



**ONTARIO ASSOCIATION OF COMMITTEES OF
ADJUSTMENT AND CONSENT AUTHORITIES**

***PRIMER ON PLANNING
COURSE***

Lesson 1

INTRODUCTION: THE PLANNING FRAMEWORK

(Revised July 2016)

PRIMER ON PLANNING

Ontario Association of Committees of Adjustment and Consent Authorities (**OACA**)

and

AMCTO, the Municipal Experts (**AMCTO**)

TABLE OF CONTENTS

GENERAL

OBJECTIVES OF LESSON	1
OVERVIEW	2
THE THREE ALTERNATIVES	2
ALTERNATIVES TO WHAT?	3
PLANNING JURISDICTION	4
A) Provincial Involvement in Planning	4
B) Local Involvement in Planning	6
C) Local Bodies in the Planning Process	7
MAIN PLANNING INSTRUMENTS	8
1 Official Plan	8
Table 1: Official Plan Approval Process	10
2 Zoning By-Law	11
Table 2: Zoning By-Law Approval Process	12
3 Subdivision Control	14
Historical Background to Subdivision Control	16
Subdivision Plan Process	18
Table 3: Subdivision Plan Approval Process	23
DELEGATION OF MINISTER'S POWERS	24
PROCEDURAL REQUIREMENTS	26
1 The Municipal Conflict of Interest Act	27
2 The Municipal Freedom of Information & Protection of Privacy Act	30
3 The Municipal Act	34
POLITICS, PLANNING AND THE PUBLIC INTEREST	34
SUMMARY: WHAT HAVE WE LEARNED?	39

APPENDIX A: The Ontario Municipal Board	40
APPENDIX B: One Window Planning and Appeals Service	42
APPENDIX C: Where to Find the Law	44
READINGS	46

SPECIFIC

In addition to the general Table of Contents above, you will find below a list of the main topics in Lesson 1 and page references where they can be found. This rather different format for a “Table of Contents” is intended to increase the usefulness of this package of material as an ongoing Reference Manual.

Objectives of the Lesson

Page 1 The key topics you should understand upon completion of this Lesson.

The basis for the “balancing act”

Pp 2-4 A brief introduction to the concepts of minor variance, alteration to legal non-conforming use and consent or severance - three ways in which some relief can be provided from the application of existing planning policies and controls. An explanation of why these must be considered within a broader planning framework, requiring a delicate balancing act.

Provincial involvement in planning

Page 4 By providing the statutory framework, by establishing Provincial planning policies, and by exercising an approval power.

Page 40 For some additional information on a key Provincial body, the OMB, see Appendix A.

Page 42 For an outline of the one window planning and appeals service, see Appendix B.

Local involvement in planning

Page 6 Directly through the preparation of official plans and zoning and other by-laws. By exercising control over the subdivision of land and by providing services.

Local bodies in the planning process

Page 7 Municipal council, planning boards, planning advisory committees, committee of adjustment, land division committee and consent authorities.

Main planning instruments

Pp 8-23 Brief overview of official plan, zoning by-law and (in somewhat more detail) control of the subdivision of land

- Page 8 Overview of official plan and table showing approval process. Official plan discussed in detail in **Lesson 2**.
- Page 11 Overview of zoning by-law and table showing approval process. Zoning by-law discussed in detail in **Lesson 3**.
- Page 14 Discussion of subdivision control, including its historical background, and table showing approval process. Also discussion of consents as limited alternative to plans of subdivision, a topic examined in more detail in **Lesson 5**.

Delegation of Minister's powers

- Page 24 Initially with regional governments, then broader delegation under 1973 and more recent amendments. Conditions relating to delegation.

Procedural requirements

- Pp 26-34 Implications of committees of adjustment, land division committees and consent authorities being quasi-judicial bodies. Concept of natural justice. Requirements of Statutory Powers Procedure Act. Impact of conflict of interest and FOI legislation. Specific procedures re applications for minor variances and for alterations in legal non-conforming use detailed in **Lesson 4**. Specific procedures re consent applications detailed in **Lesson 5**.

