

ITEM 4  
MANAGER'S REPORT NO. 56  
COUNCIL MEETING 89/09/11

RE: LOT 7, DL 152, PLAN 2001  
PROPOSED B.C. HYDRO RIGHT OF WAY ON A PORTION OF LOT 7  
(PORTION OF BONSOR PARK)  
(Item 3, Manager's Report No. 53, Council Meeting 89/08/21)

MUNICIPAL MANAGER'S RECOMMENDATION:

1. THAT the recommendation of the Municipal Solicitor be adopted.

\* \* \* \* \*

TO: MUNICIPAL MANAGER SEPTEMBER 6, 1989  
FROM: MUNICIPAL SOLICITOR  
SUBJECT: LOT 7, DISTRICT LOT 152, PLAN 2001  
PROPOSED B.C. HYDRO RIGHT OF WAY ON A PORTION  
OF LOT 7 (PORTION OF BONSOR PARK)  
(ITEM 3, MANAGER'S REPORT NO. 53,  
COUNCIL MEETING 89/08/21)

PURPOSE: To advise Council of the current status of this transaction.

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RECOMMENDATION:

1. THAT Council authorize the granting of a right of way to B.C. Hydro and Power Authority over a portion of Lot 7, D.L. 152, Plan 2001, which is a part of the Bonsor Park site, for a proposed underground wiring connection from Brief Street to the Sears Auto Centre site.

R E P O R T

Council, at its meeting of August 21, 1989, received the above noted report and tabled the within recommendation to allow an opportunity for Council members to obtain additional information with regard to the proposal.

The standard terms of B.C. Hydro's statutory right of way have previously been amended and modified as a result of negotiations with B.C. Hydro. We understand that Council has expressed concerns as to one final matter, namely, the duration of the agreement. We have accordingly obtained B.C. Hydro's concurrence to a modification of the proposed term in perpetuity to a period of thirty years subject to one further option to renew (for a total of sixty years). The amended document is attached to this report.

Summary

In view of the modifications to the subject statutory right of way, it is recommended that Council authorize the granting of this agreement.

Per *P. Devanshivie*  
Patricia W. Fliieger  
Municipal Solicitor

PD:bi  
Attach.

cc: Director Administrative & Community Services  
Director Recreation and Cultural Services  
Director Engineering  
Director Planning & Building Inspection



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THIS AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

BETWEEN:

THE CORPORATION OF THE DISTRICT OF BURNABY, of 4949 Canada Way, in the Municipality of Burnaby, in the Province of British Columbia, V5G 1M2,

(hereinafter called "the Owner")

OF THE FIRST PART

AND:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, of 970 Burrard Street, in the City of Vancouver, in the Province of British Columbia, V6Z 1Y3,

(hereinafter called "B. C. Hydro")

OF THE SECOND PART

WITNESSETH THAT:

1. The Owner, in consideration of the sum of Ten Dollars (\$10.00) of the lawful money of Canada (the receipt and sufficiency whereof is hereby acknowledged), hereby grants unto B. C. Hydro for a term of 30 years commencing on the date of this Agreement the full and free right, liberty and statutory right of way for B. C. Hydro, its servants, agents and all others the licensees of B. C. Hydro:

- (a) To excavate for, install, operate, maintain, remove and replace (with conduits or cables of the initial or any other size) one or more underground conduits, whether or not encased by concrete or other protective material, cables with all necessary attachments and fittings, and underground conduits for the distribution of electric energy and for communication purposes (all of which are hereinafter collectively called "the works") upon the land described in the schedule hereto (hereinafter called "the land");
- (b) To use such portion of the land alongside the right of way area as may be reasonably necessary in connection with the excavation for, installation, replacement, removal,

repair and maintenance of the works or any part thereof;

- (c) Generally to do all acts necessary or incidental to the business of B. C. Hydro in connection with the foregoing,

on the understanding that, as soon as B. C. Hydro has constructed the works or any of them on the land, the right, liberty and statutory right of way hereby granted shall thereupon and thereafter be confined and restricted to a portion of the land (herein referred to as "the right of way area") comprising a strip of the land which will be located approximately as shown outlined in red on the plan attached hereto, and will be precisely determined by a survey to be made by a British Columbia Land Surveyor at the expense of B. C. Hydro.

