

RESETTLEMENT REVISITED: REVIEWING THE EFFECT OF NEWFOUNDLAND AND LABRADOR'S *EVACUATED COMMUNITIES ACT, 2016* ON PROPERTY INTERESTS IN RESETTLED COMMUNITIES

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Introduction

In 2015, this author wrote an article entitled “Property Interests in Resettled Communities”, published in Volume 66 of the University of New Brunswick Law Journal.¹ The article explored the property interests which continued to exist in communities in Newfoundland and Labrador which were resettled with government funding and declared “evacuated” under the *Evacuated Communities Act*. This *Act* first passed in 1960 and continued with no substantive amendment to its terms up to the time of writing the original article in 2015. The following year, the Newfoundland and Labrador House of Assembly repealed the former *Evacuated Communities Act* and passed a new version in its place.

This article is intended as an update to the 2015 article, and will examine the effect that this new legislation has had on property interests in resettled and evacuated communities, and subsequent legal developments confirming the original conclusion of the 2015 article, which continues to apply under the new legislative regime. Part I reviews the successor legislation passed one year after the original article was written, and what changes it creates to the law surrounding property interests in affected communities. Part II canvasses jurisprudence on such property interests, which have arisen subsequent to the original article, and which confirm its thesis. Part III canvasses developments in title searching in Newfoundland and Labrador, which have allowed for further investigation of the matter, and which provide further confirmation of the author’s original thesis.

This article relies on the 2015 publication for background to the Resettlement program and property rights in this context, and readers are encouraged to review the original article to understand the original context. It is appended to this article for ease of reference.

¹ (2015) 66 UNB LJ 210 [French (2015)].

I. The New Legislation

In December of 2016, the Newfoundland and Labrador House of Assembly passed the *Evacuated Communities Act 2016*.² The 2016 *Act* repealed and replaced the existing *Evacuated Communities Act* which had remained in effect since 1960 and was incorporated in the 1990 Revised Statutes of Newfoundland and Labrador virtually unchanged from its original form.³

At first glance, there is little difference in either substance or content between the 2016 *Act* and the 1990 *Act*. The only difference is in the scope of the new *Act*. The 1990 *Act* applied to all “Vacated Communities”, being all communities where the inhabitants had moved with financial assistance from government, and which were declared “vacated” by the Minister.⁴ For those Vacated Communities affected by the 1990 *Act*, a government permit was required to construct or occupy a building in those locations, under penalty of fine or imprisonment.⁵ The 1990 *Act* encompassed 284 “Vacated Communities” in this prohibition, which were both resettled with government funds and for which a regulation or order was passed declaring the community vacated.⁶ This regulation did not include all communities which had been resettled, some of which had been resettled prior to the passage of the *Evacuated Communities Act* in 1960.⁷ Resettlement programs in Newfoundland and Labrador began in 1953, predating legislative enactments dealing with the communities being resettled.⁸ Of these 284 communities declared vacated up to 2016, 279 were vacated

² *Evacuated Communities Act*, SNL 2016, c E-15.1 [2016 *Act*].

³ The previous version of the *Act* (RSNL 1990, c E-15) was repealed by s 9 of the 2016 *Act*. The previous version had existed in virtually the same form since its original passage in SN 1960, No 54. See French (2015) at footnote 61. The previous *Act* shall be referred to throughout this article as the “1990 *Act*”, being the version in effect at the time of passage of the 2016 *Act* as codified in the Revised Statutes of Newfoundland and Labrador 1990.

⁴ RSNL 1990, c E-15, ss 2(d), 3(1). “Vacated Communities” referred to in this paper are the same as “Evacuated Communities” in French, *supra* note 1. The language has been changed for this paper to remain consistent with the legislative debates on the 2016 *Act*.

⁵ *Ibid*, ss 4–7.

⁶ Order (Community of Union East) (24 January 1961), N Gaz Vol XXXVI, No 4, p 1; *Evacuated Communities Order, 1966*, Nfld Reg 39/66; *Evacuated Communities Order, 1974*, Nfld Reg 11/74; *Evacuated Communities (Amendment) Order, 1974*, Nfld Reg 75/74; *Vacated Community of Grand Bruit Order*, NLR 52/10; *Vacated Communities of Great Harbour Deep, Petites and Big Brook Order*, NLR 25/11; *Vacated Community of Round Harbour Order*, NLR 62/16 [Evacuated Community Orders]. This reflects all orders and regulations in effect until repeal of the 1990 *Act* on December 14th, 2016. Note that all communities listed in *Evacuated Communities Order, 1966* Nfld Reg 39/66 are included in *Evacuated Communities Order, 1974*, Nfld Reg 11/74.

