

# What We Heard



Amendments to Adverse Possession Provisions in the Lands Act

Section 36

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## Introduction

Newfoundland and Labrador's Crown lands are administered under the **Lands Act** and allocated as a public trust. The Provincial Government manages this valuable resource in a responsible manner for the continuous social and economic benefit of the province's residents for present and future generations.

In 2015, the Provincial Government undertook a review of the **Lands Act** with a focus on assessing provisions in section 36. This section focuses on adverse possession of Crown lands – commonly referred to as “squatter's rights.” Adverse possession against the Crown was abolished after December 31, 1976. The final report of the 2015 review recommended that the Province maintain its position on adverse possession. In addition, the report supported the Crown's ability to quit its claim to lands where the Crown is satisfied that someone else may have acquired an interest in those lands based on the criteria noted in the Act.

The Provincial Government is currently considering three changes to the **Lands Act** to clarify adverse possession against the Crown and to protect the land interests of the people of the province. This initiative was also prompted by recommendations in the report from the Premier's Economic Recovery Team. To assist in this process of updating of the **Lands Act**, the Provincial Government engaged the public and key stakeholders for input.

The changes being considered include:

1. Changing the possessory period from the current 20 continuous years immediately prior to January 1, 1977, to 10 continuous years immediately prior to January 1, 1977. No other period of possession would count in acquiring an interest in Crown lands;
2. Setting a definitive time period within which persons making claims to Crown lands based on adverse possession have to make those claims; and
3. Allowing the Crown to issue a document that does not grant title or transfer any interest, but instead declares the Crown claims no interest where the conditions of adverse possession have been met.

As part of the review process, Government sought public and stakeholder feedback to help inform the potential amendments to the **Lands Act**. All feedback will be considered as the Provincial Government explores potential amendments.

## Relationship between the Registry of Deeds and the Lands Act

The Registry of Deeds in the province is governed by the **Registration of Deeds Act** and the **Conveyancing Act**. The Registry of Deeds has a mandate to facilitate the registration and provide information relating to property transactions in the province and is administered by the Department of Digital Government and Service NL. The administration of Crown lands is the responsibility of the Department of Fisheries,

Forestry and Agriculture. Although these two entities are often discussed and sometimes understood as one system, they are separate, each operating under its own legislation, mandate and scope.

The focus of the consultation was to receive public and stakeholder feedback regarding potential amendments to the **Lands Act** only. Although this was the intention and focus, given the interconnectedness of the two areas, deed-based registration and Crown lands administration, some feedback received was related to the registration of deeds and outside of the scope of the **Lands Act**, and the intention of the consultation.

The Department of Fisheries, Forestry and Agriculture will share comments relating to the registration of deeds with the Department of Digital Government and Service NL and will continue to engage with them as changes to the **Lands Act** are considered.

## Methodology

To engage target audiences, the department posted an online questionnaire on the engageNL platform and held a virtual session for targeted stakeholders. Those who were unable to complete the questionnaire online could access the questionnaire in alternative formats. Participants could also provide written submissions by uploading their document to engageNL, or emailing or mailing the department directly.

The questionnaire was posted on the engageNL website on January 9, 2023, and was open for public submissions until January 27, 2023. The department received 124 submissions via engageNL. The department also received a total of 22 written submissions via email and mail from stakeholders and members of the public.

A virtual session was held on January 20, 2023, with targeted stakeholders invited to attend. In total, 11 individuals representing six organizations attended the virtual session.

Organizations included:

- Newfoundland and Labrador Branch of the Canadian Bar Association
- Municipalities NL
- NL Association of Realtors
- Law Society of Newfoundland and Labrador
- Public Legal information Association of Newfoundland and Labrador
- Association of Newfoundland Land Surveyors.

# Statistics from the Online Questionnaire

## Overview of Participants – Online Questionnaire

A total of 124 participants completed the online questionnaire via engageNL.

