

NISGA'A LAND TITLE ACT

NISGA'A LISIMS GOVERNMENT

WILP SI'AYUUKHL NISGA'A

NISGA'A LAND TITLE ACT

UNOFFICIAL CONSOLIDATION
CURRENT TO NOVEMBER 1, 2012

NISGA'A LAND TITLE ACT

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PART 1 – INTERPRETATION**Definitions**

1. In this Act:

“**approving officer**” means the Approving Officer appointed under section 63;

“**charge**” means

- (a) in respect of land the title to which is registered in the fee simple register,
 - (i) an assignment of rents,
 - (ii) an easement,
 - (iii) a lease,
 - (iv) a life estate,
 - (v) a mortgage of the estate in fee simple,
 - (vi) a mortgage of a lease,
 - (vii) a restrictive covenant,
 - (viii) a statutory covenant, or
 - (ix) a statutory right of way, and
- (b) in respect of land the title to which is registered in the restricted register,
 - (i) an easement,
 - (ii) a lease,
 - (iii) a mortgage of a lease,
 - (iv) a mortgage of a Nisga'a Nation entitlement,
 - (v) a mortgage of a Nisga'a Village entitlement,
 - (vi) a Nisga'a Nation entitlement,

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- (vii) a Nisga'a Village entitlement,
- (viii) a restrictive covenant,
- (ix) a statutory covenant, or
- (x) a statutory right of way;

“Court of Appeal” means the court continued under the *Court of Appeal Act* (British Columbia);

“Crown road” means a Crown road as defined in the Nisga'a Treaty;

“designated flood plain area” means an area of Nisga'a Lands designated as a flood plain area under section 64(1);

“director” means the Director of Lands and Resources;

“discharge” includes release and surrender;

“enduring power of attorney” means an enduring power of attorney made under Part 2 of the *Power of Attorney Act* (British Columbia);

“explanatory plan” means a plan that

- (a) is not based on a survey but on existing descriptions, plans or records of the Nisga'a land title office, and
- (b) is certified correct in accordance with the records of the Nisga'a land title office by a British Columbia land surveyor;

“fee simple register” means the fee simple register referred to in section 4(b);

“indefeasible title” means, in relation to a parcel of land, all information contained in the register respecting the title to the estate in fee simple to the parcel, together with all conditions, provisos, restrictions, exceptions, reservations and charges to which that title is subject;

“instrument” means

- (a) a Nisga'a grant, or

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- (b) a document or plan relating to the transfer or charging of land or otherwise dealing with or affecting land, and includes, without limitation,
- (i) a grant of probate or administration or other trust instrument, and
- (ii) a Nisga'a Lisims enactment;

“land” means Nisga'a Lands, the title to which is registered;

“lease or agreement for lease for a term not exceeding three years if there is actual occupation under the lease or agreement” means a lease or agreement for lease the total term of which, including any period of renewal or extension provided for in the lease or agreement, does not exceed three years if there is actual occupation under the lease or agreement;

“Lisims land” means Nisga'a Lands

- (a) to which the Nisga'a Nation owns the estate in fee simple, and
- (b) the title to which is not registered;

“Nisga'a grant” means a Nisga'a grant as defined in the *Nisga'a Land Act*;

“Nisga'a Highway corridor” means the Nisga'a Highway corridor as defined in the Nisga'a Treaty;

“Nisga'a land title office” means the Nisga'a land title office continued under section 2;

“Nisga'a Nation entitlement” means a Nisga'a Nation entitlement as defined in the *Nisga'a Nation Entitlement Act*;

“Nisga'a Village entitlement” means a Nisga'a Village entitlement as defined in the *Nisga'a Village Entitlement Act*;

“owner” means a person registered in the records as the owner of land or of a charge, whether entitled to it in the person's own right or in a representative capacity or otherwise, and includes a registered owner;

“parcel” means a lot, block or other area in which land is held or into which land is subdivided, and, for certainty, does not include an area dedicated or deemed to be dedicated as a road or park under this Act;

“posting plan” means a plan deposited as a posting plan under this Act;

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“Public Guardian and Trustee” means the Public Guardian and Trustee holding office under the *Public Guardian and Trustee Act* (British Columbia);

“public utility” means a public utility as defined in the *Utilities Commission Act* (British Columbia);

“records” includes the register, drawings, plans, instruments and other documents or any part of them registered, deposited or filed in the Nisga'a land title office;

“register” means

- (a) as a noun, that part of the records in which information respecting indefeasible titles is entered or stored, comprising the fee simple register and the restricted register, and
- (b) as a verb, to enter or store under this Act in the fee simple register or the restricted register;

“registrar” means the Registrar appointed under section 3(1);

“restricted register” means the restricted register referred to in section 4(a);

“road” means a public way for vehicular or foot traffic, whether or not constructed and whether called a highway, street, road, lane, bridge, path, trail, walkway or other public way, and includes a road allowance or walkway allowance established under the *Nisga'a Land Act*;

“sketch plan” means a dimensioned drawing of the area affected by a lease of all or part of a building located on land shown on a plan of survey deposited in the Nisga'a land title office;

“statutory covenant” means a covenant of a negative or positive nature, as referred to in section 142(1);

“statutory right of way” means an easement without a designated dominant tenement, as referred to in section 141(1);

“subdivision” means the division of land into two or more parcels, whether by plan, metes and bounds description, or otherwise;

“Supreme Court” means the Supreme Court of British Columbia;

“transfer” includes a conveyance, a grant and an assignment;

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“transferee” includes a grantee and an assignee;

“transferor” includes a grantor and an assignor;

“transmission” means a change of ownership

- (a) effected by the operation of an enactment or law,
- (b) under an order of a court, or
- (c) resulting from any change in the office of a personal representative or trustee,

but does not include a change of ownership resulting from an amalgamation of two or more corporations, however effected.

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PART 2 – NISGA'A LAND TITLE OFFICE**Nisga'a land title office**

2. The Nisga'a land title office, established under NLGSR 2000/11, is continued.

Registrar and staff

3. (1) The Executive must appoint the Registrar.
- (2) The business of the Nisga'a land title office must be conducted by the registrar and any employees of the Nisga'a Nation who are assigned by the Chief Executive Officer to work under the direction of the registrar as the staff of the Nisga'a land title office.
- (3) The registrar or staff of the Nisga'a land title office must not
- (a) directly or indirectly act as the agent of a person investing money in or taking securities on Nisga'a Lands,
 - (b) advise for a fee, reward or otherwise on titles to Nisga'a Lands, or
 - (c) practise as a lawyer, notary public or conveyancer in respect of Nisga'a Lands.

Register

4. The registrar must
- (a) keep a register in the Nisga'a land title office to be known as the restricted register and enter or store in that register
 - (i) all indefeasible titles for land other than those referred to in paragraph (b)(i), and all information required by this Act or the regulations to be registered or entered on those indefeasible titles and affecting the land included in them, and
 - (ii) any other information required by the Executive, and
 - (b) keep a register in the Nisga'a land title office to be known as the fee simple register and enter or store in that register

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- (i) all indefeasible titles for land the fee simple ownership of which has been required to be registered under section 8 or 14 of the *Nisga'a Landholding Transition Act*, and all information required by this Act or the regulations to be registered or entered on those indefeasible titles and affecting the land included in them, and
- (ii) any other information required by the Executive.

Official record

5. (1) In this section:

“duplicate” means the counterpart of an original instrument or document made by the registrar in the usual and ordinary course of business using a technique that

- (a) records all significant details of the original instrument or document, and
- (b) does not permit additions, deletions or changes from the original instrument or document;

“original instrument or document” means the instrument or document that is registered, deposited or filed under this Act.

- (2) The registrar must make and maintain an official record of all instruments and documents registered, deposited or filed under this Act and the official record may consist of the original instrument or document or its duplicate, or both.
- (3) The registrar must store the official record made under subsection (2) either in the Nisga'a land title office or in some other location approved by the Executive.
- (4) A copy taken from an original instrument or document, or from a duplicate, that is
 - (a) made by the registrar, or
 - (b) certified by the registrar to be a true copy of the original instrument or document

is admissible in a court to the same extent as the original instrument or document.

- (5) A certification of the registrar under subsection (4) is conclusive proof that the copy, and the duplicate if the copy is made from a duplicate, was made by the registrar in the usual and ordinary course of business using a technique that

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- (a) is capable of recording all significant details of the original instrument or document, and
 - (b) does not permit additions, deletions or changes from the original instrument or document.
- (6) Despite section 114, if an original instrument or document filed under this Act is
- (a) a marriage certificate or a death certificate, or
 - (b) a trust instrument referred to in section 120(4),

the registrar may, at the time the original instrument or document is filed, create a duplicate and return the original to the person who applied to file it.

Content of records

6. The registrar must store in the records the names of registered owners of indefeasible titles and charges, with a reference opposite each name to the serial number under which the estate, interest or right of the owner is registered.

Searching of records

7. (1) During regular business hours, the register and any other official records of the Nisga'a land title office are open to search on such conditions as the registrar may impose.
- (2) The registrar may direct
- (a) the manner of conducting a search referred to in subsection (1), and
 - (b) that a search referred to in subsection (1) be accompanied by an application in the form directed by the registrar.
- (3) A search referred to in subsection (1) may be
- (a) a general search of the register showing the title to the land that is comprised in one indefeasible title,
 - (b) a special search confined to a single instrument, or

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- (c) if permitted by the registrar, a search for pending applications against the title to the land that is comprised in one indefeasible title.

Official seal, certificates and copies

- 8. (1) The Nisga'a land title office must have an official seal bearing the impression of the seal of the Nisga'a Nation.
- (2) A print of the official seal of the Nisga'a land title office stamped on a document is for all purposes deemed to be an impression of the official seal of the Nisga'a land title office.
- (3) A certificate or copy of an instrument provided by the registrar must, if sealed with the official seal of the Nisga'a land title office and signed by the registrar, be received in all courts as proof of
 - (a) the facts set out in the certificate, or
 - (b) the instrument of which it purports to be a copywithout proof of the official seal of the Nisga'a land title office or the signature or official position of the registrar.
- (4) The registrar must provide to any person who completes an application in the form that the registrar specifies
 - (a) a state of title certificate showing the subsisting title on the register and all pending applications, and
 - (b) a copy of an instrument registered, deposited or filed in the Nisga'a land title office.

Correction and omission of entries

- 9. (1) For the purposes of this Act, the registrar may, on any evidence the registrar considers sufficient,
 - (a) correct errors in entries made under this Act or another Nisga'a Lisims enactment, or
 - (b) supply entries omitted under this Act or another Nisga'a Lisims enactment

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in respect of the registration of titles and charges.

- (2) In correcting an error in an entry under subsection (1), the registrar
 - (a) must not erase or render illegible the original entry, and
 - (b) must sign and date the corrected entry.
- (3) In supplying an omitted entry under subsection (1), the registrar must sign and date the supplied entry.
- (4) Subsections (2) and (3) do not apply to the correction of an error or the supply of an omitted entry made to records stored by electronic means.
- (5) The correction of an error or the supply of an omitted entry under subsection (1) has the same validity and effect as if the error had not been made or the supplied entry not omitted, except in respect of a registration or filing that is made in the records of the Nisga'a land title office prior to the time of the correction of the error or the supply of the omitted entry.

Cancellation and correction of instruments

10. (1) For the purposes of this Act, the registrar may, on any evidence the registrar considers sufficient, so far as practicable without prejudicing rights acquired in good faith and for value,
 - (a) cancel an instrument issued in error or the registration of such an instrument,
 - (b) correct an error in an instrument,
 - (c) cancel an endorsement made in error on an instrument, or
 - (d) supply an endorsement omitted in error on an instrument.
- (2) In cancelling an instrument under subsection (1)(a) or an endorsement under subsection (1)(c), the registrar
 - (a) must not erase or render illegible the instrument or endorsement, and
 - (b) must sign and date the cancellation.
- (3) In correcting an error in an instrument under subsection (1)(b), the registrar

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- (a) must not erase or render illegible the original information, and
 - (b) must sign and date the corrected information.
- (4) In supplying an omitted endorsement under subsection (1)(d), the registrar must sign and date the supplied endorsement.
- (5) Subsections (2), (3) and (4) do not apply to the cancellation of an instrument or endorsement, the correction of an error or the supply of an omitted endorsement made to records stored by electronic means.
- (6) The cancellation of an instrument or endorsement under subsection (1) has the same validity and effect as if the instrument had not been issued or the endorsement had not been made.
- (7) The correction of an error or the supply of an omitted endorsement under subsection (1) has the same validity and effect as if the error had not been made or the supplied endorsement had not been omitted.

Preservation of records

- 11.** (1) The registrar may cause a record, or a selected portion of it, to be copied in a record of similar description if
- (a) the record, from use or age, is becoming obliterated or unfit for future use, or
 - (b) in the opinion of the registrar, convenience of reference requires it.
- (2) A copy of a record made under subsection (1), together with a certificate of the registrar at the end of the copy, stating that the copied record is a true copy of the original record, must, for all purposes be accepted and received as the original record.
- (3) An original record copied under subsection (1) must be preserved among the records.
- (4) If necessary for purposes of preservation, the registrar may cause
- (a) a record that is unfit for use to be repaired or rebound, or
 - (b) a plan that is deposited to be repaired, copied or mounted.

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Protection of registrar from personal liability

12. The registrar is not, nor is a person acting under their direction, liable personally in a proceeding for or in respect of an act or matter that is, in good faith, done, or omitted to be done, in the exercise or supposed exercise of the powers conferred on them, or in the performance of their duties under this Act or any other Nisga'a Lisims enactment or for costs in connection with a proceeding.

Exemption of registrar from attendance as witness in court

13. (1) The registrar, in their official capacity, is not bound by a subpoena, order or summons issued from a court in a civil matter
- (a) to attend out of the Nisga'a land title office as a witness for examination, or
 - (b) to produce a record registered, deposited or filed under this or any other Nisga'a Lisims enactment.
- (2) Subsection (1) applies whether or not a subpoena, order or summons is directed to the registrar personally or in the registrar's official capacity.
- (3) The registrar may be examined and records produced at the Nisga'a land title office under a commission or similar order for the examination of a witness.

PART 3 – REGISTRATION AND ITS EFFECT**Unregistered instrument does not pass estate or interest**

14. (1) Except as against the person making it, an instrument purporting to transfer, charge, deal with or affect land or an estate, interest or right in land does not operate to pass an estate, interest or right, either at law or in equity, in the land unless the instrument is registered under this Act.
- (2) An instrument referred to in subsection (1) purporting to transfer, charge, deal with or affect an estate in fee simple to or a charge on land in a manner and form registrable under this Act confers on every person benefited by the instrument and on every person claiming through or under the person benefited, whether by descent, purchase or otherwise, the right
- (a) to apply to have the instrument registered, and
 - (b) in proceedings incidental or auxiliary to registration, to use the names of all parties to the instrument, whether or not a party has since died or become legally incapacitated.
- (3) Subsection (1) does not apply to a lease or agreement for lease for a term not exceeding three years if there is actual occupation under the lease or agreement.

No dealing with fee simple estate until registration in fee simple register

15. (1) Despite any other provision of this Act or any other law, unless and until the indefeasible title to land is registered in the fee simple register under section 4(b)
- (a) no change in the ownership of the estate in fee simple to the land may take place, including by way of transfer, mortgage or transmission, and
 - (b) any instrument purporting to effect a change in the ownership of the estate in fee simple to the land, including by way of transfer, mortgage or transmission, is void and not registrable under this Act.
- (2) Subject to this Act and any other applicable law, once the indefeasible title to land is registered in the fee simple register under section 4(b)
- (a) a change in the ownership of the estate in fee simple to the land may take place by way of transfer, mortgage or transmission to any person, and

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- (b) an instrument purporting to effect a change in the ownership of the estate in fee simple to the land by way of transfer, mortgage or transmission is registrable under this Act.

Operation of instrument as from time of registration

16. An instrument purporting to transfer, charge, deal with or affect the estate in fee simple to or a charge on land passes the estate in fee simple or charge, either at law or in equity, created or covered by the instrument at the time of its registration, irrespective of the date of its execution.

Effect of indefeasible title

17. (1) An indefeasible title, as long as it remains in force and uncanceled, is conclusive evidence at law and in equity, as against the Nisga'a Nation and all other persons, that the person named in the title as registered owner is entitled to the estate in fee simple to the parcel of land described in the title, subject to the following:
- (a) the subsisting conditions, provisos, restrictions, exceptions and reservations including royalties, contained in the original Nisga'a grant or in any other disposition made by the Nisga'a Nation;
 - (b) a tax, charge, rate, assessment or debt payable to the Nisga'a Nation or a Nisga'a Village and imposed or made a lien on the land at the date of the application for registration or that may after that date be imposed or made a lien on the land under a Nisga'a Lisims enactment;
 - (c) a lease or agreement for lease for a term not exceeding three years if there is actual occupation under the lease or agreement;
 - (d) a road;
 - (e) a right of expropriation under a Nisga'a Lisims enactment;
 - (f) a charge, pending court proceeding or other matter noted or endorsed on title or that may be noted or endorsed on title after the date of the registration of the title;
 - (g) the right of a person to show that all or a portion of the land is, by wrong description of boundaries or parcels, improperly included in the title;
 - (h) the right of a person deprived of land to show fraud, including forgery, in

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which the registered owner has participated to any degree.

- (2) After an indefeasible title is registered, a title adverse to or in derogation of the registered owner is not acquired by length of possession.

Title by prescription abolished

18. All methods of acquiring a right in or over Nisga'a Lands by prescription or adverse possession are abolished, including the common law doctrine of prescription and the doctrine of the lost modern grant.

Protection of registered owner against actions for recovery of land

19. (1) In this section, “courts” includes a person or statutory body having, by law or consent of the parties, authority to hear, receive and examine evidence.
- (2) An action of ejectment or other action for recovery of land for which an indefeasible title has been registered must not be commenced against the registered owner named in the indefeasible title, except in the case of
- (a) a mortgagee as against a mortgagor in default,
 - (b) a lessor as against a lessee in default,
 - (c) a right arising or partly arising after the date of the application for registration of the title under which the registered owner claims, including, without limitation,
 - (i) the right of a purchaser claiming under a contract with the registered owner for the sale of the land, and
 - (ii) the right of a beneficiary if the registered owner is the trustee, and
 - (d) a right arising under section 17(1).
- (3) In any case other than those enumerated by way of exception in subsection (2), the subsisting indefeasible title must be held in all courts to be an absolute bar and estoppel to an action referred to in subsection (2) against the registered owner named in the indefeasible title, despite a rule of law or equity to the contrary.

Void instruments – interests acquired or not acquired

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- 20.** (1) Subject to subsection (2), a person who purports to acquire land or an estate, interest or right in land by registration of a void instrument does not acquire any land or estate, interest or right in land on registration of the instrument.
- (2) Even though an instrument purporting to transfer a fee simple estate is void, a transferee who
- (a) is named in the instrument, and
- (b) in good faith and for valuable consideration, purports to acquire the estate, is deemed to have acquired that estate on registration of that instrument.

Registration of charge

- 21.** (1) A registered owner of a charge is deemed to be entitled to the estate, interest or right created or evidenced by the instrument in respect of which the charge is registered, subject to the exceptions, registered charges and endorsements that appear on or are deemed to be incorporated in the register.
- (2) Registration of a charge is not a determination by the registrar that the instrument in respect of which the charge is registered creates or evidences an estate, interest or right in the land or that the charge is enforceable.

Notice given by registration of charge

- 22.** (1) The registration of a charge gives notice, from the date and time the application for registration was received by the registrar, to every person dealing with the title to the land affected, of
- (a) the estate, interest or right in respect of which the charge is registered, and
- (b) the contents of the instrument creating the charge so far as it relates to that estate, interest or right,
- but not otherwise.
- (2) A payment made by a mortgagor under a registered mortgage is not a dealing with the title to the land affected.
- (3) A transferee of a mortgage takes subject to the equities and to the subsisting state

of accounts between mortgagor and mortgagee.

Priority of charges based on priority of registration

23. If two or more charges entered on the register affect the same land, the charges have, as between themselves, but subject to a contrary intention appearing in the instruments creating the charges, priority according to the date and time the applications for registration of the charges were received by the registrar, despite the dates of execution of the instruments.

Effect of notice of unregistered interest

24. (1) For the purposes of this section, “**registered owner**” includes a person who has made an application for registration and becomes a registered owner as a result of that application.
- (2) Except in the case of a fraud in which the person has participated, a person who is contracting or dealing with or taking or proposing to take from a registered owner
- (a) a transfer of land, or
 - (b) a charge on land, or a transfer or subcharge of the charge,
- is not, despite a rule of law or equity to the contrary, affected by a notice, express, implied or constructive, of an unregistered estate, interest, right or claim purporting to affect the land or charge, other than
- (c) an estate in fee simple or charge, the registration of which is pending, or
 - (d) a lease or agreement for lease for a term not exceeding three years if there is actual occupation under the lease or agreement.

Notice of unregistered interest as affecting registered owner of charge

25. (1) In subsection (2), “**claim**” includes a certificate of pending litigation.
- (2) Under this Act,
- (a) a registered owner of a charge enforcing that owner’s charge by the exercise of a power of sale contained in it, or in an action for foreclosure,

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- (b) a purchaser under the power of sale, or under a sale pursuant to an order of the court in an action for foreclosure,
- (c) a court in which an action to enforce a charge by foreclosure is pending, and
- (d) the registrar considering an application founded on a sale under such a power of sale, on a foreclosure decree, or on a sale pursuant to an order of the court in an action for foreclosure,

are not bound by or deemed to have notice of an estate, interest, right or claim, the registration of which is not applied for until after

- (e) a notice of the intended exercise of the power of sale, or
- (f) a certificate of pending litigation in a foreclosure action

has been filed or registered.

