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## Chapter 50

# Sample Will

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### SAMPLE WILL [§50.2]

#### LAST WILL

§1.4        1.        This is the last Will of me, *John Henry Smith*, of *1234 Somewhere Street, Vancouver, British Columbia*.

#### Revocation of Prior Wills

§1.9        2.        I revoke all my prior wills and codicils.

#### Definitions and Interpretation

§2.2        3.        In this Will:

§2.3        (a)        “Articles” means all items of personal, domestic, and household use or ornament, and includes all motor vehicles and watercraft, and accessories to them, that I own when I die;

§2.9        (b)        “decide” or “decides” means, when referring to a decision of any person, a decision made in that person’s sole and uncontrolled discretion to the extent permitted by law; and

§2.19       (d)        “Trustee” means both the executor of this Will and the trustee of my estate and any reference to my Trustee includes all genders and the singular or the plural as the context requires.

§2.20       4.        Headings are inserted for convenience only and do not affect how this Will is interpreted.

§2.21       Where the word “includes” or the word “including” is followed by a list, the contents of the list are not intended to limit the generality of the expression preceding the word “includes” or the word “including”, as the case may be.

#### EXECUTOR AND TRUSTEE

##### Appointment

§3.4A       5.        (a)        I appoint *my wife Mary Jane Smith (“Mary”)* to be my Trustee.

(b)        If *Mary* is unwilling or unable to act or to continue to act as my Trustee, I appoint *my sister Erika Lynn Reid (“Erika”)* to be my Trustee.

- (c) If neither *Mary* nor *Erika* is willing and able to act or to continue to act as my Trustee, I appoint *Reliable Trust Company*, of 4444 Burrard Street, Vancouver, British Columbia, to be my Trustee.

#### **ADMINISTRATION OF MY ESTATE**

##### **Trustee to Administer My Estate**

- §7.2 6. I give my Trustee all my property of every kind and wherever located to administer as I direct in this Will. In administering my estate, my Trustee may convert or retain my estate as set out in paragraph 10 of this Will.
7. I direct my Trustee to hold that property on the following trusts:

##### **Debts to Be Paid from My Estate**

- §8.3 (a) to pay out of my estate:
- (i) my debts, including income taxes payable up to and including the date of my death;
  - (ii) my funeral and other expenses related to this Will and my death; and
  - (iii) all estate, gift, inheritance, succession, and other death taxes or duties payable in respect of all property passing on my death, including:
    - A. insurance proceeds on my life payable as a consequence of my death (but excluding the proceeds of insurance upon my life owned by any corporation or owned by any partnership of which I am a partner);
    - B. any annuity, registered retirement savings plan, registered retirement income fund, pension, or superannuation benefits payable to any person as a result of my death;
    - C. any gift made by me in my lifetime; and
    - D. any benefit arising by survivorship,

and my Trustee may pay these taxes whether they are imposed by the law of this jurisdiction or any other and my Trustee may prepay or delay payment of any taxes or duties.

##### **Gift of Articles**

- §10.6 (b) if *Mary* is not alive on the date that is 30 days after the date of my death:

- §10.8(a)(iii)** (i) to distribute those items of the Articles that remain (the "Articles") as equally as is reasonably practicable *among those of my son Henry James Smith ("Hank"), my daughter Susan Mary Smith ("Susan"), and my daughter Elizabeth Anne Smith ("Liz")* who are alive on the date that is 5 days after the date of my death;
- §10.8(a)(iv)** (ii) it is my hope that my Trustee will, together with my children, devise a format of division of the Remaining Articles that results *in those of Hank, Susan, and Liz* who are alive on the date that is 5 days after the date of my death, receiving items (or items and cash, if an equalizing payment is required) of approximately the same total market value;
- §10.8(a)(v)** (iii) to pay all of the packing, freight, and insurance costs my Trustee decides is appropriate for delivering any items of the Articles as required by this Will;

#### **Residue of Estate**

- §14.2** (d) to give the residue of my estate to *Mary*, if she is alive on the date that is 30 days after the date of my death;
- §16.16** (e) if *Mary* is not alive on the date that is 30 days after the date of my death, to divide the residue of my estate into as many equal shares as there are of my children who are alive on the date that is 30 days after the date of my death, except if any child of mine has died before that date and one or more of his or her children are alive on that date, that deceased child will be considered alive for the purposes of the division, and:
- (i) hold one of those shares for each child of mine who is alive on that date, and:
- A. pay so much of the income and capital of that child's share as my Trustee decides is necessary or advisable for the care, maintenance, education, and benefit of that child until he or she dies or reaches 25;
  - B. add any income not paid in any year to the capital of that child's share;
  - C. when that child reaches 21, give that child *one-half* of what remains of his or her share;
  - D. when that child reaches 25, give that child what remains of that child's share;

E. if that child dies before reaching 25 and leaves one or more children alive on the date that is one day after the date of that child's death, divide what remains of that child's share equally among those of that child's children who are alive on that date;

F. if that child dies before reaching 25 and leaves no child alive on the date that is one day after the date of that child's death, divide what remains of that child's share equally among the other shares created under the provisions of paragraph 7(e) of this Will;

