Subdivision Control under the *Planning Act*[1]: What do you need to know[2]?

The subdivision and part lot control provisions of section 50 of the *Planning Act* (the "section") are lengthy and complex. Sometimes it can be difficult to sort out the parts that apply to a present-day transaction, or the extent of the abutting lands search that is needed to confirm that no contravention occurred in the past. The consequences of contravention are dire: if a transfer, mortgage or other dealing with land does not comply with the section or a predecessor, it does not create or convey an interest in land. Because of this, the section is a significant source of malpractice claims. This article summarizes the parts of the section that apply in the situations most often encountered by real estate practitioners.

The basic prohibition in section 50 is straightforward: A party may not deal with real property in Ontario where he, she or it retains abutting lands, unless the transaction falls within an exception. Subsection 50(3) imposes the prohibition where no registered plan of subdivision is in place; subsection 50(5) does the same, where the land is part of a lot on a registered plan of subdivision. The prohibition applies to transfers, mortgages, leases, grants of easement, grants by will and all other dealings that have the effect of granting the use of or right in land for more than twenty-one years. All real estate transactions should therefore be approached with the presumption that a search of the title to lands that have (or previously had) a boundary in common with the subject property ("abutting lands search") should be done, to determine whether:

(a) the present grantor owns abutting lands, and therefore cannot give a valid interest in the property to the lawyer's client; or

(b) any past dealings with the property contravened the section, resulting in the present grantor not having a valid title.

Exceptions

Section 50 contains several exceptions. Below is a chart of those that are most commonly applicable to transactions where the lawyer represents the purchaser, mortgage lender or other party acquiring an interest in the land.

Exception	Statutory provision (*Planning Act*, Section 50 unless otherwise stated)	Comments	Abutting Lands Search Required?
Past and present grantors do not/did not own abutting land	(3)(b), (5)(a)		Yes, in order to determine that they do not/did not own abutting land.
Property is whole lot or block on a registered plan of subdivision	(3)(a), (4), (5)(a), (14)	Exception does not apply if plan deregistered by municipal by-law. Most deregistration by-laws are for older plans.	No
Land that would otherwise merge as a result of the death of a joint tenant	(3)(a.1), (5)(a.2)	Where the statutory requirements are met, ownership does not merge merely because the death of one of the joint tenants results in the surviving joint tenant owning the abutting land.	Yes, to confirm that the statutory requirements are met.

[1] R.S.O. 1990, c. P.13.

[2] This article is not a comprehensive guide to section 50 of the *Planning Act* or the conduct of an abutting lands search. Please refer to the *Planning Act* for complete information. For a full analysis of the statute and case law regarding subdivision control under the *Planning Act*, see "The Law of Subdivision Control in Ontario," 4th edition, by Sidney Troister, C.Arb., C.S., LSM, Canada Law Book, 2022.

Property is remaining part of whole lot or block on registered plan of subdivision, the other part of which was acquired by a body that has the right to acquire land by expropriation	(5)(e)		No
Property is whole condo unit and/or common interest in condominium	*Condominium Act,* 1998, S.O. 1998, c. 19, s. 9(1)	Section 50, *Planning Act* does not apply.	No
Part-lot control exemption by-law applies to present or past transaction	(7)	Review by-law to ensure it is/was in effect at time of transaction.	If by-law applied to past transaction but is no longer in force, search abutting lands forward from date of that transaction.
Land converted to Land Titles Conversion Qualified ("LTCQ"), if title states that the land is not subject on first registration in LTCQ to subparagraph 44(1)(11) of the *Land Titles Act*[3]		Most LTCQ titles have the required statement. Compliance with the section is confirmed only up to the date of conversion to LTCQ.	Search abutting lands forward from date of conversion to LTCQ, unless another exception applies more recently.
Planning Act statements in transfer signed	(22)	All three statements must be signed.	Search abutting lands forward from date of registration of most recent transfer with statements signed, unless another exception applies more recently.[4]
Consent to current transaction granted	(3)(f), (5)(f), (14), 53(41), 53(42), 53(43)	Certificate of consent to be given. Consent lapses if transaction not carried out within 2 years from date of certificate, or earlier lapse period if specified. The running of that period is suspended during an appeal.	No
Prior consent to conveyance granted[5]	(12), (14)	Must be identical to parcel that received consent (cannot be whole of remainder parcel). Prior consent must be to conveyance (i.e., transfer/deed), not mortgage or other transaction. Read consent to confirm it does not stipulate that subsections (3) or (5) apply to subsequent transactions.	No
Conveyance of retained land	(6)	Retained land may be conveyed or otherwise dealt with before the land that is the subject of the consent, provided the retained land is dealt with before the consent lapses under s. 53(43).[6]	Yes; exception applies only to specific transaction, does not have retroactive or future effect.