Politics, planning and the public interest

- Pp 34-38 Understanding politics as a process of making decisions, not a synonym for corruption. Recognizing potential shortcomings of a focus only on policies and legal procedures to the neglect of political considerations.

Summary: What have we learned?

- Page 39 A very brief 'snapshot' of the key points covered in Lesson 1.

Where to find the law

- Pp 44-45 Brief summary (in Appendix C) of how cases are cited and reported, as a guide to the case law references throughout the lessons.

Lesson 1

INTRODUCTION: THE PLANNING FRAMEWORK

Objectives:

- 1 To outline the statutory framework for land use planning in Ontario, especially as found in the Ontario *Planning Act* 1990, as amended and its regulations.
- 2 To introduce the three key planning instruments: that is, the official plan, zoning by-law and control over the subdivision of land.
- 3 To introduce the concepts of minor variance, variations in legal non-conforming use, and severance or consent, and their relationship to the three key planning instruments already described.
- 4 To describe the main governmental bodies involved in the planning process and their interrelationships.
- 5 To introduce the legal dimension of the operations of committees of adjustment, land division committees and consent authorities.
- 6 To describe the political milieu within which committees of adjustment, land division committees and consent authorities operate.

N.B. All references to the *Planning Act* in this set of materials are based on the *Planning Act*, R.S.O. 1990 Chapter P13 as amended to July 2016.

Lesson 2

THE OFFICIAL PLAN (Revised July 2016)

PRIMER ON PLANNING

Ontario Association of Committees of Adjustment and Consent Authorities (**OACA**)

and

AMCTO, the Municipal Experts (**AMCTO**)

TABLE OF CONTENTS

GENERAL

OBJECTIVES OF LESSON	1
INTRODUCTION	2
DEFINITION OF OFFICIAL PLAN	3
CONTENT OF OFFICIAL PLAN	6
Let's Review	15
PROVINCIAL PLANNING POLICIES	16
UPPER TIER PLANNING POLICIES	22
OFFICIAL PLAN APPROVAL PROCESS	22
Table 1: Official Plan Approval Process	29
Official Plan Amendments	30
SIGNIFICANCE OF AN OFFICIAL PLAN	32
SUMMARY: WHAT HAVE WE LEARNED?	35
APPENDIX A: How “Official” must Official Plan be?	37
APPENDIX B: Planning in Northern Ontario	39
READINGS	40

SPECIFIC

In addition to the general Table of Contents above, you will find below a list of the main topics in Lesson 2 and page references where they can be found. This rather different format for a “Table of Contents” is intended to increase the usefulness of this package of material as an ongoing Reference Manual.

Objectives of the Lesson

Page 1 The key topics you should understand upon completion of this Lesson.

Introduction

Pp 2-3 A brief outline of the value of planning policies and of the central role of the official plan.

Definition of the official plan

Pp 3-6 The definition formerly in the Planning Act, and the various implications of this definition. The primarily physical focus of the plan.

Content of the official plan

Pp 6-13 An examination of four key components: (1) statements about the basis for the plan, (2) defined goals and objectives, (3) specific policies to achieve objectives, and (4) map(s) designating land use categories. Examples of these components and their linkages.

Pp 13-15 Specific tools for implementing an official plan.

Provincial planning policies

Pp 16-22 Background on provincial policy statements and their varied nature and changing status. Comparison of changes introduced with Bill 163 and then Bill 20.

Upper tier planning policies

Page 22 Need for lower tier official plans (and zoning by-laws) to conform.

Official plan approval process

Pp 22-32 Outline of various stages in the process. Notification and documentation requirements. Table showing key steps in approval. Process re official plan amendments.

Significance of an official plan

Pp 32-34 Binding on municipality and its by-laws and public works, but not on private landowners. Need for positive steps to implement the plan.

Summary: What have we learned?

Pp 35-36 A very brief snapshot of the key points covered in Lesson 2.

