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**** HIGHLIGHTS ****

- * A Justice of the Newfoundland Supreme Court reviews the principles necessary to establish adverse possession against lands claimed by the Government of Newfoundland and Labrador pursuant to the provisions of the Quieting of Titles Act (Newfoundland and Labrador) and the Lands Act (Newfoundland and Labrador). The Court observed that the doctrine of adverse possession has been abolished except in circumstances where adverse possessions are established for the 20 years preceding January 1, 1977. (*Walsh Estate v. Newfoundland and Labrador*, [CALN/2014-033](#), [2014] N.J. No. 308, Newfoundland and Labrador Supreme Court - Trial Division (General))

**** NEW CASE LAW ****

Walsh Estate v. Newfoundland and Labrador; [CALN/2014-033](#), Full text: [\[2014\] N.J. No. 308](#); 2014 NLTD(G) 120, Newfoundland and Labrador Supreme Court - Trial Division, (General) O'Regan J., October 16, 2014.

Adverse Possession with respect to Crown Lands -- Newfoundland and Labrador.

The Estate of John Walsh (the "Walsh Estate") brought an action against Her Majesty the Queen in Right of Newfoundland and Labrador (the "Crown") for a declaration that the Walsh Estate was the owner of 11.9 acres of land pursuant to the Quieting of Titles Act, [R.S.N.L., 1990, c. Q-3](#) (the "Act").

John Walsh had purchased 44 acres of land from John Smart and John Smart's two brothers in 1968.

The Smart brothers inherited the land from their father, Michael Smart. The deed of conveyance with respect to the land indicated that Michael Smart died in fee simple possession of the land in 1944 and bequeathed the property to his three sons.

In 2008, the Crown decided to expropriate the 11.09 acres of the land in question for the purpose of constructing an access road. The expropriation proceedings and any entitlement to compensation required John Walsh to provide good title. The Crown

opposed his claim on the ground that the Crown had never issued a grant of title with respect to the land and that John Walsh therefore did not have good title or any right to compensation.

John Walsh commenced a quieting of titles application in 2009 requesting that he be declared owner of all of the property, including the 11.09 acres expropriated by the Crown. He died in 2013 and the Walsh Estate continued the action. There never was a Crown grant for the land.

Subsection 13(3) of the Act provides a certificate of conveyance may be granted against the Crown if s. 36(2) of the Lands Act, [S.N.L. 1991, c. 36](#), applies (the "Lands Act").

Section 36 of the Lands Act provides:

- 36(1) Notwithstanding a law or practice to the contrary, no period of possession of Crown lands after December 31, 1976, counts for the purpose of conferring upon a person an interest in the lands so possessed unless the period is permitted to count as against the Crown for the constitution of that interest under or by virtue of an Act of the province, or as a condition of a grant, lease, licence or other document validly made or issued by or on behalf of the Crown under the Act.
- (2) The period of possession of Crown lands prior to January 1, 1977, which would, by the application of the law pertaining to the acquisition of an interest in land based upon open, notorious and exclusive possession existing prior to the enactment of this section, have been necessary to confer upon a person an interest in that land is considered to be, and always to have been, 20 continuous years.

Decision: O'Regan, J. concluded that adverse possession had been established in accordance with the Act and s. 36(2) of the Lands Act. The Walsh Estate was entitled to be compensated for the land [at para. 29 and 30].

O'Regan, J. observed [at para. 6] that s. 36 of the Lands Act abolishes adverse possession unless s. 36(2) of the Act applies. O'Regan, J. also observed the following must establish in order to prove adverse possession against the Crown [at para. 8]:

[8] It is now well established that to prove adverse possession against the Crown, the appellant in a quieting must show that he or his predecessor in title must have been in possession for 20 years preceding January 1st, 1977. In other words, that open, notorious and exclusive possession must have occurred from January 1st, 1957 to December 31st, 1976. See: *Ring v Newfoundland and Labrador*, [2013 NLCA 66](#) (CanLII), [344 Nfld. & P.E.I.R. 23](#), at paragraph 32; *Gough v. Newfoundland and Labrador*, [2006 NLCA 3](#) (CanLII), [253 Nfld. & P.E.I.R. 1](#).

O'Regan, J. observed [at para. 10] that although nothing prior to 1957 is relevant in establishing adverse possession, the fact that there is adverse possession prior to 1957 cannot be ignored. Each case of adverse possession must be considered in light of all the circumstances, and each case is unique where the circumstances are considered as a whole: *Newfoundland v. Collingwood* [1996] N.J. No. 33, 1996 CanLII 11066 (NL CA), 138 Nfld. & P.E.I.R. 1, 1 R.P.R. (3d) 233 (Nfld. C.A.).

Evidence considered by O'Regan, J. included Affidavit and oral evidence, including evidence that the Smart family had cleared the land and constructed rock walls and fences, and that the Walsh family had farmed the land, raising pigs, goats, stocking a fish pond and growing crops including Christmas trees, which were sold.

O'Regan, J. concluded [at para. 27 and 29] that there was abundant evidence that numerous acts which directly pointed to ownership, control and usage by John Walsh and his predecessor, and that the burden of proof required by s. 36(2) of the Lands Act had been met for the 20 year period in question.

**** CREDITS ****

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