SUPREME COURT OF NOVA SCOTIA

Citation: *National Gypsum (Canada) Ltd. v. Veinot*, 2019 NSSC 326

Date: 20191114
Docket: Ken No. 477816
Registry: Kentville

Between:

National Gypsum (Canada) Ltd.

Applicant

v.

Vaughn Veinot, Geoff Veinot and Blaine Veinot

Respondents

Judge:	The Honourable Justice Ann E. Smith
Heard:	March 18; April 29, 2019, in Kentville, Nova Scotia
Final Written Submissions:	May 9, 2019 – Applicant; May 24, 2019 - Respondents
Counsel:	Richard W. Norman, for the Applicant Randall P. H. Balcome, QC, for the Respondent

By the Court:

Introduction

[1] The Applicant, National Gypsum (Canada) Ltd. ("National") commenced this proceeding as an Application in Court claiming damages for trespass and seeking a permanent injunction with respect to a property in Sweets Corner, Nova Scotia. The property is PID 45008448 (the "Property").

[2] The Respondents are brothers (the "Veinots" or the "Veinot brothers") who each contest the claims. They filed a Notice of Respondents' Claim seeking various remedies based on their alleged adverse possession of the Property and based on what they say are relevant provisions of the *Land Registration Act*, SNS 2001, c. 6 (the "*LRA*"). The Respondents claim adverse possession of less than 20 per cent of the Property.

[3] The Application was heard in Kentville on March 18, 2019 and April 29, 2019. This Court reserved its decision. Additional written submissions were provided by counsel on May 9 and 24, 2019 with respect to the reference to s. 74(7) and (8) of the *LRA* in paragraph 50 of the Nova Scotia Court of Appeal's decision in *Cook v. Podgorski*, 2013 NSCA 47.

The Evidence on the Application

[4] National filed the affidavits of Jeff Newton, a manager at National; Michael Allison, land surveyor; Patrick Mills, a former manager at National; and Jack Innes, Q.C., an independent lawyer who gave opinion evidence. Mr. Newton and Mr. Mills were cross-examined on their affidavits.

[5] Each of the Respondents filed an affidavit and was cross-examined. The Respondents filed no other affidavits.

[6] In order to distinguish one brother from the other, I will at times refer to each Respondent by their first name only. No disrespect is meant.

Background

[7] The Property is approximately 63 acres and mostly forested. It is located on the Wentworth Road in Sweets Corner, outside Windsor, Nova Scotia. National

claims it has owned the Property since 1937. The Respondents do not contest the fact that National holds paper title to the Property.

[8] Vaughn Veinot is the owner of PID 45274768 ("Vaughn's property"), which shares a southern boundary with the Property. He purchased this property in 1996, built a home there and has resided there with his spouse to the present.

[9] The Respondent Geoff Veinot, lives on PID 45081148 ("Lot LS-1"), which shares a northern boundary with the Property. Lot LS-1 is not owned by Geoff Veinot. Lot LS-1 has not been migrated to the new land registration system. Jack Inness, Q.C. in his affidavit filed in support of the motion, opines that Lot LS-1 is not owned by Blaine Veinot. Blaine Veinot says that this property was deeded to him by his father in 1984.

[10] The Respondent Blaine Veinot lives on PID 45008430 ("Blaine's property"). Blaine's property is to the immediate north of Lot LS-1. Blaine purchased this property from his paternal grandfather in 1975 and has lived there with his spouse from 1977 to the present. The parties disagree as to whether Blaine's property shares a boundary with the Property.

[11] In 2005, National migrated the Property to the land registration system. A "Form 5", pursuant to the *Land Registration Act*, S.N.S. 2001, c. 6 clause 37(4)(h) and section 38 of the *Land Registration Regulations*, was completed at that time by Patrick Mills, on behalf of National. Form 5 is titled, "Owner's Declaration Regarding Occupation of Parcel and Residency Status." Two PIDs are identified on the Form 5 completed by Mr. Mills – PID 45008448 (the "Property") and PID 45153566. PID 45153566 is a 20-acre lot owned by National, but its ownership is not at issue in this proceeding.

