# **SAMPLE LAW PRACTICE COVERAGE AGREEMENT BETWEEN THE PLANNING LAWYER AND THE REPLACEMENT LAWYER**

This sample agreement may be used by sole proprietors or lawyers who are the sole shareholders of a professional corporation when developing a contingency plan for their law practice in the event of their death, own incapacity or other disability preventing a return, whether temporary or otherwise, to their law practice. This sample agreement should be modified to suit the personal circumstances of the lawyer. This sample document has been adapted from a sample form agreement prepared by the Law Society of British Columbia. We wish to thank the Law Society of British Columbia for its assistance.

*Current as at October 2014*

**This Agreement is made the** [*insert the date*].

## Between:

**X** [*insert the Planning Lawyer’s name*] (the “Planning Lawyer”)

## and

**Y** [*insert the Replacement Lawyer’s name]*

(the “Replacement Lawyer”)

**WHEREAS** the Planning Lawyer is a sole proprietor practising law in Ontario.

**AND WHEREAS** the Replacement Lawyer is a lawyer practising law in Ontario.

**AND WHEREAS** the Planning Lawyer wishes to put a plan in place for the management, sale or winding up of his/her Law Practice (as defined in section 1), in the event that the Planning Lawyer becomes incapacitated or unable to manage the affairs of the Law Practice for any reason or if he/she dies while still in practice.

**AND WHEREAS** the Planning Lawyer has appointed the Replacement Lawyer as his/her Law Practice Attorney and Law Practice Estate Trustee (as defined in section 1).

**AND WHEREAS** the parties wish by this Agreement to clarify when and on what terms the Replacement Lawyer shall act as Law Practice Attorney or Law Practice Estate Trustee.

**NOW THEREFORE** in consideration of the mutual covenants herein contained and for other good and valuable consideration, the parties agree as follows:

## Definitions

1. Wherever used in this Agreement, the following terms shall have the meanings set out below:
2. “**Authorized Person**” means the following:
	1. the Planning Lawyer, if alive and capable of managing his/her affairs;
	2. if the Planning Lawyer is alive but incapable of managing his/her affairs, the person(s) from time to time acting as the attorney(s) for property or guardian(s) of property of the Planning Lawyer with respect to the Planning Lawyer’s assets other than the Law Practice; or
	3. if the Planning Lawyer has died, the person(s) from time to time acting as the executor(s) or estate trustee(s) of a Will governing the Planning Lawyer’s assets other than the Law Practice.

Each person whom the Planning Lawyer has appointed as an Authorized Person at the date hereof is listed in Schedule “A” to this Agreement. The Planning Lawyer agrees to notify the Replacement Lawyer promptly in writing of any change to the Authorized Persons.

1. “**Law Practice**” means all property, both real and personal, of every nature and kind whatsoever, used in connection with the Planning Lawyer’s law practice including without limiting the generality thereof all bank accounts, investments, trust funds, client lists, client property, leasehold interests in any business premises, accounts receivable, goodwill, equipment, software and software licences, intellectual property and passwords and includes the Planning Lawyer’s Law Practice Corporate Properties.
2. “**Law Practice Attorney**” means the attorney appointed by the Planning Lawyer under The Law Practice Power of Attorney.
3. “**Law Practice Corporate Properties**” means all shares, debt, and other interests that the Planning Lawyer may own in [*insert the name of the law professional corporation if applicable*], any successor corporation, and any other corporation that owns assets used in carrying on the Law Practice or that has employees who are involved in the carrying on of the Law Practice.
4. “**Law Practice Estate Trustee**” means the estate trustee appointed under the last will and testament of the Planning Lawyer with respect to the Law Practice executed on [*insert the date of signing*], a copy of which is attached to this Agreement as Schedule “B”.
5. “**Law Practice Power of Attorney**” means the continuing power of attorney for property of the Planning Lawyer with respect to the Law Practice executed on [*insert the date of signature*], a copy of which is attached to this Agreement as Schedule “C”.

## Assumption of Duties

1. The Replacement Lawyer accepts his/her appointments as, and subject to sections 3 and 4, agrees to act as, Law Practice Attorney and/or as Law Practice Estate Trustee.
2. The Replacement Lawyer’s duties as Law Practice Attorney or as Law Practice Estate Trustee shall commence only on the date the Replacement Lawyer receives actual notice of (the “Commencement Date”):
	1. grounds to request the release of the Law Practice Power of Attorney, in accordance with the Direction Regarding the Release of the Document attached to this Agreement as Schedule “D”; or
	2. the death of the Planning Lawyer.

Until the Commencement Date, the Replacement Lawyer shall be under no obligation to monitor the Law Practice or the circumstances of the Planning Lawyer.