- (3) On the filing of a notice referred to in subsection (2)(e), the registrar must endorse it and its filing number in the register.
- (4) Nothing in this section affects the right of a person claiming through a mortgagor or mortgagee, or through a vendor or purchaser, while an action is pending, to enter an appearance in the action.

Priority of certificate of pending litigation

- 26.** If a certificate of pending litigation has been registered against the title to land,
- (a) the plaintiff, if that person's claim is subsequently established by a judgment or order or admitted by an instrument duly executed and produced, is entitled to claim priority for that person's application for registration of the title or charge so claimed over a title, charge or claim, the application for registration, deposit or filing of which is made after the date of the registration of the certificate of pending litigation, and
 - (b) if proof of service of a notice of claim to priority on the subsequent applicant is provided to the registrar before the registration is effected, the registration of the title or charge claimed by the plaintiff relates back to and takes effect from the time of the registration of the certificate of pending litigation, and that time, as well as the time of the application for registration of the title or charge so claimed, must be endorsed on the

register.

Validity of registered voluntary conveyance

27. (1) An instrument executed in good faith and registered before the execution of a transfer to, and before the creation of a binding contract for the transfer to, a subsequent purchaser for value from the same grantor of the same land or any part of it, merely because of the absence of a valuable consideration in the instrument, is not and must not be considered to be void as against the subsequent purchaser for value or a person claiming by, from or under the subsequent purchaser for value.
- (2) Nothing in this section makes valid an instrument that is for any reason, other than or in addition to the absence of a valuable consideration, void under any law.

Registration of indefeasible title by court order

28. (1) Except as provided in section 120, the registrar must not register an indefeasible title in favour of a person under a direction contained in an order of a court unless the order declares that it has been proved to the satisfaction of the court on investigation that the title of the person designated in the direction is a good safe holding and marketable title.
- (2) Subsection (1) applies to the registration of a charge.

Admissibility of instruments

29. An instrument the execution of which is proved in the manner required by this Act, together with the affidavit, if any, by which the execution is proved, must be received in evidence in all courts without further proof of execution.

Completion of registration

30. The registration of an application or instrument is complete when the particulars of it have been entered, other than as a pending application, in the appropriate part of the register.

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Registration effective from time of application

31. Once registered, an instrument or application is deemed to have been registered and to have become operative for all purposes in respect of the title, charge or cancellation claimed by the application for registration, and according to the intent of the instrument or application, as of the date and time when the application was received by the registrar.

PART 4 – FORMS AND EXECUTION OF INSTRUMENTS**Definitions**

32. In this Part:

“**corporation**” includes the Nisga’a Nation and a Nisga’a Village;

“**officer**” means a person, excluding the registrar, before whom an affidavit may be taken or made under section 35(3);

“**signature**” includes the mark of an individual who cannot sign their name in English characters;

“**transferor**” includes a grantor and assignor and any other transferring or charging party.

Restrictions on registration

33. The registrar must not register an instrument unless the instrument complies with and has been completed, executed and witnessed in accordance with all applicable provisions of this Act and the regulations.

Registrable instruments

34. In order to be registrable, an instrument that is sufficient to pass or create an estate in fee simple to or a charge on land must be

- (a) in the prescribed form, if the use of a form is prescribed under this Act or another Nisga’a Lisims enactment, or
- (b) in a form satisfactory to the registrar, if the use of a form is not prescribed under this Act or another Nisga’a Lisims enactment.

Witnessing and execution

35. (1) The execution by a transferor of an instrument must be witnessed by an officer who is not a party to the instrument.

(2) Subsection (1) does not apply to

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- (a) a Nisga'a grant,
 - (b) a resolution of the Executive,
 - (c) a court order, or
 - (d) an instrument or an instrument in a class of instruments that is prescribed for the purposes of this section.
- (3) An affidavit necessary for the purposes of this Act may be taken or made inside or outside British Columbia by and before a person before whom an affidavit may be sworn under the *Evidence Act* (British Columbia).
- (4) In the absence of evidence to the contrary, the signature of a transferor on an instrument is proof that the transferor
- (a) knows the contents of the instrument,
 - (b) has signed the instrument voluntarily,
 - (c) has the legal capacity to execute the instrument, and
 - (d) intends to be bound by the instrument.

Witnessing – individuals

- 36.** The signature of the officer witnessing the execution of an instrument by an individual is a certification by the officer that
- (a) the individual appeared before and acknowledged to the officer that they are the person named in the instrument as transferor, and
 - (b) the signature witnessed by the officer is the signature of the individual who made the acknowledgment.

Witnessing – corporations

- 37.** (1) In the case of an instrument that is executed by a corporation, the signature of the officer witnessing the execution is a certification by the officer that
- (a) the individual who executed the instrument for the corporation appeared

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before and acknowledged to the officer that

- (i) the individual is an authorized signatory of the corporation,
 - (ii) the individual was authorized by the corporation to execute the instrument, and
 - (iii) the corporation existed at the time the instrument was executed and is legally entitled to hold and dispose of real property in British Columbia, and
- (b) the signature witnessed by the officer is the signature of the individual who made the acknowledgment.
- (2) A corporation must execute an instrument by its authorized signatory who must, on behalf of the corporation, sign their name on the instrument.
- (3) In the case of an instrument executed for a corporation by more than one authorized signatory, only the signature of one authorized signatory is required to be witnessed under this Part.

Witnessing – individual power of attorney

- 38.** (1) In the case of an instrument that is executed by an individual who is acting under a subsisting power of attorney, the signature of the officer witnessing the execution is a certification by the officer that
- (a) the individual appeared before and acknowledged to the officer that
 - (i) the individual is the person named as the attorney of the transferor in a subsisting power of attorney,
 - (ii) if the transferor is an individual, the individual acting under the power of attorney had, at the time the instrument was executed, no knowledge of the death or bankruptcy of the transferor, or of the revocation of the power by the transferor, and
 - (A) if the power of attorney is not an enduring power of attorney, the individual had, at that time, no knowledge of the mental infirmity of the transferor, or
 - (B) in the case of an enduring power of attorney, the individual had, at that time, no knowledge of the suspension or

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termination of their authority under any enactment,

- (ii.1) each change to the authority of an attorney under an enduring power of attorney, or a copy, certified under section 45(5) as a true copy of each such change, has been filed with the registrar under this Act, and
 - (iii) if the transferor is a corporation, the corporation is legally entitled to hold and dispose of real property in British Columbia and, at the time the instrument was executed, the corporation existed and the individual had no knowledge of the bankruptcy of the transferor or of a revocation of the power by the transferor, and
 - (b) the signature witnessed by the officer is the signature of the individual who made the acknowledgment.
- (2) An attorney who is an individual must
- (a) execute the instrument by signing their name, and
 - (b) indicate on the instrument that they are the attorney of the transferor.

Witnessing – corporate power of attorney

- 39.** (1) In the case of an instrument that is executed by a corporation acting under a subsisting power of attorney, the signature of the officer witnessing the execution is a certification by the officer that
- (a) the individual who executed the instrument for the corporate attorney appeared before and acknowledged to the officer that
 - (i) the individual is an authorized signatory of the corporate attorney,
 - (ii) the individual and any other individual who executed the instrument for the corporate attorney were authorized by the corporate attorney to execute the instrument,
 - (iii) the corporate attorney is the attorney of the transferor under a subsisting power of attorney,
 - (iv) if the transferor is an individual, the individual executing the instrument for the corporate attorney had, at the time the instrument was executed, no knowledge of the death or bankruptcy

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of the transferor, or of the revocation of the power by the transferor, and

- (A) if the power of attorney is not an enduring power of attorney, the individual had, at that time, no knowledge of the mental infirmity of the transferor, or
 - (B) in the case of an enduring power of attorney, the individual had, at that time, no knowledge of the suspension or termination of their authority under any enactment,
- (iv.1) each change to the authority of an attorney under an enduring power of attorney, or a copy, certified under section 45(5) as a true copy of each such change, has been filed with the registrar under this Act, and
- (v) if the transferor is a corporation, the corporation is legally entitled to hold and dispose of real property in British Columbia and, at the time the instrument was executed, the corporation existed and the individual had no knowledge of the bankruptcy of the transferor or of a revocation of the power by the transferor, and
- (b) the signature witnessed by the officer is the signature of the individual who made the acknowledgment.
- (2) A corporate attorney must execute an instrument in accordance with section 37(2) and must indicate on the instrument that the corporation is the attorney of the transferor.

Witnessing – persons not fluent in English

40. In the case of an instrument that is executed by an individual who appears to the officer to be unable to read English or to sign their name in English characters, the signature of the officer is, in addition to the certification in section 36, a certification by the officer that the individual appeared before and acknowledged to the officer that the contents and effect of the instrument were sufficiently communicated to the individual and that the individual fully understood the contents of the instrument.

41. *[Repealed.]*

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Execution under seal

42. (1) In the case of an instrument executed under seal by an individual, whether on the individual's own behalf or as the attorney for the transferor, the signature of the officer witnessing the execution is, in addition to any other certification evidenced by the officer's signature, a certification by the officer that the individual appeared before the officer and acknowledged that
- (a) the individual affixed their seal to the instrument, or
 - (b) if the individual is acting under a power of attorney, the individual affixed their seal to the instrument and was authorized by the transferor to do so.
- (2) In the case of an instrument executed under the seal of a corporation, whether on its own behalf or as the corporate attorney of the transferor, the signature of the officer witnessing the execution is, in addition to any other certification evidenced by the officer's signature, a certification by the officer that the individual who signed the instrument as the authorized signatory appeared before the officer and acknowledged that
- (a) the individual affixed the corporate seal of the transferor to the instrument and was authorized to do so, or
 - (b) in the case of a corporate attorney, the individual affixed the corporate seal of the attorney to the instrument and was authorized to do so.

If instrument not witnessed

43. If
- (a) the signature of a transferor is not witnessed as required under this Part,
 - (b) the registrar has satisfactory evidence, by affidavit,
 - (i) from a person who has reached 16 years of age and is acquainted with the transferor and the transferor's signature, stating their belief that the signature subscribed to the instrument is the signature of the person named in the instrument as transferor, or
 - (ii) in the case of a corporate transferor or corporate attorney, from a person who has reached 16 years of age and has personal knowledge of the matters contemplated in sections 37, 39 and 42(2) that would otherwise be acknowledged by the authorized

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signatory before an officer under those sections, and

- (c) the registrar considers it to be appropriate to act under this section to avoid hardship,

the registrar may receive the instrument for registration as if it had been witnessed as required.

Defects in execution

- 44. If there is a defect in the execution of an instrument, the registrar may, if the registrar considers the instrument is legally binding, register it, and the registration is valid for all purposes of this Act despite the defect.

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PART 5 – POWERS OF ATTORNEY**Deposit of power of attorney**

45. (1) The registrar must not register an instrument that is tendered for registration and executed by an attorney under a power of attorney unless one of the following is filed with the registrar:
- (a) the original power of attorney;
 - (b) a copy of the original power of attorney certified to be a true copy of the original
 - (i) by the registrar, if the registrar has custody of the original,
 - (ii) by the Registrar of Companies appointed under the *Business Corporations Act* (British Columbia), if the Registrar of Companies has custody of the original, or
 - (iii) by the registrar under subsection (5);
 - (c) if the original power of attorney has been executed, filed or deposited in a province or country the laws of which require that the original power of attorney be filed or deposited with the officer preparing it or with some other officer or a court, a copy of the original power of attorney certified by the officer under the officer's seal of office or under the seal of the court, as the case may be, and a certificate or other evidence that
 - (i) the original has been filed or deposited by the officer or court, and
 - (ii) the filing or depositing was required by the law of that province or country.
- (2) The execution of a power of attorney must be witnessed or proved in the manner required for instruments under Part 4.
- (3) In the case of an agreement that is
- (a) an enduring power of attorney signed under section 16(2) of the *Power of Attorney Act* (British Columbia), or
 - (b) a representation agreement deemed to be an enduring power of attorney under section 44.3 of the *Representation Agreement Act* (British

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Columbia), signed under section 13(4) of that Act,

the signature of the person signing the agreement on behalf of the adult making the agreement is deemed to be the adult's signature for the purposes of this Act.

- (4) Subject to subsection (4.1), a person who is appointed an attorney for the execution of an instrument tendered for registration must have reached 18 years of age at the time of the appointment, and proof of that fact must be given to the registrar at the time the power of attorney is filed.
- (4.1) In the case of an enduring power of attorney, a person who is appointed an attorney for the execution of an instrument tendered for registration must have reached 19 years of age at the time of registration, and proof of that fact must be given to the registrar at the time the enduring power of attorney is filed.
- (5) For the purposes of subsection (1)(b)(iii), the registrar may certify a copy of a power of attorney to be a true copy if the instrument tendered for registration is accompanied by
 - (a) the original power of attorney, and
 - (b) an application, in a form acceptable to the registrar, for the return of the original.
- (6) *[Repealed.]*
- (7) A certified copy of an original power of attorney filed under subsection (1) is conclusive proof of the contents of the power of attorney for the purposes of this Act.
- (8) If a person changes an enduring power of attorney in accordance with section 28 of the *Power of Attorney Act* (British Columbia),
 - (a) the changed enduring power of attorney must be filed in the same manner as an original power of attorney under subsection (1) of this section,
 - (b) the execution of the change must be witnessed or proved in the manner required for instruments by Part 4 of this Act,
 - (c) subsection (5) applies to a copy of a change to an enduring power of attorney as it applies to a copy of a power of attorney, and
 - (d) subsection (7) applies to a change to an enduring power of attorney as it applies to a power of attorney.

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Subsequently acquired rights and interests

46. Unless a power of attorney provides expressly to the contrary, the rights and powers conferred on an attorney with respect to land owned by the principal at the date of the execution of the power of attorney also apply to land acquired by the principal after that date.

Index of powers of attorney

47. (1) The registrar must endorse on every power of attorney, or certified copy of a power of attorney, filed in the Nisga'a land title office, a serial number and the date and time of filing.
- (2) The registrar must keep an index of all powers of attorney, and certified copies of powers of attorney, filed in the Nisga'a land title office, and for each such power of attorney or certified copy must enter in the index
- (a) the names of the principal and attorney, and
- (b) the serial number endorsed on the power of attorney or certified copy under subsection (1).
- (3) If a person changes an enduring power of attorney in accordance with section 28 of the *Power of Attorney Act* (British Columbia) and the changed enduring power of attorney, or a certified copy of it, is filed in the Nisga'a land title office in accordance with section 45(8) of this Act, the registrar must endorse on the changed enduring power of attorney, or a certified copy of it,
- (a) the serial number of the original enduring power of attorney, and
- (b) the date and time that the changed enduring power of attorney was filed.

Execution of subsequent power of attorney

48. (1) For the purposes of this Act, the execution by a principal of a subsequent power of attorney does not revoke the appointment of an attorney made by that principal under a previous power of attorney, unless
- (a) the subsequent power of attorney expressly revokes in whole or in part the previous power of attorney, and

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- (b) section 51 is complied with.
- (2) The execution by a principal of a change to an enduring power of attorney, made in accordance with section 28 of the *Power of Attorney Act* (British Columbia), does not for the purposes of this Act revoke the appointment of an attorney made by that principal under the original enduring power of attorney, unless
 - (a) the changed enduring power of attorney expressly revokes in whole or in part the original enduring power of attorney, and
 - (b) section 51 of this Act is complied with.

Valid three years

- 49.** (1) For the purposes of this Act, but subject to subsection (2) and section 50, a power of attorney filed in the Nisga'a land title office is not valid after three years following the date of its execution, unless the power of attorney
- (a) expressly excludes the application of this section, or
 - (b) is executed by a corporation.
- (2) Subsection (1) does not invalidate a dealing that is
- (a) otherwise valid, and
 - (b) entered into within three years after the date of execution of a valid power of attorney.

Enduring power of attorney valid unless terminated

- 50.** For the purposes of this Act, but subject to section 51(1), an enduring power of attorney that is filed under section 45 remains valid, unless terminated by another means, until an order terminating the power of attorney is filed in the Nisga'a land title office.

Revocation of power of attorney

- 51.** (1) For the purposes of this Act, a power of attorney filed in the Nisga'a land title office may be revoked by filing a notice of revocation in the prescribed form, or by filing other evidence that, in the opinion of the registrar, is sufficient to effect a

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revocation.

- (2) On receiving a notice of revocation of a power of attorney or other sufficient evidence under subsection (1), the registrar must
 - (a) endorse in the index of powers of attorney the fact and date of the revocation, and
 - (b) endorse on the power of attorney the fact that it has been revoked.

PART 6 – DESCRIPTIONS AND PLANS**Division 1 – General****Methods of describing land**

- 52.** (1) The registrar must require the use of a method of describing land that
- (a) is authorized by this Act, and
 - (b) will, in the registrar's opinion, best ensure brevity, accuracy and uniformity in the records.
- (2) Descriptions of land in accordance with this Act are sufficient for every transaction, dealing, instrument or proceeding relating to land, whether in or out of the Nisga'a land title office, and whether under this Act or any other enactment in which a description of land is required.
- (3) The registrar may assign to a parcel of land a number, known as a parcel identification number, for the purpose of facilitating parcel identification in records and instruments.
- (4) The registrar may require, as part of the description of a parcel of land,
- (a) the parcel identification number that has been assigned to the parcel under subsection (3), and
 - (b) any other information that the registrar considers advisable.

Description of land in Nisga'a grant

- 53.** Registration of an indefeasible title under this Act must, in the first instance, be according to the description of the land shown in the Nisga'a grant or other original instrument issued by the Nisga'a Nation.

Subsequent descriptions of land

- 54.** A description of land made after a description referred to in section 53 must be in accordance with this Part.

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Requirements as to plans

55. A plan tendered to the registrar for deposit in the Nisga'a land title office must comply with the following requirements:
- (a) the plan must be prepared by a British Columbia land surveyor;
 - (b) the plan must, to the satisfaction of the registrar, comply with the relevant rules respecting surveys and plans made under section 385(5) of the *Land Title Act* (British Columbia);
 - (c) the plan must have a title that includes the legal description, in accordance with the register, of the subject land;
 - (d) unless otherwise provided by regulation, the plan must be accompanied by a machine made transparent copy of a type approved by the registrar, together with the number of white prints that the registrar specifies;
 - (e) the British Columbia land surveyor must verify the correctness of the plan and any survey made in preparation of the plan by a statement in the form approved by the registrar.

Posting plan

56. (1) If
- (a) an angle of a parcel is redefined on the ground by a post or monument, or
 - (b) an angle or a parcel described by
 - (i) metes and bounds,
 - (ii) an abbreviated description, or
 - (iii) an explanatory planis defined on the ground by a post or monument,
- the redefinition or definition, as the case may be, must be
- (c) made by a British Columbia land surveyor, and

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- (d) shown on a posting plan.
- (2) The surveyor referred to in subsection (1) must certify the posting plan as correct and deposit it in the Nisga'a land title office within two months after the completion of the redefinition or definition, as the case may be.

Block outline survey

- 57.** (1) Subject to conditions the registrar considers necessary, the registrar may, on an application, before a survey is made for the purpose of a subdivision or for the purpose of establishing a road or park,
- (a) allow the survey to be posted by setting, at proper intervals, monuments of a specified permanent character, or
 - (b) allow a block outline posting of the survey to be made by setting key monuments at specified locations.
- (2) In a survey under subsection (1)(a), the monuments with the information on the plan showing their location is the only posting of the survey required.
- (3) In a survey under subsection (1)(b),
- (a) the information on the block outline plan showing the relationship of the monuments to the boundaries shown on the plan is evidence of the boundaries until a complete and final posting of the boundaries is made by the surveyor,
 - (b) the surveyor must complete the final posting of the boundaries within a period specified by the registrar,
 - (c) the surveyor who makes the block outline survey must make the final posting of the boundaries, and
 - (d) a posting plan must
 - (i) be deposited with the registrar before the period of time specified under paragraph (b),
 - (ii) comply with all the requirements of this Act for a subdivision or reference plan, except the requirements for
 - (A) the signature of the owner, and

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- (B) the approval of the approving officer, and
 - (iii) conform in all respects with the block outline plan, unless a departure from it is authorized by the registrar.
- (4) A posting plan deposited under subsection (3)(d) is, in the absence of evidence to the contrary, proof of the boundaries.
 - (5) On receiving a posting plan under subsection (3)(d), the registrar must,
 - (a) if the posting plan refers only to one block outline plan, assign the posting plan the same serial number as that assigned to the block outline plan, and
 - (b) if the posting plan refers to more than one block outline plan, assign the posting plan a new serial number.
 - (6) If the surveyor referred to in subsection (3)(c) is unable to make the final posting, the registrar may appoint another British Columbia land surveyor to make the final posting.
 - (7) An application to the registrar under subsection (1) must be accompanied by the prescribed fee.

Division 2 – Subdivision of Land**Restrictions on subdivision**

- 58.** (1) Except on compliance with this Part, a person must not subdivide land into smaller parcels than those of which the person is the registered owner for the purpose of
- (a) transferring it, or
 - (b) leasing it, or agreeing to lease it, for life or for a term exceeding three years.
- (2) Except on compliance with this Part, a person must not subdivide land for the purpose of a mortgage or other dealing that may be registered under this Act as a charge if the estate, interest or right conferred on the mortgagee, transferee or other party would entitle the person in law or equity under any circumstances to demand or exercise the right to acquire or transfer the fee simple.

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- (3) Subsection (1) does not apply to a subdivision for the purpose of leasing a building or part of a building.
- (4) An instrument made in contravention of this section does not confer on the party claiming under it a right to registration of the instrument or any part of it.