⁷ French (2015), *supra* note 1 at Appendix A.

⁸ French (2015), *supra* note 1 at 216–217 and Appendix A. Some of these communities were later included in the *Evacuated Communities Order, 1966* Nfld Reg 11/74, but several were not. Using the defined language in French (2015), *supra* note 1 at 220, if a community was resettled with government funds but no regulation passed under the Evacuated Communities Act relating to it, it would be a “Resettled Community”, distinct from an “Evacuated Community” (a.k.a. a “Vacated Community”).

prior to 1974.⁹ There were no regulations under the *Evacuated Communities Act* passed between 1974 and 2002.

The 2016 *Act* drastically narrows the scope of the legislated prohibitions on occupation and construction. The 2016 *Act* limited its restrictions only to the vacated communities “listed in the Schedule”, which lists only five specified communities.¹⁰ The five communities listed were resettled after 2002.¹¹

The narrowing of the *Act* to only address recent resettlement appears to arise from the difference in handling of property interests in resettled communities between the two “eras” of resettlement, being the 20th century (1953-1974) and the 21st century (2002 to present). Unlike resettlement in the 20th century, government in the 21st century had specifically dealt with the property interest in communities being vacated by purchasing the homes and land from the owners.¹² This process appears to have begun only with the 2002 resettlement of Great Harbour Deep.

Prior programs of Resettlement had not involved a conveyance of land to the provincial government.¹³ Under the 20th century systems, funds were provided to families to relocate to new communities, and the documentation prepared at the time of application for Resettlement focused on the destination community rather than the community to be vacated. Contemporary documentation registered at the provincial Registry of Deeds in the 20th century Resettlement era indicates that government funds were not advanced on the basis of the government purchasing the applicants’ existing land in the communities being resettled. Rather, funds were advanced to finance the

⁹ The last regulations in the 20th century under the Evacuated Communities Act were passed in 1974, which produces a total of 279 communities declared between 1961 and 1974: the Community of Union East by 1961 Order; five communities by Nfld Reg 39/66, which are duplicated in the list of 279 communities vacated by Nfld. Reg 11/74; and one removed from Nfld Reg 11/74 by Nfld Reg 75/74. See also note 6.

¹⁰ SNL 2016, c E-15.1, ss 4, 7 and Schedule.

¹¹ Evacuated Community Orders, *supra* note 6. Great Harbour Deep was vacated in 2002, Petites in 2003, Big Brook in 2004, Grand Bruit in 2010, and Round Harbour in 2016.

¹² A search of the Newfoundland and Labrador Registry of Deeds in the name of each of the five resettled communities of the 21st century reveals a number of deeds into the Government of Newfoundland and Labrador occurring at the date of resettlement. The author counted 61 registered deeds for Great Harbour Deep, 17 for Petites, 4 for Big Brook, 35 for Grand Bruit, and 4 for Round Harbour, all conveying properties in these communities to the Government. These figures accord with the small populations of each community: Petites having 11 resident households, Big Brook having 10 residents in three households, and Round Harbour having two residents. See Government of Newfoundland and Labrador, News Release, NLS 11, “The Community of Petites to be Relocated”, (July 9, 2003); Government of Newfoundland and Labrador, News Release, NLS 5, “The Community of Big Brook to be Relocated” (February 13, 2004); *Fudge v Newfoundland and Labrador (Municipal Affairs)*, 2013 NLTD(G) 14 at para 14 (regarding resettlement of Round Harbour: “There were only two individuals recognized as permanent residents”). Grand Bruit had 31 residents as of 2009 (Isabelle Côté & Yolande Pottie-Sherman, “*The Contentious Politics of Resettlement Programs: Evidence from Newfoundland and Labrador, Canada*” (2020), 53 Can J Political Science 19 at 28).

