

MBA Mid-Winter 2021

Corporate Insights and Taxation of Partnership

Limited Partnerships

Fiduciary duties

TAYLOR McCAFFREY
L A W Y E R S

Presented by Kristen Wittman

January 21, 2021

Why form a limited partnership?

- taxes
- control
- silent investors
- liability limitation

Why a Manitoba limited partnership?

- [63\(1\)](#)
- Where a limited partner takes an active part in the business of the partnership, he is liable as if he were a general partner, to any person with whom he deals on behalf of the partnership and who does not know that he is a limited partner for all debts of the partnership.
- [63\(2\)](#)
- The liability of a limited partner to a person under subsection (1) extends only to liabilities incurred by the partnership to that person between the time that the limited partner first so dealt with the person and the time when the person first acquires actual knowledge that he was dealing with a limited partner.

Overview of director's fiduciary duty

- Section 97(1) of The Corporations Act (Manitoba) states that directors shall manage, or supervise the management of, the business and affairs of a corporation.
- subject to: articles, by-laws, USA

Overview - continued

- Section 117: Every director and officer of a corporation in exercising his powers and discharging his duties shall
- (a) act honestly and in good faith with a view to the best interests of the corporation
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances

overview continued

- A fiduciary relationship, broadly interpreted by the case law, is a relationship between parties where one party is considered to be in a special relation of trust, confidence, or responsibility to the other.

To whom the duty is owed



Partnership Act

- **Section 8** - Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership; and the acts of every partner who does any act for carrying on, in the usual way, business of the kind carried on by the firm of which he is a member bind the firm and his partners

Section 23(1)

- All property and rights and interests in property originally brought into the partnership or acquired for the purposes and in the course of the partnership business, are called in this Act "partnership property", and must be held and applied by the partners exclusively for the purposes of the partnership, and in accordance with the partnership agreement.
- See Section 27 – subject to agreement

Sections 32 and 33

- accounting to all other partners for benefits derived from the partnership property, name or business connection
- duty not to compete – can't carry on another business of the same nature and competing with, that of the partnership without consent of the partners

Application of these rules in Limited Partnerships: Section 64

- **General partners liable to account**
- The general partners of a limited partnership are liable to account, both *at law and in equity*, to each other and to the limited partners for their management of the concern, in like manner as other partners are liable.
- In other words, the GP owes the same fiduciary duties as a partner of a general partnership

Section 22

- The mutual rights and duties of partners, whether ascertained by agreement or defined by this Act, may be varied by the consent of all the partners, and the consent may be either express or inferred from a course of dealing

Caselaw

- Rochwerg – fiduciary duty to account to each other
- Naramalta – duty to act in good faith
- Sinkeslak – duty ends when relationship changes
- McKnight – narrowly construed language in a partnership agreement

Typical Clauses in Partnership Agreements

- The liability of the General Partner for the debts, liabilities, losses and obligations of the Partnership is unlimited.

-
- **The General Partner is liable to the Partnership or the Limited Partners in connection with the General Partner's acts or omissions to the extent that such acts or omissions involve fraud, willful misconduct or negligence, a material breach of this Agreement that has a material adverse effect on the Partnership, the wilful violation of applicable laws by the General Partner or a breach of fiduciary duty by the General Partner in respect of the Partnership or its business**

-
- The General Partner shall exercise its powers and discharge its duties honestly, in good faith and in the best interest of the Partnership and shall exercise the care, diligence and skill of a prudent and qualified administrator.

THANK YOU

Visit us at **TMLAWYERS.COM**

Follow us on TWITTER or LINKEDIN

Kristen Wittman

204-988-0333

kwittman@tmlawyers.com