



The Register

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Court

UPDATE

COURT OF APPEAL RULES 2002

On March 1, 2002, per Order in Council No. 1075/2001 the new Court of Appeal Rules 2002 came into effect.

The Court of Appeal Rules have been completely amended. The previous Rules from 1982 had two Parts with 29 Sections and two Appendices. The Court of Appeal Rules 2002 have ten Parts with 71 Sections and two Appendices.

To illustrate the depth and expansion of the new Court of Appeal Rules, the various Parts and Sections are outlined below:

- Part 1 - Interpretation**
(Sections 1-2)
- Part 2 - Applications for Leave to Appeal**
(Sections 3-10)
- Part 3 - Notices of Appeal**
(Sections 11-14)
- Part 4 - Cross Appeals**
(Sections 15-18)
- Part 5 - Appeal Proceedings**
(Sections 19-31)
- Part 6 - Applications**
(Sections 32-38)
- Part 7 - Procedure on Appeals and Applications**
(Sections 39-46)
- Part 8 - Orders**
(Sections 47-51)
- Part 9 - General**
(Sections 52-58)
- Part 10 - Costs**
(Sections 59-71)
- Appendix A - Forms**
- Appendix B - Party and Party Costs**

FORMS

Under the Court of Appeal Rules 2002, there are now 32 Forms. Some of the previous Forms have been amended and others have been officially added. Several of the new Forms (indicated below) also have completion instructions:

Form 4 - Motion Book For Leave to Appeal and/or Stay of Proceedings/Execution

Form 5 - Reply Book For Leave to Appeal and/or Reply Book for Stay of Proceedings/Execution

Form 9 - Appeal Record

Form 10 - Appellant's/Respondent's Factum

Form 11 - Appellant's Reply

Form 12 - Appellant's/Respondent's Joint/Appeal Book

Form 13 - Transcript Extract Book

Form 16 - Motion Book Application to Vary an Order of a Justice

Form 17 - Reply Book on an Application to Vary an Order of a Justice

Form 18 - Memorandum of Argument on an Application For Leave to Intervene

Form 21 - Book of Authorities

A copy of the Court of Appeal Rules 2002 may be ordered from:

Crown Publications
521 Fort Street
Victoria, BC V8W 1E7
Phone: 250-386-4636

A copy of the Rules may also be found on the Government of British Columbia website at:
www.courts.gov.bc.ca/CA/CA-main.htm

Service on the Crown

Solicitors on staff at the Ministry of Attorney General have advised that the correct name of the Crown on court documents is "HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA". Naming it as "Crown of BC", "Crown in Right of BC", "AG of BC" or similar is considered insufficient. To date, none of the solicitors have refused service for referring to the Crown incorrectly. However, they have indicated that they may do so in future if the correct wording is not used.

Indian Lands UPDATE

Indian Land Registry

The Indian Land Registry has information on all First Nations lands in Canada. Much like properties in the Land Title Office, Indian Land properties have a legal description and documents are registered against the lands in the Indian Land Registry. West Coast is able to obtain both searches and copies of registered documents relating to Indian Lands.

Searches

A search of Indian Lands in the Indian Land Registry results in a *Parcel Abstract Report* which lists all documents registered against that particular piece of land. Unalienated band land generally does not have a parcel abstract report, even though it may be surveyed separately and have a legal description. It is presumed to be part of the whole reserve and any registrations against the whole reserve will apply to that parcel.

In order to do a search of Indian Land or copy documents, please provide us with the following information:

- name of the Reserve;
- legal description of the property (lot and plan#);
- name of lessee or lessor (if available); or
- document registration number

Note: As there are no references to street addresses in the Indian Land Registry, it is not necessary to provide this information.

Registrations

Documents are submitted through the Indian Land Registry in Vancouver. **Four** originally executed copies of the document must be submitted, together with a cover letter requesting registration and return of the documents. The letter should be addressed to:

Department of Indian Affairs
Indian Land Registry
#600 – 1138 Melville Street
Vancouver, BC V5E 4S3

Examiners at the Indian Land Registry in Vancouver will check the documents, and if everything is acceptable, they will complete the *Application for Registration* form and obtain the consent of the Minister (if required). The documents are then forwarded internally to the Indian Land Registry in Ottawa for registration. At this point, the documents are assigned a registration number and Ottawa will mail the documents directly back to the applicant. The registration process takes about 2 weeks.

If you have any questions about Indian Land searches or documents, please call Helen Ternan or Marian Bragg in our New Westminster office at 604-659-8600 or toll free at 1-800-553-1936. If you have any registration questions, please call *Lands and Trust Services* at the Indian Lands Registry at 604-666-3931.