¹³ French (2015), *supra* note 1 at 218–222.

purchase of new land in “growth centres”: towns to which families relocated after their former home communities were declared vacated. Families who were resettled in the late 1960s executed mortgages in favour of the Minister of Community and Social Development, which begin with recitals as follows:

WHEREAS Her Majesty the Queen in Right of Canada and Her Majesty the Queen in Right of Newfoundland have entered into an agreement dated the 20th day of June, A.D. 1967 for the purpose of, amongst other things, assisting householder in resettling from communities in which they are residing to other certain designated communities;

AND WHEREAS the said agreement makes provision for assistance to those eligible householders to the extent of a maximum of three thousand dollars (\$3,000.00) who resettle in an approved land assembly area and to the extent of a maximum one thousand dollars (\$1,000.00) who resettle in an approved resettlement centre provided the householder remain on the property for which he or she has received assistance for a period of five years from the date of occupation;

AND WHEREAS Her Majesty in Right of Newfoundland is required to receive from the aforesaid householder an interest free mortgage on the land to the extent of the assistance for a period of five years which said mortgage shall be released and discharged at the end of the term thereof provided the householder resides on the land for the aforesaid period otherwise shall be of full force and effect.¹⁴

Deeds of conveyance of the land in communities being resettled were not prepared in 20th century Resettlement programs, and the ownership land in the vacated communities appears to have been given little thought by the provincial government. While the 1967 agreement referenced above does state that the provincial government covenants “to reclaim all lands and structures in evacuated outports in the name of the Crown in the right of Newfoundland and to prohibit permanent entry thereto”, there is no record of such a dramatic step being taken.¹⁵ While government may have assumed that simple abandonment amounted to reversion, this is not the case.¹⁶ Prior to the

¹⁴ This excerpt is taken from a standard-form mortgage deed used throughout the late 1960s and early 1970s, and executed by householders who moved under the Resettlement program of the era. See registered documents at the Newfoundland and Labrador Registry of Deeds, at Vol 1000, Fol 281 and Vol 1000, Fol 290 (both relating to families moved from the Horse Islands in 1968); and Vol 1274, Fol 319 (relating to a family moved from a community in Placentia Bay in 1971). One should note that the accompanying deeds to the mortgaged properties are stamped “Crown Document” and append a single standard-form affidavit of long possession. Both the deed and the mortgage in each case appear to have been registered by the government on behalf of the householder, with the mortgage registered in immediate succession after the underlying title deed acquiring land in the new community. A review of the standard form documentation used in the 1968 and 1971 resettlement instances indicates that the form deeds and affidavits of possession had been produced from a central source, likely by government itself.

¹⁵ HR Agreement Hr-1/1, June 20th, 1967, s 3(l). On the absence of prohibition, see French (2015), *supra* note 1 at 218–224.

¹⁶ *Boy Scouts of Canada, Provincial Council of Newfoundland v Doyle* (1997), 151 Nfld & PEIR 91 at para 109 (CA). See also discussion in French (2015), *supra* note 1 at 224.

referenced 1967 agreement, it does not appear that funds were advanced in the form of mortgages on the new land. Funding appears to have been to individual families without conditions.

It does not appear that land was conveyed by landowners in Vacated Communities during the first era of resettlement, although that had changed by the second era of resettlement in the 21st century. The end result of this neglect in the first era is that land title remained vested in the individuals who had left these Vacated Communities, providing they could establish either legal or possessory title.¹⁷ As will be seen further in this article, subsequent research and developments confirm this hypothesis.

This background informs the passage of the 2016 *Act*. The Bill came before the Newfoundland and Labrador House of Assembly on November 28th, 2016.¹⁸ The stated concern in the House of Assembly which gave rise to this legislation was the government's liability for the properties in Vacated Communities.¹⁹ In Vacated Communities which had been resettled in the 21st century, property owners had conveyed their properties back to the government. In those cases, it was certain that the provincial government had become seised of these properties, as conveyances had been executed by the landowners transferring the land to the provincial government, and these deeds had been registered at the Registry of Deeds. It appears from the debate that members of the House of Assembly felt that the government was also seised of the land in communities which had been declared vacated in the 20th century. The introduction of the 2016 *Act* was focused on activity occurring in communities which had been declared vacated for decades prior:

"We know in a lot of those communities that have been vacated since time immortal [sic] had a lot of buildings or whatever, returns or whatever has gone on there, it has gone on without permits and it's something that government has not really policed or managed over the years. While they're in government, I guess under government authority, it opens government up to a liability that certainly we have to look into, because it introduces a liability to the provincial government with respect to damages, injuries, building removal and environmental issues. [...]"

The Evacuated Communities Order of 1974, as I said, listed hundreds of vacated, 279 to be exact. Seasonal residents, cabin owners, technically require a permit to occupy or build property in these communities. I would venture to say that very seldom happened, that anybody who went back there – and I'm sure there are people who go back and have some ancestral roots to some of those community. We hear it every day, but I would venture to guess that not many of them got the permits to go back. As long as we

¹⁷ French (2015), *supra* note 1 at 223–225.