[12] On Form 5 Mr. Mills solemnly declared on behalf of National as to the corporation's knowledge that neither the whole nor a portion of the Property was occupied without permission.

[13] In fact, that was not the case, as the Veinot brothers were occupying certain parts of the Property.

[14] National commenced this proceeding as a claim for trespass on the Property. The Respondents each say that they have an interest in the Property by way of adverse possession. They each say that their grandfather, father and other relatives made use of the Property since the 1950's. Their evidence was that they thought the Property was abandoned and that it was "Veinot land". They knew that they

did not hold paper title to the Property and Vaughan Veinot knew that others were registered at the land registry office as owners of the Property. This evidence will be reviewed in more detail below. Geoff and Vaughn Veinot each says that his claim in adverse possession began to run in 1986. Blaine says the same, except for certain pasture land which he says he began using in the 1970's.

[15] **Issues**:

[16] The issues before the Court are as follows:

1. Was the Property properly migrated in 2005?
2. If the Property was properly migrated, is any Respondent the owner of an adjacent parcel?
3. Have the Respondents proven adverse possession?
4. What remedies follow from the Court's decision?

Issue 1: **Was the Property properly migrated in 2005?**

Background to the Migration

The Evidence of Patrick Mills

[17] Patrick Mills had a 30-year career with National, starting in 1983. One of his responsibilities was to catalogue all property in Nova Scotia owned by National.

[18] Mr. Mills made notes of a December 23, 2004 visit to the Property which were attached as an exhibit to his affidavit. His notes indicate that he walked to the end of the Property. His notes stated that there was a "good growth of softwood on the land with trees of average diameter. It has not been logged for a long time (I would estimate +50 years). There were no other signs of occupation." Mr. Mills' evidence was that National did not have any structures on the Property and did not have plans to develop the Property. Mr. Mills did not walk on the portions of the Property which the Respondents claim in adverse possession.

[19] In preparation for his visit to the Property, Mr. Mills reviewed the Property's boundaries using Property Online. He made notes on the Property Online Map.

[20] Mr. Mills stated that the object of this cataloguing process was to ensure National had good title and that people were not trespassing on its properties.

[21] Mr. Mills' evidence was that the main purpose of his visit was to see if trees had been cut, whether there were abandoned cars or evidence of logging. He was also looking for signs of occupation. He saw none of these activities.

[22] Mr. Mills walked the Property's boundary on the southern side and traversed the Property to what he described as the mid-point. He noticed an old fence that he said appeared to run along the south boundary.

[23] Mr. Mills visited the Property again on February 18, 2005. He again made notes of his visit. This time he did not walk any part of the Property. He observed parts of the property from Wentworth Road while in his car.

[24] On his previous visit, in December of 2004, Mr. Mills had noticed structures along Wentworth Road. His evidence was that he saw some buildings which appeared to be on Lot LS-1 and other structures which appeared to be north of those buildings, and not on the Property. He did not use a GPS.

[25] During his February 2005 visit, Mr. Mills took a number of photographs from his car. The photographs were exhibits to his affidavit. One of these photographs shows the driveway to Vaughn Veinot's property, which shares a southern boundary with the Property. Notes Mr. Mills made on this photograph refer to the edge of a pond. The photograph shows a small shed-like structure.

[26] Another photograph taken by Mr. Mills on February 18, 2005 is of a section of "the northern boundary" of the Property taken from Newport Station Road. This photograph shows several structures to the south of what Mr. Mills' notes on the photograph indicate is the northern boundary of the Property.

[27] Mr. Mills did not make any inquiries of any persons occupying these observed structures on February 18, 2005.

[28] National retained legal counsel to migrate the Property later in February, 2005. The Property at the time was registered to a Lyman R. Shanks. National concluded, at the time, that there was no basis for Mr. Shanks to claim title to the Property and that he was not occupying the Property.

[29] Prior to having counsel migrate the Property, Mr. Mills reviewed several aerial photographs of the Property. The first set of photographs was taken in 1973. The second set was taken in 1981 and the third set taken in 1992. Mr. Mills attempted to match the aerial photographs with the Property Online Map.

