

LAND TITLE ACT: PART 8

(ss. 121 to 137)

Cancellation of Plans

Overview of Part 8 [§8.1]

Section 121	Definitions and interpretation [§8.6]
Section 122	Cancellation of plans by application to the registrar [§8.9]
Section 123	Petition to cancel plan [§8.14]
Section 124	Report of approving officer and district highways manager [§8.22]
Section 125	Service of petition and other documents [§8.23]
Section 126	Publication and posting [§8.29]
Section 127	Notice of intention to appear [§8.34]
Section 128	Place of hearing [§8.35]
Section 129	Powers of registrar in relation to the hearing [§8.36]
Section 130	Duties of registrar on hearing the petition [§8.43]
Section 131	Powers of the registrar to cancel or alter a plan [§8.46]
Section 132	Opposition by local authority [§8.52]
Section 133	Opposition by minister [§8.53]
Section 134	Preparation and registration of order [§8.54]
Section 135	Registrar may vest an estate in fee simple [§8.60]
Section 136	Cancellation by minister of plan comprising Crown land [§8.61]
Section 137	Cancellation of interior lines [§8.62]

OVERVIEW OF PART 8 [§8.1]

This Part:

- (1) enables an original subdivider to annex, without compensation, adjacent dedicated roads and other public areas (s. 135);
- (2) gives municipalities, regional districts, local trust areas (under the *Islands Trust Act*), and the Minister of Transportation and Infrastructure the power to oppose the cancellation of any highway or other public area that is still required for its dedicated purpose (ss. 132 and 133); and
- (3) ensures that if a highway or other dedicated area is ever cancelled, a land owner, other than the original subdivider, must pay market value for the land if that owner wishes to acquire it (s. 131).

CROSS REFERENCES AND OTHER SOURCES OF INFORMATION [§8.2]

Community Charter [§8.3]

See Part 3, Division 5 (Highways), of the *Community Charter* regarding the power of a municipality with respect to highways, and particularly s. 40 (Permanent closure and removal of dedication).

CASE LAW [§8.4]

Pre-1993 Amendment Cases [§8.5]

Notes on Case Law: Various annotations or references have been included for cases decided under Part 8 of the Act before the repeal and replacement of the Part in 1993. While the subject of Part 8 remained the same, substantial changes were made to many of the legislative provisions and early cases should accordingly be considered with caution.

SECTION 121 [§8.6]

Definitions and interpretation

121 (1) In this Part:

“**arterial highway**” has the same meaning as in section 1 of the *Transportation Act*;

“**local authority**”,

- (a) in relation to land in a municipality, means the municipal council,
- (b) in relation to land not in a municipality, means the regional board of a regional district, and
- (c) in relation to land in a local trust area, means the local trust committee;

“**local trust area**” and “**local trust committee**” have the same meanings as in the *Islands Trust Act*;

“**party**” means a person who has filed a notice of intention to appear at the hearing of a petition, in compliance with section 127, and includes the petitioner;

“**plan**” means a subdivision plan, reference plan or air space plan deposited in the land title office;

“**public area**” means an area dedicated as a highway, park or public square under this Act or the former Act;

“**registrar**” includes a person appointed by the director under subsection (2).

(2) The director may appoint a person other than the registrar to exercise and perform all or some of the powers and duties of the registrar under this Part.

1979-219-121; 1993-52-1; 2004-44-124,
effective December 31, 2004 (B.C. Reg. 547/2004);
2010-21-226, effective July 30, 2010 (B.C. Reg. 245/2010).

CROSS REFERENCES AND OTHER SOURCES OF INFORMATION [§8.7]

“Highway” [§8.8]

See the definition of “highway” in s. 1 of the Act which provides:

“**highway**” includes a public street, path, walkway, trail, lane, bridge, road, thoroughfare and any other public way.

SECTION 122 [§8.9]**Cancellation of plans by application to the registrar**

- 122** (1) By order of the registrar, a plan may be cancelled
- (a) in whole, on petition by the owner of all the parcels in the plan, or
 - (b) in part, on petition by the owner of a parcel in the plan.
- (2) The registrar must not make an order cancelling or altering the boundaries of all or part of a public area
- (a) unless the public area is in the plan and is adjacent to a parcel that is owned by the petitioner and is in the plan, or
 - (b) for which a certificate has been filed under section 132 or 133.

1979-219-122; 1993-52-1.

CROSS REFERENCES AND OTHER SOURCES OF INFORMATION [§8.10]**Opposition by Local Authority** [§8.11]

See s. 132 of the Act regarding opposition to the cancellation or alteration under this Part of the boundaries of all or part of a public area by a municipal council, regional board, or local trust committee.

Opposition by Minister of Transportation and Infrastructure [§8.12]

See s. 133 of the Act regarding opposition to the cancellation or alteration under this Part of the boundaries of all or part of a public area that is an arterial highway by the Minister of Transportation and Infrastructure.