¹⁸ *Forty-Eighth General Assembly of Newfoundland and Labrador – First Session – Hansard*, Vol XLVIII, No 49A, 28 November 2016 (Night Sitting).

¹⁹ *Ibid* at 3439-11 to 3439-13.

kept them in the Act of 1974, then government had a liability if they went back. As the member for Cape St. Francis alluded to, if something happened, if an accident happened, if an injury happened or something happened to one of the buildings, then government would be liable.”²⁰

Under this theory, the government’s concern with the pre-1974 “Vacated Communities” was that development had continued unabated in these areas without proper permitting post-Resettlement. This appears to have been premised upon the belief that the Resettlement programs of the earlier era had vested title into the government, making government responsible under a theory of occupier’s liability. However, this author’s historical review of the law on property interests under 20th century Resettlement legislation indicates that nothing in the law or regulations automatically vested title to land in Vacated Communities into government. In the absence of conveyances or legislative expropriation, the previous owners remained seised of the land. Government had neither purchased nor expropriated the land in Vacated Communities during 20th century Resettlement. This appears to have been understood in the Resettlement programs in the 21st century, as landowners were required to convey their properties to the government, and the conveyances subsequently registered at the Registry of Deeds. Nevertheless, members of the House of Assembly appear to have been of the opinion that the lands in the 20th century Vacated Communities had become government property in the course of the first era of Resettlement.²¹

During the debate on the topic, the question of the differential treatment between the Vacated Communities of the 20th century and 21st century was noted. One member asked:

“I’m not sure how you get rid of the liability by simply repealing the Act and saying we’re going to forget all these communities that existed prior to these five, take them off the list and now all of a sudden there’s no liability. If there’s a liability for these five, common sense would tell me there would be a liability for all of them. If it’s as simple as writing legislation to get rid of the liability, then why don’t we just write legislation that says we’re not responsible for any properties, whether it be the 1974, whether it be these five or whether it be any vacated communities that happen next year, 10 years from now, 20 years from now, we won’t take liability for any of it, if it’s simple?”²²

²⁰ *Ibid* at 3439-12 to -13 (Hon Graham Letto (Liberal – Labrador West)).

²¹ See, e.g., *ibid* at 3439-11 (“So while government went and did that, government basically took ownership of their properties.”); 3439-13 (“As long as we kept them in the act of 1974, then government had a liability if they went back”); 343914 (“When they were moved, if they were assisted by government and in these communities they were assisted by government, then they relinquish the ownership of the land as well.”). Note that mere “relinquishing” of ownership without documentary conveyance would seem to violate the *Statute of Frauds*, since there is no accompanying possession by government on which adverse possession could apply. Mere discontinuance without entry by someone else does not equal abandonment: *Murphy v Moores and Government of Newfoundland* (1938), 14 Nfld LR 161 at 163.

²² *Ibid* at 3439-16 (Hon Paul Lane (Ind. – Mount Pearl-Southlands)).

Though the question was never answered in the course of the debate, the answer is as noted above. In the five specified communities declared as Vacated Communities in the 21st century, government became the landowner, acquiring the land directly from the residents. This does not appear to have occurred in the 20th century Resettlement, where the advance of funds took the form of a residential mortgage on the newly-acquired property to which residents were moving or as unconditional cash grants to relocating families, rather than as a purchase of the property in the Vacated Community. While government nominally prohibited construction and occupation in Vacated Communities, it took no steps toward enforcement of the vacancy of the area and no steps toward acquiring the property therein either by deed or by expropriation. Such a position accords with government's apparent original intent with the 20th century era of Resettlement, to disavow any responsibility or obligation toward these areas. While permits were legally required for occupancy in Vacated Communities, with nobody monitoring or enforcing the *Evacuated Communities Act* in these areas, there does not appear to have been any practical effect to the prohibition.