(ii) hold one of those shares for each child of mine who died before the date that is 30 days after the date of my death and left one or more of his or her children alive on that date, and divide each deceased child's share equally among those children of that deceased child;

**§18.3**

(f) if *Mary* is not alive on the date that is 30 days after the date of my death and the trusts of paragraph 7(e) of this Will, or any of those trusts, should at any date (the "Failure Date") fail to vest, I direct my Trustee to divide that part of my estate for which the trusts have failed, *into two equal shares and:*

(i) *pay one of those shares to those of my father Sebastian Henry Smith, and my mother Anne Susan Smith who survive the Failure Date, and if both, equally; and*

(ii) *pay one of those shares to those of Mary's father Jeremiah Allan Jonston and Mary's mother Elizabeth Mary Jonston who survive the Failure Date, and if both, equally.*

**POWERS OF TRUSTEE**

**Trust Terms for Those Who Are Under 19**

**§19.2**

8. If any person who becomes entitled to any part of my estate is under 19, and I have not specified terms in this Will on which my Trustee is to hold that part, I direct my Trustee to hold that part, and:

(a) pay so much of the income and capital of that person's part of my estate as my Trustee decides for that person's benefit until that person reaches 19;

(b) add any unused income to the capital of that person's part of my estate and then pay the capital to that person when he or she reaches 19, but if that person dies before reaching 19, I direct my Trustee to pay that person's part of my estate to that person's estate; and

- (c) if at any time my Trustee decides, my Trustee may pay some or all of that part of my estate to that person's parent or guardian as trustee, to receive and hold that part of my estate for that person's benefit on the same terms set out in paragraphs (a) and (b) above.

#### **Payment to Parent or Guardian**

- §19.4** 9. When my Trustee makes any payment for the benefit of any person under 19, my Trustee may make that payment to that person's parent or guardian. When the parent or guardian receives that payment, my Trustee is discharged for that payment and need not inquire about how it is used.

#### **Convert, Keep, or Invest**

- §19.5** 10. When my Trustee administers my estate:
- (a) my Trustee may convert my estate or any part of my estate into money or any other form of property or security, and decide how, when, and on what terms;
  - (b) my Trustee may keep my estate, or any part of it, in the form it is in at the date of my death and for as long as my Trustee decides, even for the duration of the trusts in this Will. This power applies even if:
    - (i) the property is not an investment authorized under this Will;
    - (ii) a debt is owing on the property; or
    - (iii) the property does not produce income;
  - (c) my Trustee may invest my estate or any part of my estate in any form of property or security, whether inside or outside Canada, in which a prudent investor might invest; and
  - (d) if at any time my Trustee is a corporate trustee, my Trustee may invest in that corporation's common trust funds and the corporate trustee need not account for any profit that accrues to it as a result of that investment.

#### **Allocate Assets of My Estate**

- §19.7** 11. When my Trustee divides or distributes my estate, my Trustee may decide which assets of my estate (including, without limitation, money, publicly traded securities, or other property, real or personal) to allocate to any share or interest in my estate (and not necessarily equally among any shares or interests) and the value of each of those assets. Whatever value my Trustee attributes to those assets will be final and binding on everyone interested in my estate.

### **Income Tax Elections**

- §19.10** 12. (a) My Trustee may make any allocations, elections, and distributions my Trustee decides are in the best interests of my estate as a whole, including any allocations and elections under the *Income Tax Act* of Canada.
- (b) My Trustee may make those allocations or elections, in whatever manner and proportions my Trustee decides, among the beneficiaries of my estate and any one or more of them to the exclusion of any others.
- (c) Any election that allocates any portion of the income of my estate to any person for the purposes of the *Income Tax Act* will not be regarded as a decision by my Trustee to allocate, in fact, that income to that person nor will that decision give that person any right to that income.
- (d) My Trustee will not be considered to have breached any duty to maintain an even hand among the beneficiaries, nor will my Trustee be liable for any loss to my estate or any beneficiary of my estate as a result of any of those allocations, elections, or distributions made in good faith.

### **Deal with Business**

- §19.11** 13. My Trustee, subject to any contrary provisions in this Will, may deal with any interest in any business, incorporated or otherwise, held by my estate, and may exercise any rights, powers, and privileges in connection with that interest to the same extent as I could if I were alive and the only owner of that interest.

### **Further Powers Dealing with Property**

- §19.13** 14. My Trustee, subject to any contrary provisions in this Will, may exercise any rights, powers, and privileges in connection with any property (personal or real) forming part of my estate to the same extent as I could if I were alive and the only owner of that property. My Trustee's powers, which may be exercised how, when and on whatever terms my Trustee decides, include:

- §19.13(a)** (a) selling any of that property;
- §19.13(b)** (b) managing any of that property;
- §19.13(c)** (c) spending money out of the capital and income, or either, to repair, convert, improve, or rebuild any of that property;
- §19.13(d)** (d) razing any or all buildings on that property;
- §19.13(e)** (e) erecting any building or buildings on that property;

- §19.13(f) (f) insuring any of that property against whatever risks my Trustee decides;
- §19.13(g) (g) renting, leasing, or permitting the use or occupancy of any of that property for any period of time;
- §19.13(h) (h) terminating or accepting the surrender of any lease or rental arrangement concerning that property;
- §19.13(i) (i) granting any option or right of first refusal to any person to purchase or lease any of that property for any period of time;
- §19.13(j) (j) granting, paying off or renewing any mortgages on that property;
- §19.13(k) (k) paying any person in any profession, trade, or business to transact any business or trade, or to do any act in relation to that property; and
- §19.13(l) (l) transferring that property in exchange for other property.