It is understood between the parties hereto that the land is used and maintained by the Owner as a public park and that it is the intention of this agreement that B. C. Hydro shall at all times minimize interference with trees, shrubs, landscaping, and a car park located on the right of way area and shall minimize interference with the enjoyment of the right of way area by the public.

2. The Owner hereby covenants with B. C. Hydro:

- (a) Not to make, place, erect, operate, use or maintain any building, structure, well or obstruction, other than the landscaping, curb and parking lot in existence at the date of this agreement, (hereinafter called "the Owner's works"), if any such actions:
- (i) might interfere with or endanger the works or any part thereof or the installation, operation, maintenance, removal or replacement of the works or any part thereof; or
- (ii) might obstruct access by B. C. Hydro's servants, agents or licensees to the works or any part thereof; or
- (iii) might by the operation, use, maintenance or existence of the Owner's works on the right of way area create or increase any hazard to persons, vehicles or equipment;

PROVIDED HOWEVER that the Owner shall be entitled to pave, maintain and replace portions of the right of way area and to plant growth and otherwise landscape the right of way area.

- (b) Provided B.C. Hydro is not in default of its covenants contained herein the Owner grants to B.C. Hydro the option to renew this Statutory Right of Way for an additional term of 30 years, on the same terms as this Agreement, except that there shall be no further right of renewal. B.C. Hydro may exercise the said option by giving written notice to the Owner at its address hereinbefore written, together with the sum of \$10.00, not less than 60 days prior to the expiry of this Agreement.

- (c) Not to carry out blasting or aerial logging operations on or adjacent to the right of way

IN WITNESS WHEREOF the Owner has caused these presents to be executed as of the day and year first above written.

The Seal of THE CORPORATION OF  
THE DISTRICT OF BURNABY was  
hereunto affixed in the  
presence of:

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\_\_\_\_\_  
AUTHORIZED SIGNATORY

\_\_\_\_\_  
AUTHORIZED SIGNATORY

area unless permission in writing from B. C. Hydro has first been received, which permission shall not be unreasonably withheld;

(d) Not to diminish or substantially to add to the ground cover over such of the works as may be from time to time installed, operated or maintained below the surface of the right of way area unless permission in writing from B. C. Hydro has first been received, which permission shall not be unreasonably withheld;

3. B. C. Hydro hereby covenants with the Owner:

(a) To pay compensation to the Owner for any damage to any buildings, crops, landscaping, parking lot, underground watermain, or improvements caused by B. C. Hydro in the exercise of any of its rights hereunder and without negligence on the part of the Owner;

(b) To pay all royalties, scaling fees and other charges which may be levied by the Crown against any timber that B. C. Hydro cuts on the land;

(c) To pay compensation to the Owner for all merchantable timber cut or damaged on the land by B. C. Hydro in the exercise of any of its rights under this Agreement;

(d) That it will, as soon as weather and soil conditions permit and insofar as it is practicable to do so, bury and maintain any underground works installed hereunder so as not to interfere with the drainage or ordinary cultivation, use and maintenance of parking lot, landscaping and use of the land;

(e) To provide the Owner with three days written notice of its intention to undertake any of the activities or operations authorized under this agreement other than in cases of emergency;

(f) That all activities and operations on the right of way area shall be undertaken in a prompt and diligent manner so as to minimize disruption;

(g) The right of way area to be maintained in a safe or tidy condition while the works are being undertaken;

(h) To indemnify and save harmless the Owner from any and all manner of actions, causes of action, suits, damages, loss, costs, claims and demands of any nature relating to or arising out of this agreement, including but not limited to injury to any person or persons including death and any damage to or loss of property, insofar as any such injury, damage or loss is not caused by the negligence of the Owner.

(i) To assume all risk of injury, including death, property damage or other loss arising in any

way out of this agreement or the exercise of any rights thereunder, insofar as any such injury, damage or loss is not caused by the negligence of the Owner.

