

## **The Difference between General Partnerships and Limited Liability Partnerships**

General Partnerships are those which exist when two or more persons carry on a business with a view to a profit. Whilst it is always advisable in these circumstances to have a partnership agreement which governs the operations of the partnership it is not a legal requirement. The simple act of carrying on business with another is enough to establish the existence of a partnership.

In a general partnership the liabilities of the partners are unlimited. Any actions against the partnership (whether for breach of contract or for negligence) exposes all partners to liability. If successful, a claimant can recover against the personal assets of one partner individually or against the personal assets of all partners. This is known as the principle of joint and several liability. Of course, if a claimant recovers from one partner and that partner has to satisfy the claim; that partner has a right to claim a contribution from the other partners. However, this will only be successful if the other partners have the ability to pay him or her.

Prior to 1998 it was not possible to limit your liability as a Partner. In 1998 the *Partnerships Act* was amended to allow for Limited Liability Partnerships (LLP's). They are similar to general partnerships in that they expose the personal assets of the partners in cases of actions for debts due or contractual claims. However, they are different in that in claims for negligence the assets of the non-negligent partners are not exposed, a claimant can only recover against the assets of the partner that is found to be negligent.

LLP's are only permitted in Ontario for the sole purpose of carrying on a profession and that LLP must be governed by an Act that allows an LLP to practise as a profession (for example, in the case of midwives, it is the *Midwifery Act*, 1991, for accountants it is the *Public Accounting Act*, 2004).

The protection afforded by an LLP can be significant in professions where the potential for claims against a partner for negligence exist. They are not difficult to set up, all that is required is a partnership agreement and this agreement must simply specify that the partnership is a Limited Liability Partnership and that the *Partnership Act* applies.