The *Evacuated Communities Act*, which remained in effect in substantially the same form from 1960 to 2016, required permits for every community declared "vacated" under the *Act*. With the legislative amendments of 2016, these restrictions were lifted for every community vacated prior to 2002. This was expressly understood and affirmed by the legislature at the time of debate on the bill.²³ As noted in the debates in the Committee of the Whole, the government "*recognized during this review that we have this liability on the books of the 279 communities that are there as per the 1974 order. So, we're acting expeditiously to relieve ourselves of that liability*".²⁴

If the government was never seised of the land in Vacated Communities which had been resettled prior to 2002, then one wonders what liability government could have incurred. Considering the intention behind the Resettlement program in the 20th century, it is clear that the provincial government did not intend to assume responsibility for enforcing vacancy of these areas. The intention was to abandon these areas by moving the population out, and to cut off responsibility to provide government services. Government in the 20th century appears to have appreciated that individuals may maintain some control over land and buildings in these communities, both by the statutory provisions allowing for permits of occupation, and in contemporaneous government documentation suggesting that landowners may retain their residences and buildings there.²⁵ Legislative removal of these communities from the scope of the enforcement mechanisms of the *Evacuated Communities Act* in 2016 was expressly intended to relinquish government's responsibility for the land in

²³ *Ibid.*

²⁴ *Ibid* at 3439-21 (Hon Graham Letto (Liberal – Labrador West)).

²⁵ French (2015), *supra* note 1 at 218, 222.

Vacated Communities which had been resettled in the 20th century, by eliminating any statutory restrictions on the use and occupation of such land. Keeping with the conclusions of this author's 2015 article, with the lifting of the occupancy and construction provisions, there is thus no impediment on any landowner in a Vacated Community resettled in the 20th century from owning and developing land.

With this in mind, the reason for the passage of the *Evacuated Communities, 1974 Confirmation Order* under the 2016 *Act* is unclear.²⁶ The *Confirmation Order* restates the listing of vacated communities contained in Nfld Reg 11/74. However, given that the 2016 *Act* specifically restricts its focus to the five enumerated communities in the Schedule, the purpose of the declaration of vacancy of these communities is not apparent. The 2016 *Act* imposes no restrictions on use, occupancy or construction in the communities listed in the *Confirmation Order*. Further, the *Confirmation Order* restates only the content of Nfld Reg 11/74, without including the Community of Union East, declared vacated by Order in Council in 1961, or any communities which were vacated before 1961 in the earlier era of Resettlement.²⁷ It also fails to remove the Community of Daniel's Cove, Trinity Bay, which was removed from Nfld Reg 11/74 by Nfld. Reg. 75/74. The *Confirmation Order*, as a regulation to the 2016 *Act*, thus appears to be without any practical effect, except to keep an enumeration of the communities declared vacated in the 20th century. It should be noted that this is not a comprehensive list of communities which were declared vacated, and that not all communities which were resettled with government funding were declared vacated.²⁸

II. Subsequent Case Law on Vacated Communities

Since the publication of the 2015 article, the Supreme Court of Newfoundland and Labrador has had new opportunities to consider land title in Vacated Communities. These proceedings have arisen under the *Quieting of Titles Act*, an act which allows the Court to investigate title and determine the ownership of the land at issue.²⁹ In at least seven instances since 2015, the Supreme Court has investigated land title in Vacated Communities, and issued a Certificate of Title to the Applicant claiming ownership. These include lands at Hodderville, Bonavista Bay,³⁰ West Bottom, Halls

²⁶ NLR 14/16.

²⁷ French (2015), *supra* note 1 (see Appendix).

²⁸ *Ibid.* See also note 8.

²⁹ *Quieting of Titles Act*, RSNL 1990, c Q-3.

³⁰ The Community of Hodderville was resettled between 1966 and 1971. It was declared vacated by Nfld Reg 11/74. Faour J issued a Certificate of Title for land in Hodderville in *Re Freeman Quieting of Titles*, Court File No 2016 01G 0396 (Certificate issued May 16th, 2018). The property at issue appears to be ungranted on review of the Newfoundland and Labrador Land Use Atlas (*infra* note 35).

Bay;³¹ and White Rock, Trinity Bay.³² In the case of White Rock, five separate quietings were conducted in the community. A review of the Concise Statement of Facts in these cases indicates that the land in White Rock had been occupied by the applicant families for cabins, and in at least one instance the Applicant had requested and obtained written approval from the Department of Rural, Agricultural and Northern Development in the 1980s for same.³³ It is notable that these three communities are not as isolated as they had been in the 1960s, and all have road access today. Nevertheless, the communities remain listed in the *Confirmation Order* under the 2016 *Act*.