Bankruptcy UPDATE

Bankruptcy Searches

The office of the Superintendent of Bankruptcy provides current listings of all proposed and filed bankruptcies Canada-wide since 1978. Since January, 2002 the insolvency search database has been changed to search each separate name as a word rather than searching the whole name exactly as written. The new format means that the name can now be entered in any order and still show results. *For example*, Smith, John Allan can also be entered as John Allan Smith. This change was introduced by the Superintendent's office in order to provide more reliable search results.

When searching a name where the surname can also be a given name, the database will bring up all name variations with those names in them. *For example*, if you enter the name "Peter Harry", possible variations that could show might be *Peter Harry*, *Harry Peter* or even *Peter Harry Smith* and *Harry Peter Jones*. In view of these expanded search results it is a good idea to refine your search as much as possible by including a **birthdate** or the **province of bankruptcy**.

Unfortunately older entries (pre mid-1980's) often don't have a birthdate included in the information. In these instances, if you include a birthdate with the name, the search engine will ignore a name match if the birthdate is missing in the database. When a birthdate is included in your search criteria, West Coast will search both with and without the birthdate to ensure any hits are caught.

All Bankruptcy searches are done through our New Westminster Court department. If you have any questions, please contact Valerie Moss or Elyse Beaton at 604-659-8600 or toll free at 1-800-553-1936.

Land

UPDATE

Prince George LTO To Close

The Ministry of Sustainable Resource Management currently has four Land Title Offices: Victoria, Lower Mainland, Kamloops and Prince George. As of June 30, 2002, the Prince George Land Title Office will close and their records and business will be amalgamated with the Lower Mainland Land Title Office.

Although there will only be three Land Title Offices, there will still be seven land title districts. The **Lower Mainland** Land Title Office will contain all records for the four land districts of *Vancouver, New Westminster, Prince George* and *Prince Rupert*. The **Kamloops** Land Title Office will continue to contain records for *Kamloops* and *Nelson*. The **Victoria** Land Title Office will continue to contain records for *Victoria* only. **Note:** Separate electronic databases for all seven districts will still be maintained within the respective land title offices.

Transmission to Executor/Executrix

When filing Letters Probate to effect the transmission of a deceased person's real property to the personal representative, remember to check if there is reference to a Court Order on the Grant of Probate. If so, the Land Title Office will require a court certified copy of that order in addition to the court certified copy of the Letters Probate.

Note: Reference to a Court Order will usually appear beneath the names of the person(s) appointed as Executor/Executrix.

Execution of Documents

Land Title Act

Part 5 of the *Land Title Act* deals with the attestation and proof of execution of instruments.

- **Section 42** of the *Land Title Act* states that “*the execution by a transferor of an instrument must be witnessed by an officer who is not a party to the instrument*”. Certification by an officer operates to verify the signature and identity of the transferor. For Land purposes, **an officer is a person authorized by the Evidence Act to take affidavits.**

Evidence Act

Sections 56 to 69 of the *Evidence Act* deal specifically with who may take affidavits.

- **Section 60** of the *Evidence Act* provides that certain persons are, because of their office or employment, commissioners for taking affidavits for British Columbia. This includes all notaries public and “*barristers and solicitors who are enrolled under the Legal Profession Act and who are not disbarred, disqualified or suspended from practice...*”. **Note:** Attorney-at-law is not an acceptable qualification for an officer.

All barristers and solicitors in all provinces of Canada qualify as acceptable officers for land purposes. **Barristers and solicitors from countries outside Canada are not acceptable officers.**

- **Section 63** of the *Evidence Act* defines who may swear affidavits outside British Columbia for use in British Columbia. This section lists the acceptable persons before whom an affidavit may be made in any country other than Canada.

- To ensure that your documents will be accepted with out-of-province officer certification, it is advisable to have your documents certified by “*a notary public acting in the territorial limits of the notary's authority, certified under the notary's hand and official seal*” (**Section 63(f)**). **Note:** Although it is a requirement under the *Evidence Act* for a notary to affix his seal, it is not a requirement under the *Land Title Act* for officer certification. However, if a notary chooses to affix his seal, the seal must not obliterate the officer certification statement.

- Other than a notary public, the most common, acceptable qualification for an officer swearing an affidavit out of British Columbia for use in British Columbia is as follows:

“*... commissioner authorized to administer oaths in the courts of justice of _____ (specify country or state, as the case may be)*”. (**Section 63(a)**)

Affidavits of Execution

Where an instrument is not witnessed by an officer who qualifies under the *Evidence Act*, the words “**See Affidavit of Execution**” may be entered in the Officer Signature column and an Affidavit of Execution attached to the instrument. The affidavit must state the reason why officer certification cannot be obtained. Execution outside British Columbia will usually suffice as an acceptable reason.