CASE LAW [§8.13]

The appellants were successors in title to four lots created by the subdivision of land within an earlier plan. A road allowance was also dedicated as part of the earlier plan, although it was never used for its intended purpose. Part 8 of the Act permits a petition for the cancellation of a plan by an owner who has dedicated adjacent land “in the plan” for a public area where that land has not been used for the purpose for which it was dedicated. The court found that the owners under the earlier plan had a residual interest in the dedicated road allowance. Under the Torrens system, an interest in land, including a residual interest, may be removed from the land either by agreement in writing for consideration or by the exercise of the power to expropriate. For a subsequent registration of a subdivision plan to extinguish an interest in an earlier subdivision, there must be some express or explicit authorization of that result. In this case, the subsequent subdivision did not alter the nature of the road allowance or the residual interest in it held by the successors in title. They were thus entitled to apply to the registrar for the cancellation of the unused road allowance (*Ratzlaff v. British Columbia (Registrar of Land Titles)*, [1999] B.C.J. No. 2371 (QL) (S.C.)).

SECTION 123 [§8.14]**Petition to cancel plan**

- 123** (1) A petition under this Part must be
- (a) made by an owner referred to in section 122(1),
 - (b) addressed to and filed with the registrar,
 - (c) signed by the owner, and
 - (d) verified by affidavit of a signatory to the petition.
- (2) The petition must include all of the following information:
- (a) the date of deposit of the plan in the land title office, the plan's number and a description of the land within the plan;
 - (b) the name of the regional district in which the land is located and, if the land is also located in a municipality, the name of the municipality;
 - (c) whether or not the land is in a local trust area and, if so, the name or identity of the local trust area;
 - (d) whether the petitioner seeks cancellation of the plan in whole or in part, and, if in part, a description of the public areas and parcels within the plan that are affected by the petition;
 - (e) the name, occupation and address of the petitioner and a description of the land owned by the petitioner;
 - (f) the name, occupation and address of all freehold owners of parcels within the plan and a description of the parcels owned by them;
 - (g) the name, occupation and address of all charge owners, a description of the charges and of the parcels charged;
 - (h) if the petitioner was the owner of all the parcels in the plan at the time it was deposited in the land title office, a statement to that effect together with a summary of the record verifying the statement;
 - (i) the facts on which the petitioner relies in support of the petition and a description of the order petitioned for.
- (3) The petition must contain a notice that any person who wishes to make a submission at the hearing of the petition must file with the registrar, before the date set for the hearing, a notice of intention to appear.
- (4) A print of the plan showing, to the satisfaction of the registrar, the land referred to in the petition must be annexed as a schedule to the petition.

1979-219-123; 1993-52-1.

FORMS [§8.15]

Petition to Cancel Plan [§8.16]

Land Title Act

Part 8

IN THE MATTER OF the *Land Title Act*—Part 8, Section 123
and in the Matter of a Plan of Subdivision of Part of Section _____,
_____ District, Plan _____ and an Application to Cancel Part
of _____ Road

PETITIONER: *(Name)*

ON NOTICE TO: *(See Appendix A)*

TAKE NOTICE that an application will be made to the registrar of titles at _____ for an
order cancelling part of plan _____ more particularly known and described as:

(Legal description of part of plan to be cancelled)

For an order in the nature of directions as to service on persons that the registrar considers might be
affected by the within petition.

For an order that whatever public area is closed be consolidated with... .

For such further order of directions as may be necessary.

The facts upon which this petition are based are as follows:

(See Section 123(2) of the Land Title Act)

NOTICE

Notice to all those persons who deem their interest may be affected: Take notice that any person
who wishes to make a submission at the hearing of this petition must file with the registrar, before the
date fixed for the hearing, a notice of intention to appear.

Dated:

Petitioner

PRACTICE [§8.17]**Petition to Cancel Plan** [§8.18]

On the Form 17 Charge, Notation or Filing, select Nature of Interest, Petition to Cancel Plan, and attach the original petition by attaching an image of the petition to an electronic Form 17 Charge, Notation or Filing, the subscriber certifies that the original supporting document is in his or her possession (*Land Title Act*, s. 168.3 and s. 168.41).

In order to delineate the property boundaries of the parcel that results from the cancellation of the plan, the registrar requires a s. 100(1)(a) reference plan that re-defines the parcel to accompany the petition. The authority for this requirement is found under s. 131(2)(a). Use the electronic “Application to Deposit Plan” and select “Reference or Explanatory” in Item 3. The “Number of new lots created” should be selected as 0, as the fees and the application number used to create the fee simple title will be derived from the subsequent Form 17—Fee Simple, Registrar’s Order to Cancel Plan Part 8 LTA. Include the Survey Plan Certification with s. 100(1)(a) plan attached.

