

ONTARIO
SUPERIOR COURT OF JUSTICE
(Estates List)

THE HONOURABLE MR.) Thursday, the 25th day
JUSTICE CAVANAGH) of February, 2021

B E T W E E N:

LAW SOCIETY OF ONTARIO

Applicant

and

ESTATE OF BRADLEY ROBERT ALFRED DUBY, DECEASED
and BRAD DUBY PROFESSIONAL CORPORATION

Respondent

APPLICATION UNDER the *Law Society Act*, R.S.O. 1990, c. L.8, s. 49.44 to 49.52
as amended, and the *Trustee Act*, R.S.O. 1990, c.T.23, s. 60, and 61

ORDER

THIS APPLICATION was heard this day by judicial videoconference due to the COVID-19 emergency via Zoom.

ON READING the Notice of Application, the Affidavit of Linh Hoang and on hearing the submissions of counsel for the Applicant:

1. **THIS COURT ORDERS** that the Law Society of Ontario (the "**Law Society**") be appointed as Trustee without bond, to take possession of all property, including client files, Wills,

corporate records and seals, documents, financial records, electronic data and any electronic devices containing any client information or client data, trust funds, and practice-related materials of any kind whatsoever (collectively referred to as “**Property**”) that was or should be in the possession, power or control of deceased lawyer Bradley Robert Alfred Duby and/or his Estate and/or Brad Duby Professional Corporation (collectively, the “**Respondents**”), who maintained business premises at 2 Clinton Place, Toronto, Ontario (the “**Business Premises**”), relating to his professional business as a lawyer (the “**Business**” defined below), for the purpose of preserving and/or distributing the Property, and/or winding-up the Business, with the exception of those aspects of the Business set out in Paragraph 11 below.

2. **THIS COURT ORDERS** that the Respondents’ “**Business**” is defined as:
 - (a) the Respondents’ professional business / law practice;
 - (b) records related to the business or affairs of the Respondents’ clients and former clients;
 - (c) estates for which the Respondents, or one of them, is or was executor, administrator or administrator with the will annexed;
 - (d) trusts of which the Respondents, or one of them, is or was trustee;
 - (e) powers of attorney under which the Respondents, or one of them, is or was the attorney; or
 - (f) guardianships under which the Respondents, or one of them, is or was the guardian.

3. **THIS COURT ORDERS** that the Respondents and any bank, trust company, credit union, financial institution, corporation, partnership, sole proprietorship and/or person, in receipt of this Order, deliver to the Law Society, in trust, all Property in their possession as relates

to the Respondents' Business. This includes the balance of all mixed trust accounts, client investment accounts and client Estate accounts, and incorporates, but is not limited to, account no. 1994417, transit number 24502, at the Bank of Montreal branch located at 640 Bloor St W., Toronto, Ontario. All such accounts shall be closed thereafter.

4. **THIS COURT ORDERS** that the Respondents and any bank, trust company, credit union, financial institution, corporation, partnership, sole proprietorship and/or person, provided with any Order made in this proceeding, provide to the Law Society originals or true copies of all requested documents or records, including but not limited to account statements, cancelled cheques and duplicate deposit slips, be they stored in printed, electronic, magnetic or any other form, related to all bank accounts, term deposits, securities or other Property, including safety deposit boxes, that were in the possession, power or control of the Respondents, as same relate to the Business.
5. **THIS COURT ORDERS** that the Law Society may, in its discretion, request the re-direction of mail for Bradley Robert Alfred Duby and Brad Duby Professional Corporation at 2 Clinton Place, Toronto, Ontario, M6G 1J9, by Canada Post Corporation to the Law Society of Ontario, Trustee Services Department, 1100-393 University Avenue, Toronto, Ontario M5G 1E6.
6. **THIS COURT ORDERS** that any person, with possession of, knowledge of, information about or access to client files, documents, funds, financial records or other Property which relate to the Business, provide to the Law Society such information or Property upon the Law Society's request.
7. **THIS COURT ORDERS** that any person with possession of, knowledge of, information about or access to electronic Property (electronic data or electronic devices) containing

client information, client data or financial records related to the Respondents' Business, including passwords and account information for any electronic devices and cloud/internet communications or storage services, provide to the Law Society such devices or information upon the Law Society's request. For the purposes of this Order, electronic devices include computers, external storage devices, smartphones, or any other device capable of storing electronic Property, whether or not such device belongs to the Respondents, and whether or not such device also contains personal data belonging to the Respondents or any other individual or entity.