Lease of parcel of land enforceable

- 59.** A lease or an agreement for lease of a part of a parcel of land is not unenforceable between the parties to the lease or agreement for lease by reason only that
- (a) the lease or agreement for lease does not comply with this Part, or
 - (b) an application for the registration of the lease or agreement for lease may be refused or rejected.

Method of defining new parcel

- 60.** Except as otherwise provided in section 83, a new parcel created by subdivision or a parcel for which an indefeasible title is sought must be defined by a subdivision plan.

Requirements for subdivisions

- 61.** (1) A subdivision must comply with the following, and all other, requirements in this Part:
- (a) to the extent of the owner's control, there must be sufficient roads to provide necessary and reasonable access
 - (i) to all new parcels, and
 - (ii) through the land subdivided to land lying beyond or around the subdivided land;
 - (b) all existing roads
 - (i) provided for in subdivision plans of adjoining land, or
 - (ii) otherwise legally established

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must be continued without unnecessary jogs and must be cleared, drained, constructed and surfaced to the approving officer's satisfaction;

- (c) if the subdivided land borders on
 - (i) a body of water,
 - (ii) the boundary of a strip of land owned by the Nisga'a Nation or a Nisga'a Village established as the boundary of a water reservoir, or
 - (iii) a strip of land owned by the Nisga'a Nation or a Nisga'a Village, 20 m or less in width contiguous to a natural boundary,

access must be given by roads 20 m wide to the body of water and to the strips at distances not greater than 200 m between centre lines, or, outside of the Nisga'a Villages, at distances not greater than 400 m between centre lines;

- (d) suitable lanes must be provided in continuation of existing lanes and in every case where lanes are considered necessary by the approving officer.
- (2) In considering the sufficiency of a road shown on a plan, the approving officer must consider the following:
- (a) the location and width of the road;
 - (b) the suitability of the road in relation to the existing use of the subdivided land and the use intended by the subdivision;
 - (c) the configuration of the land subdivided;
 - (d) the relation of the road to an existing main road or approach, whether by land or water, and local circumstances;
 - (e) the extent of the use, present and future, to which the road may be put;
 - (f) the likely or possible role of the road in a future road network serving the area in which the subdivided land is located.

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Relief from section 61(1)

62. The Executive may make regulations prescribing the circumstances in which the approving officer may grant relief from compliance with all or part of section 61(1), which may be different for different areas.

Appointment of approving officer

63. The Executive must appoint the Approving Officer for land.

Subdivision of land subject to flooding

64. (1) The Executive may designate an area of Nisga'a Lands as a flood plain area by map, plan, legal description or a combination of any of them.
- (2) For the purpose of minimizing potential damage that could be caused by flooding, the Executive may establish conditions for the approval of subdivisions in designated flood plain areas, including, but not limited to, a condition that the owner of land being subdivided do one or both of the following:
- (a) provide a report certified by a professional engineer or geoscientist experienced in geotechnical engineering that the land may be used safely for the use intended;
 - (b) enter into one or more statutory covenants in respect of each of the parcels that are being created by the subdivision.
- (3) Conditions established under subsection (2) may be different for different designated flood plain areas or for different parts of a designated flood plain area.
- (4) If the approving officer considers that a proposed subdivision would not comply with an applicable condition established under subsection (2), the approving officer must not approve the plan of subdivision without the written consent of the Executive.
- (5) If the approving officer considers that land in a proposed plan of subdivision that is not within a designated flood plain area is or would likely be subject to flooding, the approving officer must not approve the plan without the written consent of the Executive.
- (6) As a condition of its consent under subsection (4) or (5), the Executive may require that the registered owner of the estate in fee simple to the land being

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subdivided do one or both of the following:

- (a) provide a report certified by a professional engineer or geoscientist experienced in geotechnical engineering that the land may be used safely for the use intended;
 - (b) enter into one or more statutory covenants in respect of each of the parcels that are being created by the subdivision.
- (7) The statutory covenants referred to in subsections (2) and (6) may be included in a Nisga'a grant or other disposition made under the *Nisga'a Land Act*, and
- (a) the grantee or other person entitled under the Nisga'a grant or other disposition, and
 - (b) their successors in title

are bound by the statutory covenants, even though they have not signed the Nisga'a grant or other disposition.

Division 3 – Approval of Subdivision Plans

Tender of plan for examination and approval

- 65.** (1) A subdivision plan must be tendered for examination and approval by the approving officer.
- (2) The subdivision plan must be accompanied by the following:
- (a) the prescribed fees;
 - (b) a certificate
 - (i) that any taxes assessed on the subdivided land have been paid, and
 - (ii) if taxes, rates or assessments are payable by instalments, that all instalments owing at the date of the certificate have been paid;
 - (c) if the approving officer considers that there is reason to anticipate that the land may be resubdivided and requires this information, a sketch showing that the parcels into which the land is subdivided can conveniently be further subdivided into smaller parcels;

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- (d) if the approving officer requires this information, profiles of every new road shown on the plan and any necessary topographical details that indicate engineering problems to be dealt with in opening up the roads, including environmental impact or planning studies.
- (3) The Executive may, by regulation, prescribe fees for subdivision plan examination by the approving officer, which may vary with the number, size and type of parcels involved in the proposed subdivision.

Referral to British Columbia

66. If a subdivision plan affects land adjacent to a Crown road, the approving officer
- (a) must refer the plan to British Columbia for review,
 - (b) must not approve the plan if, in the approving officer's opinion, the plan is inconsistent with any regulation by British Columbia referred to in paragraph 43 of the Roads and Rights of Way Chapter of the Nisga'a Treaty, and
 - (c) may, before approving the plan, require that the person applying for subdivision approval satisfy the requirements of any regulation by British Columbia referred to in paragraph 43 of the Roads and Rights of Way Chapter of the Nisga'a Treaty.

Late tender of plan

67. (1) If a subdivision plan is tendered for examination and approval more than three months after the date a survey is completed, the approving officer may require the surveyor who carried out the survey
- (a) to inspect the survey,
 - (b) to confirm that
 - (i) all posts and monuments are in place, and
 - (ii) the survey has not been affected by an intervening survey or a registration, deposit or filing under this Act, and
 - (c) to write on the plan "inspected under the *Nisga'a Land Title Act*", with the

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date of the inspection and their signature.

- (2) A surveyor may take the steps described in subsection (1) before a subdivision plan is tendered for examination and approval.
- (3) If a surveyor who has carried out a survey is unable to take the steps described in subsection (1), the registrar may appoint another British Columbia land surveyor to take those steps.

Consideration of public interest

- 68.** In considering an application for approval of a subdivision plan, the approving officer may reject the subdivision plan if the approving officer considers that the plan is not in the public interest.

Other matters to be considered by approving officer

- 69.** (1) Without limiting section 68, in considering an application for approval of a subdivision plan, the approving officer may
- (a) at the cost of the applicant, personally examine or have an examination and report made on the proposed subdivision,
 - (b) hear from any person who, in the approving officer's opinion, is affected by the proposed subdivision,
 - (c) refuse to approve the subdivision plan, if the approving officer considers that
 - (i) the anticipated development of the subdivision would injuriously affect the established amenities of adjoining or reasonably adjacent lands,
 - (ii) the plan does not comply with
 - (A) the provisions of this Act relating to access and the sufficiency of roads shown in the plan, or
 - (B) the regulations relating to subdivision plans,
 - (iii) the roads shown in the plan are not satisfactorily cleared, drained, constructed and surfaced,

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- (iv) a road provided for in a subdivision plan or otherwise legally established on lands adjoining, lying beyond or around the land subdivided is, in the approving officer's opinion, not sufficient,
 - (v) land in the plan has inadequate drainage installations,
 - (vi) land in the plan is subject, or could reasonably be expected to be subject, to flooding, erosion, land slip or avalanche,
 - (vii) based on all available environmental impact and planning studies, the anticipated development of the subdivision would adversely affect the natural environment or the conservation of heritage property to an unacceptable level,
 - (viii) the cost to the Nisga'a Nation or a Nisga'a Village of providing public utilities or other works or services to the subdivision would be excessive,
 - (ix) the subdivision is unsuited to the configuration of the land being subdivided or to the use intended, or
 - (x) the subdivision makes impracticable future subdivision of the land within the proposed subdivision or of land adjacent to it, and
- (d) if the approving officer considers that land in the plan is subject, or could reasonably be expected to be subject, to flooding, erosion, land slip or avalanche, require, as a condition of consent to an application for subdivision approval, that the subdivider do either or both of the following:
- (i) provide a report certified by a professional engineer or geoscientist experienced in geotechnical engineering that the land may be used safely for the use intended;
 - (ii) enter into one or more statutory covenants in respect of any of the parcels that are being created by the subdivision.
- (2) Subsection (1)(c)(iii) does not apply if, in circumstances the approving officer considers appropriate, the applicant has provided security in an amount and form acceptable to the approving officer for the completion of the work described in that subsection.
- (3) The Executive may, by regulation, amend, add to, substitute or repeal any of the

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grounds for refusal set out in this section or section 68.

Consideration of Nisga'a enactments

70. Without limiting section 68, the approving officer may refuse to approve a subdivision plan if the approving officer considers that the subdivision does not conform to all applicable Nisga'a enactments.

Time limit for approval

71. (1) A subdivision plan must be approved or rejected by the approving officer within any period that is prescribed by the Executive.
- (2) If the approving officer rejects a subdivision plan under subsection (1), the approving officer must give written notice of the rejection to the applicant, stating briefly the reason and any requirements of the approving officer.

Approval of plan

72. On the approval of a subdivision plan, the approving officer must
- (a) write on the plan "Approved under the *Nisga'a Land Title Act*" along with the date of approval, and
 - (b) sign the plan and set out the title "Approving Officer for Registered Nisga'a Lands" after their signature.

Appeal to Supreme Court

73. (1) If
- (a) the approving officer rejects a subdivision plan or fails within any time limit prescribed under section 71(1) to approve a subdivision plan, the subdivider may make an application in the nature of an appeal to the Supreme Court

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- (i) within one month after receiving written notice of the approving officer's rejection, or
 - (ii) if the subdivision plan has not been approved within any time limit prescribed under section 71(1), within one month after the expiration of that time, or
 - (b) the approving officer rejects a subdivision referred to in section 83 or fails within any time limit prescribed under subsection 85(2)(b) to approve such a subdivision, the subdivider may make an application in the nature of an appeal to the Supreme Court
 - (i) within one month after receiving written notice of the approving officer's rejection, or
 - (ii) if the subdivision has not been approved within any time limit prescribed under section 85(2)(b), within one month after the expiration of that time.
 - (2) The court may, on application made within the time limit for appeal under subsection (1) and on the terms it thinks proper, extend the time for appeal for a period not exceeding one month.
 - (3) An application under subsection (1) must be supported by an affidavit of the subdivider or the subdivider's solicitor or agent, stating fully and fairly all the material facts of the case, and that to the best of their information, knowledge and belief all facts material to the application for approval have been fully and fairly disclosed.
 - (4) An applicant under subsection (1) must serve a copy of the application on the approving officer, together with copies of all material and exhibits proposed to be used on the hearing.
 - (5) At least 10 days' notice must be given of the time and place of hearing of an application under subsection (1), and at that time and place all interested persons, whether or not served with the application, may appear and be heard.
 - (6) The court may make any order it considers proper as to the notification of other persons of the hearing of an application under subsection (1).
 - (7) On the hearing of an application under subsection (1), the court may make any order

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- (a) that the circumstances of the case require, including a direction that the approving officer approve the plan, if otherwise in order, and
 - (b) with respect to the costs of the persons appearing on the hearing of the application as appears just.
- (8) If the approving officer is directed by an order under subsection (7) to approve a subdivision plan, the approving officer must note on the plan “Approved under the *Nisga’a Land Title Act* pursuant to the order of, made, with the date of approval, and must sign the plan and set out their title in the manner provided in section 72(b).

Power to prohibit deposit

74. (1) If the Executive considers the deposit of a subdivision plan to be against the public interest, the Executive may order the registrar not to receive the plan for deposit.
- (2) Subsection (1) applies whether or not the subdivision plan has been approved under this Part.

Division 4 – Deposit of Subdivision Plans**Approval of subdivision plan required**

75. (1) The registrar must not deposit a subdivision plan or reference plan if
- (a) the plan has not been approved by the approving officer under this Part, or
 - (b) an order relating to the plan has been made under section 74(1).
- (2) Subsection (1)(a) does not apply
- (a) if, under section 78, the plan only consolidates into a single parcel a lawfully accreted area and another parcel, or
 - (b) subject to section 83(2), to a reference plan deposited under section 83(1)(d), (e), (f) or (g).

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Application for deposit

76. (1) An application to deposit a subdivision plan must be
- (a) in the prescribed form,
 - (b) accompanied by the subdivision plan, and
 - (c) tendered for deposit to the registrar within
 - (i) two months after it has been approved by the approving officer,
 - (ii) any longer prescribed period, or
 - (iii) any further time after the two months or longer prescribed period that the registrar allows for sufficient cause on an application made within the two months or longer prescribed period.
- (2) If an application and subdivision plan are not tendered to the registrar within the time required in this section, the subdivision plan is deemed to have been rejected.

Title to land in plan required to be registered

77. (1) Except as otherwise permitted by this Act or another Nisga'a Lisims enactment, the registrar must not deposit a plan tendered by a subdivider unless the title to all the land included in the plan and subdivided by it is registered.
- (2) The registrar may refuse to deposit a plan covering land held under more than one title if the registrar considers that confusion as to title of parcels may result.

Endorsement of certificate

78. (1) Despite the *Nisga'a Land Act*, if a plan to be tendered for deposit in the Nisga'a land title office
- (a) includes an area that has lawfully accreted to the land being subdivided, or
 - (b) shows a water boundary that differs from the water boundary shown on the plan already on deposit and on which the current title is based,
- the approving officer may, if in the approving officer's opinion it is in the public

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interest to do so, endorse on the plan to be tendered a certificate that

- (c) the area in question is a lawfully accreted area, or
 - (d) the water boundary shown on the plan is the natural boundary of the land included in the plan.
- (2) The approving officer must not endorse a certificate under subsection (1) on a plan to be tendered for deposit unless the approving officer is satisfied that
- (a) the area in question has lawfully accreted to the land being subdivided, or
 - (b) the water boundary shown on the plan to be tendered is the correct water boundary of the land included in the plan, and the water boundary shown on the plan already on deposit and on which the current title is based is incorrect due to lack of sufficient detail, or any other good reason.
- (3) An application to the approving officer for endorsement under subsection (1) must be accompanied by the prescribed fee.

Accreted area within plan

- 79.** (1) If a subdivision or reference plan
- (a) is tendered for deposit, and
 - (b) has endorsed on it a certificate of the approving officer certifying that all or part of an area intended to be dealt with by the plan is a lawfully accreted area,
- the certificate is deemed to be satisfactory proof to the registrar that
- (c) the registered owner purporting to include in the tendered plan the accreted area has established to that accreted area a good safe holding and marketable title in fee simple, and
 - (d) the registered owner's indefeasible title to the land included in the plan and affected by the accretion may be amended to include the accreted area.
- (2) If an indefeasible title endorsed with a registered charge is amended under subsection (1) to include an accreted area, the charge is extended to include that accreted area.

Certification of water boundary on plan

- 80.** (1) If a subdivision or reference plan
- (a) is tendered for deposit, and
 - (b) has endorsed on it a certificate of the approving officer certifying that the water boundary shown on the plan is the natural boundary of the land included in the plan,
- on the deposit of the tendered plan, and even though the water boundary shown on the tendered plan differs from the natural boundary shown on a plan already on deposit in the Nisga'a land title office, the certificate is deemed to be satisfactory proof to the registrar that
- (c) the registered owner purporting to include in the tendered plan the area comprising the difference between that within the water boundary shown on the tendered plan and that within the natural boundary shown on the plan already on deposit, has established to that area a good safe holding and marketable title in fee simple, and
 - (d) the registered owner's indefeasible title to the land adjoining the area referred to in paragraph (c) may be amended to include that area.
- (2) If an indefeasible title endorsed with a registered charge is amended under subsection (1) to include an area described by a water boundary, the charge is extended to include that area.

Signatures of owners to plan

- 81.** (1) Except as otherwise provided in this section, a subdivision plan must be signed by each owner of the land subdivided prior to its deposit.
- (2) All the signatures to a subdivision plan must be witnessed by at least one person who is 18 years of age or older and is not an owner of land affected by the plan, and the address of each witness must be stated on the plan.
- (3) The registrar may deposit a subdivision plan that has not been signed by all the owners if, in the registrar's opinion, the interests of the owners who have not signed are not affected by the deposit of the plan.

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- (4) If an owner of a charge on land affected by a subdivision plan, other than a charge by way of mortgage, lease, Nisga'a Nation entitlement or Nisga'a Village entitlement, fails or refuses to sign the subdivision plan, the owners in fee simple may apply to the registrar 30 days after serving the owner of the charge with notice of the application for an order that the owner of the charge is not required to sign the plan.
- (5) On an application under subsection (4) made 30 days after the serving of the notice referred to in that subsection, the registrar may issue an appointment for the hearing of all interested parties, and on the return of the appointment may
- (a) hear all interested parties or their agents,
 - (b) adjourn the hearing of the application on terms the registrar considers proper,
 - (c) grant or refuse all or part of the application, on conditions the registrar considers proper, and
 - (d) make any order the registrar considers appropriate.
- (6) The deposit of a subdivision plan in accordance with an order made by the registrar under subsection (5) has the same effect in all respects as if the plan had been signed by each owner of the land subdivided.

New indefeasible titles for parcels shown on deposited plan

- 82.** (1) If a plan is tendered for deposit with an accompanying application, the registrar must
- (a) examine the application and plan and any supporting instrument produced, and
 - (b) if satisfied that the documents comply with this Act,
 - (i) deposit the plan under the serial deposit number assigned to the plan on its receipt,
 - (ii) register new indefeasible titles for the parcels shown on the plan as may be necessary, and
 - (iii) if new indefeasible titles are registered, cancel former indefeasible titles as may be necessary.

- (2) Concurrently with the tender of the plan under subsection (1), an application may be made to the registrar to register an instrument dealing with any parcel included in the plan, and reference in the instrument to the plan and parcel must be made in the manner required by the registrar.

Division 5 – Other Methods of Describing Land

Acceptable land description

- 83.** (1) The registrar may accept
- (a) a metes and bounds description or an abbreviated description prepared by a British Columbia land surveyor, with or without a reference plan or an explanatory plan, or
 - (b) a reference plan or an explanatory plan, with or without a metes and bounds description prepared by a British Columbia land surveyor
- in any of the following cases:
- (c) if a new parcel is created for the purpose of adding it to an already existing adjoining parcel in the same subdivision plan, in which case the new parcel is deemed to be an integral portion of the parcel to which the new parcel is added;
 - (d) if an easement, restrictive covenant or statutory covenant is being created;
 - (e) if a parcel is being established as a road or park;
 - (f) if there is a statutory right to acquire compulsorily a parcel smaller than a registered parcel or a charge in respect of a part of a registered parcel;
 - (g) if a parcel is being transferred, leased or donated for public purposes to the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation or a person designated by the Executive under section 142(1)(c);
 - (h) if a new parcel is being created for a lease.
- (2) Before the registrar decides whether to accept a metes and bounds description, abbreviated description, reference plan or explanatory plan under subsection (1)(c), (e) or (h), the applicant must provide evidence satisfactory to the registrar

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that the approving officer has approved the proposed subdivision.

- (3) In the case of a lease of all or part of a building, the registrar may accept an explanatory plan.

Re-establishment of boundaries

- 84.**
- (1) The registrar may accept
 - (a) a reference plan without an accompanying description, if a resurvey or survey of an existing parcel is made for the purpose of re-establishing the boundaries of the parcel in accordance with the registered title, and
 - (b) a reference or an explanatory plan without an accompanying description, if a new parcel is created by the consolidation of adjoining surveyed parcels.
 - (2) Section 82 applies to the deposit of a reference plan or an explanatory plan under this section.
 - (3) Sections 61 and 75 do not apply to a survey, resurvey or consolidation under this section.
 - (4) A reference plan or an explanatory plan tendered for deposit under this section must be accompanied by a written application in the prescribed form signed by the owner of the estate in fee simple to the relevant land and consented to by each holder of a registered charge on the land.
 - (5) If there is a consolidation of surveyed parcels, a consent referred to in subsection (4) on the application and given by the holder of a mortgage granted by the owner of the estate in fee simple operates, on the deposit of the plan, to extend the mortgage registered against the title to the surveyed parcel so as to coincide with the boundaries of the new parcel as shown on the reference or explanatory plan.

Principles guiding approving officer

- 85.**
- (1) In considering an application for approval of a subdivision referred to in section 83, the approving officer must be guided by the principles and requirements set out in this Act to guide the approving officer's consideration of subdivisions made by subdivision plan.
 - (2) An application to the approving officer for approval of a subdivision referred to in

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section 83

- (a) must be accompanied by the prescribed fee, and
 - (b) must be approved or rejected by the approving officer within any period that is prescribed by the Executive.
- (3) If the approving officer rejects an application for approval of a subdivision referred to in section 83, the approving officer must give written notice of the rejection to the applicant, stating briefly the reason and any requirements of the approving officer.

Dedication of road by reference or explanatory plan

86. (1) If the Nisga'a Nation or a Nisga'a Village

- (a) is the registered owner of the estate in fee simple to a parcel that is free from charges, and
- (b) intends to establish all or part of the parcel as a road,

the Nisga'a Nation or the Nisga'a Village may deposit a reference plan showing the area intended to become a road.

- (2) If the intended establishment of a road under subsection (1) is being effected primarily for the clarification of the records, the registrar may accept an explanatory plan instead of a reference plan.

Plans to be signed

87. Unless the registrar otherwise orders, a reference plan or an explanatory plan must be

- (a) signed by each owner of the land dealt with by the plan, and
- (b) witnessed in the same manner as is required by section 81(2).

