
How Alberta Lawyers Organize Their Professional Businesses

(Updated: October 2012)

Entities that Practice Law

Viewed as **legal entities**, law practices are:

Sole proprietorships: a sole proprietorship is an individual practicing law in the individual's personal capacity

- as a solo practitioner
- as a solo practitioner with one or more employee lawyers
- in space-sharing association with other sole proprietorships, professional corporations and/or partnerships

Partnerships: a partnership consists of two or more individual lawyers and/or professional corporations jointly carrying on business as the proprietors of a single law practice; the legal relationships between the partners are found in the partnership agreement, if any, the *Partnership Act*, RSA 2000, c. P-3 and the common law.

Limited Liability Partnerships: limited liability partnerships are partnerships that comply with the LLP provisions of the *Partnership Act* and have registered as an LLP with the Law Society and the Alberta government (see Rules 159.1-159.7 on the Law Society website)

Professional Corporations: professional corporations practice law pursuant to a permit issued by the Law Society under the *Legal Profession Act* and the Law Society Rules, and may practice alone or in partnership with individual lawyers and/or other professional corporation (see Rules 153.1-159 on the Law Society website)

Note 1: When you register with the Law Society as a LLP, you have to pay a registration fee and an annual fee. You also have to register with the Alberta government and file an annual return.

Note 2: If you incorporate your practice, you will have additional expenses:

- initial incorporation expenses, including normal incorporation expenses and a fee to the Law Society for your professional corporation permit
- annual expenses associated with maintaining the corporation, a fee to the Law Society for your professional corporation permit renewal, financial statements for the corporation and corporate tax returns (federal and provincial)
- your accounting will be marginally more complex

Note 3: Some lawyers incorporate a management company that employs the spouses and/or children of the proprietor or the partners. Because of the restrictions in the *Legal Profession Act*, a management company cannot practice law, so its activities must be restricted to providing non-legal services such as secretarial, accounting, administrative, space and other like services to the firm.

Get advice from an accountant before doing this.

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Viewed as **business organizations** (i.e., as firms), law practices are:

- sole practitioners:** a solo practitioner is a sole proprietor or a professional corporation operating alone (i.e., without employed lawyers or partners, though often with employed support staff)
- sole proprietors with employed professionals:** firms consisting of a sole proprietor or professional corporation with employed lawyers are not uncommon, although we don't have a specific name for them
- partnerships:** a partnership (including an LLP) consists of two or more individual lawyers and/or professional corporations operating a single, joint business, with or without employed lawyers. The word "partnership" refers to both the legal entity and the business firm.
- space-sharing associations:** a space-sharing association, also commonly referred to as a cost-sharing association or an association of independent practitioners, is a hybrid organization consisting of a group of sole proprietors, partnerships and/or professional corporations who practice together but not in partnership; an association does not usually employ lawyers, but members of an association may. A variation on this theme is a law suite consisting of space developed into law offices by a lawyer and rented out to other lawyers who practice independently of each other.

Liability Issues

Sole proprietorships

A sole proprietor carrying on a practice as a solo practitioner, a sole proprietor with employed lawyers, or a sole proprietor as a member of an association of independent practitioners with or without employed lawyers, has unlimited personal liability for claims arising out of the practice, including claims caused by the actions of employed lawyers and other employees.

Partnerships

Each partner in a partnership has unlimited personal liability for claims arising out of the practice of the partnership, including unlimited personal liability for claims arising out of actions of other partners, employed lawyers and other employees while carrying on partnership business.

Limited Liability Partnerships

All partnership assets are subject to claims of creditors.

Partners have unlimited personal liability for their own negligence, wrongful acts or omissions or misconduct:

- for the negligence, wrongful acts or omissions or misconduct of another partner when they knew of the misdeed but failed to take remedial action
- for the negligence, wrongful acts or omissions or misconduct of an employee, agent or representative of the partnership whom they negligently supervised

So-called "innocent partners" are not personally liable for the negligence, wrongful acts or omissions, malpractice or misconduct of other partners or employees acting in the ordinary course of carrying on the practice.

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However, they are at risk for their share in the partnership assets, and all insurance coverage held by the LLP is available to satisfy claims against an offending partner or partners.

All partners are liable for ordinary debts of the partnership.

Professional corporations

You do not get the benefit of limited liability if you carry on your practice through a professional corporation in Alberta. *The Legal Profession Act* provides:

133(1) Notwithstanding anything to the contrary in the Business Corporations Act, every person who is a voting shareholder of a corporation during the time that it is the holder of a permit or of a corporation during the time that it acts in contravention of section 106(1) is liable to the same extent and in the same manner as if the voting shareholders of the corporation were during that time carrying on the business of the corporation as a partnership or, if there is only one voting shareholder, as an individual practicing as a barrister and solicitor.

Space-sharing arrangements

Solo practitioners often join in space-sharing associations to give the impression that they are part of a larger organization with more resources. However, they usually also set a high value on their independence and do not want to be liable for the actions of other members of the association. These goals are incompatible. If a space-sharing association looks like a partnership and acts like a partnership, the courts are likely to treat it as a partnership for the purpose of determining liability to third parties, irrespective of the internal arrangements. Members of a space-sharing association who wish to avoid partnership-like liability must make it abundantly clear to clients and others that they are not partners, and that each entity within the association operates independently. This defeats the goal of projecting a firm-like image. A notation like "An Association of Independent Practitioners" on the letterhead of a space-sharing association, with no other separation of the practices, is of limited value in preventing partnership-like liability.

A member of a space-sharing association is exposed to several potential partner-like liabilities based on the activities of other members of the association:

- ❑ **negligence in the provision of legal services**—normally covered under the Law Society's compulsory E&O insurance program through ALIA, including negligence of support staff. ALIA does not pursue innocent partners or associates. However, if the policy has been breached in such a way that coverage is denied, other members of the association may be exposed.
- ❑ **fraud on a client** or a third party by a lawyer or support person—fraud is not covered by the Law Society insurance
- ❑ **trust fund defalcations**—the Law Society's Assurance Fund may make up part or all of the loss if trust funds are held in the capacity of a barrister and solicitor, but will not be available if the funds were not held in that capacity. The Law Society does not pursue innocent partners or associates.

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- **public liability, tenant's legal liability**—should be insured (make sure all members of the association and their employees and agents are named as insureds)
 - **trade debts**—if incurred in the name of the association (e.g. office supplies, process service, transcripts, medical reports, space leases, equipment leases, courier services, etc.)

Many lawyers apparently consider the risk of partnership-like liability to be more than offset by the benefits of associating with other lawyers, because space-sharing associations are increasingly popular.

A space-sharing association should have a written agreement setting out the arrangements among its members, including mutual indemnities in case partnership-like liability is imposed. But remember: an indemnity is only as good as the credit-worthiness of the indemnifier. Make sure you review the agreement before agreeing to join an association.

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