Subsequent documents related to the service and hearing pursuant to ss. 125 and 126 of the Act are attached to an electronic Declaration and submitted with any additional fees required.

CROSS REFERENCES AND OTHER SOURCES OF INFORMATION [§8.19]**Notice of Hearing** [§8.20]

See s. 125(1) of the Act regarding the issuance of a notice of hearing by the registrar.

Notice of Intention to Appear [§8.21]

See s. 127 of the Act regarding the requirements for and consequences of filing a notice of intention to appear.

SECTION 124 [§8.22]**Report of approving officer and district highways manager**

124 (1) Unless the registrar otherwise orders, before the date set for the hearing of the petition, the petitioner must file with the registrar a report of the approving officer that contains all of the following information:

- (a) whether any part of a public area affected by the petition is an arterial highway;
- (b) the approving officer’s opinion as to whether, if the petition is granted, the plan referred to in the petition will comply with
 - (i) the applicable subdivision and zoning bylaws, and
 - (ii) the requirements of section 75;
- (c) other information that the approving officer considers material to the petition.

(2) If any part of a public area affected by the petition is a highway in a rural area or an arterial highway in a municipality, before the date set for the hearing of the petition, the petitioner must file with the registrar a report of the district highways manager of the Ministry of Transportation.

- (3) A request for a report required under this section must be made in writing to
- (a) the approving officer, in the case of a report under subsection (1), or
 - (b) the district highways manager of the Ministry of Transportation, in the case of a report under subsection (2),

and must be accompanied by a copy of the petition and a print of the plan annexed as a schedule to the petition.

(4) Within 60 days after receiving a request referred to in subsection (3), the approving officer or district highways manager, as applicable, must deliver the report to the petitioner.

1997-25-41, effective March 26, 1998 (B.C. Reg. 85/98); 2003-66-34.

SECTION 125 [§8.23]

Service of petition and other documents

125 (1) On receiving a petition under this Part, the registrar, by order, must set a date, time and place for the hearing of the petition.

(2) At least 6 weeks before the date set for the hearing, the petitioner must serve a copy of the petition and a notice of hearing on the following persons:

- (a) if the land affected by the petition is in a municipality, the municipality;
- (b) if the land affected by the petition is in a local trust area, the person appointed under section 17(1)(a) of the *Islands Trust Act* as secretary to the Islands Trust Council;
- (c) if the land affected by the petition is not in a municipality, the deputy minister to the minister charged with the administration of the *Transportation Act* and the regional district where the land is located;
- (d) if the land affected by the petition is a part of an arterial highway, the deputy minister to the minister charged with the administration of the *Transportation Act*;
- (e) the deputy minister to the minister charged with the administration of the *Park Act*;
- (f) every owner of a parcel or charge on a parcel in the plan affected by the petition;
- (g) every other person who, in the opinion of the registrar, might be affected by the petition.

(3) Unless the registrar otherwise orders, as soon as practicable after the report of the approving officer under section 124(1) or the report of the district highways manager under section 124(2) has been filed, the petitioner must serve it on the persons referred to in subsection (2) of this section.

(4) Section 315(1) applies to the service of documents under this section.

1979-219-125; 1993-52-1; 1997-25-42, effective March 26, 1998 (B.C. Reg. 85/98);
1998-34-278, effective September 23, 1998 (B.C. Reg. 311/98);
2003-66-44; 2004-44-122, effective December 31, 2004
(B.C. Reg. 547/2004).

FORMS [§8.24]**Form of Notice of Hearing** [§8.25]**Land Title Act****Part 8**

IN THE MATTER OF Section 123 *Land Title Act* and an Application to
Cancel Part of _____ Road, _____ District.

NOTICE OF HEARING AND DIRECTION FOR SERVICE

TAKE NOTICE THAT I, _____, registrar, HEREBY APPOINT, (date) at the hour of (time), in my office in the _____ land title office, _____, B.C. as the time and place for the hearing of the petition herein.

AND FURTHER TAKE NOTICE that I require the petitioner to post a copy of the petition, affidavits and notice of hearing in the public area of the offices of the (municipality) four (4) weeks prior to the date of the hearing and I further require that a copy of the petition, affidavits and notice of hearing and evidence intended to be used at the hearing, be served in person, or by double registered mail, and at least six (6) weeks prior to the hearing upon:

- (1) The Municipal Approving Officer of the District of _____.
- (2) The Clerk of the Council of the District of _____.
- (3) _____ Mortgage Corporation.
- (4) The persons listed in paragraph _____ of the petition (*owners of properties in the vicinity*).
- (5) (*Utilities*)
- (6) Her Majesty the Queen in Right of the Province of British Columbia.
- (7) Ministry of Attorney General.

