

PROPERTY INTERESTS IN RESETTLED COMMUNITIES

Gregory French*

During the post-Confederation era in Newfoundland and Labrador, the provincial government incentivized movement from small, isolated communities to larger centres. However, the provincial government's program largely disregarded the property interest of occupants in their former communities. As such, some communities today are experiencing a renaissance as seasonal cabin property; however, the questions remain as to what interests may still exist, and what ownership rights may today be legally exercised in such resettled communities. This article will examine the history of the resettlement program, and the impact that resettlement has had on the property interests that exist and that may be acquired in resettled areas.

Much of the population of Newfoundland is today centred in urban areas, in towns and cities across the province. This is a recent development in the population geography of Newfoundland. For centuries, settlement was primarily strung along the rugged coastline of the island, where people resided in small, isolated fishing villages known as "outports". As Newfoundland industrialized throughout the later part of the 20th century, these outports depopulated, both by organic population decline and by government encouragement.

However, land titles in these abandoned and resettled communities were never determined with finality. Possessory titles and Crown grants linger on in these communities. Interest has arisen in these potential titles, primarily by people seeking to reclaim family land for potential development or preservation. This paper explores the options available to secure good title to land in resettled communities, and the status of such title in the absence of enforcement. The author suggests that quieting of title proceedings can properly be brought to claim fee simple ownership of property in resettled communities, although there may be restrictions imposed on development in some cases. This paper will explore the development of land title in outport Newfoundland, both in the rise of settlement and the decline of communities, and the status of such title today.

An understanding of the history of settlement and resettlement is necessary to understand the property law system of Newfoundland, and how these title issues in land have arisen.

A Brief History of Settlement

* B.A. (Hons.), LL.B., associate lawyer at Mills, Pittman & Twyne, Clarenville, NL.

When John Cabot first sailed into the waters off Newfoundland in 1497, the natural bounty of the sea was overwhelming. The wealth of the fishing stocks off of Newfoundland's shores made it a lucrative outpost for the English fishing fleet throughout the 16th century. Growth in the nascent colony of Newfoundland began in earnest in the early 17th century, and continued throughout the 18th and 19th centuries. This growth was based solely on exploitation of the fishery.¹ Fishing crews were brought over on merchant ships each spring and, as time went on, crewmen began to remain in the fishing ports during the winter, in order to preserve access in the next fishing season.

However, the British Parliament did not wish to encourage a permanent colonial population, which would lead to a domestic fishery in Newfoundland and competition with the transitory British fishing fleets. Accordingly, settlement on the coastline of Newfoundland was severely restricted.² The shoreline of Newfoundland was reserved expressly for the annual fishing fleets, and was declared to be public property by legislative fiat, with instruction to relinquish such property to public use.³ Penalties for settlement were severe—those who remained and illegally occupied the coastline would be ordered to leave and their property destroyed.⁴ Some posit that the draconian laws prohibiting settlement led to the wide dispersal of communities along isolated areas of the Newfoundland shore, and prevented communication and other linkages from developing, so that the existence of settlements could remain secret from those enforcing the British laws.⁵ Others note that settlements began with crew members remaining behind to secure fishing grounds and favourable ports on the coast (known as “Ships’ Rooms”), and that the wide dispersal of settlements arose because of the need to stake out unclaimed ports for exclusive use and to spread out the fishermen to broaden access to the fishing grounds.⁶

¹ John J Mannion, *The Peopling of Newfoundland: Essays in Historical Geography* (St John's, NL: Institute of Social and Economic Research, Memorial University of Newfoundland, 1977) at 5-12.

² See “Western Charter of 1634” *Newfoundland and Labrador Heritage Web Site*, online: <www.heritage.nf.ca/lawfoundation/articles/doc1_1634charter.html>. This was amended in 1670 to bar settlers from travelling to Newfoundland and limiting ships' crews' access to Newfoundland. Those settlers already in Newfoundland were ordered to release their shoreline claims unto the British fishing vessels: see Alexander Campbell McEwen, *Newfoundland Law of Real Property: The Origin and Development of Land Ownership*, microfiche (PhD Dissertation, University of London, 1978) at 29-31.

³ *An Act to Encourage the Trade to Newfoundland, 1698* (UK), Imp Act 10 & 11 Will III, c 25, ss 5-6.

⁴ AP Dyke, “Subsistence Production in the Household Economy of Rural Newfoundland” in Michael L Skolnik, ed, *Viewpoints on Communities in Crisis* (St John's, NL: Institute of Social and Economic Research, Memorial University of Newfoundland, 1968) 29.

⁵ *Ibid.*

⁶ See e.g. Parzival Copes, *The Resettlement of Fishing Communities in Newfoundland* (Ottawa: Canadian Council on Rural Development, 1972) at 1; Noel Iverson & D Ralph Matthews, *Communities in Decline: An Examination of Household Resettlement in Newfoundland* (St John's, NL: Institute of Social and Economic Research, Memorial University of Newfoundland, 1968) at 1. The author would suggest that this theory is the preferred origin story for the widely dispersed pattern of settlement, rather than the alternative theory of a conscious effort to surreptitiously live outside the scope of an otherwise absentee government.