Serial deposit number

88. The registrar must assign a serial number to each reference plan or explanatory plan accepted for deposit.

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Division 6 – Conflicting Measurements**If measurements in conflict**

- 89.** (1) If the measurements shown on a plan tendered for deposit do not correspond with the measurements shown on a plan already on deposit that covers all or part of the same land or has a common boundary with the plan being tendered, the registrar may
- (a) refuse to accept the tendered plan,
 - (b) order a new survey, or
 - (c) order other necessary steps to be taken to ascertain the true measurements.
- (2) This section does not apply to a posting plan.

Correction of errors, defects or omissions

- 90.** If, on the filing of satisfactory evidence, the registrar determines that there is an error, defect or omission in a deposited plan, the registrar
- (a) may correct the plan, and
 - (b) in that event, must make an appropriate note of the correction on the plan and in the register following the description of the land covered by the plan.

Division 7 – Vesting of Title by Deposit of Plans**Vesting of roads and parks**

- 91.** On the deposit of a subdivision, reference, explanatory or statutory right of way plan showing a portion of the land in the plan as a road or park,
- (a) the portion of the land is dedicated as a road or park, as the case may be,
 - (b) subject to any other Nisga'a Lisims enactment, the estate in fee simple to the road or park is vested in

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- (i) the applicable Nisga'a Village, if the road or park is within a Nisga'a Village, or
 - (ii) the Nisga'a Nation, if the road or park is outside the Nisga'a Villages,

free and clear of any charge and of any unregistered estate or interest other than the subsisting conditions, provisos, restrictions, exceptions and reservations including royalties, contained in the original Nisga'a grant or in any other disposition made by the Nisga'a Nation, and

- (c) until the road or park is closed by
 - (i) a law enacted by the applicable Nisga'a Village Government, if the portion of land is within a Nisga'a Village, or
 - (ii) a regulation enacted by the Executive, if the portion of land is outside the Nisga'a Villages,

no change in the ownership of the estate in fee simple to the area of the road or park may take place, including by way of transfer, mortgage or transmission, no charge or other lesser estate or interest in the road or park may be granted or otherwise created, and any instrument purporting to effect such a change in ownership or the grant or creation of such a charge or other lesser estate or interest is void and not registrable.

If designation on plan "Returned to Nisga'a Nation"

- 92.** If, on the subdivision of land, a subdivision or reference plan is deposited in the Nisga'a land title office, and a portion of the land subdivided is designated on the plan as "Returned to Nisga'a Nation", the deposit of the plan is deemed to be a transfer in fee simple by the registered owner in favour of the Nisga'a Nation.

Division 8 – Statutory Right of Way Plans**Deposit**

- 93.** (1) In this section, "person" means a grantee referred to in section 141(1).

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- (2) The registrar must not register a statutory right of way unless a statutory right of way plan is deposited with the registrar.
 - (3) A statutory right of way plan tendered for deposit under subsection (2) must
 - (a) include in its title, if applicable, a reference to the Nisga'a Lisims enactment authorizing the acquisition of the statutory right of way, and
 - (b) to the satisfaction of the registrar, comply with
 - (i) the requirements for statutory right of way plans set out in section 116 of the *Land Title Act* (British Columbia), and
 - (ii) the relevant rules respecting surveys and plans made under section 385(5) of the *Land Title Act* (British Columbia).
 - (4) The person claiming a statutory right of way may apply for its registration concurrently with the tendering of a statutory right of way plan or after the deposit of the plan.
 - (5) The registrar must
 - (a) examine a statutory right of way plan tendered for deposit, and
 - (b) if satisfied that the plan complies with this Division, assign to the plan a serial number.
 - (6) Subject to any other Nisga'a Lisims enactment that provides otherwise, the deposit of a statutory right of way plan, that is not accompanied by an instrument of grant, does not confer an estate, interest or right in the land affected.
 - (7) After a statutory right of way plan has been deposited in the Nisga'a land title office, an instrument affecting the land included in the plan must conform to the plan and contain a reference to its serial number, unless either or both of those requirements are waived by the registrar.

Instead of a reference plan

- 94.** (1) The registrar may allow a person to use and deposit a statutory right of way plan, instead of a reference plan, if all of the following requirements are met:
- (a) the registrar is satisfied that the nature of the person's undertaking requires the acquisition of a title in fee simple to the land included within

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- the statutory right of way plan;
- (b) the statutory right of way plan is approved by the approving officer in the manner required under this Act for a subdivision plan;
 - (c) the registrar is satisfied that the statutory right of way plan complies with the requirements and rules referred to in section 93(3)(b)(i) and (ii).
- (2) Subsection (1)(b) does not apply to a person having a statutory right to acquire compulsorily a parcel smaller than the registered parcel.
 - (3) If a statutory right of way plan has been deposited before an application for title in fee simple, the approval required by subsection (1)(b) may be given by the approving officer in a separate document, instead of being written on the plan.

Nisga'a Nation or Nisga'a Village may tender

- 95.**
- (1) The Nisga'a Nation or a Nisga'a Village may tender to the registrar for deposit a statutory right of way plan in respect of land which it has acquired for a road or park.
 - (2) A statutory right of way plan tendered for deposit under subsection (1) must, to the satisfaction of the registrar, comply with the requirements and rules referred to in section 93(3)(b)(i) and (ii).
 - (3) Concurrently with the tendering of a statutory right of way plan under subsection (1), the Nisga'a Nation or a Nisga'a Village, as the case may be, must file with the registrar a certificate in the prescribed form certifying that the land designated in the plan has been acquired for a road or park.
 - (4) Except as otherwise provided in this section, a statutory right of way plan tendered under subsection (1) must be signed by each owner of the land affected by the plan.
 - (5) All the signatures to a statutory right of way plan tendered under subsection (1) must be witnessed by at least one person who is 18 years of age or older and is not an owner of the land affected by the plan, and the address of each witness must be stated on the plan.
 - (6) The registrar may deposit a statutory right of way plan tendered under subsection (1) that has not been signed by all the owners if, in the registrar's opinion, the interests of the owners who have not signed are not affected by the deposit of the plan.

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- (7) If an owner of a charge on land affected by a statutory right of way plan tendered under subsection (1), other than a charge by way of mortgage, lease, Nisga'a Nation entitlement or Nisga'a Village entitlement, fails or refuses to sign the plan, the Nisga'a Nation or the Nisga'a Village, as the case may be, may apply to the registrar 30 days after serving the owner of the charge with notice of the application for an order that the owner of the charge is not required to sign the plan.
- (8) On an application under subsection (7) made 30 days after the serving of the notice referred to in that subsection, the registrar may issue an appointment for the hearing of all interested parties, and on the return of the appointment may
- (a) hear all interested parties or their agents,
 - (b) adjourn the hearing of the application on terms the registrar considers proper,
 - (c) grant or refuse all or part of the application, on conditions the registrar considers proper, and
 - (d) make any order the registrar considers proper.
- (9) The deposit of a statutory right of way plan tendered under subsection (1) in accordance with an order made by the registrar under subsection (8) has the same effect in all respects as if the plan had been signed by each owner of the land affected.

Widening of statutory right of way**96.** If a statutory right of way

- (a) is contiguous to and parallel to a surveyed boundary, or
- (b) is shown on a posted statutory right of way plan on deposit, and the statutory right of way is to be widened by the addition of a parallel contiguous strip,

the registrar may accept, instead of a statutory right of way plan, an explanatory plan without an accompanying description.

Certification of water boundary

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97. (1) If a statutory right of way plan
- (a) is tendered for deposit, and
 - (b) has endorsed on it a certificate of the approving officer certifying that
 - (i) the water boundary shown on the plan is the natural boundary of the land included within the plan, and
 - (ii) a designated area within the plan, not included in the indefeasible title of the registered owner to be affected by the deposit of the plan, may be incorporated into that title,on the deposit of the plan, and even though the water boundary shown on the plan does not agree with the natural boundary shown on a plan already on deposit in the Nisga'a land title office, the certificate is deemed to be satisfactory proof to the registrar that
 - (c) the registered owner has established a good safe holding and marketable title in fee simple to the designated area, and
 - (d) the registered owner's indefeasible title to the land adjoining the designated area may be amended to include the designated area.
- (2) A statutory right of way plan tendered for deposit under subsection (1) must, to the satisfaction of the registrar, comply with the requirements and rules referred to in section 93(3)(b)(i) and (ii).
- (3) On the deposit of a statutory right of way plan under subsection (1),
- (a) if the affected indefeasible title is endorsed with a registered charge, the charge is extended to include the designated area referred to in that subsection, and
 - (b) the registrar must, after giving notice to all affected registered owners accompanied by a copy of the statutory right of way plan,
 - (i) amend the affected indefeasible title by adding to the legal description of the land "including the area designated on SRW Plan No.", followed by the date, and
 - (ii) amend such other records as the registrar considers advisable.

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- (4) On amendment of an existing indefeasible title as provided in subsection (3), the registrar may register a new indefeasible title in the name of the registered owner that incorporates the substance of the amendment.
 - (5) An application under this section for endorsement by the approving officer must be accompanied by the prescribed fees.

Division 9 – Plans and Descriptions to Accompany Laws

Description of road on closure

- 98.** (1) If a road or park within registered Nisga'a Lands is closed by
- (a) a law enacted by the applicable Nisga'a Village Government, if the road or park is within a Nisga'a Village, or
 - (b) a regulation enacted by the Executive, if the road or park is outside the Nisga'a Villages,
- the Nisga'a Village Government or the Executive, as the case may be, must transmit to the Nisga'a land title office for deposit and filing
- (c) a description of the road or park acceptable to the registrar, and
 - (d) a copy of the law or regulation closing the road or park.
- (2) Under subsection (1), the registrar may accept as a description of the road or park a reference plan, an explanatory plan or a metes and bounds description, including an abbreviated description.
- (3) On the filing under subsection (1) of a law or regulation closing a road or park, the registrar must
- (a) amend the records to create a parcel that comprises the area of the closed road or park, and
 - (b) register the indefeasible title of the parcel created under paragraph (a) in the restricted register in the name of
 - (i) the applicable Nisga'a Village, if the parcel is within a Nisga'a Village, or

- (ii) the Nisga'a Nation, if the parcel is outside the Nisga'a Villages.

Division 10 – Cancellation of Plans

Cancellation by Executive

- 99.** (1) The Executive may order the cancellation of a plan or a portion of a plan comprising land owned by the Nisga'a Nation.
- (2) On receipt of an order under subsection (1) and an explanatory plan showing the land affected, the registrar must
- (a) assign one or more distinguishing letters or numbers to the newly created parcel,
 - (b) cancel the existing indefeasible title affected, and
 - (c) register a new indefeasible title for the newly created parcel.
- (3) If, under the *Nisga'a Land Act*, Lisims land, comprising all the land included in a plan, has been removed from the operation of this Act,
- (a) the Executive may order the cancellation of the plan, and
 - (b) on receipt of an order made under paragraph (a), the registrar must amend the records accordingly.

Cancellation of interior lines

- 100.** (1) Subject to subsection (2), on application in the prescribed form, the registrar may cancel the lines dividing two or more contiguous parcels shown on a plan, if the estates in fee simple to the parcels are owned by the same person.
- (2) The registrar may not cancel dividing lines under subsection (1) unless
- (a) there are no registered charges on the land, or
 - (b) the owners of all registered charges consent in writing and the charges are extended by an appropriate instrument to cover and coincide with the boundaries of the parcel to be created as a result of the application.

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- (3) On an application under subsection (1), the registrar may require the applicant to deposit an explanatory plan showing the proposed new boundaries.

PART 7 – APPLICATIONS FOR REGISTRATION**Application required**

- 101.** (1) Except as otherwise permitted by this Act or the regulations, the registrar may not accept an instrument or other document tendered for registration, deposit or filing unless it is
- (a) the original instrument or document, and
 - (b) accompanied by an appropriate application.
- (2) An instrument itself constitutes an appropriate application if
- (a) the instrument is in the prescribed form, and
 - (b) the registrar considers that no further information or act of the applicant is necessary.

Form and manner of application

- 102.** (1) An application under this Act must
- (a) be in writing, and
 - (b) be in or include
 - (i) one of the prescribed forms, or
 - (ii) if no appropriate form has been prescribed, a form satisfactory to the registrar.
- (2) An application must be made
- (a) by the applicant personally, or
 - (b) on the applicant's behalf by the applicant's
 - (i) legal counsel, or
 - (ii) agent residing in British Columbia who has reached 19 years of age.

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- (3) If a legal counsel or agent has made an application on behalf of an applicant, the legal counsel or agent may, within the scope of the authority given to them by the applicant, do anything that the applicant is permitted or required to do under this Act.
- (4) A statement in an application made by a legal counsel or agent that they are the legal counsel or agent of the applicant is, in the absence of evidence to the contrary, satisfactory proof to the registrar that they are the legal counsel or agent of the applicant.

Address of applicant

- 103.** (1) An applicant must
- (a) include in the instrument or other document tendered for registration, deposit or filing, or
 - (b) deliver to the registrar a written memorandum containing

an address for the mailing of any notices that, under this Act, are required to be served on or allowed to be mailed to the applicant.
- (2) An applicant may, by a notice in the prescribed form, file with the registrar a change of address.
- (3) On receipt of a duly completed notice under subsection (2), the registrar must note the change of address in the register.

Particulars as to witness and parties to instrument

- 104.** (1) The registrar may require that the given names, surname, address and occupation of all witnesses and all parties to an instrument tendered for registration be provided by evidence satisfactory to the registrar.
- (2) If a party to an instrument is a corporation, the registrar may require that its incorporation number be stated after the name of the corporation.

Time of application

- 105.** (1) The registrar must write or stamp on each application received by the registrar

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- (a) the day and hour of its receipt, and
 - (b) the serial number assigned to the instrument or other document included with the application.
- (2) For all purposes of this Act, including but not limited to establishing priority between transferees, mortgagees and others, the day and hour written or stamped under subsection (1) is the date and time when the application was received by the registrar and a true copy of that record must be accepted in all courts as conclusive proof of the date and time the application was received by the registrar.

Application for registration of fee simple

- 106.** A person claiming to be registered as the owner in fee simple of land must apply to the registrar for registration in the prescribed form.

Application for registration of charge

- 107.** (1) If the title to an estate in fee simple has been registered or registration has been applied for, a person not entitled to be registered in fee simple, claiming to be registered as the owner of a charge on the land, must apply in the prescribed form to the registrar for registration of the charge, and if registration of the fee simple has been applied for by an application that is pending, the application for registration of the charge must await the result of the application for registration of the fee simple.
- (2) If a registered charge
- (a) is transferred, or
 - (b) by agreement
 - (i) is modified or extended, or
 - (ii) is postponed to another charge,

the transferee or a party to the agreement, as the case may be, may apply for registration of the transfer, modification, extension or postponement in the prescribed form, adapted to suit the circumstances.

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Application must be all-inclusive

- 108.** (1) A person tendering an instrument in support of an application for registration must apply to register the title dealt with by the instrument to the full extent to which the instrument is registrable.
- (2) If application is made to register the title to a part of the land or to an undivided portion of the land or a charge comprised in and effectually dealt with by an unregistered instrument, the registrar must not register the application unless registration of the title to the remainder of the land or to the remaining portion of the land or the charge comprised in the instrument is applied for concurrently.
- (3) Subsection (1) applies to an instrument purporting to create, assign or otherwise deal with two or more charges on land.

Forms

- 109.** (1) If an application is made in the appropriate prescribed form, the form must
- (a) appear on the first page at least 1½ inches from the top of the instrument tendered for registration unless the registrar allows the form to appear elsewhere, and
- (b) be signed by the applicant or the applicant's legal counsel or authorized agent.
- (2) The signature of a person on an application implies a statement by the signatory that the applicant
- (a) is applying for registration under this Act,
- (b) is entitled to be registered
- (i) as the owner in fee simple of the land described, or
- (ii) as the owner of the charge specified over the land described, and
- (c) claims registration accordingly.
- (3) Unless the signatory to an application is the applicant, the signatory must state whether they are acting as the legal counsel or authorized agent of the applicant.

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- (4) If a signatory to an application fails to make the statement required by subsection (3), the signatory is deemed to state that they are the duly authorized agent for the applicant.
- (5) If a signatory to an application is an agent for the applicant, the signatory is deemed to state that they are the duly authorized agent for the applicant and have reached 19 years of age.
- (6) Unless otherwise stated in an application, the address of the applicant is deemed to be that shown in the instrument tendered for registration.

Required production of instruments

- 110.** The registrar may require an applicant to produce, file or deposit an instrument or other document that
- (a) is in the applicant's possession or control, and
 - (b) relates to the applicant's application.

Notice of intention to register

- 111.** If
- (a) the registrar requires an applicant to produce, file or deposit an instrument or other document relating to the applicant's application, and
 - (b) the applicant is unable to comply with the registrar's requirement because the instrument or other document is in the possession of the registered owner or another person who refuses or neglects to produce it,

the registrar may, on being satisfied that the applicant has otherwise established a good safe holding and marketable title to the land in question, give notice in the prescribed form to the person who has possession of the instrument or other document.

Registration after notice

- 112.** (1) In a notice given under section 111, the registrar must stipulate the period of time during which the person given notice may object to the registration of the title claimed by the applicant.

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- (2) The period of time referred to in subsection (1) or any extension of that period is in the discretion of the registrar.
 - (3) Unless the registrar receives a good and valid objection from a person given notice under section 111 within the period stipulated in the notice or any extension of that period that the registrar allows, the registrar may proceed with the registration of the title claimed by the applicant.

Corporate powers assumed

- 113.** (1) For the purposes of this Act, a corporation is deemed to have the power and capacity of a natural person of full capacity in acquiring and disposing of land despite a stipulation, restriction or qualification expressed or imposed in any other law, in any charter, memorandum, notice of articles, articles or other constating documents of the corporation, or in any other document.
- (2) Subsection (1) does not relieve a person who under a law is responsible for or in control of a corporation from liability for acts of the corporation that, despite subsection (1), are beyond the powers of the corporation.
- (3) If a corporation holds land in a fiduciary capacity, subsection (1) is subject to section 120 and does not
- (a) extend the powers of the corporation in respect of that land, or
 - (b) relieve the corporation or a person who by law is responsible for or in control of a corporation from liability to the beneficiaries for an act of the corporation that is beyond its powers, or is contrary to the trusts under which the corporation holds the land.
- (4) Despite
- (a) any other law,
 - (b) the charter, memorandum, notice of articles and articles or other constating documents of a corporation, or
 - (c) any other document,

an instrument executed by a corporation is, in favour of all persons dealing in good faith with the corporation, conclusively deemed to be properly executed and the instrument takes effect accordingly if

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- (d) the instrument is executed for the corporation by an individual whose signature is represented in the instrument as the signature of an authorized signatory of the corporation, and
 - (e) the instrument is executed in accordance with Part 4.
- (5) The registrar may accept the signature of an officer under Part 4 or an affidavit under section 43 as sufficient evidence that a corporation existed at the time an instrument was executed by it, or the registrar may require further evidence of that fact.

Disposal of instruments

- 114.** (1) Subject to subsection (3), all instruments and other documents filed or deposited with the registrar must remain on file or deposit in the Nisga'a land title office.
- (2) If an application to register, file or deposit an instrument is refused by the registrar or withdrawn, the registrar must return to the applicant the instrument produced in support of the application.
- (3) An instrument or other document filed or deposited with the registrar may be destroyed if
- (a) there is a duplicate, as defined in section 5, of the instrument or other document, and
 - (b) the instrument or other document has no significant historical value, and
 - (c) the destruction is authorized by the Executive.

Withdrawal of application

- 115.** (1) Subject to subsection (2), if an application has been made, and no other pending application is affected by it, the applicant may withdraw the application as to all or any part of the land comprised in it at any time before registration, on terms the registrar considers proper.
- (2) If the signatory to an application is
- (a) an authorized agent who is not
 - (i) a lawyer, or

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- (ii) a notary public under the *Notaries Act* (British Columbia), or
- (b) one of several owners acting on behalf of all the owners,

the registrar may refuse to allow the application to be withdrawn by that signatory until the signatory produces the written consent, properly verified, of their principal or, as the case may be, the other owners.

- (3) An application that has been withdrawn is void.

Preliminary inspection and consideration of applications

- 116.** (1) For the purposes of this section, the registrar receives an application when the registrar records on the application the information specified in section 105(1).
- (2) The registrar
- (a) may cause an application and an instrument or other document tendered with it to undergo a preliminary inspection, or
 - (b) may, without a preliminary inspection, receive an application and an instrument or other document tendered with it.
- (3) The registrar may summarily reject an application without receiving it if, on a preliminary inspection under this section, the registrar
- (a) determines that the application or an instrument or other document tendered with it
 - (i) is incomplete or not in proper form,
 - (ii) does not qualify in substance or in form for registration, deposit or filing,
 - (iii) is not on sufficiently durable paper,
 - (iv) is illegible in any respect, including the signature of a witness or an officer authorized to take an affidavit,
 - (v) is not the original application, instrument or other document, or

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- (vi) is not capable of being satisfactorily stored in the Nisga'a land title office, or
- (b) discovers obvious defects in title.
- (4) Subject to subsection (5), the registrar must consider the applications the registrar receives in the order of their receipt.
- (5) If the registrar receives an application to register a certificate of pending litigation, the registrar may consider that application before considering any other application the registrar has received.

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PART 8 – REGISTRATION OF TITLE IN FEE SIMPLE**Division 1 – First Registration of Title****Registration on transmission of Nisga'a grant**

- 117.** (1) On the transmission to the Nisga'a land title office for registration of a Nisga'a grant made under the *Nisga'a Land Act*, if the registrar is satisfied that the boundaries of the affected area are sufficiently defined by the description in the Nisga'a grant, the registrar must
- (a) register the title granted, in the name of the grantee, subject to the provisions of the grant, and
 - (b) give notice of the registration to the grantee.
- (2) No application is required for the registration of a Nisga'a grant made under the *Nisga'a Land Act*.

