Does Reid v. Reid Still Linger?

by C.W. MacIntosh, Q.C.

The decision in **Reid v. Reid* rocked the legal community by confirming and applying the rule, well established in Ontario, that failure to comply with subdivision by-laws pursuant to the *Town Planning Act* rendered a conveyance of the property illegal.

The Attorney General acted promptly to end the uncertainty this decision gave lawyers about numerous property titles by introduction of Bill No. 141 (now ch. 16 of the Acts of 1977). The operative section reads as follows:

> "2. The failure to comply with the Planning Act or the former Town Planning Act or any local Act or any regulation or by-law made pursuant to any of the said Acts does not affect and is deemed not to affect the creation of any title or interest in real property conveyed or purported to have been coneyed whether by instrument, testamentary document or operation of the law on or before the thirtieth day of April, 1977, provided however that this Section does not affect the rights acquired by any person from a judgment or order or a court given or made in litigation or proceedings commenced on or before the thirtieth day of April, 1977."

This means that deeds made before April 30, 1977 dealing with properties which lacked proper planning approval would not be void for this reason.

Two questions remain:

1. **Can a lot which lacked planning approval and was conveyed before April 30, 1977 now be legally conveyed after that date?**

If the illegality survives the remedial legislation and still attaches to the property, then the decision in *Reid* v. *Reid* makes subsequent conveyances illegal, and a purchaser may at any time object to this defect, which goes to the root of the title. *Innes v. Van Der Weerdhof* (1970), 10 D.L.R. (3d) 722.

A careful reading of the *Planning Act*, however, leads one to the inevitable conclusion that a "subdivision" takes place upon the giving of a conveyance severing the lots. It was the giving of such a deed without planning approval which caused the illegality in the *Reid* case.

Transfers subsequent to April 30, 1977 of a lot created before that date would not be "subdividing" a property and would not for this reason be illegal. It can therefore be argued that deeds of properties in this category may now be safely accepted.

2. **Does lack of planning approval and consequent lack of a proper building permit go to the matter of title so as to raise an objection to title?**

This would seem to be answered in part by the decision in *Bihun v. Long Branch* (1960), 26 D.L.R. (2d) 10. In this case it was found that the building did in fact comply with the by-law requirements, although no building permit had been obtained. Laidlaw, J.A., of the Ontario Court of Appeal, stated, "The failure to obtain the necessary permits from the municipal authorities subjected the wrongdoers to a penalty, but it does not necessarily follow that the use of the building as a triplex was unlawful."

Buildings which do *not* comply with present by-law requirements would not come within the rule, and it would appear that valid objection could be made to the title of the land, based upon the illegality of the structure. (see DiCastri, *Law of Vendor and Purchaser*, 2ed. para. 327).

**Reid* v. *Reid* (N.S.S.C., unreported, February 24, 1976). See also *Nova Scotia Law News*, Vol.2., No.4, page 16. ■ ■

Regulations Published

The *Regulations Act*, Stats. N.S. 1973, c.15, was proclaimed recently. As a result of its requirements, a separate edition of the Royal Gazette containing the regulations deposited with the Registrar will be published.

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