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## Backgrounder

### **BCLI Report no. 38—Report on Leases of Unsubdivided Land and the Top Line Case**

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This report examines legal issues that arose in the wake of the B.C. Court of Appeal's decision in *International Paper Industries Ltd. v. Top Line Industries Inc.* (1996), 20 B.C.L.R. (3d) 41 (C.A.).

The case concerned the lease of part of a registered parcel of land. Section 73 of the *Land Title Act*, R.S.B.C. 1996, c. 250, outlined restrictions on the subdivision of land into smaller parcels for the purpose of leasing or transferring it. However, no subdivision plan had been prepared or registered under the *Land Title Act*, and the parties to the lease did not realize that it was necessary to obtain approval to subdivide the land. A dispute later arose as to whether the lease was renewable. The court provided an interpretation of section 73, holding that entering into the lease in the first place was a breach of section 73 and consequently, the lease must be considered void ab initio (from the start). In other words, parties were able to escape the contractual obligations that they had entered into.

Much criticism arose following this ruling expressing concern regarding the reasoning in the case and its potential effect on existing leases and leases concluded after *Top Line*. Additionally, there was a substantial increase in litigation following the ruling. The approach taken by the courts toward *Top Line* has not been entirely consistent.

The BCLI published the *Consultation Paper on Leases of Unsubdivided Land and the Top Line Case* in October 2004. The Consultation Paper asked readers for their views on whether reform of the law was needed in response to *Top Line*. It also presented a range of options for reform for readers to consider. The responses strongly favoured legislative reform of the law in response to *Top Line*. The preferred method of reform was by amending the *Land Title Act*. The BCLI made three recommendations after considering responses to their consultation paper. First the Legislature should enact legislation to address problems arising from the decision in *Top Line*. Second, Part 7, Division 2 of the *Land Title Act* should be amended. And third, a new section should be added to Part 7, Division 2.