Appendix A: How “official” must a plan be?

Pp 37-38 Summary of case law on whether planning policies in plan not yet fully approved are relevant in consent applications.

Appendix B: Planning in Northern Ontario

Page 39 Very brief overview of planning administration in Northern Ontario.

Lesson 2

THE OFFICIAL PLAN

Objectives:

1. To define the official plan and to examine the meaning and implications of that definition.
2. To examine and illustrate the key components of the official plan, namely, the basis, goals and objectives, policies and map or maps.
3. To introduce various tools for implementing the official plan, once adopted.
4. To explain the concept of Provincial planning policies and the legislative provisions with respect to the issuance of Provincial policy statements.
5. To describe the specific stages, and responsibilities, in the official plan approval process.
6. To outline the various ways in which amendments to the official plan can be initiated.
7. To explain the legal significance, and legal limitations, of an official plan.

Lesson 3

THE ZONING BY-LAW (Revised July 2016)

PRIMER ON PLANNING

Ontario Association of Committees of Adjustment and Consent Authorities (**OACA**)

and

AMCTO, the Municipal Experts (**AMCTO**)

TABLE OF CONTENTS

GENERAL

OBJECTIVES OF LESSON	1
INTRODUCTION	2
COMPONENTS OF A ZONING BY-LAW	3
1: Definitions	3
2: General Provisions	4
3: Zoning maps	5
4: Zone Provisions	5
HOW TO USE A ZONING BY-LAW	5
Checklist for a Zoning by-law	6
APPLYING THE ZONING BY-LAW: AN EXAMPLE	7
ZONING BY-LAW APPROVAL PROCESS	10
Figure 1: Zoning By-Law Approval Process	16
AMENDMENTS/REZONING	17
SPECIAL TYPES OF ZONING	18
Holding by-laws	19
Interim Control by-laws	20
Temporary Use by-laws	22
Increased Height and Density by-laws	23
Minister's Zoning Order	23
SITE PLAN CONTROL	23
COMMUNITY PLANNING PERMIT SYSTEM	26
MINOR VARIANCES	27
LEGAL NON-CONFORMING USES	29
ZONING BY-LAW'S LINK TO OFFICIAL PLAN	30

CASE STUDY: WHERE'S THE BEEF?	33
SUMMARY: WHAT HAVE WE LEARNED?	37
READINGS	39

SPECIFIC

In addition to the general Table of Contents above, you will find below a list of the main topics in Lesson 3 and page references where they can be found. This rather different format for a [Table of Contents](#) is intended to increase the usefulness of this package of material as an ongoing Reference Manual.

Objectives of Lesson

Page 1 The key topics you should understand upon completion of this Lesson

Introduction

Page 2 A brief outline of the zoning by-law, the kind of information it contains, and its general purpose.

Components of Zoning By-Law

Pp 3-5 Discussion of the four key components of: definitions, general provisions, zones and zone provisions.

How to Use a Zoning By-Law

Pp 5-6 Series of steps to follow when determining the application of a zoning by-law to a particular property. [Checklist included]

Applying the Zoning By-Law: An Example

Pp 7-10 Outline of fact situation, including excerpts from applicable zoning and OP. Question about the fact situation - and then the answer.

Zoning By-Law Approval Process

Pp 10-17 Detailed outline of all the steps in zoning by-law approval process. [Table included]

Amendments/Rezoning

Pp 17-18 Brief outline of (identical) procedures for amending a zoning by-law.

Special Types of Zoning

Pp 18-23 Discussion of problems in trying to use zoning to control development in line with official plan objectives. Introduction of holding, interim control, temporary use, and increased height and density by-laws.

Site Plan Control

Pp 23-25 Outline of background to introduction of site plan control and the short-lived experience with development control by-laws under s. 35a of Planning Act.

Explanation of site plan control by-laws, how they complement and refine zoning, but are not zoning.

Community Planning Permit System

Pp 26-27 Nature of system of development permits and how it differs from control by zoning by-law.