Division 2 – General**Joint tenants in fee simple**

- 118.** If, on the registration of an instrument or other document, two or more persons are joint tenants in the estate in fee simple to a parcel, the registrar must enter in the register, following the names and addresses of those persons, the words "joint tenants".

Title not to cover more than one parcel

- 119.** An indefeasible title must not cover more than one parcel.

Personal representatives and trustees

- 120.** (1) If land vests in a personal representative or a trustee, that person's title may be registered, but the particulars of a trust created or declared in respect of that land must not be entered in the register.
- (2) In effecting registration in the name of a personal representative, the registrar

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must add, following the name and address of the personal representative, an endorsement containing any additional information that the registrar considers necessary to identify the estate of the testate or intestate, and a reference by number to the trust instrument.

- (3) In effecting registration in the name of a trustee, the registrar must add, following the name and address of the trustee, an endorsement containing the words “in trust” and a reference by number to the trust instrument.
- (4) When application is made for registration of title in the name of a trustee, the trust instrument must be filed with the registrar with the application.
- (5) If an instrument, other than a will, creating or declaring a trust has been executed outside British Columbia, or the trusts of the instrument are being administered outside British Columbia, the registrar,
 - (a) on satisfactory proof of the facts and that the original instrument is required for use outside British Columbia, and
 - (b) on production of the original or a copy certified by the officer in charge of the public record office in which the original is filed,may accept for filing the certified copy of the instrument, or a copy of the instrument that the registrar has compared with the original and certified as a true copy.
- (6) A copy certified under subsection (5) has the same effect as the original.
- (7) If an endorsement has been made in the register under subsection (2) or (3), an instrument purporting to deal with the land must not be registered unless
 - (a) expressly authorized by law or by the instrument creating or declaring the trust, or
 - (b) an order has been obtained from the Supreme Court construing the instrument as authorizing the transfer, mortgage or other dealing, or ordering and directing the transfer, mortgage or other dealing, and a certified copy of the order has been filed with the registrar.
- (8) Subsection (7) does not apply to a dealing by the Public Guardian and Trustee.
- (9) If
 - (a) a registered owner appears on the face of the register to be beneficially

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entitled to land, and

- (b) from an instrument creating or declaring a trust, it is established to the satisfaction of the registrar that the registered owner was at the time that person became registered and remains a trustee on the trusts set out under the instrument,

the registrar may,

- (c) on application, make and date an endorsement in the register similar to that required under subsection (3), or
 - (d) register a new indefeasible title in the name of the trustee, if, in the registrar's opinion, the circumstances require.
- (10) If registration has been completed in accordance with this section and an instrument that is tendered and filed is effective
- (a) to modify the terms or conditions of the trust, or
 - (b) to evidence an alteration of or among the beneficiaries
 - (i) by operation of law, or
 - (ii) on the happening of an event contemplated by the trust instrument,

other than a transfer or assignment of the rights of a beneficiary made while the transferor or assignor is living,

the registrar, on application, may add to the existing endorsement a note of the fact of the modification or alteration and of the filing number of the instrument.

Restrictive covenants and easements

- 121.** (1) If a restrictive covenant, easement or other charge is entered into or created for the purpose of being annexed to other land, hereinafter referred to as the dominant tenement, for which an indefeasible title has been registered, the registrar must make an endorsement of the covenant, easement or other charge, and of the instrument creating it, against the indefeasible title of the dominant tenement.
- (2) A transfer of the land covered by an indefeasible title on which an endorsement under subsection (1) has been made transfers, without express mention, the benefit of the covenant, easement or other charge.

Entries carried forward

- 122.** If a condition, proviso, restriction, exception, reservation, charge or title is carried forward from a former indefeasible title to a new indefeasible title, the new entry in the register has the same effect as the original entry, and for all purposes dates from the time it was originally made in the register.

Registration of grantor a condition precedent

- 123.** If a person purporting to transfer an estate in fee simple in land is alive and entitled to be registered as the owner in fee simple, the registrar must not register the person to whom the transfer purports to be made unless the person purporting to transfer the estate is first registered as the owner in fee simple.

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PART 9 – TRANSFERS**Form of transfer**

- 124.** (1) A transfer of an estate in fee simple must be in the prescribed form.
- (2) This section does not apply if a form of transfer of an estate in fee simple is prescribed under another Nisga'a Lisims enactment.

Implied covenants

- 125.** (1) In this section, “**transferor**” and “**covenantor**” include the personal representatives of each, and “**transferee**” and “**covenantee**” include the personal representatives and assignees of each.
- (2) Unless expressly excepted or qualified, and except as provided in subsection (3), a transfer of an estate in fee simple for valuable consideration in the prescribed form is deemed
- (a) to be made under Part 1 of the *Land Transfer Form Act* (British Columbia),
- (b) to contain the forms of words contained in column 1 of Schedule 2 to that Act, and
- (c) to be made by the transferor as covenantor with the transferee as covenantee,
- and to have the same effect and be construed as if it contained the forms of words contained in column 2 of Schedule 2 to that Act.
- (3) Despite subsection (2), unless expressly excepted or qualified, a transfer of an estate in fee simple in the prescribed form made by a personal representative or trustee is deemed to contain only the form of words in section 7 of column 1 of Schedule 2 to the *Land Transfer Form Act* (British Columbia) and to have the same effect and be construed as if it contained only the form of words in section 7 of column 2 of Schedule 2 to that Act.
- (4) A transfer of an estate in fee simple for valuable consideration in the prescribed form that is completed and executed in the prescribed manner, and the execution of which has been witnessed or proved in accordance with Part 4, operates to transfer the estate in fee simple of the transferor to the transferee whether or not it

contains express words of transfer.

Registration of transferee

- 126.** If there is a transfer of land in the prescribed form, the transferee is entitled to be registered as the owner of the estate in fee simple held by or vested in the former owner and the registrar must register the title claimed by the applicant on being satisfied that the transfer produced has transferred to and vested in the applicant a good safe holding and marketable title.

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PART 10 – DEALINGS WITH INDEFEASIBLE TITLE OTHER THAN BY TRANSFER**Registration of new indefeasible title on change of name**

- 127.** (1) On application in the prescribed form by a person shown in the register as a fee simple owner of land, accompanied by proof satisfactory to the registrar that the name of that person has been lawfully changed and of the person's identity, the registrar must cancel the existing indefeasible title and register a new indefeasible title in the changed name of that person.
- (2) On application in the prescribed form by a person who is the registered owner of a charge, and on production of proof satisfactory to the registrar that the name of that person has been lawfully changed, and of the person's identity, the registrar must endorse the change of name on the register.
- (3) For the purposes of this section, a change of name is deemed to include an amalgamation of two or more corporations, however effected, and whether in respect of a beneficial or trust estate or interest in land, and the continuing corporation following the amalgamation may apply under subsection (1) or (2).

Registration of new indefeasible title on cancellation of charges

- 128.** (1) On application by a registered owner whose title is subject to one or more cancelled charges, the registrar may cancel the subsisting title and register a new indefeasible title.
- (2) If a title is subject to one or more cancelled charges, the registrar may cancel the subsisting title and register a new indefeasible title without an application being made.

Effect given to new indefeasible title

- 129.** A new indefeasible title registered under section 127 or 128 is available for all purposes and uses for which the former indefeasible title, as the case may be, would have been available, and in respect of the land or estate included in it is as valid and effectual as the former indefeasible title, and relates back to the date of registration or issue of the former indefeasible title.

PART 11 – REGISTRATION OF TITLE TO CHARGES**Division 1 – General****Registration of charges**

- 130.** (1) Subject to subsection (2), on being satisfied from an examination of an application and any instrument accompanying it that the applicant is entitled to be registered as the owner of a charge, the registrar must register the charge claimed by the applicant.
- (2) The registrar may refuse to register a charge claimed by an applicant if the registrar is of the opinion that
- (a) a good safe holding and marketable title to the charge has not been established by the applicant, or
 - (b) the charge is not registrable under this Act.

Registration of person creating charge

- 131.** An instrument purporting to create a charge on land executed by a person who is entitled to be registered as owner of the fee simple must not be registered unless that person has first been registered as the owner of the fee simple.

Registration of subcharges

- 132.** The registrar must not register an instrument purporting to create a charge by way of a submortgage or other subcharge of any kind unless the charge on which the submortgage or subcharge depends has first been registered.

Registration of assignment of charge

- 133.** If a person purporting to assign a charge is alive and may be registered as the owner, the registrar must not register the person to whom the assignment purports to be made as the owner of the charge unless the person purporting to assign the charge is first registered as the owner of the charge.

Registration of debt owed to Nisga'a Nation

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134. There may be registered in the same manner as a charge is registered, a debt owing to the Nisga'a Nation against the land of a debtor to the Nisga'a Nation, but no debt owing to the Nisga'a Nation affects land of a debtor to the Nisga'a Nation unless it is registered.

Registration of transfer, extension or modification of charges

135. (1) If an application is made for registration of a transfer, extension or modification of a charge, and the registrar is satisfied that all necessary parties have joined in the transfer, extension or modification, the registrar must register the transfer, extension or modification by endorsing it in the register as a separate entry or as a note against the original entry or both, using the number and date of the application for registration and an appropriate symbol or abbreviation indicating the nature and effect of the instrument registered.
- (2) The registration of a modification of a charge does not affect the registered holder of the charge unless the holder is a party to the modification.

Form of postponement

136. A registered owner of a charge, referred to in this section as the "prior charge", may postpone their rights under it by executing a priority or postponement agreement in the prescribed form and, when registered, the agreement operates to postpone that person's rights to those of the registered owner of the subsequently registered charge designated in the agreement, referred to in this section as the "subsequent charge", in the same manner and to the same extent as if the prior charge had been registered immediately after the registration of the subsequent charge.

Transfer of mortgage

137. A transfer of a mortgage must be in the prescribed form and, when in the prescribed form and registered, operates to transfer the following to the transferee:
- (a) the mortgage;
 - (b) the benefit of all collateral securities and the right to call for an express assignment of them;
 - (c) the right to demand, sue for, recover and give receipts for the mortgage money or the unpaid part of it, and the interest then due or to become due on it, if any;

- (d) the full benefit of and the right to sue on the covenants with the mortgagee, and the right to exercise the powers of the mortgagee.

Division 2 – Certificates of Pending Litigation

Registration of certificate of pending litigation

- 138.** (1) A person who has commenced or is a party to a proceeding, and who is
- (a) claiming an estate in fee simple to or charge on land, or
 - (b) given by another Nisga'a Lisims enactment a right of action in respect of land,

may register a certificate of pending litigation against the land in the same manner as a charge is registered if the registrar of the court in which the proceeding is commenced has attached to the certificate a copy of the originating process.

- (2) The land affected by a certificate of pending litigation must be described in a manner satisfactory to the registrar.
- (3) On registration of a certificate of pending litigation, the registrar must forthwith mail a copy to the owner against whose title the certificate has been registered.
- (4) If, after registration of a certificate of pending litigation, a change of parties occurs, the registrar,
 - (a) on receiving a certificate of pending litigation showing the new party, and
 - (b) on compliance with this Act,

must register the certificate of change in the same manner as a modification of a charge.

- (5) Despite subsection (1), if a person entitled to enforce a restrictive covenant has commenced an action to enforce it, the person may register under this section a certificate of pending litigation in the prescribed form against land in respect of which a breach is alleged to have occurred.
- (6) A party to a proceeding for an order for the dissolution of marriage or judicial

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separation, a declaration that a marriage is null and void, or a declaratory judgment under Part 5 of the *Family Relations Act* (British Columbia) that spouses have no reasonable prospect of reconciliation with each other, may register under this section a certificate of pending litigation in the prescribed form in respect of any estate in fee simple to or charge on land the title to which could change as an outcome of the proceeding.

- (7) Despite subsection (1), a person who has commenced an action under the *Wills Variation Act* (British Columbia) may register a certificate of pending litigation in the prescribed form against the land affected.

Effect of registered certificate of pending litigation

- 139.** (1) After registration of a certificate of pending litigation, the registrar must not make any entry in the register that has the effect of charging, transferring or otherwise affecting the land described in the certificate until registration of the certificate is cancelled in accordance with this Act.
- (2) Subsection (1) does not apply to the registration of
- (a) an indefeasible title or a charge in respect of which the applicant, in the prescribed form,
 - (i) elects to proceed to registration subject to the final outcome of the proceeding, and
 - (ii) authorizes the registrar to register the title or charge claimed subject to the certificate of pending litigation,
 - (b) a priority or postponement agreement,
 - (c) an assignment of a charge, if the charge was registered before the certificate of pending litigation was registered,
 - (d) a sublease, if the lease from which it is derived was registered before the certificate of pending litigation was registered, or
 - (e) an order, notice, certificate of pending litigation or involuntary charge or encumbrance.
- (3) Registration under subsection (2)
- (a) does not constitute a determination by the registrar that what was

registered is not affected by the final outcome of the proceeding, and

- (b) is subject to the final outcome of the proceeding if what was registered is affected by that outcome.

Effect of certificate of pending litigation if prior application is pending

- 140.** (1) The registrar may, despite section 139, make an entry in the register to complete the registration of an indefeasible title or charge that was applied for before an application to register a certificate of pending litigation was received by the registrar.
- (2) If, in the circumstances described in subsection (1),
- (a) the prior applicant is a party to the proceeding, the registrar must register the indefeasible title or charge claimed by the prior applicant subject to the certificate of pending litigation,
 - (b) the prior applicant is not a party to the proceeding, the registrar must, on registration of the indefeasible title or charge claimed by the prior applicant, cancel the registration of the certificate and give notice of the cancellation to the person who applied to register it, or
 - (c) the certificate relates to a proceeding
 - (i) in respect of a charge, or to enforce, foreclose or cancel a registered charge, or
 - (ii) referred to in section 138(6) or (7),

the registrar must register the indefeasible title or charge claimed by the prior applicant, subject to the certificate of pending litigation, whether or not the prior applicant is a party to the proceeding.

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Division 3 – Statutory Rights of Way, Covenants and Easements**Statutory right of way**

- 141.** (1) A person may and is deemed always to have been able to create on Nisga'a Lands, by grant or otherwise in favour of
- (a) the Nisga'a Nation, a Nisga'a Village or a Nisga'a Corporation,
 - (b) the Crown, or a Crown corporation or agency,
 - (c) a public utility, or
 - (d) a person designated by the Executive on any terms or conditions the Executive considers proper,
- an easement without a dominant tenement, to be known as a "statutory right of way" for any purpose necessary for the operation and maintenance of the grantee's undertaking.
- (2) To the extent necessary to give effect to subsection (1), the rule requiring an easement to have a dominant and servient tenement is abrogated.
 - (3) The granting or other creation a statutory right of way on Nisga'a Lands
 - (a) constitutes a charge on the Nisga'a Lands in favour of the grantee, and
 - (b) confers on the grantee the right to use the Nisga'a Lands charged in accordance with the terms of the instrument, and the terms, conditions and covenants expressed in the instrument are binding on and take effect to the benefit of the grantor and grantee and their successors in title, unless a contrary intention appears.
 - (4) A person who executes an instrument in which a statutory right of way is created on Nisga'a Lands is not liable for a breach of a covenant in the instrument occurring after the person has ceased to be the owner of the Nisga'a Lands.
 - (5) This section is retroactive in its application and applies to all statutory rights of way, whenever created.
 - (6) A recital in a grant or reservation of a statutory right of way that it "is necessary for the operation and maintenance of the grantee's undertaking", or a statement to

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that effect in the application to register the statutory right of way, is sufficient proof to the registrar of that fact.

Statutory covenant

- 142.** (1) A person may and is deemed always to have been able to create by grant or otherwise in favour of
- (a) the Nisga'a Nation, a Nisga'a Village or a Nisga'a Corporation,
 - (b) the Crown, or a Crown corporation or agency, or
 - (c) a person designated by the Executive on any terms or conditions the Executive considers proper,
- as covenantee, a covenant in respect of land, to be known as a "statutory covenant", that
- (d) is enforceable against the covenantor and the successors in title of the covenantor even if the covenant is not annexed to land owned by the covenantee, and
 - (e) may be of a negative or positive nature and may include one or more of the following provisions:
 - (i) provisions in respect of
 - (A) the use of land, or
 - (B) the use of a building on or to be erected on land;
 - (ii) that land
 - (A) is to be built on in accordance with the covenant,
 - (B) is not to be built on except in accordance with the covenant, or
 - (C) is not to be built on;
 - (iii) that land
 - (A) is not to be subdivided except in accordance with the

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covenant, or

- (B) is not to be subdivided;
 - (iv) that parcels of land designated in the covenant and registered under one or more indefeasible titles are not to be sold or otherwise transferred separately;
 - (v) that land or a specified amenity in relation to it is to be protected, preserved, conserved, maintained, enhanced, restored or kept in its natural or existing state in accordance with the covenant and to the extent provided in the covenant.
- (2) For the purpose of subsection (1)(e)(v), “**amenity**” includes any natural, historical, heritage, cultural, scientific, architectural, environmental, wildlife or plant life value relating to the land that is subject to the covenant.
- (3) A statutory covenant may include, as an integral part,
- (a) an indemnity of the covenantee against any matter agreed to by the covenantor and covenantee and provision for the just and equitable apportionment of the obligations under the covenant as between the owners of the estate in fee simple to the land affected, and
 - (b) a rent charge charging the land affected and payable by the covenantor and the covenantor’s successors in title.
- (4) If an instrument contains a statutory covenant, the covenant is binding on the covenantor and the covenantor’s successors in title, even though the instrument or other disposition has not been signed by the covenantee.
- (5) No person who enters into a statutory covenant in respect of land is liable for a breach of the covenant occurring after the person has ceased to be the owner of the land.
- (6) A statutory covenant may be
- (a) modified by the holder of the charge and the owner of the land charged, or
 - (b) discharged by the holder of the charge
- by an agreement or instrument in writing the execution of which is witnessed or proved in accordance with this Act.

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- (7) The registration of a statutory covenant is not a determination by the registrar of its enforceability.
 - (8) On the death or dissolution of an owner of a statutory covenant referred to in subsection (1)(c), the covenant ceases to be enforceable by any person, including the Nisga'a Nation, other than
 - (a) another covenantee named in the instrument creating the covenant, or
 - (b) an assignee of a covenantee if the assignment has been approved in writing by the Executive.
 - (9) If a covenantee or assignee referred to in subsection (8) is a corporation that has been dissolved and subsequently restored into existence under an enactment of British Columbia, the covenant continues to be enforceable by the restored corporation from the date of its restoration.
 - (10) A recital in a covenant that a person "has been designated by the Executive under section 142(1)(c) of the *Nisga'a Land Title Act*", or a statement to that effect in the application to register the covenant, is sufficient proof to the registrar of that fact.

Registrable restrictive covenant

- 143.** (1) The registrar must not register a restrictive covenant unless
- (a) the obligation that the covenant purports to create is, in the registrar's opinion, negative or restrictive,
 - (b) the land to which the benefit of the covenant is annexed and the land subject to the burden of the covenant are both satisfactorily described in the instrument creating the covenant, and
 - (c) the title to the land affected is registered under this Act.
- (2) The registration of a restrictive covenant under this section is not a determination by the registrar of its essential nature or enforceability.

Subdivision of dominant tenement

- 144.** (1) If a dominant tenement is subdivided in whole or in part, on the deposit of a plan of subdivision

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- (a) the benefit of a registered appurtenant easement is annexed to each of the new parcels shown on the plan,
 - (b) the burden of the easement is increased accordingly, even though the owner of the servient tenement has not consented to the increase, and
 - (c) the easement continues to be annexed to the remainder, if any, of the dominant tenement,
- unless
- (d) the instrument creating the easement expressly provides otherwise, or
 - (e) the subdivider designates on the plan the parcel or a part of the land to which the benefit does not attach.
- (2) A designation under subsection (1)(e) witnessed or proved in accordance with this Act is sufficient authority for the registrar to give effect to the designation and to make the necessary endorsements in the records.

Division 4 – Mortgages

Definitions

145. In this Division:

“**terms**” includes covenants, conditions, representations, warranties, grants and assignments;

“**mortgage**” means a mortgage of an estate in fee simple, of a lease, of a Nisga’a Nation entitlement or of a Nisga’a Village entitlement.

Form of mortgage

- 146.** (1) A mortgage must comply with this section unless another Nisga’a Lisims enactment requires a mortgage to be in a form different from that required by this section.
- (2) A mortgage must be in two parts.

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- (3) Part 1 of a mortgage must
 - (a) be in the prescribed form,
 - (b) contain the prescribed information,
 - (c) be executed and witnessed in accordance with Part 4 of this Act, and
 - (d) meet all other requirements of the regulations.
- (4) Without limitation, a regulation referred to in subsection (3) may
 - (a) specify any requirement for the format or content of the prescribed form of Part 1 of a mortgage, and
 - (b) require that the prescribed form be completed and executed to the satisfaction of the registrar.
- (5) Part 2 of a mortgage must
 - (a) consist of all terms of the mortgage other than those set out in Part 1 of the mortgage, and
 - (b) be adopted in one of the following forms:
 - (i) the set of standard mortgage terms prescribed under section 148 that was in effect at the time the mortgage was executed;
 - (ii) a set of standard mortgage terms filed under section 149;
 - (iii) mortgage terms expressly set out in Part 2 of the mortgage.
- (6) If Part 2 of a mortgage consists of
 - (a) the set of standard mortgage terms prescribed under section 148, Part 1 of the mortgage must contain a statement that Part 2 of the mortgage consists of the set of standard mortgage terms prescribed under that section,
 - (b) a set of standard mortgage terms filed under section 149, Part 1 of the mortgage must contain a statement that Part 2 of the mortgage consists of the set of standard mortgage terms contained in the filed set along with a reference to the filing number assigned by the registrar under that section, and

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- (c) terms referred to in subsection (5)(b)(iii), Part 1 of the mortgage must contain a statement that Part 2 of the mortgage consists of express terms that are annexed to Part 1 as Part 2.