[30] Based on his review of these aerial photographs, as well as his visits to the Property in 2004 and 2005, Mr. Mills concluded that there were no signs of any individual or entity occupying the Property, trespassing on it, or possessing it in any way. The Property was then migrated to the Land Registry system in March, 2005.

[31] Shortly before the start of this hearing, Forms 5 and 9 were provided to the Respondents. Section 12 of the *LRA Administration Regulations* provides that at any time after registration of title to a parcel, a registered owner becomes aware the declaration required by under clause (6)(b) [Form 5] was not accurate, they must, without delay, complete a new Form 5, provide notice in Form 9 to any occupier and file a true copy of the notice and proof of service. The *LRA Regulations* provide that the purpose of Form 5 is to provide a declaration by the registered owners of a parcel on their residency status and whether the parcel is occupied without permission. The purpose of a Form 9 is stated to be to give notice to an occupier or the most recent owner.

[32] National acknowledges that it did not file Forms 5 and 9 "without delay" once it had knowledge, in 2017, of the Veinot brothers' occupation, but says that in the circumstances this doesn't matter, because the Veinot brothers were each outside the time to file a claim in adverse possession. This point will be addressed later in this decision.

The Evidence of Jeff Newton

[33] Jeff Newton is the manager of National's quarry at Milton Station, Nova Scotia.

[34] In September, 2017 Mr. Newton visited the Property. His evidence was that it appeared to him that a portion of the Property had structures on it. He described the structures as a small livestock barn and a shed. It also appeared to Mr. Newton that there was a driveway and some landscaping done on the Property close to the barn and shed. Mr. Newton spoke to a neighbour who told him that his name was Geoff Veinot. Mr. Newton's evidence was that Geoff Veinot told him that his brother Blaine Veinot owned the land where he (Geoff) lived and that Geoff Veinot had lived on that land for 31 years.

[35] Mr. Newton's affidavit attached as an exhibit a Property Online printout for the lot referred to by Geoff Veinot. This lot is Lot LS-1 and at the time was registered in the name of Blaine Veinot and Lyman Shanks.

[36] Mr. Newton's evidence was that he told Geoff Veinot that he believed that some of the barn and shed appeared to be on National land, but that he (Mr. Newton) wasn't sure. He said that Geoff Veinot told him that the title to the Property was contested years ago but he (Geoff Veinot) believed the property boundary ran a different way than what Mr. Newton thought and that Geoff Veinot's buildings were not on National's land.

[37] Mr. Newton's evidence was that after he returned to his office, he recalled that he had received an inquiry to purchase the Property a year earlier from Vaughn Veinot and exchanged emails with him about the Property and some uses of the Property that Vaughn had made over the years.

[38] Mr. Newton requested that a survey be done of the northern boundary between Lot LS-1 and the Property. Surveyor Michael Allison sent Mr. Newton an email dated December 6, 2017 which states, in part, that "The mini home and large barn are on the owner's land. There is one building completely on your land, one building 95% on your land and a smaller building partly on your land. I can prepare a location certificate for you showing the encroachments if you like."

[39] Mr. Newton requested that Mr. Allison prepare a location certificate. Mr. Allison's Location Certificate, attached as an exhibit to Mr. Newton's affidavit, shows the encroachments which form part of the basis of National's claim for trespass on the northern border of the Property.

[40] The *Real Property Limitations Act*, R.S., c. 258 s. 1, 2014, c. 35, s. 26 sets a 20-year period for a true owner to seek recovery of land. The *LRA*, modifies the common law and the provisions of the *Real Property Limitations Act* to provide for a ten-year limitation period after a property is migrated, for an assertion of adverse possession. The owner of an adjacent parcel may acquire an interest in part of a parcel after ten years, provided that part does not exceed 20 per cent of the total area of the parcel.

