



July 8, 2026

Via email: MHAPleamanForshey@assembly.nl.ca; falminister@gov.nl.ca

The Honourable Pleaman Forshey, E.C.N.L.
Minister of Forestry, Agriculture and Lands
Government of Newfoundland and Labrador
P.O. Box 8700, Confederation Building
St. John's, NL A1B 4J6

Dear Honourable Pleaman Forshey,

We write to you on behalf of the National Real Property Section of the Canadian Bar Association (CBA) to express concern regarding recent developments in real property law in Newfoundland and Labrador under the *Lands Act*¹, particularly as they relate to the security of land tenure and confidence in the province's real estate system. While these issues arise under provincial legislation, questions surrounding the stability of property law in the province have consequences that extend well beyond provincial boundaries.

The CBA is a national association of over 40,000 members, including lawyers, law students, notaries, and academics. Our mandate includes promoting the rule of law, improving access to justice, and advocating for effective law reform. The Real Property Section comprises legal professionals from across Canada who specialize in real property law.

Background and Context

Real property law in Newfoundland and Labrador is shaped by a complex Crown lands regime, under which a significant proportion of land remains ungranted despite longstanding settlement. The abolition of adverse possession against the Crown effective January 1, 1977, has created ongoing uncertainty regarding the legal foundation of many landholdings, with only a narrow historical period (generally 1966 to 1977) potentially supporting such claims. This issue has been compounded in recent years by increased challenges to longstanding possession-based claims. The Law Society of Newfoundland and Labrador has recently cautioned that it may be unsafe to certify title to ungranted land.²

Newfoundland and Labrador's land tenure system is distinct from that of many other provinces because it remains fundamentally a Registry of Deeds jurisdiction rather than a Torrens-based land titles system. Historically, possession-based claims have played a significant role in establishing title,

¹ *Lands Act*, S.N.L. 1991, c. 36, as amended in December 2024 by the *Lands (Amendment) Act No. 2*, S.N. 2024, c. 19.

² What is Good Title? The Report of the Title Standards Committee of the Law Society of Newfoundland and Labrador, Sept. 12, 2024, at pp. 34, 47-48, and 69-70.

particularly in rural areas where ownership is often supported through chains of possession, affidavits of possession and applications under title-quieting legislation. While adverse possession remains a recognized doctrine in relation to private land, different considerations apply where claims involve Crown land.

The 2029 Deadline and its National Implications

The CBA is concerned about the implementation of Subsection 36(6) of the *Lands Act* which states that no application or claim may be made under Section 36 more than five years after the coming into force of the subsection. The prevailing interpretation,³ that interests grounded in adverse possession may be extinguished as of December 2029, has immediate and practical implications.

This imminent deadline impacts thousands of landowners and creates a national dimension. From a national perspective, certainty of title is foundational to mortgage lending and title insurance. Where title cannot be confidently certified due to this pending deadline, real estate transactions may be delayed, financing may be restricted or denied, and title insurers may exclude coverage. With this deadline and no clear adjudicative process, lawyers face the difficulty of whether to advise clients to take urgent steps to seek Crown grants or to initiate court proceedings in advance of the statutory deadline.

Subsection 36(6) significantly exacerbates pre-existing uncertainty in the Crown lands regime by imposing a fixed deadline after which even otherwise valid claims grounded in adverse possession may be extinguished. Moreover, recent real estate transactions may have proceeded without full appreciation of these risks. Given the scale of ungranted but occupied land in Newfoundland and Labrador, these effects could extend to a substantial portion of its real estate market, together with the national lenders and insurers exposed to it.

Legislative Approaches in Other Jurisdictions:

Other Canadian jurisdictions have sought to balance certainty of title with fairness to existing property interests. While western provinces utilize conclusive Torrens-based registries, the Nova Scotia model offers the most applicable precedent for Newfoundland and Labrador's current challenges.⁴ Their *Land Titles Clarification Act* provides a framework that preserves historical possessory interests while establishing a clear, accessible process for their determination.⁵ This approach is particularly effective for individuals who may not have the resources to pursue the more onerous paths to prove title. By adopting this transitional approach, the province can move toward a conclusive register without retrospectively eliminating rights that have already vested.

Recommendations:

The CBA provides the following recommendations:

1. **Repeal Subsection 36(6).** We recommend this Subsection and the December 2029 deadline be immediately repealed. The prospect of extinguishing longstanding property interests has undermined confidence in the province's real property regime and created significant vulnerabilities for landowners and financial stakeholders.

³ Recent presentation by the Law Society of Newfoundland and Labrador.

⁴ See also *Land Titles Act*, RSO 1990, c L.5 where Ontario adopted a different approach when transitioning properties from its Registry system to the Land Titles system. Rather than extinguishing adverse possession claims that had already matured under prior law, Ontario preserved those interests while providing certainty of title going forward.

⁵ *Land Titles Clarification Act*, RSNS 1989, c 250.

2. **Adopt a Land Tenure Clarification Framework.** In place of a fixed deadline, we recommend the adoption of a model similar to the approach in Nova Scotia's *Land Titles Clarification Act*. This framework should:
- a. **Establish a clear process:** Provide an administrative or judicial mechanism for claimants to establish rights acquired before the 1977 abolition of adverse possession against the Crown.
 - b. **Provide immediate guidance:** As an initial phase, issue interim procedures and evidentiary requirements so that potentially valid historical interests can be assessed on their merits while broader legislative reform is finalized.
 - c. **Ensure fairness:** Prioritize accessibility for landowners who may lack the resources for complex litigation, ensuring that vested rights are recognized and registered before the system moves toward a more conclusive register.

We understand that the CBA Newfoundland and Labrador Branch continues to advocate for reforms to the Crown Lands system in Newfoundland and Labrador. At the national level, the National CBA Real Property Section, together with the CBA Newfoundland and Labrador Branch, respectfully raise these concerns and offer their assistance in addressing them. We would be pleased to meet with you and your officials to provide additional information on this matter.

(Original signed by Yasmin Khaliq on behalf of James Profit and Gregory French)

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