

Court File No.:
CV-21-00657645-00ES

ONTARIO
SUPERIOR COURT OF JUSTICE
(Estates List)

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

Respondents

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

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following pages.

THIS APPLICATION will come on for a hearing, on _____ day, _____ day of _____ 2021, at _____, by videoconference.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not

have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least two days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, A JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date 2021-02-24 Issued by _____
Local registrar

Address of
court office: 330 University Avenue
Toronto, ON
M5G 1R7

To: Estate of Bradley Robert Alfred Duby,
deceased

and

Brad Duby Professional Corporation

2 Clinton Place,
Toronto, ON M6G 1J9

APPLICATION

The Applicant makes an Application for:

1. **AN ORDER** 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, general or operating account funds, and other practice-related materials, property or funds 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. **AN ORDER** defining the Respondents’ “**Business**” 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. **AN ORDER** 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, Estate accounts, general or operating accounts, and Teranet accounts, and the contents of all safety deposit boxes, 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. **AN ORDER** 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. **AN ORDER** 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. **AN ORDER** 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. **AN ORDER** 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. **AN ORDER** 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 of Howie, Sacks & Henry LLP.

9. **AN ORDER** 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. **AN ORDER** 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. **AN ORDER** 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. **AN ORDER** 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. **AN ORDER** 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. **AN ORDER** that the requirement for the filing of a Factum be dispensed with.
15. **AN ORDER** validating service, substituting service and/or dispensing with service upon the Respondent, if required.
16. **AN ORDER** 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.

17. **AN ORDER** 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.
18. Such further and other relief as Counsel for the Law Society may request and this Honourable Court may deem just and proper.

THE GROUNDS FOR THE APPLICATION are:

1. Bradley Robert Alfred Duby was a lawyer, licensed to practise law in the Province of Ontario, who carried on his Business as a sole practitioner, operating at times as Brad Duby Professional Corporation. Mr. Duby passed away while in active practice on January 28, 2021.
2. Mr. Duby died intestate and his widow is not seeking to be appointed as the Estate Trustee without a Will.
3. As there is no representative for the Respondent, there are no formal measures in place for the protection of clients' interests. All client files and documents ought to be recovered to ensure the orderly transition of active matters, the preservation of Property, and the protection of client confidentiality and privilege.
4. There is no entity with the authority to secure and distribute the trust funds from the Business. Any trust accounts operated by the Respondents containing client or Estate beneficiary monies ought to be recovered and distributed to those beneficially entitled to the funds.
5. Circumstances exist in respect of the Business that make a trusteeship order necessary for the protection of the public.

6. Sections 4.1(a), 4.2(3), 5(2) and 49.44 to 49.52 of the [Law Society Act](#), R.S.O. 1990, c. L.8, as amended.
7. Sections 60 and 61 of the [Trustee Act](#), R.S.O. 1990, c.T.23.
8. Rules 1.04, 16.04, 16.06.1(2), 16.08 and 38.09(4) of the [Rules of Civil Procedure](#), R.R.O. 1990, Reg. 194.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the application:

1. The Affidavit of Linh Hoang.
2. The *Law Society Act*, R.S.O. 1990, c. L.8, as amended, sections 4.1(a), 4.2(3), 5(2) and 49.44 to 49.52.
3. The *Trustee Act*, R.S.O. 1990, c.T.23, sections 23, 60 and 61.
4. The *Rules of Civil Procedure*, Rules 1.04, 16.04, 16.08 and 38.09(4).
5. Such further and other material as Counsel may advise and this Honourable Court may permit.

Date of Issue: 2021-02-24

Law Society of Ontario
Trustee Service Department
1100-393 University Ave.
Toronto, Ontario
M5G 1E6

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LAW SOCIETY OF ONTARIO and ESTATE OF BRADLEY ROBERT ALFRED DUBY, DECEASED, et al,

ONTARIO
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PROCEEDING COMMENCED AT TORONTO

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