

B344 vol. 387x41

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

MARITIME CENTRE, SUITE 1026, 1505 BARRINGTON STREET, HALIFAX
NOVA SCOTIA, B3J 3K5 902-424-4800

CHIEF JUSTICE T. ALEXANDER HICKMAN
CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

January 8, 1988

Ms. Leona Smith
R.R.#1, Jordan Falls
Shelburne County
Nova Scotia B0T 1J0

Dear Ms. Smith:

Thank you for your letter of January 4, 1988.

We will review it to see if there is anything that
might be of relevance to the work of the Royal Commission.

Thank you for your interest.

Yours truly,



Susan M. Ashley
Commission Executive
Secretary

SMA/jm

JAN 07 1988

R.R.#1, Jordan Falls,
Shelburne County,
Nova Scotia
BOT 1J0

January 4, 1988

The Royal Commission on the Donald Marshall Jr. Prosecution,
Suite 1026, Maritime Centre,
1505 Barrington Street,
Halifax, Nova Scotia
B3J 3K5

Dear Sirs:

I would like to bring to your attention a few documents relating to the Nova Scotia Attorney General's office.

According to a government file, legal staff of the department were taking an active role in a private court case in which my mother was a defendant. Memos and correspondence indicated that they were "carefully plotting strategy", visiting and interviewing witnesses, misleading defendants, noting "political interest" in the matter and assuming a "no comment" position.

Most of all, I was appalled by the manner in which statutory declarations were devised, following suggestions which were passed on from the department solicitor to the plaintiff's lawyer.

The Ombudsman's office and the RCMP seemed like logical places to go, but I found that they, too, led to the Attorney General's office - the very office that was so obviously involved.

It took several years to obtain some of the file - which is quite thick - and I am enclosing only a few samples.

Yours truly,

Leona Smith

Leona Smith

JAN 07 1988

R.R.#1, Jordan Falls,
Shelburne County,
Nova Scotia
B0T 1J0

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Yours truly,

Leona Smith

Leona Smith

OFFICE OF THE OMBUDSMA.

ROYAL BANK BUILDING
HALIFAX, NOVA SCOTIA
B3J 3B7

P.O. BOX 2152

OUR FILE 50-4

PHONE 424 6780

9 July, 1982

Leona Smith,
R.R.1, Jordan Falls P.O.,
Shelburne County, N. S.
BOT LJ0

Dear Leona Smith:

This will acknowledge receipt of your correspondence dated June the 16th, 1982.

I have now had an opportunity to discuss your case with Mr. Marshal Burgess a solicitor for the Department of Lands and Forests. During the course of my discussions with Mr. Burgess he advised me that on September the 25th of 1979 a Section 30 release was granted for the property in the Jordan Bay area. This transaction took place by means of an Order-in-Council, on that date, with the Certificate Number being 253.

The Order-in-Council, referred to above, had the effect of releasing 1065 acres of land in the Jordan Bay area, that had originally been known as the Myles and Luther location. The property that your family owns is located within the bounds of the 1065 acres, noted above.

In your correspondence to our office you state "these files, and others, support my charge that there was duplicity, deceit, conspiracy and outright intervention in a court case". These are very serious charges and you allege criminal wrong-doing on the part of certain individuals. If you feel you have any evidence to support these charges then I would suggest that you bring this evidence to the attention of the R.C.M.P. The R.C.M.P., and the Attorney General of this province will then determine as to whether criminal charges should be laid.

I have discussed the above with the Ombudsman, Mr. William L. Campbell, and at this point we feel that our office can be of no further assistance to you.

Yours truly,



Gerald F. DeYoung,
Investigator,
Office of the Ombudsman

GFD:m

N

177/F1 121

DEPARTMENT OF ATTORNEY GENERAL

MEMORANDUM

July 5, 1978.

FROM: J. Marshall Burgess

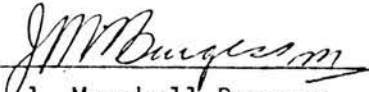
TO: D. Bancroft

Re: Quieting Title Actions - ungranted land at Green Harbour,
Shelburne County. (Scott File)

- 1.01 Ford Clements called yesterday re this file. He acts on behalf of Jessie Smith who is contesting Scott's claim.
- 1.02 Frank Peterson got a tax deed for the lots now claimed by Jessie Smith from the Municipality of Shelburne in the year 1954 (See her Abstract of Title). Ford mentioned that the Department of Municipal Affairs at that time advised the local inhabitants that by following such a route they should be able to clear their title. If the Crown has given such advice, we should investigate the matter. I note Paul Rhuland, north of the Scott lot, also got a tax deed in 1954.
- 1.03 There are very bad feelings amongst the neighbours now, and if the Crown enters the picture, there will probably be outright war.
- 1.04 We should meet with Wendell Sanford and Davidson and carefully plot our strategy in that area.

