

COURT OF APPEAL FOR ONTARIO

CITATION: The Law Society of Upper Canada v. Kelly, 2012 ONCA 222

DATE: 20120404

DOCKET: C54501

Doherty, LaForme JJ.A. and Turnbull J. (*ad hoc*)

BETWEEN

The Law Society of Upper Canada

Applicant (Respondent in Appeal)

and

Terence Austin Kelly

Respondent (Appellant)

Andrew D. Burns, Donald Park and Douglas Hunt, Q.C., for the respondent  
(appellant)

Nadia Musclow and Margaret Cowtan, for the applicant (respondent)

Heard: April 3, 2012

On appeal from the order of Justice Pollak of the Superior Court of Justice, dated  
September 28, 2011.

APPEAL BOOK ENDORSEMENT

[1] The order of Lederer J. was made under s. 49.47 of the *Law Society Act*. The Law Society, as trustee, then applied for directions “affecting the property” under s. 49.48 and sought an order for distribution of the property.

[2] We are satisfied that the part of the order under appeal directing payment of the unallocated funds into the compensation fund is a distribution under s. 49.47(2).

[3] We do not read s. 51(2) as exhaustively setting out the monies that can be paid into the compensation fund. Rather, it identifies certain monies which must be paid into the compensation fund.

[4] Sections 59.6 through 59.14 do not create a “scheme” requiring payment of unallocated funds into the unclaimed trust fund account. Those sections are designed primarily as a mechanism by which lawyers may apply to have unclaimed trust funds paid into the account, thereby relieving the lawyer of associated fiduciary duties.

[5] We are, therefore, satisfied that there was authority under the statutory scheme to make the order. We see no error in the motion judge’s exercise of her discretion in granting the order in the terms sought.

[6] We see no merit to the “due process” claims. They were not pursued in oral argument.

[7] The appeal on the merits is dismissed.

[8] We see no basis to make any order of costs of the appeal against Mr. Burns personally. We would order costs in the amount of \$15,000 “all in” payable by the appellant. The monies may come from any funds of the appellant presently held by the Law Society. To the extent that the funds do not exhaust the cost order, the appellant is liable for the remainder.