Modification of standard terms

- 147.** (1) If Part 2 of a mortgage consists of
- (a) the set of standard mortgage terms prescribed under section 148, or
 - (b) a set of standard mortgage terms filed under section 149,
- the set may be modified by making additions, amendments or deletions.
- (2) If a modification is made under subsection (1),
- (a) Part 1 of the mortgage must contain a statement that a modification has been made, and
 - (b) the modification must be attached as a schedule to Part 1.
- (3) If, as a result of a modification permitted under subsection (1), there is an inconsistency between a term contained in the set of standard mortgage terms and a modified term, the modified term prevails.

Prescribed standard terms

- 148.** (1) The Executive may prescribe one set of standard mortgage terms for the purposes of
- (a) this Division, and
 - (b) adoption under section 146(5)(b)(i).
- (2) The Executive
- (a) must not amend a set of standard mortgage terms prescribed under subsection (1), but
 - (b) may repeal and replace a set of standard mortgage terms prescribed under subsection (1).

- (3) If the Executive repeals a set of standard mortgage terms prescribed under subsection (1), the terms of any mortgage that adopted that set before the repeal are conclusively deemed to be the terms of that mortgage, subject to any modification made under section 147.

Filed standard terms

- 149.** (1) A person who wishes to file a set of standard mortgage terms for purposes of adoption under section 146(5)(b)(ii) must apply to the registrar, accompanying the application with the proposed set of standard mortgage terms.
- (2) If the registrar considers a set of standard mortgage terms received under subsection (1) to be appropriate for filing under this section, the registrar must
 - (a) file the set,
 - (b) assign a filing number to the set, and
 - (c) advise the applicant when the set was filed and the filing number assigned to it.
 - (3) A set of standard mortgage terms filed under this section
 - (a) must not contain a reference to any other set of standard mortgage terms for the purpose of incorporating a term contained in the other set, and
 - (b) must set out the mortgage terms in numbered paragraphs.
 - (4) A set of standard mortgage terms filed under this section must not be added to, varied or deleted except as permitted in section 147.

Delivery of standard terms to mortgagor

- 150.** (1) If Part 2 of a mortgage consists of a set of standard mortgage terms referred to in section 146(5)(b)(i) or (ii), the mortgagee or its agent must, before or at the time the mortgage is executed,
- (a) deliver a true copy of that standard set together with a statement of any additions, amendments or deletions referred to in section 147(2), if any, to each person comprising the mortgagor, and
 - (b) obtain an acknowledgment from each of those persons that the copy and

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statement have been delivered.

- (2) If subsection (1) applies and is not complied with in relation to a mortgage,
 - (a) the terms of Part 2 of the mortgage are deemed to be the terms prescribed by the Executive under section 148(1), that were in effect at the time the mortgage was executed, but
 - (b) the failure to comply does not extinguish
 - (i) the mortgage debt or the obligation to repay it,
 - (ii) the right of the court to foreclose the mortgagor's right to redeem, or
 - (iii) any other right or remedy that is available to the parties under the general law of mortgages.

Registrar may require filing

- 151.** (1) If the registrar considers that
- (a) a mortgagee makes frequent use of similar mortgage terms referred to in section 146(5)(b)(iii), and
 - (b) it would be appropriate to file the mortgage terms as a set under section 149,
- the registrar may, on terms the registrar considers advisable, order the mortgagee to file the frequently used mortgage terms as a set of standard mortgage terms under section 149.
- (2) If a mortgagee does not comply with an order under subsection (1), the registrar may refuse to accept for registration any mortgage made in favour of that mortgagee in which any of the frequently used mortgage terms referred to in subsection (1)(a) are expressly set out in Part 2 of the mortgage.
 - (3) The registrar, on hearing a mortgagee or a mortgagee's representative, may
 - (a) vary or set aside an order made under subsection (1), or
 - (b) make any other order the registrar considers appropriate.

Effect of a mortgage

- 152.** (1) Subject to the other applicable provisions of this Act being complied with, a mortgage that complies with this Division operates to charge the estate, interest or right of the mortgagor in order to secure payment of the debt or performance of the obligation expressed in the mortgage, whether or not the mortgage contains words of transfer or charge, subject to a proviso for redemption.
- (2) Whether or not a mortgage referred to in section 146 contains words of transfer or charge subject to a proviso for redemption, the mortgagor and mortgagee are entitled to all the legal and equitable rights and remedies that would be available to them if the mortgagor had transferred the mortgagor's estate, interest or right to the mortgagee, subject to a proviso for redemption.
- (3) Subsections (1) and (2) do not
- (a) validate a mortgage that, at law or in equity, is void or unenforceable,
 - (b) operate to change the general law of mortgages or the legal and equitable rules that apply between mortgagor and mortgagee, or
 - (c) preclude the inclusion of express words of transfer or charge subject to a provision for redemption in a set of standard or express mortgage terms referred to in section 146(5).

Division 5 – General Instruments**Definitions and application**

- 153.** (1) In this Division, “**terms**” includes covenants, conditions, representations, warranties, grants and assignments.
- (2) Subject to subsection (3), this Division applies to any instrument that creates, assigns, modifies, extends or discharges a charge.
- (3) This Division does not apply to
- (a) an instrument or class of instrument that is prescribed by this Act or another Nisga'a Lisims enactment, or
 - (b) an instrument that creates a mortgage.

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- (4) The Executive may, by regulation, exempt an instrument or class of instruments from the application of subsection (2).

Form of general instrument

- 154.** (1) An instrument to which this Division applies must comply with this section unless another Nisga'a Lisims enactment requires a general instrument to be in a form different from that required by this section.
- (2) An instrument to which this Division applies must be in the form of a general instrument.
- (3) A general instrument must be in two parts, unless it
- (a) assigns a Nisga'a Village entitlement or Nisga'a Nation entitlement, or
 - (b) discharges a charge.
- (4) Part 1 of a general instrument must
- (a) be in the prescribed form,
 - (b) contain the prescribed information,
 - (c) be executed and witnessed in accordance with Part 4 of this Act, and
 - (d) meet all other requirements of the regulations.
- (5) A regulation referred to in subsection (4) may
- (a) specify any requirement for the format or content of a prescribed form, and
 - (b) require that a prescribed form be completed and executed to the satisfaction of the registrar.
- (6) Part 2 of a general instrument must
- (a) consist of all terms of the general instrument other than those set out in Part 1 of the general instrument, and
 - (b) be adopted in either of the following forms:

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- (i) a set of standard charge terms filed under section 156;
 - (ii) terms that are expressly set out in Part 2 of the general instrument.
- (7) If Part 2 of a general instrument consists of
- (a) a set of standard charge terms filed under section 156, Part 1 of the general instrument must contain a statement that Part 2 of the general instrument consists of the set of standard charge terms contained in the filed set along with a reference to the filing number assigned by the registrar under that section, or
 - (b) terms referred to in subsection (6)(b)(ii), Part 1 of the general instrument must contain a statement that Part 2 of the general instrument consists of express charge terms that are annexed to Part 1 as Part 2.
- (8) The registrar must not register a general instrument that incorporates, as Part 2 of that general instrument, more than one set of standard charge terms.

Modification of standard terms

- 155.** (1) If Part 2 of a general instrument consists of a set of standard charge terms filed under section 156, the set may be modified by making additions, amendments or deletions.
- (2) If a modification is made under subsection (1),
- (a) Part 1 of the general instrument must indicate that a modification has been made, and
 - (b) the modification must be attached as a schedule to Part 1 of the general instrument.
- (3) If, as a result of a modification permitted under subsection (1), there is an inconsistency between a term contained in the set of standard charge terms and a modified term, the modified terms prevails.

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Filed standard terms

- 156.** (1) A person, other than the director, who wishes to file a set of standard charge terms for purposes of adoption under section 154(6), must apply to the registrar, accompanying the application with the proposed set of standard charge terms.
- (2) The director may prepare one or more sets of standard charge terms and deliver them for filing under subsection (3).
- (3) If the registrar
- (a) considers a set of standard charge terms received under subsection (1) to be appropriate for filing under this section, or
 - (b) receives a set of standard charge terms from the director under subsection (2),
- the registrar must
- (c) file the set,
 - (d) assign a filing number to the set, and
 - (e) advise the applicant or the director, as the case may be, when the set was filed and of the filing number assigned to it.
- (4) A set of standard charge terms filed under this section
- (a) must not contain a reference to any other set of standard charge terms for the purpose of incorporating a term contained in the other set, and
 - (b) must set out the charge terms in numbered paragraphs.
- (5) A set of standard charge terms must not be added to, varied or deleted except as permitted under section 155.

Effect of general instrument

- 157.** Subject to the other applicable provisions of this Act being complied with, a general instrument that complies with this Division has effect in accordance with its terms.

Release of registered charge

- 158.** (1) Part 1 of a general instrument must be used to discharge a charge from land.
- (2) A general instrument that discharges a charge from land does so whether or not
- (a) the charge was created by a registered mortgage,
 - (b) the charge affects land other than the land from which the charge is being discharged, or
 - (c) the general instrument contains words of transfer or discharge.

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PART 12 – INSTRUMENTS**Registration of instruments**

- 159.** An instrument must not be registered unless
- (a) in the case of a transfer of an estate in fee simple or a mortgage, the instrument complies with and has been completed, executed and witnessed in accordance with this Act and the regulations,
 - (b) in the case of a general instrument to which Division 5 of Part 11 applies, the instrument complies with and has been completed, executed and witnessed in accordance with this Act and the regulations, or
 - (c) in the case of any other instrument, its form complies with and it has been completed, executed and witnessed in accordance with all applicable provisions of this Act and the regulations.

Registrar may prohibit use of seal

- 160.** The registrar may prohibit the use of any type of seal on an instrument to be registered, deposited or filed under this Act if the registrar considers that the impression of the seal is not capable of being scanned or stored electronically.

PART 13 – CANCELLATION OF CHARGES**Cancellation of registration of charge**

- 161.** (1) If a registered charge has been discharged, released or surrendered in whole or in part, the registrar must, on application in the prescribed form and on proof of the discharge, release or surrender satisfactory to the registrar, cancel the registration of the charge in whole or in part, as the case may be.
- (2) If a charge described in subsection (1) was registered by an endorsement on the register, the registrar must cancel the charge by endorsing the register with a note of the cancellation.
- (3) Section 109 applies to an application made under this section.

Redemption of mortgage if mortgagee absent

- 162.** (1) If a mortgagor or owner of the equity of redemption becomes entitled to pay off or has paid off a mortgage in accordance with its terms, and
- (a) the registered mortgagee is absent from British Columbia or cannot be found, and
- (b) there is no person in British Columbia authorized, by power of attorney filed in the Nisga'a land title office, to receive payment of the mortgage money and execute a discharge of the mortgage,
- the Supreme Court may,
- (c) on application made without notice to any person, and
- (d) on proof of the facts and of the amount, if any, due for principal, interest and all other sums rightly payable to the mortgagee under the mortgage,
- order
- (e) within a time limited in the order, the payment of that amount, less the taxed costs of the application, into court to the credit of the mortgagee or other person entitled to it, or
- (f) that, if the mortgage has been paid off in accordance with its terms, the mortgage be discharged.

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- (2) On payment into court of the amount so ordered within the time limited, all interest accruing under the mortgage ceases.
 - (3) On application to the registrar for cancellation, and on deposit of a certified copy of the order with proof of
 - (a) payment, if any, into court in compliance with the order, and
 - (b) mailing a copy of the order to the mortgagee at the mortgagee's last known address,

the registrar must make an entry in the register cancelling the registration of the mortgage, and the entry is deemed to be a valid discharge of the mortgage and has the same effect as a similar entry made on an application for cancellation accompanied by the production of a discharge of mortgage executed by the mortgagee.

- (4) Money paid into court under this section must, with the accrued interest, be paid out to the person entitled to it on application.

Mortgagee's refusal or neglect to give discharge

- 163.** (1) If a mortgagee, without just cause, refuses or neglects to give the mortgagor or owner of the equity of redemption, herein referred to as the "owner", a discharge of the mortgage, despite the tender or attempted tender of all money due and owing by the owner to the mortgagee, the owner may make an application to the Supreme Court in the same manner as provided in section 162, and the court has all the power conferred on that court by section 162.
- (2) Section 162(1)(a) and (b) does not apply to this section.

Cancellation on effluxion of time

- 164.** If a registered charge that, by the terms of the instrument creating or evidencing it, is determined by the effluxion of time or the happening of an event, the registrar, on application and after giving such notice as the registrar considers necessary or advisable, may cancel the registration of the charge on the effluxion of the time or the happening of the event.

Cancellation of lease on breach of covenant

- 165.** (1) In this section, “**derivative charge**” means a sublease or other charge derived through a lease and includes a mortgage registered against the lease or sublease.
- (2) If a lease is registered, the registrar may,
- (a) on application,
 - (b) on proof to the registrar’s satisfaction of a breach of a covenant and re-entry and recovery of possession by the lessor or owner of the reversion, and
 - (c) after 30 days’ notice of the application to the lessee, and on hearing all parties attending the hearing of the application,
- cancel the registration of the lease on the register, and the estate of the lessee in the land described in the lease, and the lease, so far as it affects the land, ceases.
- (3) Cancellation of a lease under subsection (2) does not release the lessee from liability in respect of an express or implied covenant in the lease.
- (4) If a person appears on the register as the holder of a derivative charge on a lease, the registrar may require an applicant for cancellation of the lease under subsection (2) to give 30 days’ notice to that person.
- (5) If the registrar cancels the registration of a lease under subsection (2), the registrar may cancel a derivative charge on the lease, and the estate of the holder of the derivative charge described in the instrument under which the derivative charge is registered, and the instrument, so far as it affects the subject land, ceases, but the cancellation does not release a party to the instrument from liability in respect of an express or implied covenant in it.

Effect of cancellation

- 166.** If a reconveyance, surrender or transfer would otherwise have been necessary, the cancellation of the registration of a charge operates as and must for all purposes be deemed to be a reconveyance, surrender or transfer in favour of the person entitled in equity to the land in question, and the charge no longer affects the land in respect of which it was registered.

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Power of court to order cancellation of charge

- 167.** (1) If, in a proceeding pending in the Supreme Court,
- (a) a question is raised
 - (i) as to the validity of a registered charge, or
 - (ii) as to money owing on or rights respecting a registered charge, and
 - (b) in the opinion of the court, the question raised is sufficiently material for the application of this section,
- on affidavit or other proof of the good faith of the question raised, the court may, on terms as to security and otherwise it considers proper, order that the registration of the charge be cancelled on payment into court of a specified amount of money by the person claiming relief.
- (2) Except under special circumstances to be established to the satisfaction of the court, an order must not be made under this section for the cancellation of the registration of a mortgage, except on payment into court of the full amount which the mortgagee, or the mortgagee's successor in title, has stated on affidavit to be due.

Cancellation of certificate of pending litigation

- 168.** (1) If a certificate of pending litigation has been registered and no step has been taken in the proceeding for one year, any person who is the registered owner of or claims to be entitled to the estate in fee simple to or a charge on the land against which the certificate has been registered may apply for an order that the registration of the certificate be cancelled.
- (2) An application under subsection (1) must be made to the court in which the proceeding was commenced and must be brought
- (a) as an interlocutory application in that proceeding, if the applicant is a party to the proceeding, or
 - (b) as an originating application by petition, if the applicant is not a party.
- (3) The registrar must, on application and on production of a certified copy of the order of the court directing cancellation under subsection (1), cancel the registration of the certificate of pending litigation.

Cancellation of certificate of pending litigation if action discontinued

- 169.** If an action in respect of which a certificate of pending litigation is registered has been discontinued, the registrar must cancel the registration, on
- (a) application, and
 - (b) production of a certificate of the registrar of the court that issued the certificate of pending litigation, certifying that the action has been discontinued in whole or in part as to the land in respect of which the certificate of pending litigation is registered.

Cancellation of certificate of pending litigation if action dismissed

- 170.** If an action in respect of which a certificate of pending litigation is registered has been dismissed, the registrar must cancel the registration as provided in the regulations, or, on
- (a) application, and
 - (b) production of a certificate of the registrar of the court that issued the certificate of pending litigation, endorsed by the registrar of the Court of Appeal, certifying that
 - (i) the action has been dismissed and that the time limited for appeal has expired and no notice of an appeal has been filed with the registrar of the Court of Appeal, or
 - (ii) a notice of appeal has been filed and has been finally disposed of, and the dismissal of the action has not been set aside by the Court Appeal or the Supreme Court of Canada.

If action neither dismissed nor discontinued

- 171.** (1) If an action in respect of which a certificate of pending litigation has been registered has neither been discontinued nor dismissed, the registrar, on application, may cancel the registration of the certificate of pending litigation, on the written request of the party initiating the proceedings or the party's solicitor.
- (2) The request must be in a form satisfactory to the registrar, describe the land in respect of which the registration is to be cancelled, and, in the case of a party, be

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witnessed and proved in the manner required under Part 4.

Cancellation of certificate of pending litigation on other grounds

- 172.** (1) A person who is the registered owner of or claims to be entitled to the estate in fee simple to or a charge on the land against which a certificate of pending litigation has been registered may, on setting out in an affidavit
- (a) particulars of the registration of the certificate of pending litigation,
 - (b) that hardship and inconvenience that are experienced or are likely to be experienced as a result of the registration, and
 - (c) the grounds for those statements,
- apply for an order that the registration of the certificate be cancelled.
- (2) An owner whose indefeasible title or charge is registered subject to a certificate of pending litigation under section 140(2)(a) or (c)(ii) may, on setting out in an affidavit
- (a) that the originating process or notice of motion attached to the certificate contains no allegation that the owner is not a purchaser in good faith and for valuable consideration,
 - (b) that the owner applied to register the owner's indefeasible title or charge before the certificate was received by the registrar, and
 - (c) particulars of dates and times of receipt, application and registration of the owner's application and the certificate,
- apply for an order that the registration of the certificate be cancelled.
- (3) An application under this section must be made to the court in which the proceeding was commenced and must be brought
- (a) as an interlocutory application in that proceeding, if the applicant is a party to the proceeding, or
 - (b) as an originating application by petition, if the applicant is not a party.

Power of court to order cancellation

- 173.** (1) On the hearing of an application referred to in section 172(1), the court
- (a) may order the cancellation of the registration of the certificate of pending litigation either in whole or in part, on
 - (i) being satisfied that an order requiring security to be given is proper in the circumstances and that damages will provide adequate relief to the party in whose name the certificate of pending litigation has been registered, and
 - (ii) the applicant giving to the party the security so ordered in an amount satisfactory to the court, or
 - (b) may refuse to order the cancellation of the registration, and in that case may order the party
 - (i) to enter into an undertaking to abide by any order that the court may make as to damages properly payable to the owner as a result of the registration of the certificate of pending litigation, and
 - (ii) to give security in an amount satisfactory to the court and conditioned on the fulfilment of the undertaking and compliance with further terms and conditions, if any, the court may consider proper.
- (2) The form of the undertaking must be settled by the registrar of the court.
- (3) In setting the amount of the security to be given, the court may take into consideration the probability of the party's success in the action in respect of which the certificate of pending litigation was registered.
- (4) On hearing an application referred to in section 172(2) and on being satisfied that
- (a) the facts set out in the affidavit are consistent with the records of the Nisga'a land title office, and
 - (b) there is nothing in the originating process or notice of motion attached to the certificate that expressly or by necessary implication alleges that the owner is not a purchaser in good faith and for valuable consideration,
- the court may make an order declaring that the owner's indefeasible title or charge is not affected by the certificate of pending litigation or the outcome of the

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proceeding.

- (5) On receipt of an order made under subsection (4), the registrar must file it and cancel the registration of the certificate of pending litigation.

Cancellation of registration

174. On

- (a) application to the registrar for the registration of an order of cancellation of registration of a certificate of pending litigation under section 173(1), and
- (b) production of the order or a certified copy, and a certificate from the registrar of the court from which the certificate of pending litigation was issued certifying that the security required has been given,

the registrar must cancel the registration of the certificate of pending litigation as to the land affected by the order.

Discharge of mortgage

175. A discharge of mortgage must be in the prescribed form.

PART 14 – TRANSMISSION OF FEE SIMPLE AND CHARGES**Division 1 – General****Registration of transmission before subsequent dealing**

- 176.** (1) In this section, “**dealing**” does not include
- (a) a discharge by a personal representative of a mortgage of which the testator or intestate was the registered owner, or
 - (b) a discharge by a surviving joint tenant of a mortgage of which the surviving and deceased joint tenants were the registered owners.
- (2) If an estate in fee simple to or a charge on land has become the subject of a transmission, the person entitled under it,
- (a) before applying to register an instrument dealing with the estate in fee simple, and
 - (b) in the case of a charge,
 - (i) before applying to register an instrument dealing with the charge, or
 - (ii) before taking or continuing a proceeding to enforce the charge,
- must apply to the registrar to be registered as the owner of the estate in fee simple or the charge.
- (3) The registrar, on being satisfied that a good safe holding and marketable title has been established by an applicant for registration under subsection (2), may register the title claimed by the applicant.