JMB:M

c.c. W. Sanford,
Department of Attorney General.


J. Marshall Burgess,
Solicitor.

RECEIVED
JUL 5 1978

DEPT. OF LANDS & FORESTS

255/F1

June 20, 1978.

J. Marshall Burgess

D. Bancroft

Re: Quieting Title Actions - ungranted land at Green Harbour, Shelburne County. (Scott File)

1.01 Scott File: I have reviewed the Scott v. Smith/Attorney General Statement of Claim. (dated 29 March 1978). Research indicates that the land was never granted by the Crown. From this it follows that the Crown still has an interest in this parcel of land and should defend this interest.

1.02 Use/Occupation: From reviewing the file, it would appear that there has been use and occupation of some parts of the lot since 1895. There is a house on the lot built on or shortly after the birth of Harry Wamback, age 62 when the declaration was filed. Taxes have been paid since 1951 by Harry Wamback and he believes his father paid them before him. See Statutory Declaration of Harry Wamback (Book 95, Page 613) or Abstract No. 8 in search of William Scott's land.

1.03 Title: Reference is made to Lots 2, 3 and 6. I do not know what plan, if any, they relate. Possibly it could be "Plan No. 1" from the Shelburne Portfolio. I believe Lots 2 and 3 lie to the east of the Bennam Road, marked on the Hebb plan, and Lot 6 lies to the west of it. William Wamback appears to have acquired one-half interest in the lots in 1914 from Leander MacKenzie and his wife Sophia. He picked up the other half interest from the heirs of Joshua Wamback in 1914 (deed recorded 1955).

1.03 cont'd.

There appears to be paper title to the lots dating as early as 1895. The descriptions are by adjoining only so it is hard to tell where the lots lie and what is included. However, these deeds would appear to give a colour of title to the lot claimed.

1.04 Surveys: There have been several surveys done. H. Wamback in his declaration states that Swansburg (George ?) surveyed the former Frank Peterson lot which forms the southern boundary of the lots in question.

Mrs. Jessie Smith now owns the F. Peterson lot and she had R. L. Hunt survey it in 1975. It shows Lots 3 and 6 as belonging to Jessie Smith.

E. Hebb did his survey on 6 July 1977 for the ^{South} ~~South~~ spots.

1.05 I note according to the Quieting Titles Act, R.S.N.S. 1967, c. 259, s. 6(3), that the Attorney General does not have to file or deliver a defence unless the court or judge directs him to do so. So there will be no rush to prepare such a defence.

1.06 Conclusion: There appears to be a possessory claim to this parcel of land.

(a) I would suggest that Mr. Gerald Freeman, solicitor for the Plaintiff, be notified that the land is Crown land. He may wish to prepare several declarations to strengthen his client's possessory claim, although Harry Wamback's declaration outlines it well. The Crown should obtain a copy of this declaration. One or more declarations from independent parties might be useful and firm up the possessory claim.

1.06 cont'd.

What use was made of the lot from the Benham Road to the baseline, I do not know. The declaration is weak here. It is marked as "woodland" on Hebb's plan so there should be some information on the use of the woodlot. I wonder if any of this part was cultivated.

(b) The Crown should question the adverse possession point at the hearing and to obtain a ruling on this point. The matter can be dealt with by the judge before he issues a certificate under the Act.

1.07 There will undoubtedly be problems in the area with other claims. The Crown can deal with them as S.30 claims pursuant to the Lands and Forests Act, R.S.N.S. 1967. ✓

However, if the homes have been recently built in the area it is doubtful whether there will be 60 years of use and occupation to remove the Crown's interest in all cases. Perhaps the only solution is to look into the possibility of designating the area as a Land Titles Clarification Area, pursuant to the Land Titles Clarification Act, R.S.N.S. 1967, c. 162. ✓ In this way the Crown can retain land in which it still has an interest and survey lots off for the people there. It undoubtedly will be an expensive undertaking. If the claimants claim 50 or more acres as in the Scott case, perhaps the Crown will not be too interested in designating such an area.