Whether by conscious choice or by incidental development, the end result was that hundreds of small villages developed along the rugged coastline, accessible only by boat and far removed from the resources and services of larger centres. Over time, these seasonal ports grew to become permanent settlements as fishermen stayed over winter and immigrated with families in tow.⁷ The reality of the growing settler population of Newfoundland had to be addressed and acknowledged by the British Parliament, particularly with regard to the relatively large settlement developing at St. John's. Ultimately, Crown grants became available in St. John's in 1811, and across Newfoundland in 1824.⁸

By 1816, the population of Newfoundland measured some 50,000, largely spread along the coastline in small outpost villages.⁹ For centuries, these communities had a single industry—the small-scale inshore fishery, conducted by open boat on the ocean. Some other subsistence activities took hold (though rarely if ever on a commercial scale), including agriculture, keeping livestock, and harvesting timber.¹⁰ Few of these outpost communities grew to more than 200 people, and estimates suggest there were some 1,100 outposts in Newfoundland by the time of Confederation in 1949.¹¹

Economically, these outposts had no opportunity to develop beyond their limited focus on the fishery. There was no effort at economic diversification prior to Confederation. Geographic isolation, coupled with a near-total lack of transportation network connecting outposts to larger centres, prevented modernity from taking hold. Goods and provisions were provided to the outposts by merchants who sold goods and equipment to fishermen on credit, which would be repaid by the fishermen through their seasonal catch. What resulted was the outpost population's complete economic reliance on the merchant, who set both the sale price for the goods as well as the purchase price for the catch; outpost life became effectively cashless, operating solely

⁷ Iverson & Matthews, *ibid.*

⁸ *Saint John's, Newfoundland Act, 1811* (UK), 51 Geo III, c 45. The *Newfoundland Fisheries Act, 1824* (UK), 5 Geo IV, c 51, repealed *An Act to Encourage the Trade to Newfoundland, 1698* (*supra* note 3), and the restrictions on land occupation that it imposed. Sections 14 and 15 of the 1824 Act disbanded the fishery restrictions on shoreline lands and allowed grants in fee simple.

⁹ Kevin Major, *As Near as to Heaven by Sea: A History of Newfoundland and Labrador* (Toronto: Penguin Books, 2001), at 185-186.

¹⁰ *Supra* note 4 at 29-33.

¹¹ Iverson & Matthews, *supra* note 6 at 1.

on merchant credit.¹² History and academic literature is replete with examples of the abuses that this system engendered.

The impact of this settlement history and longstanding economic feudalism bore itself out in the treatment of real property. For the first centuries of settlement, the mere act of possessing shoreline property in Newfoundland was a prohibited offence. Given that all European settlement in Newfoundland was along the shoreline, this amounted to a blanket repudiation of real property interests of the settler population.¹³ Naturally, the ownership of land was given little thought in light of this.¹⁴ Nevertheless, the lack of officially sanctioned land title was no hindrance to the settlement and occupation of the coast for many generations. The lack of governmental intervention in settlement, either in active enforcement of the prohibition on settlement or in granting title to settlers, allowed land title to develop organically in these self-sufficient communities. The freedom to simply occupy otherwise unoccupied land provided little incentive to seek out formal title (a familiar practice to those engaged in real estate law in Newfoundland, even to the present day). In spite of such *laissez-faire* attitudes to property ownership, the residents of some outports do appear to have obtained Crown grants to their lands, whether for personal investment or because these communities were settled at later dates when title could be obtained by grant.

For the construction of dwelling houses in outports, there was no involvement of banks or other lending institutions. The general state of poverty and lack of cash in the outports would have made it a worthless endeavour for banking, and few fishermen could be expected to qualify for mortgages. Instead, the family and friends of the owner generally built the houses in the community.¹⁵ During the post-Confederation efforts to resettle these isolated areas, the provincial government was concerned about

¹² *Supra* note 9 at 186; Patrick O’Flaherty, *Lost Country: The Rise and Fall of Newfoundland, 1843-1933* (St John’s, NL: Long Beach Press, 2005) at 5-6. Both authors note that this system continued well into the 20th century in outport Newfoundland.

¹³ This was remarked upon in one of the earliest reported Newfoundland property law cases. In *The King v Cuddihy* (1831), 2 Nfld LR 8, a panel of three judges of the Supreme Court of Newfoundland considered the scope of the property ownership restrictions imposed by the 17th century acts, stating (at 21) that “[t]hat portion, therefore, of the land which was not clothed with the character of ‘Ships-rooms’, either under the Acts of William or of George the Third [which barred private ownership by settlers], must have been, comparatively, very small indeed”.

¹⁴ Note that this complication would endure as civil society took hold in Newfoundland, and after the lifting of the prohibitive acts. Some early cases of the Supreme Court of Newfoundland had to grapple with property rights in this unsettled system—see e.g. *R v Row* (1818), 1 Nfld LR 126 at 127 (“I shall abstain from entering into the general question as to what is real property in Newfoundland; a question which has been carefully avoided by all my predecessors and which I am not disposed to invite.”); and also *R v Kough et al* (1819), 1 Nfld LR 172 at 173 (“The question of property had often been agitated, but never fully determined.”).

¹⁵ David Mills, “The Development of Folk Architecture in Trinity Bay, Newfoundland”, in Mannion, *supra* note 1 at 98.

introducing outport residents to “unaccustomed responsibilities”, such as “the familiar loan and mortgage”, which was “unfamiliar to most outport Newfoundlanders and [viewed] with some misgiving”.¹⁶ Mortgages were new and unfamiliar to those who had neither the need nor the resources to acquire one.