Registration of land vested in Nisga’a Nation by statute

- 177.** (1) If land or a charge on land becomes vested in the Nisga’a Nation under a Nisga’a Lisims enactment,
- (a) on application by the director, and

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- (b) on the filing of a certificate of vesting signed by the director and describing the land or charge sufficiently for the registrar to identify it in the register,

the registrar must register an indefeasible title to that land in the name of the Nisga'a Nation and cancel any existing indefeasible title to the land, or effect registration of the charge in the name of the Nisga'a Nation, as the case may be.

- (2) A certificate of vesting referred to in subsection (1) is satisfactory evidence to the registrar that the Nisga'a Nation is entitled to a good safe holding and marketable title to the land or charge described in the certificate.
- (3) The title of the Nisga'a Nation to land or a charge registered under this section is conclusive and is deemed to be the true and correct title from the time of registration, free from charges and encumbrances, and is conclusive evidence that every application, notice, publication, proceeding, consent and act whatever that ought to have been made, given and done before the issuance of the certificate has been made, given or done by the proper authority to the proper persons.

Division 2 – On Death of Testator or Intestate

Definition

- 178.** In this Division and in Divisions 3 and 4 of this Part, “**certified copy**” means a copy certified by the signature of the registrar of the court.

Effect on personal representative of registration

- 179.** If an applicant becomes registered as personal representative of a deceased owner,
- (a) in the case of an estate in fee simple, the applicant is invested with all the title of the deceased owner in it, and
- (b) in the case of a charge, the applicant is invested with all the rights and powers of the deceased owner,

and the title of the applicant relates back to and takes effect as and from the date of the death of the deceased.

Death of testator or intestate

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- 180.** (1) Subject to subsection (2), the registrar must not deal with an application to register a transmission of an estate in fee simple or charge resulting from the death of a testator or intestate, unless the application is accompanied by
- (a) a certified copy of the grant of letters probate or letters of administration issued from the court in the province that made or resealed the grant, and
 - (b) if application for grant or reseal of letters probate or letters of administration was filed with the registrar of the court in British Columbia, a certified copy of that portion of the declaration and disclosure document required by section 111 of the *Estate Administration Act* (British Columbia) that correctly describes the estate in fee simple or charge affected.
- (2) The registrar may consider an application to register a transmission of an estate in fee simple or charge resulting from the death of a testator or intestate, unaccompanied by the documents referred to in subsection (1), if the application is accompanied by a certified copy of
- (a) an approval of will and grant of probate,
 - (b) a grant of letters of administration, or
 - (c) an approval of will and grant of letters of administration with will annexed
- issued on behalf of the Minister of Indian Affairs and Northern Development under the *Indian Act* (Canada) and confirming that the deceased was a member of the Gitlakdamix Indian Band, the Gitwinksihlkw Indian Band, the Lakalzap Indian Band or the Gingolx Indian Band who died before May 11, 2000.

Discharge of mortgage

- 181.** Section 180 applies to an application to register a discharge of a mortgage executed by the personal representative of a deceased mortgagee.

When resealing may be dispensed with

- 182.** If the net value of an estate in British Columbia does not exceed \$50 000, the registrar may, in the case of hardship, economic or otherwise, dispense with the resealing in British Columbia of a grant of probate or letters of administration issued in another province.

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Division 3 – On Death of Joint Tenant**Death of joint tenant**

- 183.** The registrar must not deal with an application to register a transmission of an estate in fee simple or charge resulting from the death of a joint tenant unless the application is accompanied by
- (a) a certified copy of the grant of letters probate or letters of administration issued from the court in the province that made or resealed the grant, or
 - (b) a certificate of death issued by the appropriate public officer.

Discharge of mortgage by surviving joint tenant

- 184.** Section 183 applies to an application to register a discharge by a surviving joint tenant of a mortgage of which the surviving and deceased joint tenants were the registered owners.

Division 4 – On Foreclosure**Presumption as to regularity of foreclosure and cancellation proceedings**

- 185.** (1) In this section, “**assurance fund**” means the assurance fund referred to in Part 16.
- (2) In an application founded on a final order of foreclosure, the registrar, on production of a certified copy of
- (a) the order nisi, if any, and
 - (b) the final order for foreclosure in which the defendants are all the parties appearing in the records as the owners of the fee simple in or a charge on the land priority to whose estate or charge is claimed by the applicant,

is entitled to presume the regularity of all intervening proceedings, and no person foreclosed by the order and named in it as a defendant, who is deprived of an estate in fee simple or charge by the registration of a new indefeasible title, has an action or claim against the assurance fund based on an alleged defect in the foreclosure proceedings.

PART 15 – INJUNCTIONS**Power of court to issue injunction**

- 186.** (1) In this section, “**order**” includes an injunction.
- (2) The Supreme Court may, on the application of a person claiming the estate in fee simple to or a charge on land, make an order prohibiting dealing with that land.
- (3) The Supreme Court may annex to an order referred to in subsection (2) terms and conditions it considers proper, including an expiry date.
- (4) An order referred to in subsection (2) may be lodged with the registrar.

Duty of registrar on lodging of injunction

- 187.** On the lodging of an order under section 186, the registrar must
- (a) make an endorsement on it of the day and time of its lodging,
- (b) enter an endorsement of it in the register, and
- (c) forthwith send a copy of it to the person against whose title the order has been lodged.

Effect of injunction

- 188.** As long as an order lodged under section 186 remains in force, the registrar must observe the order and, for certainty, must not
- (a) register another instrument affecting the land described in the order if such a registration would be inconsistent with the order, or
- (b) deposit a plan of subdivision or otherwise allow any change in boundaries affecting the land described in the order, if such a deposit would be inconsistent with the order.

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Expiry or discharge of injunction

- 189.** On application to the registrar, together with such evidence as the registrar may require, the registrar must make an endorsement in the register of the expiry or discharge of an order lodged under section 186.

PART 16 – NISGA'A LAND TITLE ASSURANCE FUND**Definitions**

190. In this Part:

“**court**” means the Supreme Court;

“**fund**” means the assurance fund established under section 191(1).

Establishment and maintenance of assurance fund

- 191.** (1) The Director of Finance must establish and maintain an assurance fund for the purposes of this Part.
- (2) The fund
- (a) is the property of the Nisga'a Nation,
 - (b) must be accounted for separately from other property of the Nisga'a Nation,
 - (c) is not subject to any process of garnishment, attachment, execution or seizure, and
 - (d) is not subject to a trust in favour of a person who claims to have sustained a loss.
- (3) If at any time the fund is reduced to an amount below the sum of \$50 000 by payment of claims or otherwise, sufficient money must be paid into the fund to maintain the fund at not less than \$50 000.
- (4) Despite any enactment, agreement or court order, a receiver must not exercise custody or control over the fund.

Application of this Part

- 192.** No payment may be made from the fund in respect of a loss, damage or deprivation referred to in this Part occurring as a result of the deposit, filing or registration of an instrument or document before the date this section came into force.

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Remedies of person deprived of land

- 193.** (1) A person, in this Part referred to as the “claimant”,
- (a) who is deprived of an estate in fee simple to or charge on land
 - (i) because of the conclusiveness of the register, in circumstances in which, if this Act had not been passed, the claimant would have been entitled to recover the land from the present owner, and
 - (ii) in consequence of fraud or a wrongful act in respect of the registration of a person other than the claimant as owner of the land, and
 - (b) who is barred by this Act or by any other Nisga’a Lisims enactment, or otherwise precluded from bringing an action
 - (i) for possession, or any other remedy for the recovery of land, or
 - (ii) for rectification of the register,
- may, subject to subsections (2) and (3), proceed in court for the recovery of damages against the person by whose fraud or wrongful act the claimant has been deprived of the land.
- (2) In a proceeding under subsection (1), the Nisga’a Nation must be joined as a nominal party defendant as a condition of recovering damages and costs from the fund, and the Nisga’a Nation has the right in the proceedings to all the defences available to the Nisga’a Nation or any other person for the purpose of protecting the fund.
- (3) If the person liable for damages is dead, or cannot be found in British Columbia, a claimant may, instead of proceeding against that person, proceed in court for the recovery of damages and costs against the Nisga’a Nation as nominal defendant and recovering the amount of the damages and costs from the fund, and the Nisga’a Nation has in the proceedings all the rights and defences under subsection (2).
- (4) If
- (a) final judgment has been given against the person liable for damages under subsection (1) in a proceeding in which the Nisga’a Nation has been joined as a party defendant, and

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- (b) the court, on the application of the plaintiff supported by evidence satisfactory to the court, certifies to the Nisga'a Nation that the plaintiff has taken all reasonable steps to recover the amount of damages and costs awarded by the judgment from the person so liable, but the plaintiff has been unable to recover all or part of them,

on receipt of a certified copy of the judgment and the certificate of the court, the Nisga'a Nation must

- (c) pay the amount of the damages and costs so awarded or the unrecovered balance of them, as the case may be, on account of the person liable for the damages or the person's personal representatives, and
- (d) charge the amount to the fund.
- (5) If the person bringing an action under subsection (3) recovers final judgment against the Nisga'a Nation, the registrar of the court must certify to the Nisga'a Nation the fact of the judgment and the amount of the damages and costs recovered.
- (6) On receipt of a certificate under subsection (5), the Executive must pay the amount of the damages and costs on account of the person liable for the damages or the person's personal representative, and must charge the amount to the fund.
- (7) A proceeding for the recovery of damages sustained through the deprivation of land may not be brought under this section
- (a) against the Nisga'a Nation, or
- (b) against the person by whose fraud or wrongful act the person entitled to the land has been deprived of it,
- unless the proceeding is commenced within three years after the deprivation is discovered by the claimant.
- (8) If a person is under a disability, the *Limitation Act* (British Columbia) applies to this section.

Protection of purchaser in good faith and for value

- 194.** (1) In this section, “**transferee**” means a transferee who, in good faith and for valuable consideration, acquires a charge on land.

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- (2) Despite anything to the contrary in this Act, no transferee is subject to a proceeding under this Part in respect of a charge of which the transferee is the registered owner, for
- (a) recovery of land,
 - (b) deprivation of land, or
 - (c) damages in respect of land
- on the ground that the transferor
- (d) may have been registered as owner through fraud, error or a wrongful act, or
 - (e) may have derived title from or through a person registered as owner through fraud, error or a wrongful act.

Fault of registrar

- 195.** (1) Except in accordance with this section, no proceeding may be brought against the registrar or a person acting under the registrar's direction by a person sustaining loss or damages caused, solely or partially, as a result of an omission, mistake or misfeasance of the registrar, or a person acting under the registrar's direction, in the execution of their respective duties under this Act.
- (2) A person sustaining loss or damages caused, solely or partially, as a result of an omission, mistake or misfeasance of the registrar, or a person acting under the registrar's direction, in the execution of their respective duties under this Act, may, subject to section 199, proceed in court against the Nisga'a Nation as nominal defendant for the purpose of recovering the amount of the loss or damages and costs from the fund.
- (3) Despite the *Limitation Act* (British Columbia), an action may not be brought against the Nisga'a Nation under this section unless the action is commenced within three years after the loss or damage is discovered by the claimant.
- (4) If the person bringing an action under subsection (1) recovers final judgment against the Nisga'a Nation, the registrar of the court must certify to the Nisga'a Nation the fact of the judgment and the amount of the damages and costs recovered.

- (5) The Executive must, on receipt of a certificate under subsection (4), pay the amount of the damages and costs, and must charge the amount to the fund.

Notice of actions against Nisga'a Nation

- 196.** (1) A proceeding against the Nisga'a Nation, or in which the Nisga'a Nation is required to be joined as a party defendant under this Part, may not be commenced until the expiration of one month after a notice of the intended proceeding, setting out
- (a) the particulars of the claim, and
 - (b) fully and fairly all the material facts of the matter,
- has been served on the Nisga'a Nation and on the registrar.
- (2) The Executive may, on application supported by an affidavit, grant relief in whole or in part from strict compliance with subsection (1).

Liability of plaintiff for costs

- 197.** (1) A plaintiff in an action under this Part is liable to pay the full costs of the action if
- (a) judgment is given in favour of the Nisga'a Nation as nominal defendant,
 - (b) the plaintiff discontinues the action, or
 - (c) the action is dismissed.
- (2) The costs when taxed must be levied in the name of the Nisga'a Nation as nominal defendant by similar process or execution as in other actions.

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Judgment against a person liable

- 198.** (1) If an amount has been paid by the Nisga'a Nation in respect of a judgment recovered under section 193, the court,
- (a) on an application by the Nisga'a Nation without notice to any person, and
 - (b) on the production of a certificate signed by the Director of Finance certifying that the amount has been paid in satisfaction of the judgment,
- may order that judgment be entered for the amount so paid, together with the costs of the application, in favour of the Nisga'a Nation for the benefit of the fund against the person liable for damages and costs and on whose account the amount has been paid, or against the personal representatives of that person.
- (2) A judgment so entered is final, and is enforceable by similar process or execution as in the case of other judgments.

Limitation of liability of fund

- 199.** The fund or the Nisga'a Nation as nominal defendant is not under any circumstances liable for compensation for loss, damage or deprivation
- (a) occasioned to or suffered by the owner of undersurface rights,
 - (b) occasioned by
 - (i) the breach by a registered owner of a trust, whether express, implied, constructive or statutory,
 - (ii) land being included under an indefeasible title with other land through misdescription of boundaries or parcels of land,
 - (iii) the improper use of the seal of a corporation or by an act of an authorized signatory of a corporation who exceeds their authority, or
 - (iv) the dissolution of a corporation, or its lack of capacity to hold and dispose of land,
 - (c) if the land in question may have been included in two or more grants from the Nisga'a Nation,

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- (d) because of an error or shortage in area of a lot, block or subdivision, according to a plan deposited in the Nisga'a land title office,
- (e) if the plaintiff, or the person through or under whom the plaintiff claims,
- (i) was served with notice in any manner permitted by this Act, or
- (ii) not being served with notice, had knowledge that the registrar or a person under the registrar's direction was about to commit the act through which the plaintiff claims to have suffered damages,
- unless the person so served or having knowledge took and maintained the proper proceedings to establish the person's claim to the land, or to prevent that act on the part of the registrar or the person under the registrar's direction,
- (f) in respect of the proportion of the loss, damage or deprivation caused or contributed to by the act, neglect or default of the plaintiff, or
- (g) if the loss, damage or deprivation arises out of a matter in respect of which the registrar is by any Nisga'a Lisims enactment or law not required, either expressly or by necessary implication, to inquire.

Recovery limited to value of land

- 200.** (1) A person is not entitled to recover from the Nisga'a Nation as nominal defendant or the fund an amount for compensation, in respect of loss, damage or deprivation of land, greater than the value of the land at the time of the loss, damage or deprivation.
- (2) In ascertaining the compensation, the value of buildings and other improvements erected or made subsequent to the loss, damage or deprivation must be excluded.

Payment from fund without action

- 201.** The Executive, without a proceeding being brought, may admit or compromise a claim made under this Part against the fund, and may direct the payment of all or part of the claim out of the fund.

Payment by Nisga'a Nation

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- 202.** The Executive must direct that a payment be made from another source of the amount of a claim or judgment in respect of which the fund is liable if there is not at that time a sufficient amount at the credit of the fund.

Withholding of payment until proceedings concluded

- 203.** The Executive is not bound to direct that a payment be made under this Part in the case of a final judgment until
- (a) the time allowed for appeal from the judgment has expired, or
 - (b) the determination of all proceedings in the action, including appeals.

PART 17 – APPEALS**Registrar to notify applicant of refusal of application**

- 204.** (1) If the registrar refuses an application under this Act, the registrar must serve a written notice on the applicant, stating the refusal and briefly stating the reasons for the refusal and the registrar's requirements respecting the application.
- (2) If within 21 days after service of a notice respecting an application referred to in subsection (1), the applicant
- (a) fulfills the requirements of the registrar respecting the application, and
 - (b) pays any prescribed fees,
- the registrar must proceed with the application.
- (3) If within 21 days after service of a notice respecting an application referred to in subsection (1), the applicant
- (a) fails to fulfill the requirements of the registrar respecting the application, or
 - (b) fails to pay any prescribed fees,
- the refusal of the registrar is final, and the application, at the end of that period, becomes void and must be cancelled by the registrar unless the applicant applies under section 206.
- (4) The registrar may, in the registrar's discretion, on request at any time before the lapse of the period referred to in subsection (2), extend the time for making an application under section 206 or for fulfilling the registrar's requirements, as the case may be.
- (5) If the registrar refuses to grant an extension of time under subsection (4), an application in the nature of an appeal may be made to the Supreme Court, without notice to any person or on terms as to notice or otherwise as the court may consider proper.
- (6) During an extension of time ordered by the court under subsection (5), the application to the registrar remains in full effect.

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Applicant may request reasons for other decisions

205. If an applicant is dissatisfied with

- (a) a summary rejection of an application under this Act by the registrar, or
- (b) an act, omission, decision, direction or order of the registrar under this Act in respect of an application, other than a refusal or summary rejection of an application,

the registrar must, on written request by the applicant in a form satisfactory to the registrar, provide written reasons for the summary rejection, act, omission, decision, direction or order.

Appeal to court

- 206.** (1) Within 21 days after an applicant receives a written notice under section 204(1) or written reasons under section 205, the applicant may make an application to the Supreme Court in the nature of an appeal from the refusal, summary rejection, act, omission, decision, direction or order of the registrar, as the case may be, supported by the applicant's affidavit and, if necessary, the affidavits of other persons, stating
- (a) the material facts of the case, and
 - (b) that to the best of the information, knowledge and belief of the deponents, all facts and things material to the title have been fully and fairly disclosed.
- (2) All parties affected or interested, including the registrar and a person directed to be served by the court, must be served with the court application, together with copies of all material and exhibits proposed to be used on the hearing.
- (3) At least 10 days' notice must be given of the time and place of hearing and at that time and place all interested parties, whether served with the court application or not, may appear and be heard.
- (4) The place of hearing must be the city at which the court sits nearest to the Nisga'a land title office.
- (5) The court may make any order it considers proper as to the notification of other parties, and on the hearing may make such order as the circumstances of the case

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require and such order as it considers proper as to costs in respect of the parties appearing.

Preservation of applications

- 207.** (1) An application under this Act the refusal of which by the registrar is the subject of a court application under section 206 remains in full effect until the final disposition of the court application.
- (2) If a court application under section 206 is dismissed, the application under this Act the refusal of which by the registrar was the subject of the court application is void and must forthwith be cancelled by the registrar unless an appeal is filed by the applicant and a stay of proceedings is obtained and evidence of the appeal and stay of proceedings is filed with the registrar.

Registrar to act on order of court

- 208.** (1) Service on the registrar of an order of the court made on an application under this Part, or a certified copy of it, is sufficient authority for the registrar to act under the order.
- (2) Subject to section 28, an order of a court affecting the title to land, or a certified copy of it, accompanied by an application for the registration of the order, on compliance with this Act, is sufficient authority for the registrar to act under the order.

Registrations made under order of court

- 209.** The registration of an estate in fee simple or a charge made under an order of a court stands in the same position and has the same force as a corresponding registration made under an instrument other than an order of a court.

Power of registrar to state case

- 210.** (1) If a question arises
- (a) respecting the performance of a duty or the exercise of a function conferred or imposed on the registrar by this Act,

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- (b) as to a matter of law or fact arising on the examination of the title to land or as to the construction or legal validity or effect of an instrument or other document,
 - (c) as to the person entitled, or as to the extent or nature of the title, estate, interest, right, power or authority of a person or class of persons, or
 - (d) as to the manner in which an endorsement ought to be made on the register,

the registrar may state a case for the opinion of the Supreme Court, and the stated case must include

- (e) a short statement of the facts,
 - (f) the registrar's reasons for referring the matter, and
 - (g) the names of the interested parties so far as the registrar knows or has been informed.
- (2) A case stated under subsection (1) must be filed in the court and an application without notice to any person must be made by the registrar to the court for directions respecting
- (a) the parties to be served,
 - (b) the method of service,
 - (c) the time and place of hearing, and
 - (d) any other incidental matters.
- (3) The court must allow a person affected by or interested in the matter of a case stated under subsection (1) to appear and may summon any other person to appear and give evidence or make a representation respecting the matter in question.
- (4) The court, having regard to the parties appearing before it on a case stated under subsection (1), whether summoned or not, may
- (a) decide the question,
 - (b) direct proceedings to be instituted for that purpose, or

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- (c) direct the registrar to make such particular form of endorsement in the register as under the circumstances appears to be just.

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PART 18 – NOTICES**Registrar's discretion**

- 211.** (1) If notice is required or permitted to be served under this Act, service may be effected
- (a) as allowed under another Nisga'a Lisims enactment, or
 - (b) at the discretion of the registrar,
 - (i) personally,
 - (ii) by mail,
 - (iii) by electronic means, or
 - (iv) by any other means ordered by the registrar as substituted service.
- (2) If the registrar is required or permitted to serve a notice under this Act, the registrar may
- (a) prepare the notice, or
 - (b) direct the preparation of the notice in a form the registrar approves.
- (3) The registrar may direct that the service of a notice referred to in subsection (2) be effected by
- (a) an applicant,
 - (b) a person interested in proceedings before the registrar, or
 - (c) the agent of a person referred to in paragraph (a) or (b).

Personal service

- 212.** Personal service must be proved by affidavit.

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Service by mail

- 213.** (1) Service by mail must be by registered mail unless otherwise directed by the registrar.
- (2) In the case of registered mail, the envelope containing a notice sent by the registrar must be stamped and addressed, and marked on the outside "Registered. To be returned to the Nisga'a Land Title Office if not delivered in 10 days."
- (3) Unless a notice sent by registered mail is returned through the post office as undelivered, it is deemed to have been received by the person to whom it was addressed within 10 days, exclusive of the day of mailing.
- (4) If
- (a) a notice sent by registered mail is returned to the registrar through the post office as undelivered,
 - (b) it comes to the registrar's attention that a notice sent by registered mail has not reached the person to whom it was addressed, or
 - (c) postal service may be interrupted or is not available,
- the registrar may dispense with service or require further notice to be served in another manner the registrar may order.