[41] The *LRA* provides:

> **Adverse possession and prescription**
>
> **74** **(1)** Except as provided by Section 75, no person may obtain an interest in any parcel registered pursuant to this Act by adverse possession or prescription unless the required period of adverse possession or prescription was completed before the parcel was first registered.
>
> **(2)** Any interest in a parcel acquired by adverse possession or prescription before the date the parcel is first registered pursuant to this Act is absolutely void

against the registered owner of the parcel in which the interest is claimed ten years after the parcel is first registered pursuant to this Act, unless

(a) an order of the court confirming the interest;

(b) a certificate of *lis pendens* certifying that an action has been commenced to confirm the interest;

(c) an affidavit confirming that the interest has been claimed pursuant to Section 37 of the *Crown Lands Act*; or

(d) the agreement of the registered owner confirming the interest has been registered or recorded before that time.

(3) *repealed 2004, c. 38, s. 22.* 2002, c. 19, s. 32; 2004, c. 38, s. 22.

Limit on land acquired

75 (1) The owner of an adjacent parcel may acquire an interest in part of a parcel by adverse possession or prescription after the parcel is first registered pursuant to this Act, if that part does not exceed twenty per cent of the area of the parcel in which the interest is acquired.

(1A) An owner of an undivided interest in a parcel may acquire the whole interest in the parcel by adverse possession or prescription after the parcel is first registered pursuant to this Act.

(2) For the purpose of this Section, adverse possession and prescription include time both before and after the coming into force of this Act. 2001, c. 6, s.75; 2002, c. 19, s. 33.

[emphasis added]

[42] The Respondents argue that Mr. Mills' investigation of the Property in 2004 and 2005 was cursory, inadequate and that upon proper inquiries he would have discovered that the Veinots were occupying portions of the Property. The Respondents say that they are entitled to a correction of the Property's registration pursuant to s. 35 of the *LRA*, to the recording of their interest pursuant to s. 92 of the *LRA*. Alternatively, they say that they are owners of adjacent parcels and entitled to a declaration of their interest in the Property pursuant to s. 75 of the *LRA*.

[43] The Respondents also claim that the failure of National to provide them with a Form 5 at the time of the migration of the Property, or in 2017 when Jeff Newton had the plan of survey completed, means that the migration was improper. They also say that the very recent service on them of Forms 5 and 9, resets the limitation "clock" for their claims in adverse possession.

Analysis: Was the Migration of the Property Improperly Carried Out?

[44] I find that National's migration of the Property in 2005 was valid. This Court has outlined earlier in this decision, the efforts Mr. Mills made in 2004 in order to ascertain if there were trespassers on the Property. I will not review all of his actions here. The Respondents did not provide this Court with any case law where a migration had been set aside on the basis of a lack of diligence on the migrating party, or on any other basis. It would take an extraordinary set of circumstances for a court to do so. Property owners should be able to rely upon the certainty that registering their properties provides to them. The Respondents provided this Court with no authority in support of the contention that Mr. Mills could have spoken to neighbours and easily learned that the Veinots were on the Property and had been for years, and indeed that he was required to do so.

[45] The Property is a 60-plus acre lot. Mr. Mills walked parts of it in 2004, took notes, compared aerial photographs from a 30-year period and concluded that there were no trespassers on the Property. There was no evidence that he was willfully blind to the presence of trespassers. He went back to the Property in 2005 and took photographs from his car from Wentworth Road. Again, he did not see any trespassers on the Property. There was no evidence that Mr. Mills had any knowledge of the Veinot's occupation.

[46] The *LRA* does not impose any duty on a property owner to carry out the type of investigations the Respondents suggest were necessary.

[47] This Court concludes that Mr. Mills was prudent and diligent in his efforts to examine the Property prior to its migration. To impose any higher burden on him, or on any owner migrating a property would be onerous.

[48] Nor does this Court find that the failure on the part of National to provide, without delay, the Respondents with Forms 5 and 9 after 2017 when they discovered that the Veinots were occupying part of the Property, voids the migration. The evidence disclosed that the Veinot brothers knew about National's concerns in 2018 before it started this proceeding. Even then, they did not initiate a claim in adverse possession, but rather contested National's claim in trespass on the basis of adverse possession.