Similarly, civil society was weak in rural Newfoundland. Municipal government was nonexistent outside of the city of St. John’s, which was incorporated in 1888, and small local councils only began in larger centres in the early 20th century.¹⁷ The spread of municipal governance stopped during the economic collapse of the colony in the 1930s, when Newfoundland voluntarily relinquished its democracy in favour of a Commission of Government appointed by London.¹⁸ Even following Confederation, local government still progressed glacially—by 1961, there were only 94 incorporated towns in Newfoundland and Labrador, comprising 46% of the population.¹⁹ Almost all outports were without any form of local government whatsoever.²⁰ Indeed, a rural population that had grown accustomed to living so independently was not overly enthusiastic to be subject to a new layer of government and taxation. Many communities resisted even basic municipal structure for fear of paying new taxes, and because of distrust of local government.²¹ The lack of any municipal government structure in outports further inhibited comprehensive land titling, as there was no municipal government maintaining tax rolls or other records of ownership.²²

A Brief History of Resettlement

Outports carried on—even thrived—for the first several centuries of Newfoundland’s history. But modernity could not be kept at bay forever. By the 20th century, a railway system had developed across Newfoundland, linking one end of the island to the other, connecting the settlements of the colony to one another like never before. The interior

¹⁶ Government of Newfoundland, *Report on Resettlement in Newfoundland*, by Robert Wells (St John’s, NL: 1960) at 9-10.

¹⁷ O’Flaherty, *supra* note 12 at 164, 252.

¹⁸ *Ibid* at 396.

¹⁹ Copes, *supra* note 6 at 48.

²⁰ *Ibid*.

²¹ Robert DeWitt, *Public Policy and Community Protest: The Fogo Case* (St John’s, NL: Institute of Social and Economic Research, Memorial University of Newfoundland, 1969) at 42-43.

²² The author notes parenthetically that this system exists to a significant degree today; approximately 10% of residents of Newfoundland and Labrador reside outside of municipalities in unincorporated areas with no local government. See Joe O’Connor, “Tax-free Utopia: Newfoundlanders in Unincorporated Areas Pay no Municipal Taxes. How Long can it Last?” *National Post* (27 September 2013), online: <www.nationalpost.com>.

of the island, far removed from the traditional fishery, began to develop industrially as a source of wood, pulp, and paper. Mining projects began in the centre and west of the island. Industrialization came to Newfoundland and offered its young men employment opportunities away from the fishery, which had never before existed.

The true catalyst for change in outport Newfoundland was the outbreak of the Second World War, and the rapid development of American military bases in the colony, notably in the communities of Argentia, Stephenville, and Gander, as well as in St. John's, and in the then-unpopulated centre of Labrador. Suddenly, gainful employment—for cash, rather than for merchant's credit—was available to the working population, at work that did not require the risk of life and limb that the fishery had demanded of so many generations. As young people gravitated to these new jobs in thriving settlements, the true nature of their longstanding deprivation became all too apparent to them. The younger generation, coming of age in a time of unprecedented prosperity beyond their communities, and exposed to the cultures of Americans and Canadians coming through the military bases, suddenly gained insight into all the things they did not have, had never had, and could not have in their outport communities.²³ Indeed, many outports did not have schools, shops, post offices, churches, or electricity, let alone medical care or other basic necessities.²⁴ The prospect of returning to subsistence life in an isolated, far-flung village kept many young people from returning to their home communities. So began the inexorable decline of the most isolated of outports. Without any government incentive or involvement, some communities organically grew smaller and were ultimately abandoned or depopulated. Approximately 46 communities are believed to have become abandoned between 1945 and 1953.²⁵

The natural depopulation of these isolated communities dovetailed nicely with the goals of Premier Joseph R. Smallwood to modernize and industrialize the woefully underdeveloped province of Newfoundland. As a province of Canada, Newfoundland lagged terribly behind the rest of its new sister provinces, due in no small part to the poverty of the outports. The cost of modernizing these tiny communities, scattered far and wide along thousands of miles of coastline, would have been far too prohibitive. Connecting these isolated villages to the railway or to a road network was not feasible, and providing even electricity or telephone service was not possible, due to the same problems of isolation and inhospitable terrain. Rather than

²³ *Supra* note 16 at 14; *supra* note 21 at 21-28.

²⁴ See *supra* note 16 as a general source canvassing the conditions in dozens of communities targeted for the resettlement program.

²⁵ Copes, *supra* note 6 at 101.

try to develop every tiny village in every bay and cove of Newfoundland, it was far more practical to develop only those communities that appeared sustainable.