Based on the investigation at the time of writing the 2015 paper, the author had found only one case in which the Court had granted a Certificate of Title to land in a Vacated Community. In *Re Webster Quieting of Titles*, Mercer J granted a Certificate of Title to property at Pope's Harbour, Trinity Bay.³⁴ However, the author has subsequently discovered at least three other Quieting Certificates had been issued for land in Vacated Communities predating the article.³⁵ The earliest known Certificate issued for a Vacated Community predates *Webster* by almost ten years. In 1983, in the case of *Re Pike Quieting of Titles*, Lang J granted a Certificate of Title for land at the vacated Community of Spread Eagle.³⁶ In two cases in the early 21st century, Justices

³¹ The Community of West Bottom was resettled before 1974. It was declared vacated by Nfld Reg 11/74. Goulding, J issued a Certificate of Title for land at West Bottom in *Re Young Quieting of Titles*, Court File No 2017 03G 0079 (Certificate issued July 20th, 2017). The property at issue appears to be contained within a Crown Grant on review of the Newfoundland and Labrador Land Use Atlas (*infra* note 35).

³² The Community of White Rock was resettled in the summer of 1966. It was declared vacated by Nfld Reg 11/74. The Court has issued five Certificates of Title in White Rock in the span of less than one year: in *Re Moody Quieting of Titles*, 2016 06G 0023 (Certificate issued by Boone J on June 7, 2021); *Re (C) Stone Quieting of Titles*, Court File No 2020 06G 0039 (Certificate issued by O'Flaherty J on August 30th, 2021); *Re (J & E) Stone Quieting of Titles*, Court File No 2020 06G 0071 (Certificate issued by Boone J on October 5th, 2021); *Re (R & J) Stone Quieting of Titles*, Court File No 2020 06G 0072 (Certificate issued by Boone J on October 5th, 2021); and *Re (R) Stone Quieting of Titles*, 2020 01G 4010 (Certificate issued by Boone J on March 17th, 2022). Each parcel was wholly contained within a Crown Grant.

³³ The Concise Statement of Facts in *Re Moody Quieting of Titles*, 2016 06G 0023, refers to a letter from the Department in June 1988 authorizing construction of a cabin on the subject property, which appears to have been filed in the proceeding as part of the record. The Community of White Rock was a Vacated Community and subject to the restrictions on development and penalties therefor, as discussed in the 2015 article. The statutory changes in 2016 obviate the need for such approval today.

³⁴ 1992 B No 48 (Judicial District of Brigus). Certificate of Title was issued by Mercer J on April 1st, 1993. The subject property was partially contained within a Crown Grant. Pope's Harbour was resettled in the early 1960s, and declared vacated by Nfld Reg 11/74. See Cyril Poole and Robert Cuff, eds, *Encyclopedia of Newfoundland and Labrador*, Vol 4, (St. John's, NL: Harry Cuff Publications Ltd, 1993) at 378.

³⁵ Public access to the provincial Land Use Atlas online (<https://www.gov.nl.ca/landuseatlas/details/>) since 2017 allows individuals to search out Crown titles using a map of Newfoundland and Labrador. The map denotes granted land as well as land which has been cleared by a Quieting of Titles proceeding.

³⁶ Court File No 1983 No 469 (St. John's Judicial District). Certificate was issued August 25th, 1983. The Community of Spread Eagle was resettled in 1967 and declared vacated by Nfld Reg 11/74. See Cyril Poole and Robert Cuff, eds, *Encyclopedia of Newfoundland and Labrador*, Vol 5, (St. John's, NL: Harry Cuff Publications Ltd, 1993) at 279.

at both the Gander and Grand Bank Supreme Court Centres issued Certificates of Title to land at the vacated Community of Barton.³⁷

The successful outcome of these quietings confirms that land in Vacated Communities remains vested in the previous landowners, continuing to the present day, and that these property interests can be enforced by the court. One should note that the Crown must be notified in the course of a Quieting of Title Application, such that if the government had any objection, such objections could be brought forward at a trial on the matter.³⁸ These precedents hold that title established in the ordinary course will still vest good title today, even in cases of Vacated Communities.

III. New Developments in Land Searching

Another notable development affecting title in Vacated Communities is public accessibility of the Newfoundland and Labrador Land Use Atlas, maintained by the Lands Branch of the Newfoundland and Labrador Department of Fishery, Forestry and Agriculture, which has become accessible online since the 2015 article was written.³⁹ The Land Use Atlas allows for a map-based search of the province, onto which most grants and quietings are mapped.⁴⁰

This tool allows for much greater ease of determining the issuance of Crown Grants province-wide, and of particular note for this paper, the issuance of Crown Grants and Quieting Certificates in Vacated Communities. When combined with the comprehensive register of the “lost grants” destroyed in the Great Fire of 1892, a fuller picture develops of land in Newfoundland and Labrador that has been granted and remains in private hands. Using the listing of the 279 communities declared as Vacated Communities prior to 1974, if one can locate these communities on the Land Use Atlas, it is possible to determine at a glance whether or not there are known grants in the area.