I am answering these questions as:	# of Responses	Percentage
Member of the public	87	70.16 per cent
Employee of volunteer with a municipality	3	2.42 per cent
Person who is employed in the legal field but providing a personal opinion	23	18.55 per cent
Person who is employed in the real property administration field but providing a personal opinion	1	0.81 per cent
Member of a professional body or agency and responding on their behalf	1	0.81 per cent
Other	9	7.26 per cent
<b>Total</b>	<b>124</b>	<b>100 per cent</b>

I am answering these questions as:



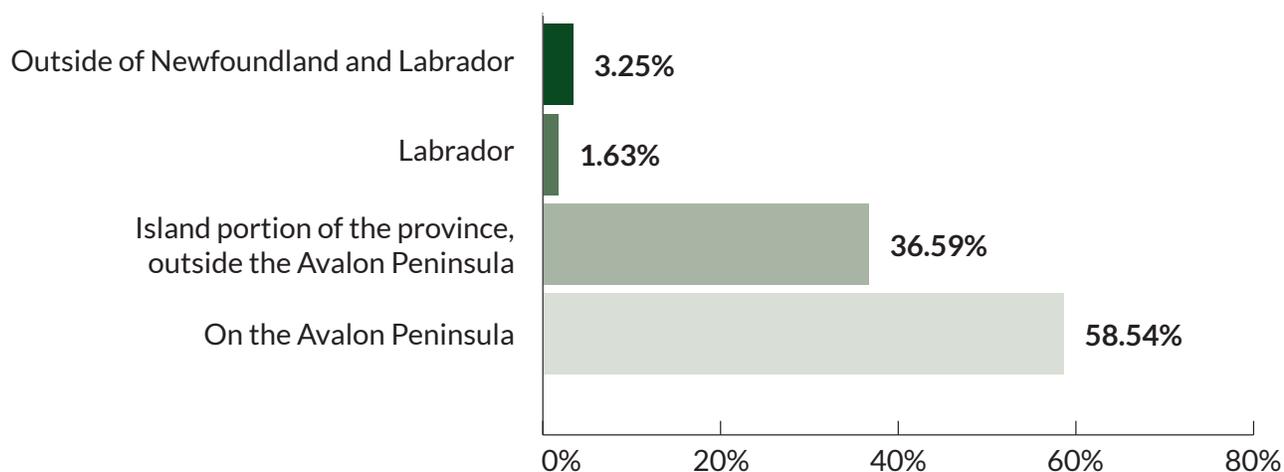
The majority of respondents identified as being somewhat familiar with the adverse possession provisions in the **Lands Act**.

How familiar are you with section 36 of the Lands Act (Adverse Possession Abolished)?	# of Responses	Percentage
Very familiar	47	37.90 per cent
Somewhat familiar	67	54.03 per cent
Not familiar	10	8.06 per cent
<b>Total</b>	<b>124</b>	<b>100 per cent</b>

Most respondents (58.54 per cent) resided within the Avalon Peninsula. The remaining participants were distributed throughout Newfoundland and Labrador and outside of the province.

My primary residence is located:	# of Responses	Percentage
Avalon Peninsula	72	58.54 per cent
Island portion of the province, outside of the Avalon Peninsula	45	36.59 per cent
Labrador	2	1.63 per cent
Outside of Newfoundland and Labrador	4	3.25 per cent
<b>Total</b>	<b>123</b>	<b>100 per cent</b>

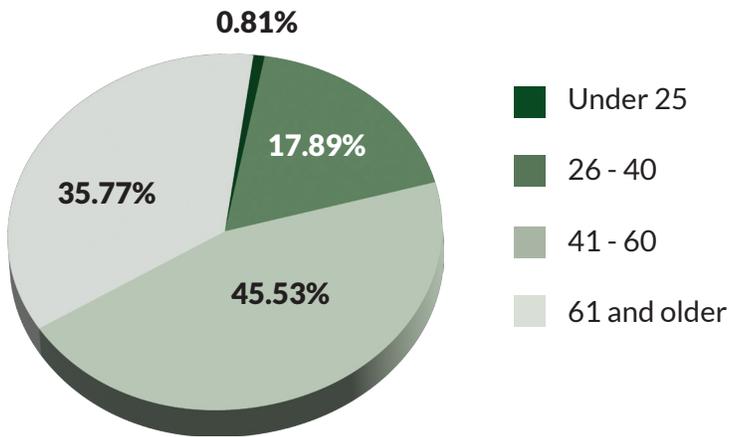
### My primary residence is located:



Of the respondents who identified their primary residence as on the Avalon Peninsula, 91.55 per cent resided within a municipality and 8.45 per cent resided outside a municipality.