The Centralization Program: 1953-1965

In 1953, the Government of Newfoundland began a formal “Centralization Program” to encourage residents of isolated outports to relocate to larger centres.²⁶ Rather than expend the cost of bringing these communities to modernity, the provincial government preferred the less costly option of moving the inhabitants of such communities to more populated and serviced areas.²⁷ This program was operated by the Department of Public Welfare, and offered a maximum payout of \$600.00 toward the cost of moving.²⁸ This program required unanimous consent of the families residing in a community before funds would be provided for relocation.²⁹ The program was described in government literature as follows:

One point must be made clear in the beginning, and it is that the Government will not move people, or in any way force them to move. What it will do is help them to move if they are absolutely sure that is what they want. The way that the Government can help is by giving money to householders to help pay the cost of moving.³⁰

Application under the Centralization Program involved holding a town meeting to establish community interest. If such was approved, then the resident Welfare Officer would be notified, and the Department of Public Welfare would consider the community’s application. If it was granted, money would be provided to each family to assist with the cost of moving.³¹ There was no restriction on the destination for relocated families, nor does there appear to have been any formal execution of documents or conveyance of property associated therewith. Rather, the money was provided only as moving assistance. It appears that the Centralization Program did not consider the assistance paid to families as defeasing property interests held in the communities to be resettled.³²

²⁶ Copes, *ibid* identifies the formal start date of the Centralization Program as 1 January 1954. However, other sources indicate that this program was operational from March 1953: see *supra* note 16 at 11; Iverson & Matthews, *supra* note 6 at 2.

²⁷ *Supra* note 16 at 2-7.

²⁸ Iverson & Matthews, *supra* note 6 at 2.

²⁹ Newfoundland, Office of the Premier, *What You Need to Know About the Government’s Policy on Centralizing Population*, by Robert Wells (St John’s, NL: 1959) at 3.

³⁰ *Ibid* at 3. The introductory page of this booklet indicates that it was distributed to schools across Newfoundland. It is addressed “Dear Principal”, and states in part: “We hope you will display this pamphlet, particularly in smaller schools in settlements where centralization may be of considerable interest”.

³¹ *Ibid* at 4-5.

³² See *supra* note 16 at 16: “Consider the position of the householder desiring to resettle. If he cannot transport his home to the new location, the actual physical structure becomes worthless. He must leave it where it is, or, if he can sell it, its value in a place which is about to be vacated is negligible.”

Formal government institution of a resettlement program was not necessarily foisted on an unwilling population. While people in some cases were saddened to leave the communities that had been home to their families for centuries, there appears to have been a general resignation that the loss of the community was inevitable. Many outport residents were taken with a sense of hopelessness and pessimism—poor fish harvests, the poor state of education for their children, the nonexistent state of healthcare, the high cost of living, a disadvantageous (if not outright crooked) merchant system, and isolation from the world around them all played a role in the decline of outport Newfoundland.³³ Tellingly, some of the communities that were most motivated to relocate were not the most isolated. Rather, it was those communities on the periphery of development—close enough to see prosperity and modernity, but too far away to take part—that were the first to agitate for resettlement assistance.³⁴

Between March of 1953 and February of 1959, 29 communities were resettled with “Provincial grants-in-assistance”—the government’s term for the resettlement funds.³⁵ Further public inquiry in the autumn of 1957 identified 199 other communities that the provincial government felt ought to be resettled.³⁶ By the end of the Centralization Program in 1965, 115 communities had been resettled.³⁷

Fisheries Household Resettlement Program: 1965-1975

On 1 April 1965, the Fisheries Household Resettlement Program, a joint federal-provincial program administered by the Newfoundland Department of Fisheries, replaced the Centralization Program.³⁸ To apply, a representative of the community would have to have a two-page petition completed and sent to the Department. At least 90% of the community was required to support the resettlement petition.³⁹ Unlike the Centralization Program, the Fisheries Household Resettlement Committee (consisting of five representatives of the federal Department of Fisheries and 10 representatives of the provincial government) had to approve the request for resettlement and approve the destination communities for resettled families.⁴⁰ Payouts were higher under the new program: \$1,000.00 per household, plus \$200.00 for each individual in the

³³ *Supra* note 21 at 26.

³⁴ See Skolnik, *supra* note 4 at 16.

³⁵ *Supra* note 16 at 2. See Appendix A for a list of these communities.

³⁶ *Ibid* at 2; the Report’s author noted that some of these communities had become abandoned on their own by the time the Report was completed in 1960.

³⁷ Copes, *supra* note 6 at 102.

³⁸ Government of Newfoundland, *What You Need to Know About the Fisheries Household Resettlement Program*, cited in Appendix A of Iverson & Matthews, *supra* note 6 at 145.

³⁹ *Ibid* at 146-148; Copes, *supra* note 6 at 102 noted that this standard was quickly dropped to 80%; Iverson & Matthews, *supra* note 6 note that it was subsequently lowered again to 75%.

⁴⁰ Iverson & Matthews, *supra* note 6 at 3.

household, plus the cost of moving personal belongings.⁴¹ However, the new program was also more explicit in dealing with the community to be resettled:

Under the Federal-Provincial Agreement the Government of Newfoundland in the name of the Crown has the right to prohibit resettlement in any abandoned community. It should be clearly understood that after a community has been abandoned and all the property removed, or as much of the property as the householder wishes to remove; the Government of Newfoundland has a right to declare the community evacuated. At such time any remaining property such as land and structures thereon reverts to the Crown. However, where a fisherman intends to return and prosecute the fishery from his former premises which would include his former dwelling permission may be granted for seasonal use only upon application to the Minister.⁴²

To enact the threatened prohibition on settling in communities under resettlement, the governing legislation of the new Fisheries Household Resettlement Program provided for the making of regulations as to “the surrender of property in evacuated settlements” and “the acquisition of land in resettlement areas”.⁴³ This demonstrates an intention to go further than the Centralization Program ever did. Property interests under the Centralization Program were governed by the *Evacuated Communities Act*, which was passed in 1960.⁴⁴ That Act permitted the provincial government to declare a community “vacated” when its residents had left the community and received financial compensation for their relocation.⁴⁵ The *Evacuated Communities Act* did not provide authority for the return of property to the Crown. In spite of the new authority under the *Resettlement Act*, no regulations dealing with the surrender of property appear to have been passed as part of the Fisheries Household Resettlement Program. Despite the government’s public declaration in its informational pamphlets that “land and structures thereon reverts to the Crown” upon a declaration that a community is “evacuated”, this was simply not the case. The *Evacuated Communities Act* did not extend that far, and no authority was granted by regulation under the *Resettlement Act*.