³⁷ *Re Gardner & Clouter Quieting of Titles*, Court File No 2010 05T 0016: certificate issued April 21st, 2010 (issuing justice unknown); *Re Manuel Quieting of Titles*, Court File No 2013 06G 0133: certificate issued by Handrigan J February 10th, 2014. Barton was declared vacated by Nfld Reg 11/74, although curiously, it appears not to have been resettled, but rather abandoned by 1951: see JR Smallwood and Robert D Pitt, eds, Vol 1, *Encyclopedia of Newfoundland and Labrador* (St John’s, NL: Newfoundland Book Publishers (1967) Ltd, 1981) at 140.

³⁸ *Quieting of Titles Act*, RSNL 1990, c Q-3, s 13.

³⁹ Land Use Atlas, *supra* note 35.

⁴⁰ One should note that mapping is not comprehensive. A number of grants are unmapped due to technical limitations such as poor property descriptions or absence of objective reference points. Many grants were lost in the Great Fire of 1892 which destroyed a number of volumes of registered grants, notwithstanding the issuance of such grants and their continued dispositive effect.

The availability of public access to the Land Use Atlas, as well as a review of the “lost grants” index at the Crown Lands Registry,⁴¹ discloses two discoveries of interest to this article and the author’s original thesis.

Firstly, the author’s initial estimate of the percentage of vacated communities containing Crown Grants was “as many as 20%”.⁴² This figure was based on a limited mapping search conducted at the Crown Lands Registry in St. John’s in 2014. The availability of the Land Use Atlas online has allowed the author to conduct a more comprehensive investigation of the 279 vacated communities of the 20th century era of Resettlement. This further research produces a much higher estimate of Vacated Communities where land was granted. Reviewing the Land Use Atlas, in conjunction with other available records to locate vacated communities, the author was able to more particularly pinpoint 222 of the 279 communities.⁴³ Reviewing these 222 communities which the author could locate conclusively on the Land Use Atlas, exactly 50% (111 communities) had grants present, which had been issued prior to Resettlement.⁴⁴ This is significant, as the presence of Crown Grants in an area removes the requirement to dispossess the Crown by adverse possession, as the Crown is already dispossessed by virtue of the grant. The strictures of dispossessing the Crown by adverse possession requires proof of open, notorious, continuous and exclusive use and occupation for the twenty year period immediately prior to January 1st, 1977.⁴⁵ In Vacated Communities which had been resettled in the 20th century, this defined time period will often preclude reliance on adverse possession against the Crown, as these

⁴¹ Several volumes of Crown Grants were lost in the Great Fire of 1892, including Vols 1–7, 10–16, 19, 20 and 28. Grants from these volumes were re-registered only sporadically, and only an index remains of the names, locations and total area of land granted.

⁴² French (2015), *supra* note 1 at 224, footnote 75.

⁴³ The author utilized contemporaneous maps from pre-1975 to assist in placing communities, as well as online research, a review of Memorial University of Newfoundland’s Maritime History Archive records and the Encyclopedia of Newfoundland and Labrador, in an effort to pinpoint the locations of these communities. The location of some communities remained difficult to ascertain due to the undefined boundaries of these communities, proximity to other population centres and communities, or an inability to find any records on the community. The author has erred on the side of caution in drawing conclusions only from communities which were able to be plotted with specificity and for which corroborating records could be found.

⁴⁴ This search was based not only on the Land Use Atlas, but on the author’s personal familiarity with certain resettled areas. In two communities (Horse Islands, White Bay; and Kerley’s Harbour, Trinity Bay), the author was able to locate Crown Grants, which were registered in the Crown Lands Registry, but which were not mapped on the Land Use Atlas and were otherwise undiscoverable without prior knowledge. Since becoming aware of these grants and their location, the Crown Lands Administration has mapped these grants onto the Land Use Atlas. Thus, even this percentage of 50% may be lower than the actual figure, but a comprehensive review of the unknown number of unmapped Crown Grants would be required to come to a precise figure. As of the date of writing, there is no method of searching the unmapped Crown Grants apart from an in-person review of Crown Lands’ records at the Crown Lands Registry in St John’s.

⁴⁵ *Lands Act*, SNL 1991, c 36, s 36; *Ball v Day* (1982) 38 Nfld & PEIR 365 (CA); *Ring v Newfoundland and Labrador*, 2013 NLCA 66.