4. It is mutually agreed between the Owner and B. C. Hydro that:

(a) B. C. Hydro shall, on or before the 1st day of December, 1989, cause a survey of the right of way area to be made and shall deposit the plan of such survey when completed in the proper Land Title Office. Such plan and the survey upon which it is based shall thereafter in all respects establish and define the right of way area and the land, except the right of way area, shall upon the acceptance of such plan by the said Land Title Office be discharged from the right, liberty and statutory right of way hereby granted. Upon receipt of the proper fee and application made by B. C. Hydro on behalf of the Owner, the making of which application the Owner hereby authorizes, the Registrar is hereby authorized to make such entries upon the Register as may be necessary to give effect to the foregoing.

The right of way area so established shall not exceed the dimensions of the plan attached hereto. In the event that the survey plan of the right of way area is not submitted for registration at the Land Title Office by the date specified in this paragraph, this right of way agreement in its entirety shall become void and B. C. Hydro consents to discharge of same from the Land Title Office.

- (b) The title to all timber cut on the land by B. C. Hydro in the exercise of its rights hereunder shall vest in B. C. Hydro;
- (c) This Agreement shall be construed as running with the land and that no part of the fee of the soil shall pass to or be vested in B. C. Hydro under or by this Agreement;
- (d) The expressions "Owner" and "B. C. Hydro" herein contained shall be deemed to include the executors, administrators, successors and assigns of such parties wherever the context so admits;
- (e) Where the expression "Owner" includes more than one person, all covenants herein on the part of the Owner shall be construed as being several as well as joint;
- (f) Wherever the singular and masculine are used in this Agreement they shall be construed as meaning the plural or the feminine or body corporate where the context or the parties hereto so require.
- (g) Time shall be of the essence of this agreement.

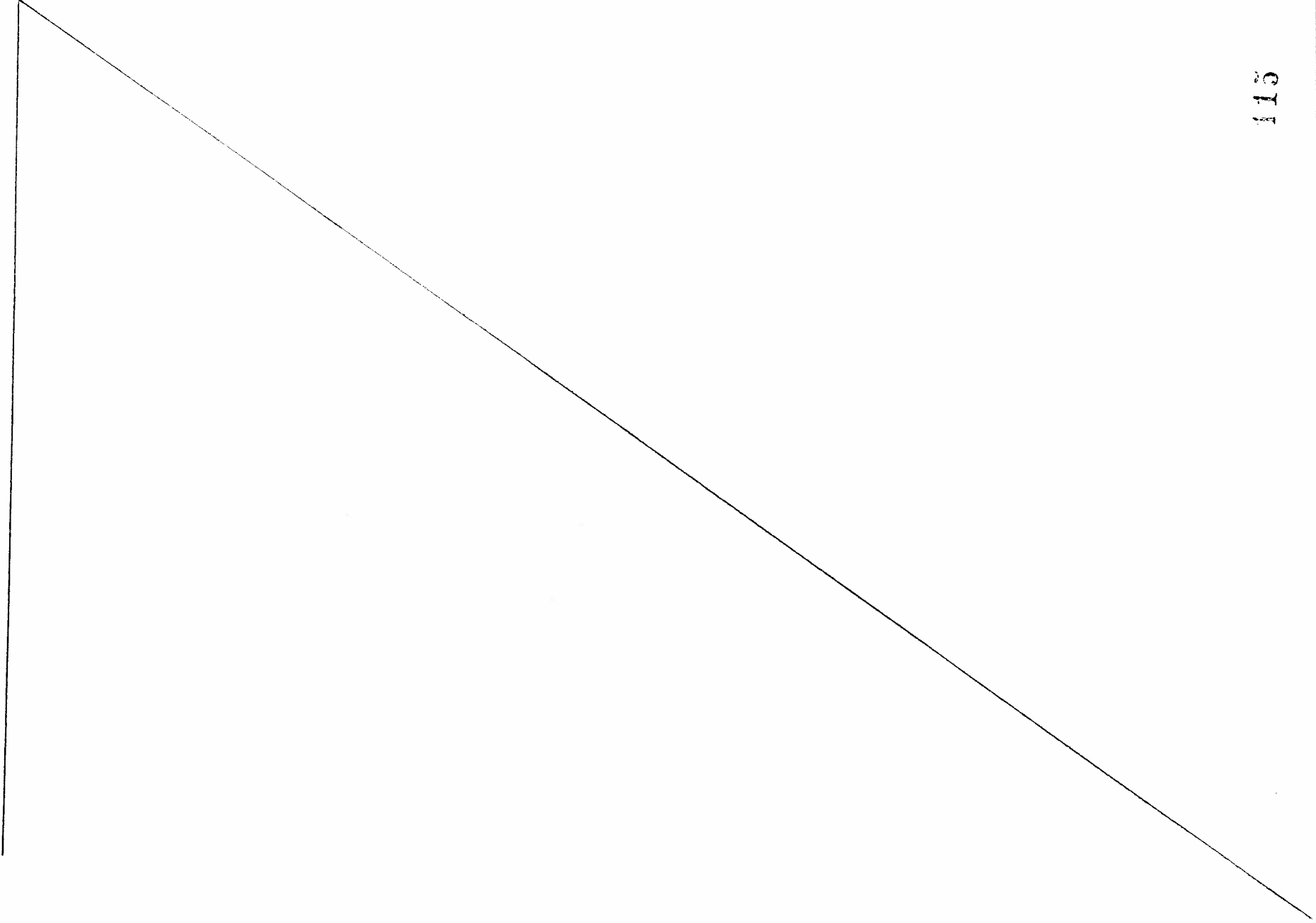
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SCHEDULE