Minor Variances and Legal Non-Conforming Uses

Pp 27-29 Brief explanation of how they arise in connection with zoning by-law.

Zoning By-Law's Link to Official Plan

Pp 30-32 Series of excerpts to illustrate the link between policies in Official Plan and Zoning.

Pp 33-36 Case Study: *Where's the Beef?*" to test your application of zoning (and official plan) to a particular minor variance application.

What Have We Learned?

Pp 37-38 Summary of key points covered in Lesson 3.

Lesson 3

THE ZONING BY-LAW

Objectives:

- 1 To explain the nature and general purpose of a zoning by-law.
- 2 To describe and illustrate the key components of a zoning by-law (that is, definitions, general provisions, zoning maps, and zone provisions.)
- 3 To outline the various steps and requirements in the zoning by-law approval process.
- 4 To describe other specialized land use control by-laws, namely holding, interim control, temporary use, and increased height and density by-laws.
- 5 To explain the nature and purposes of site plan control, and to distinguish site plan control by-laws from zoning by-laws.
- 6 To introduce the concept of development permits and how this process differs from control through a zoning by-law.
- 7 To explain the concept of a minor variance under a zoning by-law.
- 8 To explain the concept of a legal non-conforming use under a zoning by-law.

Lesson 4

MINOR VARIANCES AND LEGAL NON-CONFORMING USES

(Revised July 2016)

PRIMER ON PLANNING

Ontario Association of Committees of Adjustment and Consent Authorities (**OACA**)

and

AMCTO, the Municipal Experts (**AMCTO**)

TABLE OF CONTENTS

GENERAL

OBJECTIVES OF LESSON	1
INTRODUCTION	2
SECTION A:	
OPERATIONS OF COMMITTEE OF ADJUSTMENT	4
Establishing a Committee of Adjustment	4
Powers of Committee of Adjustment	5
Rules of Procedure for Committee of Adjustment	6
1: Application Form	7
2: Sketch Map	8
3: Filing and Record System	8
4: Fees	9
5: Notice of Hearing and Circulation	9
6: Site Visit	12
7: Responses	13
8: The Hearing	13
9: The Decision	16
10: Notice of Decision	17
11: Appeal to OMB	19
12: The OMB Hearing	21
13: The Board's Decision	23
Review: Checklist for Secretary-Treasurer	23
Figure 1: Minor Variance Approval Process	26
SECTION B:	
PLANNING CONSIDERATIONS - MINOR VARIANCES	27
1: What is Minor?	28
2: How is Desirability Measured?	29
3: Maintaining Intent of Zoning By-Law	30
4: Maintaining Intent of Official Plan	31
Why ... Why ... Why ... Why? (<i>State your Reasons!</i>)	32
Who's on First? Minor Variances or Consents?	33
Is A Minor Variance A Special Privilege?	34
Is Removal Still Minor Variation?	35

What about Variance from Use?	36
Here I am again! Repeat Applications	37
Yes, But... Power to Impose Conditions	37
Variances from Other By-laws	40
Review: Minor Variance Considerations	40
SECTION C:	
PLANNING CONSIDERATIONS - LEGAL NON-CONFORMING USES	41
What is Legal Non-Conforming Use?	41
What Alteration is Possible in Legal Non-Conforming Use?	42
Grounds for Enlarging or Extending a Use	43
Altering to a Similar or More Compatible Use	44
Provisions of Zoning By-Law	45
Perpetuating the Legal Non-Conforming Use	45
Power to Interpret By-Laws	46
Review: Non-Conforming Use Considerations	47
APPENDIX A: Sample By-Law to appoint C of A	49
APPENDIX B: Ontario Regulation 200/96 as amended to July, 2016	50
APPENDIX C: Case Law Relating to Conflict of Interest	57
APPENDIX D: Sample Decision Form	60
APPENDIX E: OMB Minor Variance Appeals – April 2010	61
READINGS	64

SPECIFIC

In addition to the general Table of Contents above, you will find below a list of the main topics in Lesson 4 and page references where they can be found. This rather different format for a Table of Contents is intended to increase the usefulness of this package of material as an ongoing Reference Manual.