The Crown can also sit back and let the people proceed under the Quieting of Titles Act, which is a very costly method on their part to clarify title to their land.

1.08 Please contact me if you wish to discuss this file in more detail.

JMB:M

J. Marshall Burgess,
Solicitor.

c.c. W. Sanford,
Department of Attorney General.

228/F1

August 28, 1978.

J. Marshall Burgess

Wendell Sanford

Re: Quieting Title Actions - ungranted land at Green Harbour,
Shelburne County. (Scott v. Smith)

- 1.01 I have discussed this file with the Deputy Minister and other members of the Department of Lands and Forests and have been instructed to raise, at the trial and preliminary hearings, the objection that the land involved is ungranted land. I trust you will advise Mr. G. H. Davidson of this.
- 1.02 We are investigating the Scott and the Smith files as possessory claims to Crown land.
A Field Report for each claim is being completed by the local staff of the Department of Lands and Forests, Shelburne. When it is completed, I would like to discuss it with you.
- 1.03 I have made plans to go to Shelburne the first week in September to give some assistance in completing the reports.
- 1.04 Please keep us posted on this file. If you need any assistance, do not hesitate to contact me.

J. Marshall Burgess,
Solicitor.

JMB:M

c.c. J. S. Mactavish
J. D. Bancroft

178/F1

September 14¹⁵, 1978.

J. Marshall Burgess

Wendell Sanford

Re: Quieting Title Action (Scott v Smith), Green Harbour,
Shelburne County.


- 1.01 Please be advised that investigations by the Department of Lands and Forests have been completed on this file and I have reviewed it with members of the Department. The Department is now in a position to recommend to the Cabinet that whatever claim the Crown might have to the land which is the subject matter of the court application has been extinguished by the prescriptive rights of the applicant and his predecessor in title.
- 1.02 Enclosed find copies of Statutory Declarations which have been received in this regard. I have personally interviewed two of the declarants and have spoken to several others and made extensive notes of our conversations. Field Reports on the lot in question have also been completed by the Department.
- 1.03 Please take whatever action you deem necessary in light of this Department's recommendations.

Encl.
JMB:M

J. Marshall Burgess,
Solicitor.

c.c. J. S. MacTavish
D. Bancroft

226/F1



DEPARTMENT
OF
ATTORNEY GENERAL
NOVA SCOTIA

P. O. BOX 7
HALIFAX NOVA SCOTIA
B1A 2L8

5 September 1978

Gordon M. Davidson, Esq.
Bardon, Conrad & Davidson
P. O. Box 246
Bridgewater, NS
B4V 2W9

Dear Mr. Davidson:

RE: Scott v. Smith and The Attorney General -
Quieting Titles

Further to our conversation of 29 August 1978 I have talked with Marshall Burgess and he indicates that he has no information with respect to a "settlement offer" made on Mr. Scott's behalf by Mr. Freeman. Marshall Burgess is going to Shelburne tomorrow and again at the first of the week to attempt to clarify as much as he can and he and I will both meet at some point next week in order to resolve as many of the problems as possible. Once we have done that we will be in contact to bring you up to date on all the information we are able to obtain.

Marshall also advises that there is considerable political interest in the local area with regard to this matter and that he has taken a "no comment" position inasmuch as we are actively contesting the action at this point. Finally, Marshall or I will be in communication with you during the week of 11 September 1978. If anything further comes to your attention, please let me know at the first opportunity.

Regards,



Wendell Sanford
Solicitor

/nap

cc Marshall Burgess

Tue 9:30

DEPARTMENT OF ATTORNEY GENERAL

144/F1

MEMORANDUM

FROM: Kenneth Fiske

TO: Marshall Burgess
Dept. of Lands & Forests

RE: Scott v. Smith -
Quieting Titles

As you know, Wendell has left the Attorney General's Department and I have been assigned responsibility for Quieting of Titles. Wendell's instructions to me on this file are that I forward to you a copy of this letter for your comments. Your comments would be appreciated in view of the fact that I am not overly familiar with this file.

I also attached to this memo a copy of a letter from Mr. Davidson dated November 3, which in turn enclosed a copy of a letter from the Chief Justice to the Prothonotary of the Supreme Court of Shelburne dated October 31, a copy of which is also attached. In view of this correspondence would you kindly advise me as to whether or not a Tribunal is to be set up to determine the question of whether the lands the subject of the claim are granted or ungranted.



Kenneth Fiske

KWF/nap

November 8, 1978