Of the respondents who identified their primary residence as on the Island portion of the province, outside of the Avalon Peninsula, 81.82 per cent resided within a municipality and 18.18 per cent resided outside a municipality.

My age falls within the following range:



The majority of Respondents to the questionnaire were between 41-60 years of age.

### Overview of Response to Proposed Amendments

Proposed Amendments	# of responses	Percentage Agree	Total
Do you agree that legislation should be amended to reduce the possessory period from 20 continuous years immediately prior to January 1, 1977 to 10 continuous years immediately prior to January 1, 1977? No other period of possession would count.	Yes: 61 No: 45 Unsure: 18	49.19 per cent	<b>124</b>
Do you agree that legislation should be amended to limit the period when a person can make claims on land based on adverse possession?	Yes: 49 No: 55 Unsure: 19	39.84 per cent	<b>123</b>
Where adverse possession exists, do you agree that the Crown should be able to issue a document declaring that the lands are not Crown lands?	Yes: 99 No: 4 Unsure: 19	81.15 per cent	<b>122</b>

If legislation was amended to set a specific time within which a person had to make a claim to Crown lands based on adverse possession, the majority of respondents felt that a period of time less than 10 years was insufficient.

Proposed Time frame	# of Responses	Percentage
5 years	28	23.33 per cent
8 years	6	5.00 per cent
10 years	36	30.00 per cent
Other	50	41.67 per cent
<b>Total</b>	<b>120</b>	<b>100 per cent</b>

Of the respondents who selected “Other”, 18 further specified that they believed there should be no time limit of claims of adverse possession. There were 11 respondents that proposed various timeframes longer than 20 years, ranging from 20 years to 100 years.

## What We Heard – Online Questionnaire

### Concerns about proposed amendments to Lands Act:

- Changing the possessory period from 20 years to the 10 years prior to 1977 does not resolve the issue, only delays the issue. In another 10 years, we will run into the same issue where claimants are once again unable to find individuals who have capacity and are able to recall specifics from 1967-1977.
- Crown lands currently has the ability to issue Quit Claim Deeds when it is clear that adverse possession is established which questions the necessity of the third proposed amendment.
- A limitation period on adverse possession claims will likely give rise to situations where individuals who have strong adverse possession claims will have their title revert to the Crown if they fail to make such an application. It is highly inappropriate to trigger such automatic reversion of interest. It may set up a situation in which thousands of people (as the vast majority of titles in the Province are based on possessory title with no past Crown Grant) will need to initiate such claims. Real state transactions will have to be held in inactivity, pending a decision by Crown lands, which if the past is any indication will result in very lengthy, unacceptable, inappropriate delays in being processed.
- Introducing a limitation period for adverse possession claims of 10 years or less will create a bottleneck in the private businesses dedicated to the real estate industry (lawyers and professional title search firms). This will be further exacerbated by the fact that the majority of residents are not aware of the need to file an adverse possession claim.

- Introduction of a limitation period fails to contemplate the external factors that impact applicants' ability to bring forward adverse possession claims (financial situations, availability of lawyers, probating and administering estates). May need to consider setting exceptions where applicants make the Crown aware of a future claim within set time period.

### **Challenges of the current system:**

- Difficulty finding individuals to sign affidavits of long possession that have sufficient recall of the period from 1957-1977.
- Lengthy processing times to have adverse possession applications reviewed and approved by Crown lands.
- Lack of a mandatory land titles system.
- Inconsistencies in the information provided, management of applications, and approval of applications by Crown lands.
- Abuse of Crown lands - individuals improperly claiming ownership of Crown lands.
- No full, clear and easily accessible record of all land in the province.
- Many individuals in the province believe that they own their land despite the lack of a Crown grant; believing that they have 'squatters' rights' and being unaware of just how onerous it is to establish adverse possession.