[3] R.S.O. 1990, c. L.5

[4] E.g., if land converted to LTCQ in 1998 and Transfer with statements signed registered in 2002, search abutting lands forward from date of registration in 2002.

[5] Subject to case law and comments at pages 297 et al., "The Law of Subdivision Control in Ontario."

[6] *1390957 Ontario Ltd. v. Acchione*, 2002 CanLII 23579 (ONCA). The *Acchione* case remains relevant when reviewing transactions completed under the former statutory wording. However, the practice established under the *Acchione* case is no longer required as a workaround (for current transactions only?). The applicant can request a consent certificate for the retained lands together with the certificate for the consented lands (s.53 (4.2))

Grantor retains abutting lands that are a whole lot or block on registered plan of subdivision, and property is whole of remainder parcel	(3)(b), (5)(a)		Yes; exception applies only to specific transaction, does not have retroactive or future effect.
Validation certificate	s. 57	A certificate of validation may provide that a contravention of s. 50 or a predecessor provision does not, and is deemed never to have, prevented the conveyance or creation of an interest in the land described in the certificate.	Yes

The following types of transactions are exempt from the application of the section. However, unless one of the exceptions above applies, you may wish to do an abutting lands search to confirm that past dealings with the property did not contravene the section, resulting in the granting party not having a valid title.

Exception	**Statutory provision (*Planning Act,* Section 50)**	**Comments**
Grantor is federal or provincial government or municipality	(3)(c), (5)(b)	
Party obtaining interest in land is federal or provincial government or municipality	(3)(c), (5)(b)	
Term of lease or right to use is less than 21 years	(3), (5)	Calculation of term includes renewal rights.
Disposition of land acquired for an energy line	(3)(g)	Land or an interest acquired for an energy line may be disposed of to the person from whom it was acquired or that person's successor in title, provided the recipient holds the required interest or right in the abutting land.
Grant of use of part of a building or structure	(9)	For any period of time, including 21 years or more. The exemption also extends to ancillary land. Part of a property that is not in the building can now be dealt with without contravening the *Act*. For example, a lease for a restaurant in part of the building can now also convey an exclusive use to allow the restaurant to set up an outdoor patio.
Agreement subject to express condition that Section 50 complied with (agreement is valid, but condition does not remedy transfer or other dealing if there is a contravention upon registration)	(21)	Condition standard in Ontario Real Estate Association residential and commercial resale Agreements of Purchase and Sale; in other agreements, used where parties know or suspect that a registered plan or consent is necessary.

Consent Applications

Section 53(1) permits an owner, chargee or purchaser, or their authorized agent, to apply for consent to sever land. A pending consent application may be amended at any time before the consenting authority grants or denies the consent (s.53 (4.2.1). The time to satisfy conditions before the consent expires is two years, and will be suspended during any appeal. The two years runs from the date of the order of the tribunal (s.53 (41)). An owner or owner's agent can apply for a consent to be cancelled (s.53 (45)).

Partial Discharges

Mortgages may encumber more than one property. Where this is the case, the mortgagee may wish to grant a partial discharge with respect to part of the lands. A partial discharge can engage subdivision control because releasing only part of the charged lands may be treated as a conveyance for section 50 purposes, so the partial discharge has to follow the same section 50 rules as a transfer of part of a property (s 50(16)). Section 50(16) **does not apply** if the

owner could legally transfer the released land by deed anyway, without breaking section 50. In other words, if the owner could already sell that piece on its own, the partial discharge is fine. No separate consent or exception is needed just because the land is being released from a mortgage.

Foreclosures and Powers of Sale

A foreclosure or exercise of a power of sale over part of the lands subject to a mortgage must comply with the same subdivision-control rules that would apply to an ordinary conveyance of those lands (s. 50(18). If no general exception applies, obtain an ordinary consent under section 53.

As you can see, section 50 of the *Planning Act* is complex. In the past, the section and its predecessors were referred to as "the lawyer's bear trap." Awareness of the applicable subsections and search requirements in different types of transactions will help make sure that your client gets a valid title (and that you avoid a malpractice claim).