Examples of preferred forms of affidavit may be found in the Appendix to all editions of the Land Title Transfer Forms Guidebook. The most recent edition to the Guidebook was published in 2001 and is available from:

Continuing Legal Education
Society of British Columbia
#300-845 Cambie Street
Vancouver, BC V6B 5T2
Phone: 604-669-3544

Builders Lien Act Notice of Interest

Under the *Builders Lien Act*, a **Notice of Interest** may be filed to alert any interested party that “*the owner’s interest in the land is not bound by a lien claimed under the Builders Lien Act in respect of an improvement on the land unless that improvement is undertaken at the express request of the owner*”.

To File a Notice of Interest

A Notice of Interest is filed in Form 1 under the *Builders Lien Act* and must be accompanied by a filing letter. It may be filed either by an owner in *fee simple* or by an owner of a *charge* and may be signed by the owner or by an agent of the owner. LTO fees are \$20.00. The notice will be endorsed on the title under Legal Notations. **Note: The Land Title Office will still register a Claim of Lien that is subsequently filed even if there is a Notice of Interest endorsed on the title.**

To Release a Notice of Interest

A Notice of Interest is released by way of Form C under the *Land Title Act*. The transferor in Item 5 of the Form C must be the *original* owner that filed the Notice of Interest. The original owner must execute the Form C. An agent for the owner cannot execute the Form C. LTO fees are \$20.00.

Tax Sale Notice

On receipt of a notice that land has been sold for taxes, the Land Title Office will endorse a **tax sale notice** on the title affected. The effect of this entry is to restrict all further dealings with the land. *Title to the land cannot be conveyed until the property has been redeemed.* The tax sale notice will only be cancelled upon the filing of a notice of **tax sale redemption**.

Corporate UPDATE

Corporate Annual Reports

The Corporate Annual Report System (CARS) has now been implemented. The new Annual Reports are a mint-green colour with an access code that is required for online registration. Only BC companies with an anniversary date January 26, 2002 or later can be filed remotely and only after all previous annual reports have been registered on paper. Also, if a change of director has been registered between the date of printing and the anniversary date, the Annual Report must be submitted on paper. An automatic confirmation of the filed Annual Report is available at no additional cost.

Our corporate staff in Victoria are ready to handle all of your filings, both online and in paper format. Whether paper or online, our fee for filing remains at \$8.00 each. If you have any questions, please contact Sheila Mitchell at 250-405-6000 or toll-free at 1-800-667-7767.

West Coast UPDATE

Information Handouts and Precedents

West Coast’s commitment to providing quality service includes providing registry precedents and information handouts *free of charge*.

Information Handouts

We have several information handouts available in connection with Land, Court, Process Serving and various Victoria government registries. A partial listing follows:

Land

- Credit Union Registration Numbers
- Filed Standard Charge Terms
- Filed Standard Mortgage Terms
- When To Use A Form C

Court

- Court Registry Turn-Around Times
- Court Registry Telephone Numbers
- Pre & Post Judgment Interest Rates

Corporate/PPR

- Corporate/PPR Registry
- Corporate/PPR Search Definitions
- PPR Library Service
- Is a CPO enough?

Miscellaneous Registries

- Motor Vehicle Search Guidelines
- Vital Statistics Search Guidelines

Process Serving

- 30/50/70 Brochure and Fee Schedule
- Conduct Money Distance Chart
- Practical Guide to Process Serving in British Columbia

If you would like copies of any of the above handouts, please contact Kelly Buziak in our Client Services department at 604-659-8600 or toll-free at 1-800-553-1936. You may also e-mail your request to info@wcts.com. We are able to send you these handouts by e-mail, facsimile, on your run or by regular mail.

Registry Precedents

For *Registry precedents*, please contact the appropriate department at West Coast:

- For **Land** precedents, please contact Marsha Cromwell or Peggy Forrester in **New Westminster** at 604-659-8600 or toll-free at 1-800-553-1936.
- For **Court** precedents, please contact Stuart Scharf or Alison Hughes in **Vancouver** at 604-659-8700 or toll-free at 1-800-806-2788.
- For **Corporate/PPR** and other government registry precedents, please contact Moira Millar or Sheila Mitchell in **Victoria** at 250-405-6000 or toll-free at 1-800-667-7767.

West Coast Anniversary Milestones

West Coast is very proud of its 32 year history of serving the legal profession. We have worked hard to develop a West Coast attitude and way of doing things over the years. We are proud to acknowledge that it is our experienced and conscientious staff who have contributed greatly to our success.

