

# SUPREME COURT OF YUKON

Citation: *Tom (Estate of)*, 2012 YKSC 30

Date: 20120425  
S.C. No. 09-P0030  
Registry: Whitehorse

Between:

IN THE MATTER OF THE ESTATE

OF

ROSIE TOM, DECEASED

Before: Mr. Justice R.S. Veale

Appearances:

Michael Tom  
Lily Hill  
Trudy Tom

Appearing on his own behalf  
Appearing on her own behalf  
Appearing on her own behalf

## REASONS FOR JUDGMENT

### INTRODUCTION

[1] This is an application by Michael Tom, the son of Rosie Tom and a beneficiary of a  $\frac{1}{4}$  interest in the Estate of Rosie Tom who died on July 23, 2009, in Carmacks. The Administration of the Estate of Rosie Tom was granted to her daughter, Lily Hill, on August 27, 2009. The other beneficiaries are Trudy Tom, David Tom Jr., also children of Rosie Tom. All the beneficiaries are adults as Rosie Tom was 78 years old when she passed away.

[2] On April 10, 2012, Michael Tom applied for an order that Lily Hill make an accounting for all the income and expenses of the estate pursuant to Rule 64 (61), (62) and (63). Rule 64(63) sets out the procedure and contents of the account that must be prepared in Form 88 and I have asked the clerk to provide this information to Ms. Hill. The specific requirement for the passing of accounts in this matter is a Statement of Income and Disbursements for the estate. There is no necessity to complete the assets and liabilities section or proposed remuneration. However, the Statement of Proposed Distribution must be completed.

[3] Michael Tom stated in his affidavit that no cash or asset distribution of any kind had been made to him since the grant of administration almost three years ago. I have found from hearing the evidence of Lily Hill and Michael Tom, as well as interventions from Trudy Tom that there is a complete breakdown in the relationships between Michael Tom and his siblings, especially Lily Hill and there is some merit to his assertion that they do not wish to have him participate in sharing the estate of Rosie Tom with him. It is not necessary for me to decide the reasons for this. Perhaps it is because he did not attend the funeral, perhaps it is because of animosity with this spouse or perhaps it is because he has left Carmacks for employment.

[4] What is important is that Lily Hill has been appointed by this Court to be the administratrix of the estate of Rosie Tom. That imposes a fiduciary duty on her to administer the estate in a fair and honest way. She is obligated to put the interests of the estate of her mother ahead of any personal interest and the personal interest of any other party. It is her job to serve all the beneficiaries in an equal and fair manner. The assets of the estate cannot be used by the administratrix for personal use or profit. This

is the high standard of conduct that a court of law imposes on a trustee or someone granted the administration of an estate.

[5] Yesterday, I made some orders that I will now review for some of the assets of the estate that are simply not possible to distribute. However, all parties present have agreed but David Tom Jr. who was not present, although he was given the documents that Michael Tom filed. If he wishes to have a say in court, he can do so.

1. The Tom Cabin at Little Salmon Lake is on site specific land of the Little Salmon/Carmacks First Nation. It is available for use by Lily Hill, Trudy Tom, David Tom Jr. and Michael Tom but the contents are not to be removed;
2. The trapline # 151 remains an asset of the Tom family, subject to applicable laws and is available for use by Lily Hill, Trudy Tom, David Tom Jr. and Michael Tom upon obtaining a trapping certificate;
3. The 2000 Chevrolet Blazer, VIN: 1GNDDT13W4Y2101144 shall be transferred to David Tom Jr.;
4. The 16-foot aluminium boat and motor shall be transferred to David Tom Jr.;
5. The Tom fish camp on the Yukon River, also on site specific land of the Little Salmon/Carmacks First Nation, shall be available for use by Lily Tom, Trudy Tom, David Tom Jr. and Michael Tom;
6. Michael Tom is entitled to possession and use of the family home of David and Rosie Tom, subject to the laws of the Little Salmon/Carmacks First Nation;
7. Lily Hill shall file an accounting in the Court no later than May 31, 2012, for all income and reasonable disbursements that she has made on behalf of the estate of Rosie Tom pursuant to Rule 64(63) as amplified in the judgment filed in this matter;
8. All disbursements must be verified by receipts or an explanation if there is no receipt. The Proposed Distribution to beneficiaries shall be filed proposing the distribution to Lily Hill, Trudy Tom, David Tom Jr. and Michael Tom in equal shares no later than May 31, 2012;

9. The accounting filed shall be distributed by the clerk to each party that provides an address;
10. This order authorizes Michael Tom to attend at the Canadian Imperial Bank of Commerce and H&R Block in Whitehorse to inspect documents that relate to the Estate of Rosie Tom.

[6] To ensure that there is proper court supervision of the administration of this estate, I am going to set a further date to review the accounting filed by Lily Hill. I want to make it very clear that this estate will be distributed to the family beneficiaries. If any money has been spent for improper purposes, it is best to disclose that and we will deal with it in court.

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VEALE J.