### **Suggestions for improving the land administration system in Newfoundland and Labrador:**

- Amend the possessory period to a rolling time frame - a set number of continuous years at any point; not just prior to 1977.
- Modernization of current system to adapt a mandatory land title system.
- Amalgamate the Crown lands registry and the Registry of Deeds into one entity.
- Digitalization of records.
- An administrative body should be commissioned to investigate the extents of occupied Crown Land and issue grants where appropriate.
- Due to the passage of time and the lack of acceptable historical records of land occupancy and use in rural and isolated areas, Government needs to establish a process where it expands the acceptable documentation establishing ownership (surveys, property taxes receipts, wills).

## Summary

One of the most consistent complaints raised by respondents was the inability to evidence adverse possession claims. With the aging population, it is becoming increasingly difficult to find individuals who have sufficient recollection from 1957-1977 and have the capacity to execute affidavits of possession. Shortening the possessory period will address a large number of these concerns and half of the respondents (49.19 per cent), supported the proposal to reduce the possessory period by 10 years. While no responses suggested that this amendment would have negative impacts upon adverse possession claims, many expressed that this amendment falls short of addressing the full scope of the issue as it does not contemplate claims from 1977 forward.

Respondents want to be able to clear up title to their properties in a manner that causes the least hardship and stress. Many respondents find the process to be overwhelming, time consuming, costly and inconsistent. While the majority of respondents (81 per cent), support the issuance of a document that dispossess the Crown, this amendment may not ensure that the processing of applications will be more streamlined and efficient.

## What We Heard – Virtual Consultation Session

### Concerns with proposed amendments to the Lands Act:

- The proposed amendments fail to address possessory claims that have been documented and registered since 1977 as only claimants who can demonstrate occupation from 1967-1977 are eligible for a grant under adverse possession. For example, the amendments provide no recourse to residents who built their houses in 1977, occupied the land for the last 45 years, but did not occupy the land from 1967-1977. This amendment will also fail to assist anyone who built their house in 1970 as you are required to show possession for the full 10-year period 1967-1977 to successfully make a claim.
- The province's title search capacity is not sufficient to support current real estate transactions levels. The introduction of a limitation period for adverse possession claims will increase the demand for searches well beyond title searchers' capacities.
- Amending the possessory period from 20 years to 10 years does not resolve the issue entirely, but merely pushes the issue down the road. As time passes, it will once again be difficult to locate individuals who are able to execute affidavits of possession.

### Challenges of the current system:

- Lack of mandatory land registry system.
- Lack of confidence in land title is causing economic stress amongst sellers, purchasers and agents.
- The need to complete a full title search for each real estate transaction in the province is straining resources and delaying real estate closings.
- Difficulty obtaining title insurance for mortgages in certain areas of the province.
- Lack of public awareness. The majority of the public are completely unaware of the fact that they do not own their land and need to bring an application evidencing adverse possession.

### Suggestions for improving the land administration system in Newfoundland and Labrador:

- Support for the Crown issuing documents to dispense of its interest in land. It would be beneficial if the Crown could provide a set of specific objective criteria required to receive such a document to allow applicants and the legal community to assess the strength of potential claims.

### Summary

Similarly to the online questionnaires, the participants of the virtual consultation session expressed an eagerness to change adverse possession within the province and create a modernized land registration system that would improve confidence in land transactions. Majority of participants noted their support for the recommendations made within the 2021 Canadian Bar Association NL Report, “Reforming the Law on Adverse Possession, Proposed Changes to the Lands Act”. It is important to note that the participants of the virtual consultation session were mainly lawyers and realtors, and a great deal of the comments received was very similar in nature which may be interpreted as an attempt to increase their impact.

Participants expressed an overarching sentiment that any amendments to adverse possession provisions in the **Lands Act** would not be effective without a complete overhaul of the current land registry system. All participants agreed that while not within the scope of the proposed amendments, the introduction of a mandatory land registry system is a necessity.

While it was acknowledged that reducing the possessory period by 10 years would address some of the current hardships experienced by claimants, the real issue is the continued adherence to limiting adverse possession claims to the years prior to 1977. The proposed amendments fail to provide recourse to those who have openly occupied land for the past 45 years.

The legal community noted that the introduction of a document that dispenses of the Crown's interest in land is a solution that will sufficiently address many issues related to adverse possession.

