

# Kelly A. Charlebois

## Partner

Toronto

**OFFICE**

416.595.2632

kcharlebois@millerthomson.com



## Industries & Expertise

**EXPERTISE**

Estates and Trusts Litigation | Shareholders Disputes | Commercial Litigation

## Biography

**BAR ADMISSION**

Ontario, 2001

**EDUCATION**

- LL.B., University of Toronto, 1999
- B.B.A. (honours), Wilfrid Laurier University, 1994

**LANGUAGES SPOKEN**

English

Kelly Charlebois is an experienced estate and trust litigator with expertise in complex and multifaceted cases. She is a tenacious advocate who persuasively and effectively advances her clients' interests and achieves positive and cost-effective results for them in a broad range of areas. Kelly's clients praise her strategic approach to handling their files. Kelly also serves as Leader of Miller Thomson's Estates & Trusts Group. She

is, by invitation, an Honorary Overseas Member of the Commercial Bar Association, England and Wales (COMBAR).

Kelly has particular expertise in matters relating to estates, trusts, and fiduciary and capacity-related proceedings. Kelly has successfully represented high-net-worth individuals, institutions, and charitable organizations in this area, including in will challenges, will interpretations, guardianship applications, dependant support applications, passing-of-account applications, and proceedings involving breach of trust and breach of fiduciary duty. She also regularly advises financial institutions and trust companies in relation to estates, powers of attorney, capacity issues and the administration of estates during litigation.

## Industry involvement

### Recognition

- *The Best Lawyers in Canada* – Trusts and Estates, 2015 – 2024
- *The Canadian Legal Lexpert Directory* – Estate & Personal Tax Planning, 2017 – 2024
- *Benchmark Canada*, Litigation Star: Trusts and Estates, 2022 – 2024
- *Chambers High Net Worth Guide*, Private Wealth Disputes – Canada, 2017 – 2024
- Who's Who Legal, Canada Guide – Global Leader; Private Client, 2023
- *Who's Who Legal*, Canada Guide – National Leader; Canada – Private Client, 2022

### Thought leadership

#### Papers and Presentations

- "Litigation Skills Part 1: Advocacy for Estate Litigators", Ontario Bar Association, April 2024
- "Tales from the Trenches", Canadian Association of Gift Planners Summit, September 2022
- "Wealth Planning in a Digital Age", 23rd National STEP Conference, June 14, 2021
- "Making Submissions to the Court", Estate Accounting and Passing of Accounts, Law Society of Ontario, January 2021
- "How Do You Determine Urgency in an Urgent Motion", 23rd Annual Estates and Trusts Summit, October 2020
- "Questions from the Bench", OBA Essential Evidence Series for Estate Litigators, August 2020
- Case Law Update, 22nd Annual Estates and Trusts Summit, October 2019
- "Update on Trust Law: Two Recent Cases from the Supreme Court", Twelve Minute Civil Litigator, Law Society of Ontario, September 2019
- "Identifying Tax Issues in Estates and Trusts Mediations", Ontario Bar Association, April 2019
- "Conducting a Dependant Support Trial – Examinations-in-Chief", The Advocates' Society, October 29, 2018

- “Questions from the Bench”, OBA Essential Evidence Series for Estate Litigators, May 2018
- “Planning and Litigation: Financial Products and Their Implications to Your Practice”, OBA Trusts and Estates Law, October 20, 2016
- “Building A Successful Solicitor’s Wills and Estates Practice: A Mentorship Event”, OBA Trusts and Estates Mentorship program, October 6, 2016
- “Advisors Roundtable on the Planning and Litigation of Closely Held Corporations”: American Bar Association – Section of International Law Fall Meeting, 2015
- “Key Advice to Maximize Your Management and Guardianship Plans,” Ontario Bar Association, February 24, 2015
- “Offers to Settle,” OBA Sunrise Series, November 26, 2013
- Presented to Junior Trusts and Estates Practitioners on various substantive and practice-related issues, October 2013
- “Disappointed Beneficiaries, Testamentary Independence and Public Policy,” June 2012
- Trustee Compensation: How Much Can an Executor Take? presented at CAGP-ACDP Conference, April 2011
- “Certificates of Pending Litigation”, OBA Conference on Your First Collection II Deadbeat Dilemmas: How to Get Paid, November 19, 2008
- Co-Chair, “Your Comprehensive Guide to Will Challenges: A Series”, Ontario Bar Association, August 2021

### **Other Editorial Contributions**

- Co-editor, *Wealth Matters*, Miller Thomson’s Private Client Services Newsletter