8. **THIS COURT ORDERS** that the Law Society be authorized and empowered, if in its opinion it is necessary or desirable for the purposes of preserving and/or distributing the Property, to do any or all of the following, without the necessity of any further Order of the Court:

- (a) to employ, retain or use the services of such agents, assistants, experts, auditors, advisors, legal counsel and others, as the Law Society may consider necessary or desirable for the purposes of receiving, managing, operating, preserving, safekeeping and protecting any and all Property relating to the Business, or generally exercising its power and performing its duties hereunder;
- (b) to take such steps as in the opinion of the Law Society are necessary or appropriate to maintain or manage any and all Property relating to the Business, including but not limited to the changing of locks, security codes, and passwords, the removal of signage and the cancellation of advertising in any form of media whatsoever, the cancellation or re-direction of phone, fax, internet, email, digital or physical storage accounts, or other Business-related communications or storage services, the relocation or digitization of Property, the disposition of

Property including the return of or confidential destruction of Crown disclosure, the destruction of aged, illegible, contaminated or duplicate documents in a manner that protects client confidentiality, the taking of physical inventories and the storage and safeguarding of the Property;

- (c) to disburse, distribute, deliver or return to the clients or their lawful representative, trustee, agent or attorney, including the transfer of money to the Law Society's Unclaimed Trust Fund in accordance with the terms of the *Law Society Act*, any Property of the client that comes into the possession of the Law Society, including money, client files or other Property; and
- (d) to take any steps, enter into any agreements or incur any obligations necessary or incidental to the exercise of the aforesaid powers, including authorizing the urgent, interim law practice wind-up assistance of the law firm, Howie, Sacks & Henry LLP.

9. **THIS COURT ORDERS** that the Law Society may enter into the Business Premises and any other office premises or storage facilities occupied or maintained by the Respondents in relation to the Business during customary daytime business hours to search the premises and to take possession of any Property found therein that is covered by any Order made in this proceeding, and to otherwise execute the terms of any Order made in this proceeding.
10. **THIS COURT ORDERS** that the compensation of the Law Society as trustee and the disbursements and other expenditures properly and reasonably made or incurred by the Law Society, both before and after the date of any Order made in this proceeding, be paid by the Respondents or be provided for out of the funds and/or Property set out above

with approval of the Court to be obtained from time to time by way of report to the Court on the administration of the trusteeship and/or upon discharge of the trusteeship.

11. **THIS COURT ORDERS** that the role of the Law Society as trustee and the scope of the trusteeship is restricted to attending to the preservation and distribution of client Property and/or winding-up the Business, as defined above, and that the Law Society is not responsible for billing accounts, collecting accounts receivable, making remittance payments, paying rent, fees, storage accounts, levies, outstanding accounts, employee salaries or any other administrative, operational or managerial function or expense related to the Business, all of which remain the responsibility of the Respondents.
12. **THIS COURT ORDERS** that no proceeding or enforcement process in any Court or Tribunal shall be commenced or continued against the Law Society in relation to the trusteeship herein except with the written consent of the Law Society or with leave of this Court.
13. **THIS COURT ORDERS** that the Law Society shall incur no liability as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or willful misconduct on its part.
14. **THIS COURT ORDERS** that MNP Ltd. as Court-appointed Receiver appointed pursuant to the Court Order dated February 25, 2021 in Ontario Superior Court of Justice (Commercial List) Court File No. CV-21-00657656-00CL (the “**Receiver**”) and the Law Society use best efforts to coordinate each of the Trustee’s and Receiver’s powers and authorizations in dealing with all Property and third parties and otherwise as provided in this Order, and to resolve any issues that may arise in such dealings and with respect to any conflicts that may arise. In the event that the Receiver and the Trustee are unable to

resolve any issue that may arise, or require direction on same, then the Law Society may apply to this Court, on reasonable notice to the Trustee, for direction and any Order that may be required.

15. **THIS COURT ORDERS** that the requirement for the filing of a Factum be dispensed with.
 16. **THIS COURT ORDERS** service upon the Respondents be dispensed with.
 17. **THIS COURT ORDERS** that the Law Society shall report to the Court with respect to the administration of the trusteeship within six months of the date of this Order, and may do so by filing written evidence with the Registrar if no relief or costs are sought at that time.
 18. **THIS COURT ORDERS** that any party affected by this Order may apply to this Court pursuant to section 49.51 of the *Law Society Act* to vary or discharge this Order.
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LAW SOCIETY OF ONTARIO and **ESTATE OF BRADLEY ROBERT ALFRED DUBY, DECEASED, ET AL.**

ONTARIO
SUPERIOR COURT OF JUSTICE
(Estates List)

PROCEEDING COMMENCED AT TORONTO

ORDER

Law Society of Ontario
Trustee Services Department
1100-393 University Avenue
Toronto, ON
M5G 1E6

M. Joanne MacMillan
LSO No. 43529J
Tel: (416) 947-5241
Fax: (416) 644-4880
jmacmill@lso.ca

Counsel for the Applicant