Objectives of Lesson

Page 1 The key topics you should understand upon completion of this Lesson.

Introduction

Pp 2-3 A brief introduction to the two types of planning variation or exception to be considered: minor variances and legal non-conforming uses.

Establishing a Committee of Adjustment

Pp 4-6 An explanation of the status of a committee of adjustment, the legislative provisions governing its establishment, and the general powers its exercises.

Rules of Procedure

Pp 6-25 A detailed summary of the rules governing the operation of a committee of adjustment - as set down in the Planning Act and Regulations and the Statutory Powers Procedure Act. This summary covers all steps from receipt of an application until the final decision is made.

Pp 23-25 A useful summary of the rules, in the form of a Checklist for the Secretary-Treasurer.

Page 49 A sample by-law for appointing a committee of adjustment is provided in Appendix A.

Pp 50-56 Regulation 200/96 as amended to July, 2016 is provided in Appendix B

Page 57 Case Law – Conflict of Interest

Page 58 A sample decision form is found in Appendix D

Pp 59-61 Ontario Municipal Board Appeal Submission Form

Minor Variances: The 4 Key Factors

Pp 27-31 An examination, with examples, of what is minor, is desirable, and how the intent of the official plan and zoning by-law are maintained.

Minor Variances: Other Considerations

Pp 31-40 A further examination of factors to be considered, including the concept of the variance as a special privilege, whether a variance can completely eliminate a by-law requirement, whether there can be a variance from use, and the imposition of conditions.

Page 40 A summary of the key minor variance considerations is provided.

What is a Legal Non-Conforming Use?

Page 41 An explanation of what a legal non-conforming use is, and how that is determined.

Alterations to Legal Non-Conforming Uses

Pp 42-47 A description of the kinds of changes which can be considered with respect to legal non-conforming uses - that is, enlargement or extension, or alteration to a use that is similar or more compatible. An examination, with examples, of the various factors to be considered in evaluating applications about non-conforming uses.

Review of Non-Conforming Considerations

Page 47 Summary of the key considerations.

Regulation re Minor Variances

Pp 50-56 Ontario Regulation 200/96 and 175/16 are in Appendix B. (Amendment to O. Reg. 200/96 on July 1, 2016 by O. Reg. 175/16 changed the giving of notice requirements)

OMB Minor Variance Appeal – Municipal Submission Form (R3)

Pp 61 List of All Information Required by OMB

Lesson 4

MINOR VARIANCES AND LEGAL NON-CONFORMING USES

Objectives:

1. To describe the establishment and powers of a committee of adjustment.
2. To describe the rules of procedure governing the operations of a committee of adjustment, including such matters as application, notice of hearing, the hearing, the decision, notice of decision, and notice of no appeal or notice of appeal to the OMB.
3. To explain the nature of a minor variance, and the four key factors (tests) to consider with respect to an application for minor variance.
4. To explain the various other factors to be considered in evaluating an application for minor variance, including any additional prescribed criteria.
5. To distinguish what makes a use a legal non-conforming use.
6. To explain the alterations in use which are possible with respect to a legal non-conforming use.
7. To explain the factors to be considered in evaluating an application with respect to a legal non-conforming use.
8. To provide fact situations to illustrate the planning issues relating to applications involving minor variances or alterations to legal non-conforming uses.

