

## **Partners, Partnering, Partnership: The legal implications of being Partners.**

Three business associates sit down for a meeting to discuss working together to buy a business. They decide to proceed, but do not sign a contract. After several failed attempts to reach a deal with the seller, one goes off and buys the business on his own.

The other two claim there is a partnership, sue for breach of duties owed to the partnership and claim a share of the business. The lawsuit was unsuccessful, but it was time consuming, expensive and very public. This is a simplified version, but essentially what happened in the case of an undocumented “partnership” for purchase of the Canuck’s hockey team.

The lesson? Partnerships can be dangerous vehicles.

“Partners” is currently a popular word among First Nations communities and other businesses, often used to describe relationships between people who want to work on a project or do business together. It connotes working towards a common goal and mutual benefit, but that word – partners – has a very specific meaning in law. It carries with it duties and liabilities you may not want.

### **The Legal Definition of Partnership**

In law a partnership exists if there is an agreement, written or verbal, to carry on business in common with a view to profit. This means that if two or more people or organizations have an agreement to carry on business together in the hopes of making a profit (actual profit is not requirement, just the desire), then they are partners and have the legal rights and obligations of partners.

A formal written agreement is recommended, but not required. Where there is no formal agreement, legislation sets out rules for handling various situations.

### **The Consequences of Partnership**

Partnership is a fiduciary relationship, that is one based on trust, and the law imposes a duty of utmost loyalty and good faith. Each partner must work for the benefit of the shared business, and is not entitled to direct opportunities or customers away from the partnership. No partner can compete with the business of the partnership.

The partners share the profits, and are all liable for the debts and losses of the partnership. The partners are also liable for money owed by the partnership or if any of the partners is negligent or causes damage in the course of carrying on the partnership’s business.

Any person owed money by the partnership can sue any of the partners for payment, whether or not it was that partner who caused the damage or debt. It is this shared, and sometimes unpredictable liability (lawyers call it “joint and several liability”) that is one of the biggest concerns.

### **Partnership Structures**

There are several different partnership structures available.

A “general partnership” is the standard partnership with no liability protection, and is the default structure that applies if the partners do not take consciously decide to create one of the other structures.

The other structures are “limited partnerships” and “limited liability partnerships”. Both of these limit the liability of partners for the actions of other partners. These structures are governed by provincial legislation, and you should consult a lawyer about whether either or both of these are available for business in your province.

Limited partners are basically silent partners; they put in money, but have no control over management. The limited partners, so long as they do not get involved in management, have no liability beyond the amount of money they contributed to the partnership. This structure requires a formal agreement and registration with the provincial government.

Limited liability partnerships are generally found in connection with professionals such as law and accounting firms, but in British Columbia, for example, this structure is available to any type of business.

This model allows all partners to be active in the business, and provides liability protection to the partners for the actions of another partner so long as they did not know of the activity that caused the liability.

This structure also requires a formal partnership agreement and registration with the provincial government.

**What's in a Word?**

In a dispute, a court will look at the intentions of the parties and the form of the relationship, not just what they called it, to determine whether there is a partnership. Being aware of the legal consequences of being partners, and choosing words that match your intentions for the relationship, can go a long way to protecting yourself. A relationship may be better described as a “joint venture”, a “collaboration”, a “business alliance” or something else which describes the circumstances.

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