DATED at the City of _____, B.C. this ____ day of _____, 20__.

Registrar

PRACTICE [§8.26]**Date of Hearing** [§8.27]

The date of hearing should be set down for a date that provides sufficient time for six weeks' service of a copy of the petition and notice of hearing pursuant to s. 125(2). Also note that an approving officer or a district highways manager may take as long as 60 days to deliver a report under s. 124 to the petitioner after receiving a request for such a report, including a copy of the petition, from the petitioner. The petitioner must file the report with the registrar before the date set for the hearing and serve it on the other persons described in s. 125(2).

Calculation of “At Least Six Weeks” [§8.28]

In calculating “at least six weeks”, exclude the first and last days. See the *Interpretation Act*, s. 25(4).

Electronic Filing

Subsequent documents related to the service and hearing are attached to an electronic Declaration and submitted with any additional fees required.

SECTION 126 [§8.29]**Publication and Posting**

126 The registrar may order a petitioner to do one or both of the following:

- (a) publish a notice of the petition and of the date, time and place of the hearing in the Gazette and in a newspaper circulating in the area of the land affected by the petition at least 2 weeks before the hearing date;
- (b) post the petition and any other documents, for 4 consecutive weeks before the date set for the hearing, at one or more of the following places:
 - (i) a conspicuous place on the land affected by the petition;
 - (ii) if the land affected by the petition is in a municipality, the municipal hall;
 - (iii) if the land affected by the petition is not in a municipality, a nearby court house or other Provincial government building or in a nearby post office, with the permission of the person in charge.

1979-219-126; 1993-52-1.

PRACTICE [§8.30]**Proof of Publication and Posting** [§8.31]

The registrar requires proof of posting and publication by way of affidavit. The affidavit must state clearly that the petitioner posted and/or published in accordance with s. 126 of the Act.

Electronic Filing

Subsequent documents related to the service and hearing are attached to an electronic Declaration and submitted with any additional fees required.

CROSS REFERENCES AND OTHER SOURCES OF INFORMATION [§8.32]**Calculation of “Four Weeks”** [§8.33]

In calculating “four weeks”, exclude the first day and include the last day. See *Interpretation Act*, s. 25(5).

SECTION 127 [§8.34]**Notice of intention to appear**

127 (1) On filing with the registrar a notice of intention to appear, any person whose land might be affected by a petition under this Part may become a party to the proceeding initiated by the petition.

(2) The notice under subsection (1) must contain the following:

- (a) the name of the person filing the notice and an address for service;
- (b) a description of the land owned by the person and the manner in which the land is affected by the petition;
- (c) a summary of the argument and evidence the person intends to submit at the hearing.

(3) A person who files a notice under this section must serve a copy of the notice on the petitioner, on any other parties and on any other persons on whom service is required under section 125.

(4) A notice under this section may be filed at any time before the date set for the hearing.

(5) The petitioner and any party is entitled to be heard, to call and examine witnesses and to submit argument and evidence at the hearing of the petition.

1979-219-127; 1993-52-1.

SECTION 128 [§8.35]**Place of hearing**

128 The hearing of a petition is to be held in the city where the land title office is.

1979-219-128; 1993-52-1.

SECTION 129 [§8.36]**Powers of registrar in relation to the hearing**

129 In the same manner as a judge of the Supreme Court under the Supreme Court Civil Rules, the registrar may

- (a) hear the petitioner and the parties and the witnesses called by any of them,
- (b) order the discovery of documents,
- (c) exercise any of the powers under section 382 in connection with the proceeding initiated by the petition,
- (d) inspect the land covered by the plan referred to in the petition,
- (e) adjourn the hearing of the petition on terms that the registrar considers proper,
- (f) award to the petitioner or a party costs the registrar considers just and order by whom the costs must be paid, and
- (g) give directions that the registrar considers appropriate.

1979-219-129; 1993-52-1; 2010-6-97, effective July 1, 2010.

CROSS REFERENCES AND OTHER SOURCES OF INFORMATION [§8.37]

Powers and Duties of Registrar [§8.38]

See s. 382 of the Act, which empowers the registrar to summon witnesses, administer oaths and take evidence. Note particularly s. 382(1)(d), which empowers the registrar to “summon a person whose evidence in respect of a matter pending before the registrar may be material”.

Secondary Sources [§8.39]

See Di Castri, *Registration of Title to Land*, vol. 1, para. 144.

CASE LAW [§8.40]

Registrar’s Discretion [§8.41]

See *West Vancouver (District) v. British Columbia (Attorney General)*, [1992] B.C.J. No. 599 (QL) (S.C.), which provides that the registrar has a wide discretion when considering applications for cancellation under Part 8. Note that this case was decided under an earlier enactment of s. 129.