This past year significant anniversary milestones have been reached by several of our staff members. In our June, 2001 issue we acknowledged *Bette Stone* who had achieved **25 years** with our Land Department in May, 2001. Since then, several more staff members have celebrated long-term anniversaries. On behalf of Wayne Crookes, Owner/President and all the staff at West Coast Title Search, we would like to congratulate them all and say "*Thank You For A Job Well Done!*"



Marian Bragg
Front Office, New West
20 years – March, 2001



Cyndy Patterson
Land Department, New West
10 years – May, 2001



Teresita Garcia and Dharendra Lal
Messenger, Vancouver / Office, Vancouver
10 years – July, 2001



Judith Hellem
Front Office, New West
25 years – December, 2001



Sharon Phillips
Land Department, New West
20 years – February, 2002



Cheryl Wong
Land Department, New West
15 years – February, 2002

Asked & Answered

We are pleased to answer the following question related to the **Manufactured Home Registry (MHR)**:

Question: How do I correct the Affidavit of Witness with my *Manufactured Home* transfer when the affidavit is either incomplete or incorrect?

Answer: When an affidavit is incomplete or incorrect in the body of the affidavit (between "I"... and "set forth above.") and is corrected by fax before initial submission to MHR, MHR will require that the documents be submitted with both the original incorrect affidavit and the fax copies of the amended/initialled affidavit and a letter of undertaking. MHR will release registration numbers but not the registered documents until they receive the originally corrected and initialled Affidavit of Witness.

Note: *If an amendment must be made, we will fax you the originally executed affidavit. Both parties to the affidavit must make the amendment(s) needed and initial each change. Fax the originally amended fax copy of the affidavit, along with a letter of undertaking from the lawyer, back to us for submission with the original documents. Then send the original undertaking letter and the fax copy of the affidavit that was amended and originally initialled to us for submission to MHR.*

"You asked... We answered."

Keeping You Informed

Below is a list of memorandums and notices that we have sent out since December, 2001. If you require additional copies, please call our Client Services department at 604-659-8686 or toll-free at 1-800-553-1936. You may also view these on our website www.wcts.com under the *News and Updates* button or send your request via e-mail to info@wcts.com.

COURT

- **March 7, 2002** - Unavailable dates for a Master in Victoria for March, 2002
- **February 19, 2002** - New Westminster Chambers Calendar for March
- **February 19, 2002** - Court of Appeal - New Rules
- **January 23, 2002** - New Westminster Chambers Calendar for February
- **January 23, 2002** - Unavailable dates for Judges in Vancouver
- **January 8, 2002** - New Westminster Trial Scheduling
- **January 3, 2002** - Proposed Family Law Project New Implementation Date
- **January 3, 2002** - New Westminster Chambers Calendars for January 2002
- **December 31, 2001** - 2002 Judges Chambers for Victoria



E-Mail Service

- Work requests may be sent to us via e-mail to info@wcts.com. These requests will be received in our New Westminster office and then forwarded to the appropriate West Coast office for processing. If you do not receive confirmation from us by return e-mail that your request has been received, please contact Marian Bragg or Helen Ternan in our New Westminster office at 604-659-8600 or toll-free at 1-800-553-1936.

- **Please do not send time-sensitive instructions via e-mail.** If you wish to *Put a File on Hold*, *Release a Hold*, or *Give Additional Instructions*, please call the appropriate West Coast office directly, to ensure that your request will be dealt with immediately. In **New Westminster**, please call 604-659-8600 or toll-free at 1-800-553-1936; in **Vancouver**, please call 604-659-8700 or toll-free at 1-800-806-2788; in **Victoria**, please call 250-405-6000 or toll-free at 1-800-667-7767.



The Register is the newsletter of **West Coast Title Search Ltd.** It is available free of charge and we encourage you to use the information to assist you with your work.

West Coast Title Search Ltd.

99 Sixth Street
New Westminster, BC V3L 5H8
604-659-8600 Fax 604-525-2593
Toll Free: 1-800-553-1936

840 Howe Street - Suite 100
Vancouver, BC V6Z 2L2
604-659-8700 Fax 604-682-5793
Toll Free: 1-800-806-2788

754 Broughton Street - Suite 100
Victoria, BC V8W 1E1
250-405-6000 Fax 250-383-1614
Toll Free: 1-800-667-7767



Caution - While every effort has been made to verify the accuracy of this newsletter, neither West Coast Title Search Ltd. nor the authors are providing legal or other professional advice through this publication, and it should never be relied upon without reference to the relevant legislation, case law, administrative guidelines and other primary sources.