[49] Further, as will be discussed below, in 2017, the Veinot brothers were outside the ten-year limitation period, and therefore were restricted to a limited form of adverse possession available only to adjacent parcel owners claiming 20 per cent or less of the property at issue. That is their alternative claim before this Court.

Did the Recent Service of Forms 5 and 9 Restart the Ten-Year Limitation Period?

[50] In terms of the Respondents' argument that the service of the new Forms 5 and 9 serves to reset the ten-year limitation period, I am persuaded by the argument and analysis set forth by National's counsel in his March 4, 2019 brief to the Court that that is not the case:

> From the time the Property was migrated in March 2005, the Respondents (or anyone else) had 10 years to bring a claim for adverse possession.
>
> The Act's language makes it clear that this is an absolute limitation period:
>
> > Adverse possession and prescription
> >
> > 74 (1) Except as provided by Section 75, no person may obtain an interest in any parcel registered pursuant to this Act by adverse possession or prescription unless the required period of adverse possession or prescription was completed before the parcel was first registered.
> >
> > (2) Any interest in a parcel acquired by adverse possession or prescription before the date the parcel is first registered pursuant to this Act is absolutely void against the registered owner of the parcel in which the interest is claimed ten years after the parcel is first registered pursuant to this Act, unless
> >
> > (a) an order of the court confirming the interest;
> >
> > (b) a certificate of *lis pendens* certifying that an action has been commenced to confirm the interest;
> >
> > (c) an affidavit confirming that the interest has been claimed pursuant to Section 37 of the *Crown Lands Act*; or
> >
> > (d) the agreement of the registered owner confirming the interest, has been registered or recorded before that time.
>
> It is difficult to imagine clearer or stronger language with respect to the extinguishment of a claim for adverse possession or prescription. Such claims are "absolutely void" after 10 years (subject to s. 74(2) and s. 75).
>
> The Act does not say the extinguishment of such claims are void subject to s. 10 of the *Regulations*.
>
> Nor does it create a discoverability mechanism which extends the 10-year period from the date when an alleged adverse possessor learns of the migration.
>
> Nor does it provide the Court with the power to extend the 10-year limitation period for equitable reasons (which National says in any event are not present here).
>
> An adverse possessor who does not actively take steps to assert and confirm his or her interest can see their claim barred by this limitation period. That is the

> purpose of s. 74. It is in keeping with the ultimate purpose of the *Land Registration Act*, which is to provide certainty.
>
> If the Court were to adopt the Respondents' interpretation, and find that the non-delivery of a new Form 5 at some point after migration causes the 10-year limitation period to reset, the limitation period might be extended almost indefinitely. This would diminish the usefulness of the Act and limit the purpose intended for it by the Legislature.
>
> Under the Respondents' interpretation, a landowner might migrate a property in 2019; twenty years later, in 2039, the landowner might observe adverse possession for the first time and serve a new Form 5 on the adverse possessor. The possessor then has a further 10 years to assert their clam for adverse possession (or 30 years from the date of the migration). Some time later, the same landowner might find a second trespasser and have to serve a new Form 5, extending the limitation for that individual by another 10 years,. The result would make the registration system's promise of certainty a practical illusion.
>
> The discoverability principle applicable to some limitation periods does not apply here. The statute makes that clear. The Respondents were aware they were using property to which they did not have title. They were either unsure who the true owner was or they suspected National or a number of other people might have been the owner. It was open to the Respondents at any time to take confirmatory steps to ensure any claimed interest to the Property was protected – for example, by obtaining a court order. They were content to continue to operate as they had in the past. They may not have been fully aware of all their legal rights, but ignorance of the law should not serve to extend the time period dictated by the Act.

[51] For all of the above reasons, this Court finds that there is no basis in law to re-open the migration of the Property migration. Nor does the recent service of Forms and 9 serve to reset the ten-year limitation period.

Issue 2: Is any Respondent the Owner of an Adjacent Parcel?

[52] In order for each Respondent to advance a claim pursuant to s. 75 of the *LRA*, he must prove that he is an adjacent parcel owner.

[53] It is admitted by National that Vaughn Veinot is an adjacent property owner.