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Municipality of Burnaby, in the Province of British Columbia and more particularly known and described as:

Parcel Identifier: 002-460-220

Lot 7, District Lot 152, Group 1,  
New Westminster District, Plan 2001.



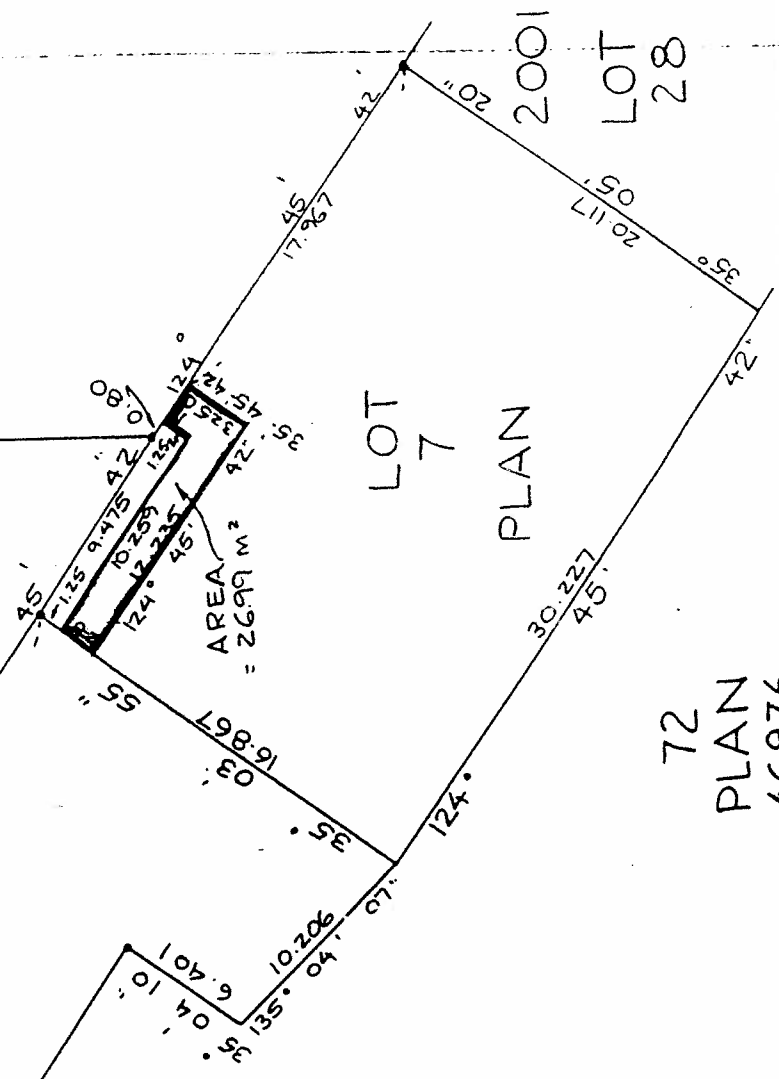
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LOT 4

LOT 5

BRIEF ST.