Conditions Imposed by Registrar [§8.42]

See also *Elsom v. Goodwin* (1983), 48 B.C.L.R. 178 (C.A.) with respect to the power of the registrar to impose conditions. Note that this case was decided under an earlier enactment of s. 129 which specifically authorized the registrar to grant or refuse a petition on conditions the registrar deemed proper. The imposition of conditions are now dealt with under s. 131(2) of the Act.

SECTION 130 [§8.43]

Duties of registrar on hearing the petition

130 In the same manner as a judge of the Supreme Court under the Supreme Court Civil Rules, the registrar, on hearing the petition, must

- (a) consider whether or not there is sufficient cause connected with the dedication of any public area affected by the petition to continue the dedication over all or any part of the public area,
- (b) as far as possible,
 - (i) protect existing utilities and assure anticipated utilities,
 - (ii) assure the rights of adjoining owners as to entry and exit, whether of a public or private nature, and
 - (iii) consider whether or not an easement, statutory right of way or other interest needs to be created, enlarged or extended, and
- (c) permit any party to call, examine and cross examine witnesses and, without limitation, to examine or cross examine an approving officer on matters relating to the contents or sufficiency of his or her report.

1979-219-130; 1993-52-1; 2010-6-97, effective July 1, 2010.

CASE LAW [§8.44]**Consideration of Adjoining Property Owner Interests** [§8.45]

Section 130 (formerly, s. 13 of the *Plans Cancellation Act*, R.S.B.C. 1960, c. 286) requires the registrar to protect the rights of adjoining owners to pass over roads lying within the subdivision between their properties and the highway system. The criteria by which the registrar is to determine the application of s. 130 are set out, if not wholly at least partly, in s. 75(a) and (b) of the Act (formerly, s. 86(a) and (b) of the *Land Registry Act*), which stipulate what access is to be provided to lots in a proposed subdivision. When a subdivision plan is proposed, only the subdividing owner and the public, represented by the approving officer, are concerned. When a subdivision plan is cancelled, those who use the roads and lanes to get access to adjoining properties are interested. Their objections, along with the representations of other opponents, as well as the proponents, should be considered (*Plans Cancellation Act, Re; Simpson-Sears Ltd. v. Registrar of New Westminster Land Registration District* (1955), 17 W.W.R. 343 (B.C.C.A.)).

SECTION 131 [§8.46]**Powers of the registrar to cancel or alter a plan**

131 (1) Subject to sections 132(3) and 133(3), the registrar, by order after hearing a petition under this Part, may do one or more of the following:

- (a) cancel or alter or refuse to cancel or alter
 - (i) the plan referred to in the petition, or
 - (ii) a public area

or any part of either of them;

- (b) in the circumstances described in section 135, consolidate into a single parcel
 - (i) land that ceases to be a public area, and
 - (ii) land of the petitioner;
- (c) direct that any land that ceases to be a public area be consolidated into a single parcel with land of the petitioner, as a condition of registering a transfer from the Crown to the petitioner of the land that ceased to be a public area;
- (d) extend any charge or encumbrance registered against a parcel in the plan affected by the petition over other land in the plan and direct that the charge or encumbrance, as extended, vest in the owner of the charge or encumbrance;
- (e) register in the name of the Crown in right of British Columbia an indefeasible fee simple title to any land that ceases to be a public area and direct that the title be encumbered by any easement, statutory right of way or other interest that the registrar considers necessary to
 - (i) protect existing utilities and assure anticipated utilities, and
 - (ii) assure the rights of adjoining owners as to entry and exit, whether of a public or private nature.

(2) An order of the registrar under this section

- (a) may be made on terms the registrar considers necessary, and
- (b) may be made conditional on the creation, enlargement, extension, cancellation or registration of any interest that the registrar considers necessary to give effect to a term of the order.

(3) An order of the registrar that cancels or alters the boundaries of a public area extinguishes the dedication or establishment of the public area or of that part of it that ceases to be a public area as a result of the cancellation or alteration.

1979-219-131; 1993-52-1.

PRACTICE [§8.46A]

Under the authority of s. 131(2)(a), the registrar also requires a s. 100(1)(a) reference plan that re-defines the parcel that results from the cancellation of the plan to accompany the petition under s. 123. In addition, under the authority of s. 131(2)(b), all charges must be cancelled from the title(s) to the plan being cancelled.

CROSS REFERENCES AND OTHER SOURCES OF INFORMATION [§8.47]**Secondary Sources** [§8.48]

See Di Castri, *Registration of Title to Land*, vol. 1, para. 136.