[54] Geoff Veinot does not own the property where he lives (Lot LS-1). He claims that Blaine Veinot owns this property and that he acted as Blaine's agent in his acts of adverse possession. The evidence before the Court was that Geoff Veinot acted on his own initiative when he placed structures on the Property. Not only does the evidence before the Court not support that Geoff was acting as

Blaine's agent when he put certain structures on the Property, the *LRA* does not allow for such a finding on any reasonable interpretation. The legislation refers to "owners." I find that Geoff Veinot is not the owner of any parcel adjacent to the Property and cannot claim under s. 75 of the *LRA.*

[55] Blaine Veinot claims that he is an adjacent owner. His Property lies to the north of Lot LS-1. His evidence was that there is a survey marker on the southwestern corner of his property at the point where his property touches upon a border of the Property. There is no expert evidence that supports where the survey maker is located. A Property On-Line map in evidence appears to show that this is not the case. This does not constitute proof, but Blaine Veinot led no convincing evidence to contradict what is shown on the map. He produced no plan of survey or expert evidence in support of his argument that he is an adjacent owner.

[56] This Court notes that the Nova Scotia Court of Appeal in *Podgorski v. Cook*, 2013 NSCA 47, referred to s. 74 of the *LRA.* in the context of determining a claim of adverse possession. The Court of Appeal stated at paragraph 50:

> 50. In Nova Scotia, no one can obtain adverse possession against lands registered under the *Land Registration Act* unless the necessary period of possession concluded prior to registration (*Land Registration Act*., s. 74(1)). There is an exception for claims of less than 20% of an owner's land by an abutter (s. 74(7) and (8).
>
> [emphasis added]

[57] Counsel provided written submissions to this Court as to the Court of Appeal's reference to s. 74(7) and (8) because the current *LRA* does not have those subsections. In fact, counsel agree that subsections (7) and (8) never existed.

[58] Clearly, however, the Court of Appeal has signalled an understanding of s. 74 which interprets s. 75's reference to "the owner of an adjacent parcel" to mean the owner of an abutting parcel, i.e., that a border is shared between the two parcels.

[59] Quite apart from this Court's observations about the *Podgoski* decision, I find that Blaine Veinot has not proven that he is an adjacent owner within the meaning of s. 75 of the *LRA* and therefore cannot advance a claim in adverse possession pursuant to s. 74 of the *LRA.*

The Legal Effect of Vaughan Veinot's 2017 Communications with National

[60] Vaughn Veinot is an adjacent parcel owner. However, National argues that Vaughn has acknowledged that he does not own the Property and that on that basis, his claim in adverse possession must fail.

[61] Vaughn Veinot's evidence was that he knew that he did not hold paper title to any part of the Property. His evidence was that at one point he understood a gypsum company, a 'Jim Hunter' and an 'Effie Mosher' owned the Property. He testified that in 1996 after purchasing his property, he went to the land registry office in Windsor and viewed records which showed that at that time Reid Shanks owned the Property.

[62] In 2016, Vaughan Veinot called the land registry office and asked whose name was on the Property. He was told that the Property was in the name of National Gypsum. His evidence was that he had no knowledge at that time as to how National came to have its name on the Property.

[63] Vaughn Veinot wrote to National on August 11, 2016 as follows:

> August 11, 2016
>
> Vaughn Veinot
> 1600 Wentworth Road
> Windsor, NS B0N 2T0
>
> National Gypsum Ltd.
> PO Box 57
> Milford, NS B0N 1Y0
>
> Dear Sir/Madam:
>
> National Gypsum owns a piece of land next to my house and I would be interested in purchasing it for a reasonable price.
>
> The Nova Scotia Land Registry gave me your company as the owner and your address. There have been some discrepancies over the years as to the land owner and a local resident Reid Shanks had done some grading about 30-40 years ago. They also attempted to sell this land.
>
> There is a pond that is partly on my property and on your land. As a young boy, I spent many hours playing hockey on it. There are also a few maple trees that I

> have tapped for sap. I would like to own this property. If it is not for sale, I hope you don't mind if I continue to skate on the pond and tap the maple trees.
>
> I have included a map so you would know the property I am talking about.
>
> Thanks for your consideration.
>
> Sincerely:
>
> Vaugh Veinot
>
> [emphasis added]

[64] Vaughn Veinot signed this letter and sent it by registered mail. Over the course of the next 18 months, including after Mr. Newton's September 2017 visit, Vaughn continued to make inquires of National, offering to purchase the Property and also offering to act as custodian of the Property on behalf of National. His proposals were declined.