Participants expressed concerns with the feasibility of introducing a limitation period for adverse possession claims without a marketable increase in title search resources, Crown lands resources and processing times. The province's title search capacity is not sufficient to support current real estate transactions levels. It is foreseeable that imposing a limitation period will result in an influx in Crown land applications beyond title searchers capacities.

## What We Heard – Written Submissions

### Concerns with proposed amendments to the Lands Act:

- The proposal is a temporary “bandage” at best, simply pushing the problem down the road.
- Is a step in the right direction, but fails to address the true nature of the concern, which is the growing difficulty of obtaining the evidence necessary to prove that possessory title has been established.
- Issues of cost should be considered as individuals may not be able to afford to obtain the necessary documents to meet a deadline.
- This approach would be grossly unfair to property owners as it implies that after that deadline, there would be no basis for a claim based on adverse possession. What will the consequences be for individuals whose claims are otherwise valid and provable and may even meet the current **Lands Act** limitation period, but are not submitted by the government-imposed deadline?
- Establishing an arbitrary deadline does nothing to make property owners aware that they have a problem in the first place.

### Challenges of the current system:

- As the cohort of individuals who are able to swear affidavits continues to age, there will be fewer individuals available to provide clear and concise evidence to prove possessory title.
- The length of the section 36 application process has been a continued impediment to land owners confirming possessory title in this manner. Instead, there has been significant reliance upon the legislated and common law test for establishing possessory title.
- Many of the documents in the registry of deeds are of low quality simply because they are illegible.

- Most lawyers in rural Newfoundland and Labrador insist that title insurance is purchased as a means of protecting purchasers against challenges that may arise to the ownership of their home or for problems related to the title of the property. If there is a mortgage, title insurance is required by the lender. There is a risk that title insurers may not continue to underwrite policies in rural areas of the province. If title insurers walk away from the local market, this will have a significant impact on overall business in the rural parts of our province.
- Crown lands offices ought to increase resources to ensure responses to applications for deeds are made in a more timely manner.
- Some manner of consideration ought to be given to occupied lands that do not strictly comply with the 1977 period because the absence of enforcement for over 40 years has only encouraged the belief in good title.
- Government must bear some responsibility for the fact that development has effectively continued unimpeded since 1977.

#### **Suggestions for improving the administration system in Newfoundland and Labrador:**

- Reconcile and modernize the two land registries – Crown lands registry and the Registry of Deeds – into a single, efficient and accurate land title registration system.
- Amend legislation in such a manner as to certify or grandfather historic possessory title in a manner that is not a burden to property owners.
- Establish standards of good title with the Law Society of Newfoundland and Labrador.
- Establish a set of objective criteria that allow lawyers to make a determination on pursuit of such letters. This should include factors such as: payment of municipal taxes, registered deeds at the Registry of Deeds existing prior to 2023, longstanding occupation for a period occurring after 1977 but prior to 2023, and other objective indicia of ownership to title existing prior to 2023.
- Send a notification out to all residents in Newfoundland and Labrador via mail of the pending changes to the **Lands Act** Section 36.
- Amend the legislation to include a rolling occupation period whereby anyone who can establish 40 years of open, notorious, continuous and exclusive occupation of land is eligible for a Crown grant based on adverse possession, regardless of the start date.

- Issuance of documents that declare the Crown claims no interest can be a satisfactory solution for instances where title does not strictly comply with the requirements of adverse possession and the Crown does not intend to pursue action to recover the land.

## Summary

Of the 22 written submissions, nine did not identify any association; nine identified as lawyers (either as having practiced and experience in the field of property law or submitted on firm letterhead); four identified as being involved in the realty/survey field and two identified themselves as representing their company or their association.

Written submissions suggest that while the proposed amendments, (with the exception of the introduction of the limitation period) may have some positive impacts on adverse possession claims, the amendments do not go far enough. The amendments are viewed as a temporary solution that will need to be revisited.

Other submissions expressed that a more appropriate solution would be to create a rolling possessory period, where applicants who can demonstrate possession for a continuous period determined by the Crown, pre or post 1977, would be deemed to eliminate the Crown's interest.