Vacated Communities were depopulated before 1974.⁴⁶ However, in Vacated Communities with grants present, title can be established by dispossession from the original grantholder by deed or by adverse possession for the limitation period of ten years.⁴⁷

The ability to investigate communities on the Land Use Atlas led to a second significant discovery: the issuance of modern Crown Grants to land in Vacated Communities. A number of Vacated Communities which had been resettled in the 20th century and declared “vacated” under Nfld Reg 11/74 were found to have grants issued subsequent to Resettlement and subsequent to being declared “vacated”. These grants were issued between 1980 and 2002.⁴⁸ Unexpectedly, these grants were made under the provisions of the *Lands Act* dealing with adverse possession against the Crown.⁴⁹ Such grants are only available where adverse possession is demonstrated for the fixed 1956 to 1977 period. This discovery bolsters the position that adverse possession against the Crown remains available for ungranted land in Vacated Communities. The fact that the grants were issued under the adverse possession provisions, rather than as Licences to Occupy or grants under other provisions of the *Lands Act*, is indicative that landowners in Vacated Communities can continue to rely on such adverse possession to this day. The issuance of these grants indicates that the government itself acknowledged property interest in these Vacated Communities continuing post-Resettlement.

Conclusion

The author’s original article in 2015 posited that property interests in Vacated Communities continued to the present day, notwithstanding the government’s Resettlement programs in the 1960s and 1970s. Subsequent investigation confirms this hypothesis, by subsequent grants issued by the Government of Newfoundland and Labrador, and by successful Quieting of Title proceedings in Supreme Court. The Newfoundland and Labrador government’s legislative reforms in 2016 have not changed this conclusion, but have lifted the restrictions on development and occupation which existed under the previous legislation. These legislative reforms thus

⁴⁶ Nfld Reg 11/74.

⁴⁷ *Limitations Act*, SNL 1995, c L-16.1, s 7(1)(g).

⁴⁸ This includes grants at Bar Haven Island (Crown Lands Registry Vol 201, Fol 134 and Vol 258, Fol 85); Black Island, Exploits (Vol 203, Fol 45); Coney Arm, White Bay (Vol 184, Fol 119; Vol 187, Fol 18; and Vol 191, Fol 122); Bragg’s Island (Vol 157, Fol 15; Vol 159, Fol 18; and Vol 164, Fol 64); Exploits (Vol 158, Fol 104; and Vol 187, Fol 12); Little Harbour Deep (Vol 164, Fol 121) and Long Point, Port-au-Port (Vol 251, For 50). All communities were resettled prior to 1974 and declared Vacated Communities by Nfld Reg 11/74. All grants aforesaid expressly identify the community in which they are located, confirming they are in the Vacated Communities.

⁴⁹ *Lands Act*, 1991, SNL 1991, c 36, s 36 and its predecessor legislation, *Crown Lands Act*, RSN 1970, c 324, s 134B.

eliminate any uncertainty in the alienability and developmental potential of land in communities which had been resettled in the 20th century.

PROPERTY INTERESTS IN RESETTLED COMMUNITIES (REPRODUCED, (2015) UNBLJ 66)

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

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, crewman 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

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 outport 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 outport communities grew to more than 200 people, and estimates suggest there were some 1,100 outports in Newfoundland by the time of Confederation in 1949.¹¹

Economically, these outports 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 outports to larger centres, prevented modernity from taking hold. Goods and provisions were provided to the outports 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 outport 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; outport life became effectively cashless, operating solely

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.

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 introducing outport residents to “unaccustomed responsibilities”, such as “the familiar loan and mortgage”, which was “unfamiliar to most outport Newfoundlanders and

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.

[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 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.

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>.

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 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.

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.

The Centralization Program: 1953-1965

In 1953, the Government of Newfoundland began a formal “Centralization Program” to encourage residents of isolated outposts 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.

⁵² See *infra* notes 58–61.

⁵³ See *supra* notes 6, 16.

⁵⁴ *Supra* note 44.

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 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

⁵⁵*Supra* note 43.

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.

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 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.

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.

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*.

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 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

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)).

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 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

⁷¹ *Newfoundland v Collingwood* (1994), 116 Nfld & PEIR 194 at paras 47–54, 1 RPR (3d) 233 (Nfld SC(TD)); aff’d (1996), 138 Nfld & PEIR 1, 1 RPR (3d) 233 (CA).

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 69, ss 43–52.

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.

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.

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

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.