LOT 7

PLAN

2001

LOT 28

72  
 PLAN  
 46976

LOCATION SKETCH  
 FOR PROPOSED HYDRO  
 RIGHT OF WAY

CORPORATION OF THE DISTRICT OF BURNABY  
 ENGINEERING DEPARTMENT  
 DESIGN DIVISION

DESIGNED BY M. CHERNEFF SCALE 1:250  
 DRAWN BY MDC DATE AUG 2 1999  
 CHECKED BY DATE  
 APPROVED BY B. DRWG NO.

AUG 2 1999  
 DATE

REVISION



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### Proof of Execution by Corporation

I CERTIFY that on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_, in British Columbia,

(whose identity has been proved by the evidence on oath of \_\_\_\_\_,

who is) personally known to me, appeared before me and acknowledged to me that he/she is the authorized signatory of \_\_\_\_\_  
(State full name, address and occupation.)

and that he/she is the person who subscribed his/her name and affixed the seal of the corporation to the instrument, that he/she was authorized to subscribe his/her name and affix the seal to it, and that the corporation existed at the date the instrument was executed by the corporation.

IN TESTIMONY OF WHICH I set my hand and seal of office at \_\_\_\_\_, in British Columbia, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
A Commissioner for Taking Affidavits for British Columbia  
A Notary Public in and for the Province of British Columbia

### Proof of Execution by Corporation (D.V.A.)

I CERTIFY that on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at Ottawa, in Ontario,

who is personally known to me, appeared before me and acknowledged to me that he is the authorized signatory of THE DIRECTOR, THE VETERANS' LAND ACT and that he is the person who subscribed his name and affixed the seal of the corporation to the instrument, that he was authorized to subscribe his name and affix the seal to it, and that the corporation existed at the date the instrument was executed by the corporation.

IN TESTIMONY OF WHICH I set my hand and seal of office at Ottawa, in Ontario, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
A Commissioner for Taking Affidavits for British Columbia  
A Notary Public in and for the Province of British Columbia

### Statutory Declaration Where Attorney is Not a Corporation

I, \_\_\_\_\_, in British Columbia, solemnly declare that:

1. I am the attorney for \_\_\_\_\_ under a power of attorney filed under the LAND TITLE ACT.
2. I am the person who subscribed the name of \_\_\_\_\_ and my name in the instrument as a transferor.
3. At the time of the execution of the instrument the power of attorney had not been revoked by or on behalf of \_\_\_\_\_ and I had not received any notice or information of the death, disability or bankruptcy of \_\_\_\_\_

OR, IF THE PRINCIPAL OF THE POWER OF ATTORNEY IS A CORPORATION, SUBSTITUTE FOR 3 ABOVE:

3. At the time of execution of the instrument the power of attorney had not been revoked by or on behalf of \_\_\_\_\_ that \_\_\_\_\_ is legally entitled to hold and dispose of land in British Columbia, and I had not received any notice or information of the bankruptcy or dissolution of \_\_\_\_\_
4. I know the contents of the instrument and subscribed the name of \_\_\_\_\_ to it voluntarily as the free act of the transferor.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

Declared before me at \_\_\_\_\_, )  
in British Columbia, this \_\_\_\_\_ day of \_\_\_\_\_ )  
\_\_\_\_\_, 19\_\_\_\_ )  
\_\_\_\_\_)  
\_\_\_\_\_) )

\_\_\_\_\_  
A Commissioner for Taking Affidavits for British Columbia  
A Notary Public in and for the Province of British Columbia