Introducing a limitation period was not supported and many respondents viewed this as a step in the wrong direction. Many individuals expressed grave concerns that imposing a limitation period has the potential to cause significant harm to residents who fail to file an application prior to the deadline. Lack of public education regarding adverse possession combined with the fact that enforcement of this issue has been extremely limited over the course of the last 40 years, has created a situation where many residents incorrectly believe they have good title to their property. The creation of a limitation period without ensuring proper public education was not viewed as a solution.

## Conclusion

The consultation process was very helpful in drawing forward the issues with respect to adverse possession. It is clear that participants are not satisfied with the current land title system and expressed an eagerness to see meaningful changes in how titles are registered and how adverse possession is established within the province. While there was limited support for various features of the current Crown lands process and recognition that land is an asset of the province, no responses, across any method of consultation, suggested that the system remain unchanged.

Below is the summary of what we heard with respect to the following three proposed amendments to the **Lands Act**:

1. Changing the possessory period from the current 20 continuous years immediately prior to January 1, 1977, to 10 continuous years immediately prior to January 1, 1977. No other period of possession would count in acquiring an interest in Crown lands;
2. Setting a definitive time period within which persons making claims to Crown lands based on adverse possession have to make those claims; and
3. Allowing the Crown to issue a document that does not grant title or transfer any interest, but instead declares the Crown claims no interest where the conditions of adverse possession have been met.

The general sentiment amongst participants is that while the proposed amendments, with the exception of the introduction of a limitation period, may have some positive impacts on adverse possession claims, the amendments are not seen as going far enough. Changes regarding land titles systems will need to extend beyond the management of Crown lands. As noted earlier, **the Department of Fisheries, Forestry and Agriculture is not responsible for processes or legislation related to the registration of deeds**. Such activities fall within the mandate of the Department of Digital Government and Service NL. The Department of Fisheries, Forestry and Agriculture will forward comments relating to the registration of deeds to the Department of Digital Government and Service NL and will continue to engage with them as changes to the Lands Act are considered.

Amendment 1, participants consistently expressed that some manner of consideration ought to be given to occupied lands which do not strictly comply with the 1967-1977 adverse possession period. Though reducing the possessory period will assist applicants in securing affidavits of possession, this only addresses claims that arise from 1967 or earlier. This amendment fails to assist individuals whose claims arise from 1977 onwards, or individuals who built their homes in 1970, as occupation must be established for the full ten year period 1967-1977 to successfully make a claim. It was noted that the absence of enforcement for over 40 years has only encouraged the belief amongst residents that they hold good title to their properties. Any solution that did not address occupation from 1977 forward, was viewed as a half measure.

Amendment 2, the introduction of a limitation period for adverse possession claims has the potential to give rise to situations where regardless of the strength of potential claims, individuals will have their title revert to the Crown failing to make an application. As one of the main concerns amongst participants is protecting their homes and the properties that have been in their families for generations, this suggestion was viewed by many as contrary to public interest. While it is within the Crown's interest to abolish adverse possession, respondents viewed this proposed amendment as a step in the wrong direction.

Even with extensive communication around this issue, there may be individuals who will not be able to comply with the limitation period and will lose the right to their homes. As many potential claimants reside outside of the province and some outside of the country, there was great concern as to how this restriction would be effectively communicated.

Amendment 3, the introduction of a document that dispenses of the Crown's interest in land is viewed as a step towards resolving land claims. However, some participants questioned the need for this amendment as Crown lands currently provides Quit Claim Deeds where adverse possession is demonstrated. It was not clear to participants how this amendment would impact participants' numerous concerns with the adverse possession application process. Feedback consistently suggested that the application process is too onerous, lengthy and inconsistent and expressed a need for a more streamlined application process. It may not have been clear in the consultation process, however, the amendments contemplate the issuance of quit claims over broad areas rather than simply quit claiming individual parcels of land. This has the potential to create a more efficient and streamlined process.

Overall, the information gathered through the online questionnaire, virtual engagement session and written submissions will be of invaluable assistance in considering amendments to the **Lands Act** and provides government insight into land titles and registration considerations beyond the scope of matters related to just Crown lands. The Department of Fisheries, Forestry and Agriculture appreciates the thoughtful feedback of all participants and will continue to work on addressing the issues related to its mandate.