Lesson 5

CONSENTS (Revised July 2016)

PRIMER ON PLANNING

Ontario Association of Committees of Adjustment and Consent Authorities (**OACA**)

and

AMCTO, the Municipal Experts (**AMCTO**)

TABLE OF CONTENTS

GENERAL

OBJECTIVES OF LESSON	1
INTRODUCTION	2
Organization of the Lesson	4
SECTION A: OPERATIONS OF CONSENT AUTHORITIES	5
I: Responsibility for Consents	5
II: Provision for Consent Authorities	6
III: Operational Framework or Rules of Procedure	7
1 Application Form	7
2 Sketch Map	8
3 Filing and Record Systems	8
4 Fees	9
5 Circulation and Requests for Comments	10
6 Hearing on the Application	14
7 Preparation of Agenda and Staff Reports	17
8 Requests for Adjournment or Withdrawal	18
9 Notice of Decision	18
10 Failure to make a decision	19
11 Conditions of Approval	19
12 Preparation of Minutes	22
13 Correspondence arising from Minutes	23
14 Notice of No Appeal	23
15 Warning Letters	23
16 Documentation of Fulfilment of Conditions	23
17 Finalizing the Decision	24
18 Duration of the Certificate	24
19 Forms for the Certificate	25
20 Lapsing of Consent	26
21 Re-issuance of Certificate of Consent	27
22 Appeals to the Ontario Municipal Board	27
23 Ontario Municipal Board Hearing	29
24 Ontario Municipal Board Decision	30
Let's Review: Checklist for Secretary-Treasurer	32
Figure 1: Consent Approval Process	34

SECTION B: PLANNING CONSIDERATIONS	35
I: Planning Policy Framework	35
1 Provincial Policy Statements	36
2 Municipal Planning Policies and Controls	36
II: Long Term Impact of Approval	38
III: Evaluating the Site and Surrounding Area	40
1 Suitability of Site	40
2 Access to the Site	42
3 Provision of Services to Future Buildings	42
4 Compatibility of Use with Abutting Land Uses	43
IV: Once a Consent, Always a Consent?	44
V: The Decision	46
VI: Conditions	49
 SUMMARY: WHAT HAVE WE LEARNED?	 55
 Appendix A: Ontario Regulation 197/96, as amended	 56
 Appendix B: Sample Notice of Decision	 71 & 85
 Appendix C: OMB Form – R4 12/04/2006 re Consent Appeals	 74
 Appendix D: Answers to Conditions Cases	 81
 Sample of Form 2 Certificate	 80
 Sample of Form 4 Certificate	 81
 Sample of Notice of Decision	 85
 Sample of Suggested Attachment to Notice of Decision	 86
 READINGS	 87

SPECIFIC CONTENTS

In addition to the general Table of Contents above, you will find below a list of the main topics in Lesson 5 and page references where they can be found. This rather different format for a Table of Contents is intended to increase the usefulness of this package of materials as an ongoing Reference Manual.

Objectives of Lesson 5 **Page 1**

The key topics you should understand upon completion of this Lesson.

Introduction **Pp 2-4**

A brief introduction to the control of the subdivision of land in Ontario.

Who Gives Consents? **Pp 5-6**

A description of the legislative authority for consents, the varied consent jurisdictions which may exist and the make-up of consent authorities.

Rules of Procedure **Pp 7-31**

A detailed summary of the rules governing the operation of a consent authority – as set down in the *Planning Act* and regulations. This summary covers all the steps from receipt of an application until the certificate of consent has been acted upon or has lapsed.

Checklist for the Secretary-Treasurer **Pp 32-33**

Provides a useful summary of the rules, for quick reference.

Flowchart **Page 34**

Provides a flow chart depicting the usual steps in the consent process.

Ontario Regulation 197/96, as amended **Page 56**

The Ontario Regulation setting out the rules of procedure for consents and the prescribed information for a consent application form is found in Appendix A.

Sample Notice of Decision **Appendix B & pg. 85**

Certificates of Official **Page 69**

For Consent Forms 1 through 4, see Appendix A & Pp 83-84

Ontario Municipal Board Appeals**Page 74**

For the OMB Form indicating information to accompany consent appeals, see Appendix C.

Planning Considerations relating to Consents**Pp 35-44**

Provides a detailed explanation of the planning considerations which must be taken into account when judging a consent application, including provincial policy statements, municipal planning policies and controls, the long term impact of approval, and site evaluation (for suit-ability, access, future servicing requirements and compatibility of use).

Once a Consent, Always a Consent?**Pp 44-45**

An explanation of this often confusing concept, when it applies, and when a consent authority would not want it to apply.