Service by electronic means

- 214.** Service may be effected by electronic means in the prescribed manner.

Substituted service

- 215.** (1) For the purpose of subsection (2), "**solicitor**" or "**authorized agent**" includes
- (a) an attorney of the person to be served named in a power of attorney filed in the Nisga'a land title office or brought to the attention of the registrar, and
 - (b) a solicitor or agent who has acted for that person in other applications or proceedings in the Nisga'a land title office.

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- (2) If for any reason it is impractical to effect personal service or service by mail, whether or not there is evidence that
- (a) the document will probably reach the person to be served,
 - (b) the document will probably come to the person's attention, or
 - (c) the person is evading service,
- the registrar may order substituted service
- (d) by personal service or by mail on the solicitor or authorized agent of the person to be served,
 - (e) by publication, for such time as the registrar considers sufficient, of a notice in a newspaper circulating in the area, whether in or out of British Columbia, where the person to be served had their last known place of business or residence, or in Nisga'a Lands,
 - (f) by publishing the notice in accordance with Nisga'a law,
 - (g) by leaving the notice at the usual or last known place of residence of the person to be served,
 - (h) by posting the notice at places and for periods the registrar considers sufficient, or
 - (i) in the manner specified for giving notice to a party to be served in the instrument under which the rights of the party are derived.
- (3) The registrar may direct that a notice may be given in any one or more or in all the methods specified in this section.

Service if person is dead

- 216.** (1) If a person to be served a notice under this Act is dead, service may be effected on the personal representative of the deceased person.
- (2) If the deceased person has been dead for at least one year and
- (a) the will of the deceased person has not been proved and letters of administration have not been granted for the deceased person's estate, or

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- (b) the personal representative of the deceased person has died and no successor has been appointed,

a notice under this Act may, with the approval of the registrar, be served on the persons who are beneficially entitled to the estate of the deceased person.

- (3) If

- (a) the registrar has been informed of the provisions of the will of the deceased person, and

- (b) the will has not been probated,

a notice under this Act may, with the approval of the registrar, be served on the persons claiming under a devise in the will.

- (4) If

- (a) the will of the deceased person has not been probated, or

- (b) the deceased person has died intestate,

the registrar may name one or more of the persons beneficially entitled to the estate of the deceased person as the person or persons on whom a notice under this Act may be served as representatives of all the beneficiaries of the estate.

- (5) A notice served under subsection (2), (3) or (4) has the same effect on the estate of the deceased person and on all persons claiming under the deceased person as if the notice had been served on the personal representative of the deceased person.

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PART 19 – SPECIAL SURVEYS**Executive may order**

- 217.** (1) In the circumstances set out in subsection (2), the Executive may,
- (a) on the request of the Nisga'a Village Government whose Nisga'a Village is affected,
 - (b) on the request of the registrar, or
 - (c) without a request if the Executive thinks it proper,
- order a special survey of land to be made by a British Columbia land surveyor, on such terms, including apportionment of survey costs and expenses, as the Executive may determine.
- (2) A special survey may be ordered under subsection (1) if
- (a) an error appears in, or doubt exists as to the accuracy of, an existing survey or plan,
 - (b) a discrepancy exists, or is thought to exist, between the occupation of a parcel and a deposited subdivision plan or other plan or description,
 - (c) doubt exists as to the true location of a road or as to a boundary line between parcels which it is desirable to remove by defining the location or boundary line without dealing with the other boundary lines of contiguous parcels, or
 - (d) the Executive otherwise considers it advisable.
- (3) The Executive must transmit a copy of an order made under subsection (1) to the registrar.

Notice of special survey

- 218.** (1) On receipt of an order for a special survey under section 217, the registrar must give notice that the special survey has been ordered to all
- (a) registered owners of an estate in fee simple to, and

- (b) registered owners of a charge on
the land within the limits of the special survey.
- (2) The notice given under subsection (1) must
 - (a) state that an order has been made under section 217,
 - (b) describe the land within the limits of the special survey, and
 - (c) identify the surveyor appointed to make the special survey.

Surveyor to act under registrar

- 219.** The British Columbia land surveyor in charge of a special survey under section 217 must make the survey and plan
- (a) under the guidance and instruction of the registrar, and
 - (b) within the period of time required by the registrar.

Guiding principles

- 220.** (1) Subject to subsection (2), in making a special survey under section 217, the British Columbia land surveyor must re-establish as nearly as possible the existing boundaries.
- (2) The surveyor in subsection (1) may
- (a) depart from existing boundaries in order to establish boundaries in agreement with occupation and improvements, and
 - (b) distribute any shortage in area within a block or group of parcels, having regard to occupation and improvements.

Substitute surveyor

- 221.** (1) After a special survey has been ordered under section 217, the Executive may by order
- (a) appoint a substitute British Columbia land surveyor in place of the

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- surveyor previously appointed to make the survey,
- (b) direct the substitute surveyor to adopt and make use of as much of the survey as the previously appointed surveyor has completed, and
 - (c) determine how the work of the previously appointed surveyor is to be certified or authenticated.
- (2) A special survey, although completed by a substitute surveyor appointed under subsection (1)(a), is, on its final approval, as valid and binding for all purposes as if made by the previously appointed surveyor.

Plan and report of surveyor

- 222.** (1) On completion of a special survey under this Part, the British Columbia land surveyor must prepare and submit to the registrar
- (a) the special survey plan, and
 - (b) a report that sets out
 - (i) any difficulties encountered during the survey,
 - (ii) the evidence concerning the re-establishment of original and lost monuments,
 - (iii) the system of survey employed,
 - (iv) the degree of accuracy obtained,
 - (v) the nature of all monuments erected, and
 - (vi) other information bearing on the survey as may be of service in the consideration of the report and plan.
- (2) The surveyor must include in a report under subsection (1), in concise and tabulated form,
- (a) a list of all parcels comprised within the limits of the survey,
 - (b) a list of all parcels the boundaries of which appear as altered by the plan, with a statement showing how they are altered, and

- (c) a statement of the costs and expenses of the survey.

Further work by surveyor

223. If, for any reason, the registrar is not satisfied with a special survey plan or report that a British Columbia land surveyor has submitted under section 222, the registrar may

- (a) refuse to accept the plan and the report, and
- (b) instruct the surveyor
 - (i) to complete further or remedial work, and
 - (ii) to prepare and submit under section 222 a plan and report that includes that further or remedial work.

Notice of plan and report

224. On accepting a special survey plan and report submitted under section 222, the registrar must

- (a) transmit a copy of the plan and the report to the Executive, and
- (b) give notice to all registered owners of an estate in fee simple to, and registered owners of a charge on, the land within the limits of the special survey
 - (i) that the special survey has been completed,
 - (ii) that the plan and report may be inspected at the Nisga'a land title office, and
 - (iii) of a date and place at which submissions may be made to the registrar on the plan and the report.

Hearing of submissions

225. At the time and place specified in the notice given under section 224(b), the registrar must receive the written or oral submission on the special survey plan and report of any

- (a) registered owner of an estate in fee simple to, or

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(b) registered owner of a charge on
the land within the limits of the special survey.

Report to Executive

226. After receiving any submissions under section 225 on a special survey plan and report, the registrar must prepare and transmit to the Executive a report on the submissions received.

Approval of special survey and plan

- 227.** (1) After receiving a report prepared by the registrar under section 226 on the submissions received by the registrar on a special survey plan and report, the Executive may, by order,
- (a) approve all or any part of the special survey and the special survey plan, or
 - (b) reject the survey and plan.
- (2) If the Executive approves a special survey and a special survey plan, or any part of them, under subsection (1)(a), the Executive may by order
- (a) declare the survey and plan, or the approved part of them, to be the true and correct survey and plan of the land affected,
 - (b) declare that all the boundaries and lines fixed by the survey and plan, or the approved part of them, are the true boundaries and lines, and
 - (c) declare, with any reservations that the Executive considers expedient, that the survey and plan, or the approved part of them, must be substituted for all former surveys and plans of the land affected which have previously been deposited, or for the corresponding portions of those former surveys and plans,
 - (d) set the amount of any compensation payable to any person because of the approval of the survey and plan, or the part of them,
 - (e) determine the amount of

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- (i) any compensation set under paragraph (d), or
 - (ii) the costs and expenses of the survey
- that must be paid by any registered owner of an estate in fee simple to, or registered owner of a charge on, the land within the limits of the survey, and
- (f) vest any estate or interest necessary to implement the survey and plan, or the approved part of them.
- (3) An amount of compensation ordered to be paid by any person
- (a) under subsection (2)(e)(i) is recoverable by the person to whom the amount is required to be paid as a debt due to that person, and
 - (b) under subsection (2)(e)(ii) is recoverable by the Nisga'a Nation as a debt due to the Nisga'a Nation.
- (4) The Executive must transmit a copy of an order made under this section to
- (a) the registrar, and
 - (b) the British Columbia land surveyor who completed the special survey in respect of which the order is made.

Filing of order and deposit of plan

- 228.** (1) On receipt of an order made under section 227 approving all or part of a special survey and special survey plan, the registrar must file the order and deposit the approved plan or part of the plan.
- (2) An approved special survey plan or part of a plan that is deposited under subsection (1) is conclusively deemed to be the official plan of the land comprised within the limits of the plan or the approved part of it, and is binding on all persons.
- (3) Unless otherwise ordered by the Executive under section 227(2), on the deposit of an approved special survey plan or part of a plan under subsection (1),
- (a) the registered owner of the estate in fee simple to each parcel located within the limits of the approved special survey or part of the survey, as shown on the most recently deposited previous plan, is conclusively

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deemed to be the registered owner of the estate in fee simple to the corresponding parcel as shown in the approved special survey plan or part of the plan,

- (b) the registered owner of a charge on a parcel located within the limits of the approved special survey or part of the survey, as shown on the most recently deposited previous plan, is conclusively deemed to be the registered owner of that charge on the corresponding parcel as shown in the approved special survey plan or part of the plan,
- (c) each portion of the land included located within the limits of the approved special survey or part of the survey and designated as a road or park in the approved special survey plan or part of the plan is conclusively deemed to be
 - (i) dedicated as a road or park, and
 - (ii) owned in fee simple by
 - (A) the Nisga'a Nation, if the road or park is outside the Nisga'a Villages, or
 - (B) the applicable Nisga'a Village, if the road or park is within a Nisga'a Village,

free and clear of any charge and of any unregistered estate or interest other than the subsisting conditions, provisos, restrictions, exceptions and reservations including royalties, contained in the original Nisga'a grant or in any other disposition made by the Nisga'a Nation, and
- (d) until a road or park referred to in paragraph (c) is closed by
 - (i) a law enacted by the applicable Nisga'a Village Government, if the portion of land is within a Nisga'a Village, or
 - (ii) a regulation enacted by the Executive, if the portion of land is outside the Nisga'a Villages,

no change in the ownership of the estate in fee simple to the area of the road or park may take place, including by way of transfer, mortgage or transmission, no charge or other lesser estate or interest in the road or park may be granted or otherwise created, and any instrument purporting to effect such a change in ownership or the grant or creation of such a charge

or other lesser estate or interest is void and not registrable.

Conflicting monuments

- 229.** On receipt of an order made under section 227 approving all or part of a special survey and special survey plan, the British Columbia land surveyor who completed the survey must
- (a) remove all survey posts, stakes or monuments that
 - (i) were on the land within the limits of the survey prior to the survey, and
 - (ii) are liable to lead to confusion in connection with the approved survey or part of the survey, and
 - (b) obliterate all marks on any post, stake or monument that
 - (i) was on the land within the limits of the survey prior to the survey, and
 - (ii) has been used or adopted by the surveyor as a post, stake or monument of the approved survey or part of the survey,
- except the marks placed on it or adopted by the surveyor in the survey.

Removal of special survey monuments

- 230.** (1) A person must not, unless acting under the written authority of the registrar, pull down, deface, alter, remove, cover up or render inaccessible any special survey monument.
- (2) If in the carrying out of public or private works it is found necessary to remove or cover up or render inaccessible any special survey monument, the person carrying on the works may give the registrar notice in writing that it is necessary to remove the special survey monument, and the registrar must take the steps the registrar deems necessary for ensuring the correct re-establishment of the special survey monument on the completion of the works, either at the place where it formerly stood or at another place the registrar directs, and the entire cost and expenses incurred by the registrar in connection with the removal and re-establishment of a special survey monument must be paid to the Nisga'a Nation by the person at whose instance the removal of it is made, and may be recovered by action in any

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court as for a debt due to the Nisga'a Nation.

- (3) If a special survey monument referred to in this section is re-established at a place other than where it formerly stood, the registrar must make all notations on the registrar's records necessary to show the removal and re-establishment of that special survey monument.

Offence and penalty

- 231.** (1) A person who willfully pulls down, defaces, alters, removes, covers up or renders inaccessible a special survey monument in contravention of section 230 commits an offence punishable under the *Nisga'a Offence Act* and is liable on conviction to a penalty of not less than \$50 and not more than \$500.
- (2) A person who directs, authorizes, assents to, acquiesces in or participates in the commission of an offence under subsection (1) by a servant or employee of the person while in the person's service or employ commits an offence punishable under the *Nisga'a Offence Act* and is liable on conviction to a penalty of not less than \$250 and not more than \$500.

PART 20 – SURVEYS UNDER ROADS AND RIGHTS OF WAY CHAPTER**Surveys of right of way areas under Treaty**

- 232.** (1) If under paragraph 5 of the Roads and Rights of Way Chapter of the Nisga'a Treaty the detailed location and dimensions of all or any portion of a right of way area within registered Nisga'a Lands are deemed to be described conclusively in a survey plan, the Executive must transmit a copy of the survey plan to the registrar for deposit in the Nisga'a land title office and order the substitution of the survey plan for any previous plan of the right of way area or portion then on deposit in the Nisga'a land title office.
- (2) On the transmission of a survey plan and order referred to in subsection (1), the registrar must deposit the plan in the Nisga'a land title office and make any amendment to the records of the Nisga'a land title office the registrar considers necessary or advisable.

Surveys of Nisga'a Highway corridor

- 233.** (1) If under paragraph 9 of the Roads and Rights of Way Chapter of the Nisga'a Treaty the detailed location and dimensions of a portion of the Nisga'a Highway corridor within registered Nisga'a Lands are deemed to be described conclusively in a survey plan, the Executive must transmit a copy of the survey plan to the registrar for deposit in the Nisga'a land title office and order the substitution of the survey plan for any previous plan of the portion of the Nisga'a Highway corridor then on deposit in the Nisga'a land title office.
- (2) On the transmission of a survey plan and order referred to in subsection (1), the registrar must deposit the plan in the Nisga'a land title office and make any amendment to the records of the Nisga'a land title office the registrar considers necessary or advisable.

Closure of Nisga'a Highway corridor

- 234.** (1) If under paragraph 11 of the Roads and Rights of Way Chapter of the Nisga'a Treaty British Columbia closes and discontinues a portion of the Nisga'a Highway corridor within registered Nisga'a Lands and transfers the estate in fee simple to that portion to the Nisga'a Nation, the Executive must transmit a copy of the instruments evidencing the closure and transfer of, and describing the

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location of, the portion of the Nisga'a Highway corridor to the registrar for filing or deposit in the Nisga'a land title office.

- (2) On the transmission of instruments referred to in subsection (1), the registrar must file or deposit the instruments in the Nisga'a land title office and make any amendment to the records of the Nisga'a land title office the registrar considers necessary or advisable.

Relocation of Nisga'a Highway corridor

235. (1) If under paragraph 13 of the Roads and Rights of Way Chapter of the Nisga'a Treaty

- (a) British Columbia transfers the estate in fee simple to an abandoned portion of the Nisga'a Highway corridor to the Nisga'a Nation or a Nisga'a Village, and
- (b) the Nisga'a Nation or a Nisga'a Village transfers the estate in fee simple to a relocated portion of the Nisga'a Highway corridor to British Columbia,

the Executive must, if the abandoned or relocated portion of the Nisga'a Highway corridor is within registered Nisga'a Lands, transmit a copy of the instruments evidencing the transfer of, and describing the location of, the abandoned or relocated portion of the Nisga'a Highway corridor to the registrar for filing or deposit in the Nisga'a land title office.

- (2) On the transmission of instruments referred to in subsection (1), the registrar must file or deposit the instruments in the Nisga'a land title office and make any amendment to the records of the Nisga'a land title office the registrar considers necessary or advisable.

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PART 21 – MISCELLANEOUS**Regulations**

- 236.** (1) The Executive may make regulations it considers necessary or advisable for purposes of this Act.
- (2) Without limiting subsection (1), the Executive may make regulations as follows:
- (a) establishing fees for applications, deposits, filings, registrations, examinations, approvals, searches, and other functions under this Act;
 - (b) exempting the Nisga'a Nation, the Nisga'a Village and Nisga'a citizens from payment of any or all fees;
 - (c) respecting procedure and practice under this Act in so far as any other Nisga'a Lisims enactment relates to or affects the title to land;
 - (d) respecting the form of and the manner in which
 - (i) the register and certificates relating to titles are kept or provided, or
 - (ii) applications under this Act are made and dealt with;
 - (e) prescribing the forms for instruments, documents or notices to be registered, deposited, filed or given under this Act;
 - (f) limiting the number of persons who may be named as
 - (i) registered owners of one estate in fee simple, or
 - (ii) registered owners of one charge;
 - (g) authorizing the use of a master form of instrument to reduce the volume of paper received by the registrar;
 - (h) varying the regular business hours of the Nisga'a land title office;
 - (i) providing for or facilitating the computerization of the Nisga'a land title office;

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- (j) determining the manner of completion, execution and witnessing of any instrument, document or notice to be registered, deposited, filed or given under this Act;
 - (k) determining the effect of a form of instrument;
 - (l) determining the manner in which statements in a prescribed form are to be made;
 - (m) determining the type of seal that may be used on an instrument to be registered under this Act;
 - (n) permitting or requiring the registration of, and governing the procedure for registration of, the title to and dealings with an estate, interest, right or claim that may be granted or created under a Nisga'a Lisims enactment.
- (3) A regulation under subsection (2)(n) may
- (a) classify estates, interests, rights or claims in any manner,
 - (b) establish different requirements for different classes of estates, interests, rights or claims, and
 - (c) extend all or part of this Act to the registration an estate, interest, right or claim.

Fees

- 237.** Fees required to be paid under this Act or the regulations must be paid at the time
- (a) an instrument is tendered for deposit, filing, registration, examination or approval, or
 - (b) a request or application is made for the performance of any other function.

Offences

- 238.** (1) A person who
- (a) willfully makes a false declaration or a false acknowledgement or certification under Part 4, or

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- (b) fraudulently procures, assists in fraudulently procuring or is privy to the fraudulent procurement of an order of the court affecting the title to land, an entry on the register or an alteration or erasure of an entry on the register

commits an offence punishable under the *Nisga'a Offence Act*.

- (2) An order of the court affecting the title to land procured by fraud, an act consequent on such an order, and an entry on the register or an alteration or erasure of such an entry made as a consequence of the fraud or the order is void as between all parties or privies to the fraud.
- (3) A person who, as principal or agent in an application to register title to land or in a transaction relating to land that is or is proposed to be registered, knowingly and with intent to deceive,
- (a) makes a material false statement or representation,
- (b) suppresses or conceals from a court, the registrar or the staff of the Nisga'a land title office, a material document, fact, matter or information, or
- (c) is a party to anything mentioned in paragraph (a) or (b)

commits an offence punishable under the *Nisga'a Offence Act*.

- (4) An act or thing done or obtained by means of anything mentioned in subsection (3)(a) or (b) is void, except in respect of a purchaser in good faith and for valuable consideration.

Conviction not to affect liability

- 239.** No proceeding or conviction in respect of an act declared to be an offence under this Act or the regulations affects a right or remedy to which a person may be entitled against the person who committed the act.

Transition

- 240.** (1) On the coming into force of this Act, the titles entered and stored in the register kept by the registrar under the *Nisga'a Land Title Act*, NLGSR 2000/11, and all information entered and stored in the register kept by the registrar under the *Nisga'a Land Title Act*, NLGSR 2000/11 relating to those titles, must be entered

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and stored in the restricted register.

- (2) For certainty, on the coming into force of this Act,
- (a) each area of Nisga'a Lands designated as a road on a current plan on deposit in the Nisga'a land title office under the *Nisga'a Land Title Act*, NLGSR 2000/11, is conclusively deemed to be
- (i) dedicated as a road, and
- (ii) owned in fee simple by
- (A) the applicable Nisga'a Village, if the road is within a Nisga'a Village, or
- (B) the Nisga'a Nation, if the road is outside the Nisga'a Villages,
- free and clear of any charge and of any unregistered estate or interest other than the subsisting conditions, provisos, restrictions, exceptions and reservations including royalties, contained in the original Nisga'a grant or in any other disposition made by the Nisga'a Nation, and
- (b) until a road referred to in paragraph (a) is closed by
- (i) a law enacted by the applicable Nisga'a Village Government, if the portion of land is within a Nisga'a Village, or
- (ii) a regulation enacted by the Executive, if the portion of land is outside the Nisga'a Villages,

no change in the ownership of the estate in fee simple to the area of the road may take place, including by way of transfer, mortgage or transmission, no charge or other lesser estate or interest in the road may be granted or otherwise created, and any instrument purporting to effect such a change in ownership or the grant or creation of such a charge or other lesser estate or interest is void and not registrable.

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Repeal and replacement

241. The *Nisga'a Land Title Act*, NLGSR 2000/11, is repealed and this Act is substituted for it.

Commencement

242. This Act comes into force by regulation of the Executive.