⁴¹ *Ibid* at 3. See also *Fisheries Household Resettlement Regulations*, Nfld Reg 102/65.

⁴² *Supra* note 38 at 149-150. Iverson & Matthews, *supra* note 6 at 146 note that this pamphlet was made available by the provincial Department of Fisheries as a summary of the new resettlement program, and that the pamphlet has no date or authorship indicated.

⁴³ *Resettlement Act*, SN 1965, No 48, ss 4(f), 4(k).

⁴⁴ SN 1960, No 54.

⁴⁵ *Ibid*, s 2(a).

The Fisheries Household Resettlement Program ran from 1 April 1965 to 31 March 1970, and was renewed for a further five years thereafter.⁴⁶ Between 1965 and 1975, 148 communities were resettled.⁴⁷

Though there appears to have been a general consensus in outports that resettlement was the only route to a better life for the families and children, it was not without a heavy heart. Families had lived in these communities for generations, even centuries. Land had been passed down from father to son through the years. Parents, grandparents, and ancestors were buried in the churchyards. Ties to these communities were strong. Moving from the community and shuttering it forevermore was no easy task from an emotional standpoint. Compounding the heartache was the perception, in some areas, that the resettlement program was voluntary in name only, and was nothing more than a government plot to save money at the expense of their communities.⁴⁸ References to resettlement on television and radio, as well as speeches by visiting government ministers and Members of the House of Assembly, gave an impression that resettlement was a foregone conclusion, whether desired or not.⁴⁹

Modern Resettlement: 1975 to Present

It should be noted that resettlement still exists today, although perhaps not as formally encouraged by government as in years past. Since 1975, it appears that only four communities have been resettled and declared evacuated.⁵⁰ The impetus today is upon the residents of the communities themselves to seek resettlement assistance from the provincial government, namely from the Department of Municipal Affairs.⁵¹

⁴⁶ Copes, *supra* note 6 at 103. More on the changes made in the Second Fisheries Household Resettlement Program (1970-75) can be found in Melanie Martin, “The Second Resettlement Programme” *Newfoundland and Labrador Heritage Web Site* (2006), online: <www.heritage.nf.ca/law/dree.html>. Most changes were minor and the program continued largely as before.

⁴⁷ “No Great Future: Government Sponsored Resettlement in Newfoundland and Labrador Since Confederation” *Maritime History Archive* (May 2010), online: <www.mun.ca/mha/resettlement/rs_intro.php>

⁴⁸ *Supra* note 21 at 31.

⁴⁹ *Ibid.*

⁵⁰ *Vacated Communities of Great Harbour Deep, Petites and Big Brook Order*, NLR 25/11; *Vacated Community of Grand Bruit Order*, NLR 52/10. A separate order was issued regarding Great Harbour Deep, declaring it vacated effective 1 November 2002: see *Order Respecting Great Harbour Deep (Public Notice)*, (2002) NL Gaz I, 789.

⁵¹ See “Decision Time; Grand Bruit Residents Offered up to \$100,000 to Relocate”, *The Western Star* (24 September 2009), online: <www.thewesternstar.com>; Government of Newfoundland and Labrador (Municipal and Provincial Affairs), News Release, NLIS 5, “Community of Big Brook to be relocated” (13 February 2004), online: <www.releases.gov.nl.ca/releases/2004/mpa/0213n05.htm>; Government of Newfoundland and Labrador (Municipal and Provincial Affairs), News Release, NLIS 11, “The community of Petites to be relocated” (9 July 2003), online: <www.releases.gov.nl.ca/releases/2003/mpa/0709n11.htm>. The modern process is also defined in *Fudge v Newfoundland and Labrador (Minister of Municipal Affairs)*, 2013 NLTD 14 at para 3, 333 Nfld & PEIR 287 [Fudge].

Categorization of Vacant Communities in Newfoundland

Based on the foregoing history, it is perhaps easiest to classify these depopulated communities into one of three groups:

1. **Abandoned Communities:** Those that were never formally resettled by government incentive programs and which naturally depopulated.
2. **Resettled Communities:** Those communities that were abandoned by their residents under government incentive programs from 1953 through the present day. These communities did not naturally depopulate and received government assistance to move their residents.
3. **Evacuated Communities:** Resettled Communities that have formal restriction on use and occupancy by government order under the *Evacuated Communities Act*, from 1960 to the present day. These Resettled Communities were formally declared evacuated under the *Evacuated Communities Act*. While one would presume that all Resettled Communities are Evacuated Communities, this does not appear to be the case. An Evacuated Community had to be declared by the Minister responsible for the *Evacuated Communities Act*, which was a separate step from the disbursement of resettlement funds.⁵²

The Legal Framework of Resettlement

Until 1960, resettlement appears to have been a fairly informal process. There does not appear to be formal legislation governing the terms and conditions attached to financial assistance; rather, it was governed by the policy of the Department of Public Welfare, which did not address issues of land title in these to-be-resettled communities.⁵³

The *Evacuated Communities Act* appears to be the first legislative act dealing with the issue of Resettled Communities themselves.⁵⁴ The Minister of Welfare could make an order declaring a community vacated if the residents had left and taken financial assistance. Such an order would make it an offence to construct or occupy a building in an Evacuated Community without a permit, punishable with a maximum fine of \$200.00 or imprisonment of no more than six months.

