

CASE NO.

VOL. NO.

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Cite as: Nickerson v. Canada (Attorney General), 2000 NSSC 9

JERRY E.A. NICKERSON

PLAINTIFF

- and-

THE ATTORNEY GENERAL OF CANADA

DEFENDANT

1999 S.H. No. 150869 Halifax, Nova Scotia Gruchy, J.

HEARD: April 18 & 19, 2000

DECISION: June 6, 2000

SUBJECT: Real property; Crown; Limitations; *Constitution Act, 1867*; *Limitation of Actions Act*; etc.

SUMMARY: Plaintiff acquired, *inter alia*, a water lot in Sydney Harbour, the title of which was derived from a Provincial Crown grant to a predecessor in title in 1901. An attempted sale to the federal Crown failed and the plaintiff then entered into negotiations with the Province. Province objected to title because the provincial Crown grant of 1901 conveyed nothing, the *Constitution Act, 1867* vested under water properties in harbours in the Dominion Crown. The federal Crown refused to concede it had no title in the property or that the plaintiff and his predecessors had acquired prescriptive title by sixty years occupancy prior to 1950 when the federal government enacted the *Public Land Grants Act* S.C. c.19 which had the effect of prohibiting prescriptive titles against the federal Crown.

The legal history of prescriptive titles against the federal Crown was examined by an opinion of Dr. Philip Girard, accepted by both parties. Possession of the property from 1901 to 1950 was conceded by the federal Crown. The actual possession for the period 1850-1901 was examined by an expert historian together with certain family history. The property had been owned and occupied by Senator John Bourinot and his family and had been used extensively for the French navy during this period, as well as for servicing Newfoundland ships.

ISSUE: Had the plaintiff’s predecessors acquired title by prescription for the sixty years prior to 1950?

RESULT: Plaintiff proved sufficient acts of possession during the period in question to establish prescriptive title. Quality of possession of a water lot may be distinguished from that required for uplands. Title, however, is subject to *jus publicum*.

THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT’S DECISION
QUOTES MUST BE FROM THE DECISION, NOT FROM THE COVER SHEET
