

LAW SOCIETY OF ONTARIO
BY-LAWS MADE UNDER
SUBSECTIONS 62 (0.1) AND (1) OF THE LAW SOCIETY ACT

BY-LAW 7.1 [OPERATIONAL OBLIGATIONS AND RESPONSIBILITIES]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 25, 2024

MOVED BY Megan Shortreed

SECONDED BY William McDowell

THAT By-Law 7.1 [Operational Obligations and Responsibilities], in force immediately before this motion is moved, be amended as follows:

1. Effective January 1, 2025, the English version of the By-Law is amended by adding the following:

PART II.1

CONTINGENCY PLANNING

Definition: administrator

19.1. (1) In this Part, “administrator” means a licensee appointed and authorized to take or cause to be taken all steps necessary to preserve and carry on or to wind up the professional business of the licensee who appoints them.

Interpretation: winding up professional business

(2) Without limiting what it means to wind up the professional business of a licensee, winding up the professional business of a licensee includes the following:

1. Advising the licensee’s clients that the licensee cannot complete their retainers and arranging for the transfer of the clients’ files to another licensee or returning the clients’ files to the clients.
2. Returning or transferring clients’ trust funds as directed by the clients.

When contingency planning requirement not applicable

19.2. (1) This section does not apply to a licensee while they are practising law or providing legal services,

(a) within any of the following settings:

1. The Government of Canada,
2. A provincial or territorial government,
3. A municipal government,
4. A First Nation, Metis or Inuit government,
5. A clinic, within the meaning of the Legal Aid Services Act, 2020, that is funded by Legal Aid Ontario,

6. Legal Aid Ontario, pursuant to Part III of the Legal Aid Services Act, 2020,
7. An in-house legal department; or

(b) through a firm that is a sole proprietorship not owned by the licensee, an ordinary partnership or a limited liability partnership.

Contingency planning requirement

(2) A licensee who practises law or provides legal services shall maintain a contingency plan in accordance with this section for the preserving or carrying on or the winding up of their professional business in the event the licensee is unexpectedly temporarily or permanently unable to practise law or provide legal services and is incapable of meeting their obligations as licensee or former licensee.

Minimum components of contingency plan

(3) A contingency plan shall, at a minimum, include the following:

1. The appointment of an administrator.
2. Information on the location of and the means of obtaining possession or control of all property that is or should be in the possession or control of the licensee in connection with,
 - i. the professional business of the licensee,
 - ii. the business or affairs of a client or former client of the licensee,
 - iii. an estate for which the licensee is or was executor, administrator or administrator with the will annexed,
 - iv. a trust of which the licensee is or was a trustee,
 - v. a power of attorney under which the licensee is was the attorney, or
 - vi. a guardianship under which the licensee is or was the guardian.
3. Without limiting the generality of paragraph 2, information on the location of and the means of obtaining possession or control of all trust and other accounts of which the licensee is holder in connection with,
 - i. the professional business of the licensee,
 - ii. the business or affairs of a client or former client of the licensee,
 - iii. an estate for which the licensee is or was executor, administrator or administrator with the will annexed,
 - iv. a trust of which the licensee is or was a trustee,
 - v. a power of attorney under which the licensee is was the attorney, or
 - vi. a guardianship under which the licensee is or was the guardian.
4. Without limiting the generality of paragraphs 2 and 3, information on the location of and the means of obtaining possession or control of all [accounting records] and contact information for all bookkeepers or accountants that worked for the licensee in connection with,
 - i. the professional business of the licensee,
 - ii. the business or affairs of a client or former client of the licensee,
 - iii. an estate for which the licensee is or was executor, administrator or administrator with the will annexed,
 - iv. a trust of which the licensee is or was a trustee,
 - v. a power of attorney under which the licensee is was the attorney, or
 - vi. a guardianship under which the licensee is or was the guardian.

Contingency plan to be current

(4) A contingency plan shall be current at all times.

Timing of review of contingency plan

(5) A licensee shall review their contingency plan at least once every year.

Administrator to notify Society, insurers

19.3. An administrator whose appointment is activated shall notify the Society and the appointing licensee's professional liability insurers that the appointing licensee has ceased practising law or providing legal services and that they are the administrator in respect of the appointing licensee's professional business.