

NOVA SCOTIA



# LAW NEWS

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## Reid v. Reid Clarified

The decision of Mr. Justice Jones in the case of *Reid v. Reid* 22 N.S.R. (2d) p. 361 excited considerable controversy, particularly relating to the type of transaction which was caught by the rule.

The decision held that a deed given to a grantee was illegal and void if the grantor had not obtained approval of the appropriate board for subdivision of the parcel pursuant to the *Town Planning Act*.

A number of areas in this Province were not equipped with boards to administer the *Town Planning Act* or the *Planning Act* and the status of numerous transactions in these municipalities was considered doubtful. Lawyers involved in property transfers in these municipalities may now relax. Mr. Justice Jones has clarified the law on this question in a decision filed January 9, 1978 in the case of *Dougan v. Falkenham* 1977 S.H. No. 17541.

This was an application under the *Vendor's and Purchasers Act* to interpret an agreement of sale on a property in Chester. There were no regulations under the *Planning Act* in force in Chester prior to March 5, 1975. The subject property was shown on a plan of subdivision dated July 14, 1973 and a second plan dated July 31, 1974. The first, which showed the lots as "future lots" was registered and the second, which outlined the lot in question, was not registered. The lot in question was sold and occupied. In his decision, Mr. Justice Jones stated as follows:

"... In 1973 and 1974 when Mr. Falkenham subdivided his property there was no requirement that he had to obtain municipal approval and apparently nothing requiring him to record his plans. He in fact recorded the first plan. He effectively subdivided the property by the two plans. In my view this was in fact accomplished by the first plan. The procedure which he followed

was in accord with the practice within the Municipality at the time.

After March 5, 1975 subdivision plans had to be approved before they could be recorded. This provision is prospective in its operation and obviously applies to new subdivisions and to old subdivisions where approval is sought. There is no provision in Section 49 of the *Planning Act* which voids conveyances made in the District. There is such a provision in subsection (8) of Section 50 of the *Planning Act* but that subsection only applies to revisions of subdivision plans. The effect of *Reid v. Reid* (1974), S.H. No. 0451 (unreported) was to render illegal conveyances which did not conform with the *Planning Act*. It is clear from *Reid v. Reid* (supra) at page 5 of the decision that there were municipal by-laws in force in the Municipality of the County of Halifax at the time accordingly the *Planning Act* applied to the subdivision of the lands made in that case. *Reid v. Reid* (supra) has no application in this case at present.

As Mr. Falkenham's subdivision complied with the existing law there is nothing in the *Planning Act* or the subdivision regulations under Section 49 which required subsequent approval and rendered conveyances illegal.

While Chapter 16 of the Acts of 1977 would confirm prior conveyances by Mr. Falkenham no confirmation was necessary to render them effective. For the same reasons Mr. Falkenham could validly continue to convey lots after April 1, 1977."

This would appear to clarify the situation with respect to many lots throughout the Province.

— C. W. MacIntos