### **Publications**

- “Family Law Issues in Estate Litigation”, Key Developments in Estates and Trusts Law in Ontario, 2016 – 2017 Edition
- “Dependants’ Relief Claims under the *Succession Law Reform Act*”, Key Developments in Estates and Trusts Law in Ontario, 2015 – 2016 Edition
- Miller Thomson on Estate Planning, 2013
- Ademption: Beware the Potential Failure of Gifts, *Wealth Matters*, Spring 2011
- Supreme Court of Canada Rules on Joint Account Cases, *Wealth Matters*, October 2007

### **Notable matters**

- *Zavet v. Herzog*, 2018 ONSC 3398 (successful in limiting claim for interim support and resisting claim for interim costs)
- *Leon v Leon*, 2018 ONSC 5679 (successful in resisting injunction to remove officers and directors and to prevent them from taking certain actions pending trial)

- *Woolnough v. Dare*, 2016 ONSC 4013, *aff'd* 2017 ONCA 274 (successful in resisting beneficiary's attempt to remove Estate Trustees with costs on a substantial indemnity scale)
- *Woolnough v Dare*, 2015 ONSC 6933 (Div. Ct.) (successful in resisting mandatory injunction requiring estate trustees to permit occupancy of cottage property)
- *Mortgage Investment Corp. of Eastern Ontario v. Szpivak*, 2014 Carswell Ont. 6325 (S.C.) (successful in having a professional negligence action dismissed on the basis of the expiry of the limitation period)
- *Re Grieco Estate*, 2013 ONSC 2465 (CanLII) (successful in preventing a \$1 million payment pursuant to a settlement agreement from being paid out in priority to contingent creditors)
- *Faris v. Eftimovski et al*, 2012 ONSC 1126 (CanLII) *aff'd* 2013 ONCA 360 (CanLII) (successful in having multi-defendant action dismissed for delay)
- *Babiana v. Dobson*, 2012 ONSC 3431 (successful in having action dismissed at a preliminary stage on the basis of it being frivolous, vexatious and an abuse of process)
- *Re Kaptyn* (2010), 102 O.R. (3d) 1 (Ont. S.C.) (represented beneficiary in application for advice and directions on numerous will interpretation issues)
- *Re Gibbon Estate*, 2010 CarswellOnt 3799 (represented Estate Trustee in application for interpretation of various testamentary documents)
- *Desjardins Credit Union Inc. v. Grenville-Wood*, [2010] O.J. No. 226, *aff'd* 2011 ONCA 512, leave to appeal denied [2011] S.C.C.A. No. 426 (successful action by financial institution for loss sustained in connection with the deposit of a materially altered cheque)
- *Grey & Bruce Mutual Insurance Co. v. MacKinnon Plumbing & Heating*, [2009] O.J. No. 5448 (S.C.J.) (successful motion for summary judgment based on principles of subrogation and equitable contribution)
- *Kaptyn Estate, Re.* (2008), 43 E.T.R. (3d) 219 (successful on trial of issue as to whether testator had testamentary capacity at time of execution of codicil)
- *Jobsearch Canada Inc. v. Matrix*, [2008] O.J. No. 2556 (successful in resisting motion for injunction seeking a prohibition on solicitation)
- *African Caribbean Grocery Inc. v. 732718 Ontario Inc.*, [2007] O.J. No. 1575 (successful motion for judgment dismissing the plaintiff's claim)
- *Brookfield Lepage Johnson Controls Facilities Management Services Ltd. v. Ontario (Labour Relations Board)* (2007), C.L.L.C. 220 (Div. Court) (successful in resisting motion to quash an application for judicial review)
- *B. (R.) v. Toronto Catholic District School Board*, [2006] O.J. No. 3700 (Div. Court) (successful in responding to an application for judicial review of the decision of the respondent school board to conduct an assessment prior to deciding on placement)
- *Oz Optics Ltd. v. Dimensional Communications Inc.*, [2005] O.J. No. 2816 (C.A.) (successful in responding to an appeal from a decision allowing an application for enforcement of a foreign judgment and motion for summary judgment)
- *VW Credit v. Elguindy*, [2005] O.J. No. 104 (C.A.) (successful in responding to an appeal to set aside summary judgment)

- *Garvey v. Meyers. Transport Ltd.*, [2004] F.C.J. No. 2093 (Fed. Ct.), affirmed [2005] F.C.J. No. 1864 (Fed. C.A.) (successful in responding to application for judicial review of a decision of the Canadian Human Rights Commission)
- *Sutherland v. Birks* (2003), 65 O.R. (3d) 812 (C.A.) (appeal and cross-appeal in an oppression remedy claim); application for leave to appeal to the Supreme Court of Canada dismissed, [2003] S.C.C.A. No. 424

### **Memberships & affiliations**

- Society of Trust and Estate Practitioners
- Advocates' Society
- Canadian Bar Association
- Ontario Bar Association
- Toronto Lawyers' Association
- University of Toronto Alumni Student Mentor Program