**No Vesting**

- §19.37 15. Unless my Trustee directs in writing, no part of the income or capital of my estate or any interest in any income or capital of my estate will vest, either absolutely or indefeasibly or subject to divestment, either in interest or possession in any beneficiary unless and until my Trustee has actually paid or applied that part of the income or capital of my estate to or for the benefit of that beneficiary and will not be subject to seizure for the payment of any debts of the beneficiary.

**Digital and Electronic Assets and Liabilities**

- §19.42 16. My Trustee, subject to any contrary provisions in my Will, may exercise any rights, powers and privileges in connection with any digital or electronic property or online accounts forming part of my estate to the same extent as I could if I were alive and the only owner of that property. My Trustee's powers, which may be exercised how, when and on whatever terms my Trustee decides, include:
  - (a) accessing, retrieving and downloading, or securely deleting digital or electronic property;
  - (b) managing or disposing of domain names;
  - (c) continuing operation of or dismantling websites;
  - (d) managing or closing accounts (including social media accounts, email accounts, cloud storage accounts, online gaming accounts, subscription media accounts and electronic commerce accounts);
  - (e) protecting or securely deleting my digital works and related intellectual property, including documents, blog posts, photographs, videos and websites;

- (f) protecting my personal information; and
- (g) accessing digital wallets and managing any associated digital currencies or cryptocurrencies.

**Professional Assistance and Agents**

- §19.19** 17. My Trustee need not act personally but may retain and rely upon the advice of, and delegate my Trustee's powers to corporate trustees, investment counsel, lawyers, accountants, and other professionals or advisors, as my Trustee decides will assist my Trustee in the discharge of my Trustee's duties, and my Trustee:
- (a) without limitation, may from time to time:
    - (i) retain accountants in matters relating to the preparation of tax returns, my Trustee's accounts and valuation of assets;
    - (ii) retain a corporate trustee to act as my Trustee's agent for the management of all or any part of my estate;
    - (iii) retain the services of one or more investment counsel, brokers or other investment advisors to advise my Trustee with respect to the investment of all or any part of my estate;
    - (iv) delegate to any such corporate trustee or advisor any and all discretionary powers given to my Trustee with respect to the investment of such assets; and
    - (v) terminate any of those arrangements;
  - (b) may permit any person to have possession or control of all or any part of my estate;
  - (c) may place assets of my estate in the custody of a corporate trustee or other agent and may transfer assets to the name of that corporate trustee or other agent or any nominee of it;
  - (d) may pay the reasonable compensation of those professionals, agents or advisors and charge it to the income and capital of my estate in such proportions and at such times as my Trustee decides, and any compensation paid is to be taken into account and deducted from the compensation to which my Trustee would be otherwise entitled; and
  - (e) will not be liable for any neglect, omission, misconduct or default of any of those professionals, agents or advisors nor for any loss or damage resulting from any delegation to a professional, agent or advisor or any action taken relying on the advice of a professional, agent or advisor, notwithstanding that the retainer of that professional, agent or advisor was not strictly necessary, provided that the professional, agent or advisor was selected and retained with reasonable care.



**Interim Compensation**

**§19.30** 18. If *Reliable Trust Company* is my Trustee, I authorize it to appropriate and pay to itself from the income and capital of my estate such amounts on account of its compensation as my Trustee as it, in its discretion, determines to be reasonable and appropriate from time to time notwithstanding that it will have the use of the funds prior to any order of any court of competent jurisdiction or prior to the approval of the estate accounting by the beneficiaries entitled to so approve. That compensation will not be considered as a reserve with respect to compensation to be claimed, nor will any interest accrue to my estate on any excess compensation appropriated by my Trustee.

**Funeral Wishes**

**§20.2** 19. I want my remains to be cremated *and my ashes disposed of as my Trustee decides.*

**§21.2** I have signed this Will on *April 14, 2016.*

We were both present, at the request )  
of **John Henry Smith**, and we were both )  
19 years of age or older, when he signed )  
this Will. We then signed as witnesses in )  
his presence and in the presence of )  
each other. )

\_\_\_\_\_)  
Signature of Witness )

\_\_\_\_\_)  
Printed Name )

\_\_\_\_\_)  
Address (Street) )

\_\_\_\_\_)  
City )

\_\_\_\_\_)  
Occupation )

\_\_\_\_\_)  
Signature of Witness )

\_\_\_\_\_)  
Printed Name )

\_\_\_\_\_)  
Address (Street) )

\_\_\_\_\_)  
City )

\_\_\_\_\_)  
Occupation )

\_\_\_\_\_) *John Henry Smith*