The Consent Decision**Pp 46-49**

A summary of some pertinent case law concerning consent decisions, and three fact situations for your consideration.

Conditions on Consent**Pp 49-54**

A discussion of the consent authority's power to require conditions before a consent is granted, court limitations on the conditions that may be imposed, and six fact situations to test your understanding of conditions.

Answers to Fact Situations**Pp 81-82**

A summary of "answers" to the fact situations concerning conditions is found in Appendix D.

Summary: What have we learned?**Page 55**

Summary of key considerations in evaluating consents.

Lesson 5

CONSENTS

Objectives:

1. To describe the establishment and powers of those bodies authorized to handle applications for consents.
2. To describe the rules of procedure governing the operations of consent authorities, including such matters as application, decision, notice of decision, and appeal to the Ontario Municipal Board.
3. To highlight the lack of specific statutory requirements concerning the holding of hearings in connection with consent decisions, and to offer recommendations in this regard.
4. To explain the nature of a consent, and the factors to consider in evaluating the merits of an application for a consent.
5. To provide fact situations to illustrate the planning issues relating to applications for consents.

Lesson 6

VALIDATION OF TITLE
(Reviewed with no changes July 2016)

PRIMER ON PLANNING

Ontario Association of Committees of Adjustment and Consent Authorities (**OACA**)

and

AMCTO, the Municipal Experts (**AMCTO**)

TABLE OF CONTENTS

GENERAL

OBJECTIVES OF LESSON	1
Planning Act Mistakes – How Do They Occur?	1
Why Must a Mistake be Fixed?	2
What is a Certificate of Validation	2
When Is It Used?	3
Section 57 and its Background	6
Understanding Section 57: What is Issued?	7
Who Can Apply? Who Hears the Application?	8
What are the Criteria?	9
A Council’s Jurisdiction	10
What is the Application Procedure: Consent procedures do not apply to validations	11
Practical Things to Consider	12
What does a Validation Certificate Look Like?	13
Conclusion	14
Sample: Certificate of Validation	15

Lesson 6

THE VALIDATION CERTIFICATE What is it and when and how is it used?

Sidney H. Troister¹
Torkin Manes Cohen Arbus LLP
August, 2005

OBJECTIVES

1. To understand what a certificate of validation is and when it is sought.
2. To appreciate that validation is different from a severance and consent and that it is not governed by the same rules or principles as consents.
3. To understand the criteria for validation certificates.

Planning Act Mistakes – How Do They Occur?

Section 50 of the *Planning Act* contains the subdivision control provisions that generally prevent owners from dividing land except in certain specified cases. Where certain exceptions set out in the Act are not available, owners must apply to councils, land division committees or committees of adjustment (collectively called “committees” in this paper) for consent to transfer, mortgage, etc., in order to permit a transaction to occur.

Section 50 has a long history of amendments, changes, exceptions, exceptions to exceptions, and court interpretations that make it very technical. Most real estate lawyers would state that it is complicated, and that it contains illogical results and numerous traps. Often, applications for consent are brought where logic might suggest that they are unnecessary. Such applications are brought because they are necessary to ensure that a transaction does not contravene the subdivision control provisions of the *Planning Act*.

¹ Sidney Troister is a partner of Torkin Manes Cohen Arbus in Toronto. He was called to the bar in Ontario in 1974 and has a diversified commercial and real estate law practice. He is the author of *The Law of Subdivision Control in Ontario*, a text devoted to section 50 of the *Planning Act*. From 1990-2000, he was a co-head of the real estate section of the Ontario Bar Admission Course. He received the 2000 Award for Excellence in Real Estate Law from the Ontario Bar Association and is recognized by Lexpert magazine as one of the 500 Leading Lawyers in Canada. He acts as counsel to the Lawyers Professional Indemnity Company, the insurer for lawyers in Ontario and is regularly retained to correct *Planning Act* errors necessitating applications for consents and validations throughout Ontario.