CASE LAW [§8.49]**Conditions Imposed by Registrar** [§8.50]

The power of the registrar to impose conditions under the Act is not restricted to protection of the interests set out in s. 130 of the Act. The conditions the registrar imposes may be substantive, provided the registrar observes the appropriate rules of natural justice and confines his or her consideration to matters that are truly relevant to the question. The registrar may consider evidence of future intentions and matters of general public interest, benefit, or welfare (*Elsom v. Goodwin* (1983), 48 B.C.L.R. 178 (C.A.)). Note that this decision was made under s. 127 of the Act (Powers of registrar at hearing) before the repeal and replacement of Part 8.

Use of Public Area [§8.51]

The registrar does not have power to cancel a road allowance that is, in fact, being used in the manner for which it was dedicated. Evidence of past use of the area as a horse trail and evidence of ongoing intentions to develop the area for equestrianism constitute use as a road allowance (*Maple Ridge (District) v. New Westminster (Registrar of Land Titles)*, [1992] B.C.J. No. 2968 (QL) (S.C.), affirmed (1994), 86 B.C.L.R. (2d) 359 (C.A.)).

SECTION 132 [§8.52]**Opposition by local authority**

132 (1) Except in the circumstances set out in section 135, a local authority by resolution declaring that a public area is required for the purpose for which it is dedicated, may oppose the cancellation or alteration under this Part of the boundaries of the public area or any part of the public area.

(2) A local authority that passes a resolution under subsection (1) must file with the registrar before the hearing date a certificate containing

- (a) the name of the petitioner, the filing number of the petition and a description of the land referred to in the petition,
- (b) the text of the declaration contained in the resolution, and
- (c) a description, along with a print of the plan, that shows to the satisfaction of the registrar the public areas or parts of them to which the declaration applies.

(3) After a certificate is filed with the registrar under subsection (2), the registrar must not, without the written consent of the local authority, make an order under this Part that cancels or alters the boundaries of a public area to which the certificate pertains.

- (4) A local authority that files a certificate under this section
 - (a) must, in the manner required by section 315(1), serve a copy of the certificate on the petitioner, the parties and any other persons that the registrar considers might be affected by the certificate, and
 - (b) within 7 days after receiving a request from the petitioner or any party, must
 - (i) give written reasons for the declaration, and
 - (ii) deliver to the petitioner or party a copy of the reports, plans and other documents that were taken into account by the local authority in passing the resolution.

1979-219-132; 1993-52-1.

CASE LAW [§8.52A]

The respondent landowners owned two lots separated by a 66-foot road allowance dedicated and registered on a subdivision plan. The respondent landowners petitioned the registrar to cancel the road allowance and consolidate half of the road allowance (33 feet) with the title to each of their respective lots. The regional district opposed the application and the registrar refused the petition as required under s. 132 of the Act. Subsequently, the parties agreed that the regional district's opposition suffered a fatal flaw because no proper notice had been given to local residents about the regional district's proposed actions. On appeal to the Supreme Court, the chambers judge remitted the question of cancellation to the registrar for reconsideration rather than ordering a new hearing. The effect of that decision effectively prevented the regional district from correcting the defects in its resolution opposing the application. The Court of Appeal found that, in this case, the chambers judge did not give sufficient weight to the public interest. The structure of the *Land Title Act* is such that if a public authority files an objection to the type of petition that was before the registrar in this case, the registrar is bound to reject it. While an objection to the validity of a local government resolution ought to be resolved before a hearing before the registrar, in this case, the respondent landowners had no right to the road allowance prior to their application and the regional district was simply acting to preserve potential public use of and access to the road allowance. As the only way to explore and fully debate the merits of the matter, the Court of Appeal allowed the regional district's appeal and ordered a new hearing before the registrar (*Hlina v. British Columbia (Registrar of Land Titles)*, 2007 BCCA 369). For subsequent proceedings, see the annotation below for *Burke v. Columbia Shuswap (Regional District)*, 2008 BCSC 66.

In earlier proceedings (see *Hlina v. British Columbia (Registrar of Land Titles)*, 2007 BCCA 369, *supra*), the petitioners sought cancellation and consolidation of an unused road allowance as part of their adjacent private properties. In anticipation of a new hearing before the registrar as ordered by the Court of Appeal, the regional district passed a resolution opposing the petitioners' application on the grounds that the unused road allowance was required for the purpose for which it was dedicated under s. 132 of the Act. The petitioners brought this application for an order that the regional district had no jurisdiction to pass the resolution. In dismissing the petition, the court found that s. 132 of the Act grants a regional district a veto under Part 8 and that, in this case, the regional district properly exercised its veto when it passed the resolution opposing the application. The court did not consider it significant that no public use had been made of the road allowance for 49 years. Rather, it found that "planning" by definition requires an eye to the future and that resources can be husbanded for years before they are brought into use to satisfy existing needs. The regional district had an interest in bringing the unused road allowance into its general scheme for designated park areas and it did not want to lose public access to the lake and to whatever park opportunities it might develop within a reasonable distance of that access. The regional district did nothing more than state and re-state its consideration that the unused road allowance was necessary "for the purpose for which it was intended", that is, for public access (*Burke v. Columbia Shuswap (Regional District)*, 2008 BCSC 66).