1. The Replacement Lawyer shall have two weeks from the Commencement Date to review the books, records and files of the Law Practice and notify the Authorized Person whether or not the Replacement Lawyer is able and willing to accept at that time the duties under this Agreement and the attached Schedules. While conducting the review of the Law Practice, the Replacement Lawyer will take reasonable steps to deal with urgent matters to protect the interests of the Planning Lawyer and his or her clients.

## Practice Management

1. If the Replacement Lawyer accepts the duties under this Agreement, the Replacement Lawyer will take possession and control of the Law Practice, and will manage the Law Practice on behalf of the Planning Lawyer in the same manner that a prudent and competent lawyer would manage his or her own legal practice. Without limiting the generality of the foregoing, the Replacement Lawyer will, if and to the extent appropriate in the circumstances, follow the guidance set out in the Law Society of Ontario’s *Replacement Lawyer Checklist for Taking Over the Law Practice of Another Lawyer*, which is attached to this Agreement as Schedule “E”.
2. If the Planning Lawyer has died or if there is no reasonable expectation, after consultation with the Planning Lawyer, the Planning Lawyer’s immediate family or the Planning Lawyer’s doctor, that the Planning Lawyer will be able to resume the practice of law in a timely manner to retain the clients and preserve the good will of the Law Practice, the Replacement Lawyer will sell or wind down and dispose of the Law Practice.

## Financial Management

*Lawyers should consider how the Replacement Lawyer will cover the office overhead and expenses for a period of time. Sections 7 and 8 are only relevant if the funding mechanism is insurance purchased for this purpose. Insurance, however, is not the only option. Other funding methods might include payment of expenses from the general account, personal bank account or, by the estate as provided for in the will. Sections 7 and 8 should be modified to reflect the funding mechanism chosen.*

1. The Planning Lawyer will purchase disability and life insurance for the purpose of paying the Replacement Lawyer and funding the expenses of the Law Practice. The Planning Lawyer will name the Replacement Lawyer as the beneficiary of such policies.
2. The Replacement Lawyer shall:
	1. hold the proceeds received from the disability and life insurance policies referred to in section 7 in trust and use those proceeds for paying the expenses of the Law Practice, which includes the Replacement Lawyer’s fees;
	2. account for the proceeds of the disability and life insurance policies and their use as part of the reporting requirements under this Agreement; and
	3. give to the Authorized Person, any proceeds remaining after the Planning Lawyer returns to practice or the practice is sold or wound up.

*Include section 9 below only if the Lawyer would like to specify tasks that are mandatory for the Replacement Lawyer to perform. If section 9 is not included in the Agreement, then section 5 of the Agreement would apply and the Replacement Lawyer would be required to consider all the matters referred to in Schedule “E” but could exercise his or her own judgment as to whether any particular action was required. Examples of items that the Planning Lawyer might wish to make mandatory, by listing them in section 9, are the payment of law office expenses for a period of time, the collection of accounts receivable, dealing with the lawyer’s bank accounts including trust accounts.*

1. Without limiting the generality of section 5 and the powers and duties under this Agreement and the attached Schedules, the Replacement Lawyer will:

[*List duties*]

1. If the Replacement Lawyer wishes to buy some part or all of the Law Practice, he/she may do so, if acceptable terms can be reached with the Authorized Person.

## Indemnity

1. Each party (the “Responsible Party”) agrees to indemnify and save harmless the other party (the “Innocent Party”) from all loss or damage that the Innocent Party may sustain in any manner as a result of an error or omission made by the Responsible Party, so long as the Innocent Party did not have actual knowledge of the error or omission or, having actual knowledge, so long as the Innocent Party acted honestly and reasonably in attempting to correct the error or omission.

## Reporting

1. The Replacement Lawyer will provide to the Authorized Person, on a quarterly or other reasonable periodic basis, or on request by the Authorized Person, a written report(s) to include, but not limited to, an accounting for accounts billed, accounts collected and expenses paid, and any efforts to sell or otherwise dispose of the Law Practice.
2. If the Replacement Lawyer decides to sell or wind down the Law Practice, the Replacement Lawyer will provide a written explanation to the Authorized Person.

## Compensation

1. In consideration of carrying out the duties of Law Practice Attorney and Law Practice Estate Trustee, the Planning Lawyer agrees to pay to the Replacement Lawyer, and the Replacement Lawyer agrees to accept as sufficient, the compensation set out in the Last Will and Testament and/or Law Practice Power of Attorney of the Planning Lawyer attached as Schedules B and C.