The *Resettlement Act* was passed in 1965.⁵⁵ This Act elaborated upon the administration of the resettlement program, but did not deal with the property interests in Resettled Communities, except to permit regulations to deal with same. No such

⁵² See *infra* notes 58-61.

⁵³ See *supra* notes 6, 16.

⁵⁴ *Supra* note 44.

⁵⁵ *Supra* note 43.

regulations were passed.⁵⁶ Instead, the dominant legislation dealing with property interests in Resettled Communities appears to have still been the 1960 *Evacuated Communities Act*, governed by the Department of Welfare.⁵⁷ It appears that the *Resettlement Act* regulations relied on the *Evacuated Communities Act* for dealing with real property in Resettled Communities.⁵⁸ Strangely, the *Resettlement Act* and the *Fisheries Household Resettlement Regulations* largely mirror the provisions of the *Evacuated Communities Act* without making reference to that Act, in spite of the *Evacuated Communities Act* remaining in force and in use at that time. The declaration of evacuation of a community therefore appears to have remained the province of a separate government ministry, rather than the Fisheries Household Resettlement Committee.⁵⁹ The *Fisheries Household Resettlement Regulations* may have vested the same power in the Minister of Fisheries, although if this was indeed the case the power does not appear to have been used.⁶⁰

The *Evacuated Communities Act* remains in effect today in very much the same form as the original 1960 legislation.⁶¹ Resettlement today still resembles in substance the old Centralization Program or Fisheries Household Resettlement Program, in that money is given to allow permanent residents of a community to take up residence elsewhere.⁶²

Communities to be evacuated under the *Evacuated Communities Act* are evacuated by ministerial order or by regulation.⁶³ During the heyday of resettlement, it appears that few orders or regulations were made declaring communities vacated.⁶⁴

⁵⁶ The author has again had the assistance of the staff at the Law Society of Newfoundland law library to attempt to locate any regulations under this Act. The only such regulation identified is the *Fisheries Household Resettlement Regulations*, *supra* note 41.

⁵⁷ Note that all regulations evacuating communities are made under the *Evacuated Communities Act*, *supra* note 44, rather than the *Resettlement Act*, *supra* note 43. See *infra* notes 65-67.

⁵⁸ The *Fisheries Household Resettlement Regulations*, *supra* note 41, permits the “Minister” to prohibit occupancy and to remove buildings in “evacuated communities”; see ss 11-12. There is no definition of “evacuated communities” in the *Resettlement Act*, *supra* note 43 or the *Regulations* aforesaid.

⁵⁹ This has evolved over time from the Department of Welfare to the Department of Rural Development to, at present, the Department of Municipal and Intergovernmental Affairs.

⁶⁰ *Supra* note 41. Note that the Regulations refer only to the “Department of Fisheries for the province” and make references to the “Minister” without defining the term. Either the Minister of Fisheries had a similar authority under the Regulations, or the Regulations implicitly incorporated the *Evacuated Communities Act*, *supra* note 44, without an express reference to same. As no relevant regulations have been discovered under the *Resettlement Act* and there are several dealing with the *Evacuated Communities Act* subsequent to 1965, one must conclude that the latter Act was the proper route for dealing with a Resettled Community.

⁶¹ RSNL 1990, c E-15. The author notes parenthetically that there has been very little amendment to this legislation, such that even the \$200.00 fine has remained constant for over 50 years.

⁶² The policy is explored in some detail in *Fudge*, *supra* note 51.

⁶³ While most Evacuated Communities were declared by regulation, an order (published in the Gazette without a regulation number) was used on at least one occasion without a subsequent regulation. See Appendix B. The author has had the assistance of the Law Society of Newfoundland and Labrador library staff in attempting to locate all orders and regulations under the *Evacuated Communities Act*.

⁶⁴ See Order (Community of Union East) (24 January 1961) N Gaz, Vol XXXVI No 4 pg 1; and the *Evacuated Communities Order, 1966*, N Reg 39/66, which declares five communities to be vacated.

The *Evacuated Communities Order, 1974*⁶⁵ appears to have swept up the loose ends of 20 years of resettlement by declaring 279 communities evacuated, all of which had been vacated prior to 31 December 1971. It is questionable whether or not this 1974 Order reflects the entirety of communities resettled between 1953 and 1971, and may or may not include Abandoned Communities.⁶⁶

The author is not aware of any prosecutions under the *Evacuated Communities Act*. The reasons for this may be twofold. Firstly, for many years after the initial resettlement, there would be no practical reason to return to the vacated community on a permanent basis, and consequently no offenders to speak of. Secondly, it is quite doubtful that there is or has been any active enforcement of the *Evacuated Communities Act*, particularly when dealing with isolated and far-removed areas of the province. Given the intent of the resettlement program, one would not expect government resources to be expended to enforce the continued vacancy of these areas. The restrictions on the land, and the right to order a community vacated, would better accord with the legislative intent of abandoning all responsibility for these communities going forward, and ensuring that the expense of providing services would not arise. Indeed, occupying Resettled Communities is permitted under the *Evacuated Communities Act*, with the appropriate government permission.⁶⁷

While restrictions on construction and occupation are imposed, there does not appear to have been any legislative resolution of the question of property interests remaining in the land in these Resettled Communities. For this, one must examine the general law of property of Newfoundland, and determine whether or not a proprietary interest in land in a Resettled Community can still be conferred today.

