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BCLI RELEASES FOUR NEW CONSULTATION PAPERS ON REAL PROPERTY LAW

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The British Columbia Law Institute has issued four new consultation papers in connection with Phase 2 of its Real Property Reform Project. One deals with restrictive covenants and the other three deal with various aspects of co-ownership of land.

“Restrictive covenants and some matters relating to co-ownership figure prominently among the areas in real property law that are overdue for modernization. The reforms proposed in these consultation papers would benefit all owners of land, both residential and commercial,” said Dr. A.J. (Bertie) McClean, Q.C., Chair of the Project Committee.

The *Consultation Paper on Restrictive Covenants* deals with one of the most complex and obscure areas of real property law, namely obligations that “run with land” so as to affect successive owners. Currently the only obligations that run with land (apart from limited statutory exceptions) are ones that restrict use or occupation, such as a restriction prohibiting non-residential use of land. Among other reforms, the consultation paper proposes that cost-sharing or repair and maintenance obligations be allowed to run with land. An example would be a covenant between neighbouring landowners to contribute towards maintaining a fence or a common access driveway.

The *Consultation Paper on Joint Tenancy* urges reform of the law surrounding severance of joint tenancies, among many other proposals. As the law now stands, if spouses own their home as joint tenants, Spouse A can “sever” joint tenancy without the knowledge of Spouse B. If Spouse A dies first, Spouse B would not receive the interest of Spouse A in the house. The consultation paper proposes that a joint tenant wishing to sever must give notice to the other joint tenant.

The *Consultation Paper on the Partition of Property Act* proposes replacement of the Act, which is based on English legislation originally passed in 1868 and has undergone little change since then. Among the features proposed for a new Act would be a right of first refusal to always give the other co-owners the first opportunity to buy out a co-owner who obtains a court-ordered sale of the land.

The *Consultation Paper on Accounting and Contribution Between Co-Owners of Land* proposes reforms to deal with financial aspects of co-ownership, including cost-sharing and the collection of rents and profits from land.

The Real Property Reform Project (Phase 2) is generously funded by the Law Foundation, the Notary Foundation, and the Real Estate Foundation. The project is carried out with the aid of a 12-member committee consisting of volunteers from the real estate Bar, the notarial profession, and industry.

The consultation papers are issued to obtain comment on proposals for law reform before the final recommendations are made. They can be downloaded from the B.C. Law Reform Group page of the BCLI website at: <http://www.bcli.org>.

Responses to the consultation papers are requested by September 1, 2011.

– 30 –

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