SECTION 133 [§8.53]**Opposition by minister**

133 (1) Except in the circumstances set out in section 135, the minister charged with the administration of the *Transportation Act* may oppose the cancellation or alteration under this Part of the boundaries of all or part of a public area that is an arterial highway, wherever located, or of a public area that is not in a municipality, if he or she considers that the public area is required for the purpose for which it is dedicated.

(2) If the minister charged with the administration of the *Transportation Act* opposes the cancellation or alteration, he or she must file with the registrar before the hearing date a certificate containing

- (a) the name of the petitioner, the filing number of the petition and a description of the land referred to in the certificate, and
- (b) a description, along with a print of the plan, that shows to the satisfaction of the registrar the public areas or parts of them to which the certificate pertains.

(3) After a certificate is filed with the registrar under subsection (2), the registrar must not, without the written consent of the minister charged with the administration of the *Transportation Act*, make an order under this Part that cancels or alters the boundaries of a public area to which the certificate pertains.

(4) The minister charged with the administration of the *Transportation Act* must, in the manner required by section 315(1), serve a copy of a certificate filed under this section on the petitioner, the parties and any other persons that the registrar considers might be affected by the certificate.

1979-219-133; 1993-52-1; 2003-66-39; 2004-44-122,
effective December 31, 2004
(B.C. Reg. 547/2004).

SECTION 134 [§8.54]**Preparation and registration of order**

134 (1) Following the conclusion of the hearing of a petition under this Part, the registrar, exercising the powers given under section 131, must decide the outcome of the petition and publish written reasons for the decision.

(2) Within 30 days after publication by the registrar of the written reasons, the petitioner must prepare and submit to the registrar for approval and signature an order giving effect to the registrar's decision.

(3) If all applications necessary to give effect to an order deciding the outcome of a petition under this Part are not submitted for registration within 3 months after the order is signed or within a further period allowed by the registrar,

- (a) the order ceases to have effect, and
- (b) any extinguishment previously effected by the order by the operation of section 131(3) is deemed not to have occurred.

(4) The registrar must not register an application referred to in subsection (3) unless all duplicate indefeasible titles to the land affected by the order have been surrendered for cancellation.

(5) Within 21 days after the registrar has published the reasons for the decision under this section, the petitioner or any party may appeal the decision to the Supreme Court.

1979-219-134; 1993-52-1.

FORMS [§8.55]**Application for New Indefeasible Title** [§8.56]

Electronic Submissions

On the Form 17 Fee Simple, select Nature of Interest, Registrar's Order to Cancel Plan Part 8 LTA, and attach an image of the originally signed Registrar's Order.

CROSS REFERENCES AND OTHER SOURCES OF INFORMATION [§8.57]**Appeal from Decision of Registrar** [§8.58]

See ss. 309 and 311 of the Act.

CASE LAW [§8.59]

See the Case Law under s. 309 in Part 21 of the Act.

SECTION 135 [§8.60]**Registrar may vest an estate in fee simple**

135 The registrar, by order, may vest in the petitioner an estate in fee simple to all or part of a public area adjacent to a parcel owned by the petitioner in the plan referred to in the petition if

- (a) the public area or part of it, as the case may be, has been cancelled by order of the registrar under this Part,
- (b) at the time the plan was deposited, the petitioner was the fee simple owner of all land in the plan, and
- (c) the petitioner continues to be the owner of all the land in the plan.

1979-219-134.1; 1993-52-1.

SECTION 136 [§8.61]**Cancellation by minister of plan comprising Crown land**

136 (1) Subject to subsection (1.1), the minister may

- (a) order the cancellation of a plan or a portion of a plan comprising land owned by the government, including land vested in a municipality as a highway, and
- (b) by that order or a subsequent order, make provisions he or she considers proper for the protection of the rights of a purchaser of a parcel shown on the plan.

(1.1) In respect to land vested in a municipality as a highway, the minister may only make an order under subsection (1) if the municipality has done all of the following:

- (a) closed the highway and removed the dedication of the land as a highway in accordance with sections 40 and 41 of the *Community Charter*;
- (b) disposed of the land that was a highway to the government in accordance with section 26 of the *Community Charter*.

(2) On receiving a certified copy of an order under subsection (1) and an explanatory plan showing the land affected, the registrar must

- (a) assign one or more distinguishing letters to the new parcel created, and
- (b) cancel the existing indefeasible title affected and register a new indefeasible title for the newly created parcel.

(3) If, under the *Land Act*, Crown land, comprising all the land included in a plan, has been removed from the operation of this Act, the minister may order the cancellation of the plan and the registrar must amend the records accordingly.