Public Interest in Newfoundland Property

Today, rural Newfoundland is seeing a resurgence unlike any it has heretofore known. The generation that were children during resettlement are retiring, and many are looking to return to their ancestral lands, to connect with the communities of their youth. At the same time, Newfoundland is becoming an increasingly popular destination for tourists from around the world. There is suddenly demand for the land and properties that had no value at all for decades. Homes in those outports that had

⁶⁵ N Reg 11/74. See also the *Evacuated Communities (Amendment) Order, 1974*, N Reg 75/74, which removes one community from the original Order.

⁶⁶ Not all communities listed as resettled in Appendix A are included in N Reg 11/74 or any other known order. Also see *White v Bennett*, 2010 NLTD 208, 303 Nfld & PEIR 147, where Handrigan J dealt with an easement issue in the resettled community of Molliers. This community is not listed in the *Evacuated Communities Order, 1974*, *ibid*, or in any other known order.

⁶⁷ *Supra* note 61, s 5 permits occupancy and construction permits to be issued by the provincial government, however no regulations relating to the issuance of permits (as contemplated under s 6) appear to have been passed as of the date of writing. The author is aware of such permission having been given in the form of a letter from the appropriate government department overseeing the *Evacuated Communities Act*.

survived resettlement—communities that had been at the brink of dying off just short years ago—are now in demand as summer homes for Canadian, American, and European tourists, who are taken by the natural beauty and tranquility of these areas.

It is becoming more common to see interest in vacant lands in rural Newfoundland, whether for sentimental reasons or for more practical reasons. Land values have increased dramatically over the last several years in rural areas of Newfoundland, and tourism may well be an all-time high. Those who wish to obtain title to particularly pristine and scenic plots of land, or those wishing to reclaim their family's long-deserted property, now find themselves trying to determine who actually owns the land, in order to obtain clear title. Whether for personal development or for resale, the land would otherwise be worthless without certified title. Those seeking to develop lands today are not usually as carefree as the original settlers were regarding their ownership interests prior to constructing or developing the land.

Principles of Newfoundland Property Law

As is common knowledge to those who practice real property law in Newfoundland, good title must be rooted in either a Crown grant or in adverse possession of sufficient duration to defease the Crown. Adverse possession against the Crown must have occurred prior to 1 January 1977, for a period of 20 years.⁶⁸ Recent case law has confirmed that the relevant period of possession must span the 20 years immediately prior to 1977—that is, from 31 December 1956 to 1 January 1977.⁶⁹ Although the main era of resettlement ended in 1975 with the conclusion of the Fisheries Household Resettlement Program, if one did maintain boundaries and some seasonal use of the property until 1977, an argument could be made that seasonal use could rise to the level of open, notorious, continuous, and exclusive possession. However, the high threshold of necessary use to establish adverse possession may preclude reliance thereon in any community that was completely vacated.⁷⁰ In instances where buildings or physical structures were left standing in Resettled or Evacuated Communities, it may be possible to claim continuous occupation of the land if there was some regular or seasonal use to at least 1977.⁷¹ While adverse possession against the Crown may not be available in many cases, the author is aware of at least one successful quieting

⁶⁸ *Lands Act*, SNL 1991, c 36, s 36.

⁶⁹ *Ring v Newfoundland and Labrador*, 2010 NLTD 141, 328 Nfld & PEIR 119; aff'd 2013 NLCA 66, 344 Nfld & PEIR 23.

⁷⁰ See *Russell v Blundon* (1999), 185 Nfld & PEIR 181 at paras 45-55, 29 RPR (3d) 130 (Nfld SC(TD)); *Strickland v Murray* (1977), 17 Nfld & PEIR 368, 6 RPR 39 (Nfld SC(TD)); *Wickham v Wickham (No 1)* (1977), 17 Nfld & PEIR 452 at 492, 46 APR 452 (Nfld SC(TD)); *Crowley v. Crowley* (1984), 51 Nfld & PEIR 140, 150 APR 140 (Nfld SC(TD)).

⁷¹ *Newfoundland v Collingwood* (1994), 116 Nfld & PEIR 194 at paras 47-54, 363 APR 194 (Nfld SC(TD)); aff'd (1996), 138 Nfld & PEIR 1, 431 APR 1 (CA).

claim to land in an Evacuated Community based upon long possession prior to resettlement.⁷²

In a community where a Crown grant exists to land, it is possible to rely on that grant for the proposition that the Crown has already become defeased of the property, and thus the 20-year limitation period prior to 1977 is unnecessary. The *Evacuated Communities Act* does not make any provision for the return of real property to the Crown upon resettlement of a community, and government information of the time indicates that money was given solely for the purpose of assisting a move rather than an outright acquisition of the land.⁷³ As such, the only question is the claim of other private individuals, whose claims expire after 10 years.⁷⁴ The author suggests that as many as 20% of resettled outports may have at least one Crown grant affecting land therein.⁷⁵ This would provide a reasonable basis for the last known user of the land to seek a quieting, as the concerns of adverse possession of the Crown do not arise.