## Termination

1. If the Replacement Lawyer has not assumed any duties under this Agreement, this Agreement may be terminated:
	1. by the Replacement Lawyer on two weeks’ written notice to the Planning Lawyer, or
	2. by the Planning Lawyer, if alive and capable of managing his/her affairs, immediately on providing written notice to the Replacement Lawyer.
2. Subject to the Replacement Lawyer’s duties pursuant to the Law Society of Ontario *Rules of Professional Conduct* and in particular Section 3.7 on Withdrawal from Representation, if, after assuming any duties under this Agreement, the Replacement Lawyer decides that he/she can no longer act, he/she will:
	1. give the Authorized Person two weeks’ written notice of this decision;
	2. prepare to hand over the Law Practice or what remains of it and any funds the Planning Lawyer holds in trust from disability and life insurance proceeds;
	3. provide a written report to the Authorized Person as described in section 12;
	4. take any steps necessary in this two week period to deal with urgent matters to protect the interests of the Planning Lawyer and the clients;
	5. advise Trustee Services of the Law Society of Ontario of the decision to withdraw; and
	6. provide any additional information requested by the lawyer taking over the duties outlined in this Agreement.
3. If the Replacement Lawyer has assumed any duties under this Agreement, this Agreement may be terminated:
	1. by the Planning Lawyer, if alive and capable of managing his/her affairs, on two weeks’ written notice to the Replacement Lawyer;
	2. by any Authorized Person, immediately upon providing written notice to the Replacement Lawyer in which the Authorized Person shows good cause for such termination.

Subject to the duties of the Replacement Lawyer pursuant to the Law Society of Ontario *Rules of Professional Conduct* and in particular Section 3.7 on Withdrawal from Representation, the Replacement Lawyer will cooperate with the Planning Lawyer or other Authorized

Person in returning the Law Practice to the Planning Lawyer and follow the steps set out in paragraph 16 (b), (c), and (d).

## Miscellaneous

1. In carrying out his/her duties under this Agreement and the attached Schedules, the Replacement Lawyer shall not be liable to the Planning Lawyer or his/her estate for decisions made by the Replacement Lawyer in good faith which may result in a loss to the Planning Lawyer or to his/her estate.
2. If the Replacement Lawyer has any problems or concerns in carrying out the duties under this Agreement and the attached Schedules, and, in particular, in accessing the Law Practice bank accounts, he/she is urged to contact Trustee Services of the Law Society of Ontario for help and support.
3. If a disagreement arises between the Replacement Lawyer and the Authorized Person as to the handling by the Replacement Lawyer of the Law Practice and such disagreement cannot be resolved in a timely way, the parties are urged to seek help to resolve the matter by mediation or binding arbitration.
4. For greater clarity, save and except for restrictions contained in the Law Practice Power of Attorney, a copy of which is attached as Schedule C in the event of any inconsistency between this Agreement and the Law Practice Power of Attorney, the provisions of this Agreement shall prevail.

## The parties have agreed to its terms and signed this Agreement as of the date written above.

SIGNED BEFORE ME at [LOCATION] on [DATE]

|  |  |
| --- | --- |
| [Signature of the Witness] | [Signature of the Planning Lawyer] |

SIGNED BEFORE ME at [LOCATION] on [DATE]

|  |  |
| --- | --- |
| [Signature of the Witness] | [Signature of the Planning Lawyer] |

# **LIST OF SAMPLE SCHEDULES**

**Schedule “A”**

[*List the name of each person whom the Planning Lawyer has appointed as an Authorized Person*]

**Schedule “B”**

[*Attach a copy of the* [*Last Will and Testament of the Planning Lawyer with respect to the Law Practice*](https://lawsocietyontario.azureedge.net/media/lso/media/lawyers/practice-supports-resources/sample-last-will-and-testament-clauses_en.docx)]

**Schedule “C”**

[*Attach a copy of the* [*Continuing Power of Attorney for Property of the Planning Lawyer with respect to the Law Practice*](https://lawsocietyontario.azureedge.net/media/lso/media/lawyers/practice-supports-resources/sample-continuing-power-of-attorney-for-property-for-law-practice_en.docx)]

**Schedule “D”**

[*Attach the* [*Direction for the Release of the Power of Attorney for Property for Law Practice Document*](https://lawsocietyontario.azureedge.net/media/lso/media/lawyers/practice-supports-resources/sample-direction-for-the-release-of-the-power-of-attorney-for_en.docx)]

**Schedule “E”**

[*Attach the Law Society of Ontario’s* [*Replacement Lawyer Checklist for Taking Over the Law Practice of Another Lawyer*](https://lawsocietyontario.azureedge.net/media/lso/media/lawyers/practice-supports-resources/replacement-lawyer-checklist_en.pdf)]