(4) The minister may delegate to the Surveyor General the minister's powers under subsections (1) and (3).

1979-219-134.2; 1993-52-1; 2003-66-41; 2003-52-151,
effective January 1, 2004 (B.C. Reg. 465/2003);
2004-66-83, effective January 1, 2004;
2004-66-84, effective January 20, 2005 (B.C. Reg. 16/2005).

PRACTICE [§8.61A]

Application for Cancellation of Plan [§8.61B]

Submissions

On the Form 17 Surveyor General, select Nature of Interest, Cancel Plan s. 136, and attach an image of the originally signed certified copy of the order.

The Form 17 Surveyor General has been approved by the Director of Land Titles for use by authorized subscribers within the Surveyor General Division, Land Title and Survey Authority.

SECTION 137 [§8.62]

Cancellation of interior lines

137 (1) On application in the form approved by the director, accompanied by the plan, if any, that the registrar may require, the registrar may cancel the lines dividing 2 or more contiguous parcels shown on a plan, if

- (a) the parcels are owned by one person, or by 2 or more persons as joint tenants or tenants in common, or by the Crown, and
- (b) the parcels are free from all charges or encumbrances, or the holders of all existing charges and encumbrances consent in writing and the charges and encumbrances are extended by an appropriate instrument to cover and coincide with the boundaries of the parcel to be created as a result of the petition.

(2) If the plan showing the parcels that are the subject of an application under this section has been microfilmed, or the registrar considers that the cancellation cannot satisfactorily be shown on the plan because of its age, or for any other reason, the registrar

- (a) may require the applicant to deposit an explanatory plan showing the new boundaries, and
- (b) must incorporate with the description shown on the new indefeasible title a reference to the explanatory plan.

1979-219-134.3; 1993-52-1; 2004-66-78,
effective January 20, 2005 (B.C. Reg. 16/2005).

REGULATIONS AND FORMS [§8.63]

Application for Cancellation of Interior Lot Lines [§8.64]

The director has approved the use of Form 14, Application for Cancellation of Interior Lot Lines. The use of Form 14 is compulsory.

Submissions

On the Form 17 Fee Simple, select Nature of Interest, Application for Cancellation of Interior Lot Lines, and attach an image of the originally signed Form 14 by attaching an image of the originally signed Form 14 to an electronic Form 17 Fee Simple, and applying an electronic signature to the electronic Form 17, the subscriber certifies that the original supporting document is in his or her possession (*Land Title Act*, s. 168.3 and s. 168.41).

PRACTICE [§8.65]

Application [§8.66]

For s. 137 to apply, the lots must be within one plan, and must be intact; meaning there may be no exceptions from the legal description. Section 100 of the Act is the appropriate section for a consolidation of lots that are not within the same plan or that contain exceptions in the legal description.

Equivalent Estates Required to Consolidate [§8.66A]

In order to consolidate parcels of land, the estates held in each parcel must be equivalent. Where the estates held are themselves different (as distinct from being encumbered by different charges), appropriate steps must be taken to achieve equivalence in advance of the consolidation. This issue has arisen in the context of applications to cancel interior lines dividing two or more contiguous parcels where one of these is held in determinable fee (i.e., subject to a right of reverter) and the other is held in a greater estate, typically fee simple.

Equivalence of titles cannot be achieved by execution of an “extension agreement” purporting to extend the right of reverter elements in one parcel over a second parcel. A right of reverter is created by reservations in the grant of land from a previous owner and a recipient (or later) determinable fee owner cannot purport to release those reservations. Similarly, the holder of a fee simple interest in land cannot purport to add reservations into the grant of land that he or she owns. Additions or limitations in the grant must be made or released by the grantor on transfer.

Registrar Distributes Copies of Application [§8.67]

On granting an application, the registrar sends a copy of the application to all taxing authorities shown on the title and, if the land is located outside a municipality, to the board of the regional district.

Updating the Register [§8.68]

The registrar cancels the indefeasible titles to the lots that are the subject of a successful interior lot line cancellation application and issues a new indefeasible title for the new parcel. The legal description for the new parcel contains a reference to the former lots, for example:

PARCEL A (BEING A CONSOLIDATION OF LOTS 1 AND 2, SEE KX12345)
BLOCK 8 DISTRICT LOT 123 LILLOOET DISTRICT PLAN 456

The registrar also notes the cancellation of the interior lot lines in the marginal notes segment of the short legal screen, for example:

S/456//8//1
NOW PCL A OF THIS BLOCK AND PLAN

The registrar does not make an amendment to the plan to indicate the cancellation of the interior lot line.

Effect of Cancellation of Interior Lot Line [§8.69]

After an interior lot line has been cancelled, it cannot be restored except in compliance with the subdivision requirements under this Act. Accordingly, the approval of the approving officer is required.