On the issue of abandonment, the long-established principle is that “[v]acant’ land—‘abandoned’ land, (where title is involved) is an impossibility”.⁷⁶ As such, someone must remain seised of the land at all times. If the Crown has alienated its interest, the Crown must provide notice of an intention to seek repossession of the land and must actually instigate proceedings to do so.⁷⁷ Even if the land has long since been abandoned by a grantholder or successor thereof, until a declaration of abandonment is made under Part II of the *Lands Act*, the lands in question would remain the property of the original claimant rather than the Crown.⁷⁸ An adverse claimant or other titleholder can alienate Crown Lands with proof of sufficient use and occupation for the operative period in the *Lands Act*—being 1956 to 1977.

⁷² See *Re Webster Quieting of Titles* (1 April 1993), St. John’s, Nfld SC(TD) 1992 B No 48 (certificate), in which Mercer J granted a quieting to land at Pope’s Harbour, which was evacuated by the *Evacuated Communities Order, 1974*, *supra* note 65. The author notes that there are Crown grants in Pope’s Harbour, and the quieting was at least partly contiguous with granted land.

⁷³ See *supra* notes 6, 16.

⁷⁴ *Limitations Act*, SNL 1995, c L-16.1, s 7(1)(g).

⁷⁵ Of approximately 170 communities listed in the *Evacuated Communities Order, 1974*, *supra* note 66, which were searched by the author using mapping at the Crown Lands Registry, Crown grants were present in the vicinity of 35 communities as identified in Crown Lands’ mapping. However, due to the imprecise nature of settlements and the boundaries thereof, and without reviewing the physical grants, it is not generally possible to authoritatively state whether or not a given grant is within the resettled community itself or merely adjacent thereto. Nevertheless, Crown Lands mapping strongly indicates that some outports were at least partly subject to Crown grants. Given the successful quieting in *Re Webster Quieting of Titles* (*supra* note 73), it can be confirmed that there are Crown Grants in some resettled communities.

⁷⁶ *Bentley v Peppard* (1903), 33 SCR 444 at para 2; *Matchless Group Inc v Carpasia Properties Inc*, 2002 NLCA 56 at para 14, 216 Nfld & PEIR 206.

⁷⁷ *Supra* note 68, ss 43-52.

⁷⁸ *Gough v Newfoundland and Labrador*, 2006 NLCA 3 at paras 21-22, 253 Nfld & PEIR 1.

Thus, the author would suggest that quietings can still be validly brought in relation to Resettled Communities, and even to Evacuated Communities. While Evacuated Communities would still require a permit to construct or occupy, an individual could still take ownership and possession of the lands therein. Where no regulation exists declaring a Resettled Community as evacuated, there does not seem to be any impediment to construction and occupation.

Conclusions

The resettlement program did not eliminate property interests in Resettled Communities or even in Evacuated Communities. Rather, resettlement followed by formal evacuation only imposed restrictions on the use and occupancy of the land. If no formal evacuation order was made, then no statutory restrictions exist.

Where property interests were continued in some way post-resettlement, ownership interests in Abandoned Communities and Resettled Communities may continue and carry forth validly by standard adverse possession, or as evidence on a quieting claim. As the Crown did not formally take repossession of land under any resettlement legislation, ancient Crown grants would seem to remain as valid dispositive instruments of the Crown's interest. Thus, it is possible for individuals to obtain title to property in Abandoned, Resettled, or Evacuated Communities, in much the same way as title is established today.

APPENDIX A:**Resettled Communities Under the Centralization Program (1953-1959)**⁷⁹

1. Bragg's Island
2. Bonald's Island
3. Barge Bay
4. Brunette Island
5. Cape Cove
6. Coward's Island
7. Corbin
8. Deer Island
9. Dog Cove
10. Trinity, Bonavista Bay (East Side)
11. Flat Island
12. Femme
13. Green's Harbour
14. Great Harbour
15. Head's Harbour
16. North Island
17. North West Arm
18. Pinchard's Island
19. Pardy's Island
20. Port Nelson
21. Paul's Island
22. Round Harbour
23. Raymond's Point
24. Red Island
25. Safe Harbour
26. Sydney Cove
27. Sound Island
28. Sandy Hill
29. Woodford's Cove

⁷⁹ Identified from *supra* note 16 at 11.

APPENDIX B:
Evacuated Community Orders

1. Order (Community of Union East) (24 January 1961) N Gaz, Vol XXXVI No 4 p 1.
2. *Evacuated Communities Order, 1966*, N Reg 39/66.
3. *Evacuated Communities Order, 1974*, N Reg 11/74.
4. *Evacuated Communities (Amendment) Order, 1974*, N Reg 75/74.
5. Order Respecting Great Harbour Deep (Public Notice), (2002) NL Gaz I, 789.
6. *Vacated Community of Grand Bruit Order*, NLR 52/10.
7. *Vacated Communities of Great Harbour Deep, Petites and Big Brook Order*, NLR 25/11.