[65] Vaughn Veinot described his actions in contacting National in August, 2016 about purchasing the Property as attempting to get purchase paper title to what the Veinots had been using on the Property. He said that he believed at the time that the Veinot family owned the Property, having maintained and fenced it over the years. He was willing to pay to "get his name on the title."

[66] He denied in cross-examination that his statement in the August 11, 2016 letter he sent to National that "I hope you don't mind if I continue to skate on the pond and tap the maple trees" was asking for permission to do so. He said that he wrote this because he wanted to let National know that he was using the Property and wondered, since it had paper title, whether this would create a conflict. He was "searching that out." His evidence was that he wanted to see what kind of response he would get from National.

[67] Vaughn Veinot testified that his opening statements in this letter, "National Gypsum owns a piece of land next to my home and I would be interested in purchasing it for a reasonable price" was not an acknowledgement that National owned the property, but only that he had learned through the land registry office that National owned the paper title to the Property.

[68] Vaughn Veinot's evidence was that the eventual response from National was that it was not interested in selling him the Property.

[69] He testified that Geoff Veinot told him that Jeff Newton had visited in the Property in September 2017. He learned of Mr. Newton's visit within a day of it from Geoff. He learned that Mr. Newton was concerned about structures possibly being on the Property and its boundary. In cross-examination, he admitted that he wrote to Mr. Newton by email dated September 28, 2017, with the Re line of "National Gypsum Land" stating:

> Jeff:
>
> I understand that a representative of National Gypsum Ltd (possibly yourself) inspected the company's land next to my house at 1600 Wentworth Rd, Hants County.
>
> I am still interested in purchasing this property to preserve its natural beauty and habitat it provides to the wild life….
>
> I mentioned in a letter to you that local resident Reid Shanks made a claim to this land many years ago. He sold 2 acres to my brothers and they have constructed buildings on that land. Since Shanks has lost title and National Gypsum Ltd regained the title to the land, I thought those 2 acres may become a contentious issue.
>
> If National Gypsum would consider selling me this land, I would resolve the issue of the 2 acres my brothers maintain by giving it to them.
>
> [emphasis added]

[70] This Court notes that apart from Mr. Veinot's assertion in this email to Mr. Newton, there was no evidence that Reid Shanks sold Vaughn's brothers two acres of the Property where they constructed buildings. Mr. Veinot continued in cross-examination to characterize his request to purchase the Property as requests to purchase the paper title.

[71] On November 8, 2017 Vaughn Veinot sent another email to Jeff Newton, stating:

> I was disappointed to hear National Gypsum Company will not be selling me the forested land next to my property….
>
> My brother tells me you would like to meet with us next Thursday and sign a document regarding National Gypsum's land. I would like to be a custodian for National Gypsum to help look after this land making sure no one cuts any of the maturing trees…Would you please email a copy of the document so I would have an opportunity to review it before Thursday.
>
> [emphasis added]

[72] Counsel for National suggested to Vaughn Newton that the document referenced in this email was to a licensing agreement. Vaughn's evidence was that he didn't know that. He characterized his statement in the letter about being custodian of the land, not as asking National's permission to do so, but as buying time to allow for the negotiation of some kind of agreement with National. He said that he hoped that he could negotiate an agreement with National for him to be custodian of the Property, and have first options to buy the paper title should National decide to sell it at some later date. His evidence was that if he had the paper title that his ownership through uses of the Property would be more cemented. He wanted a deed to the Property from National which he said would be the paper title.

[73] Vaughn Veinot agreed in cross-examination that he had never sought to purchase "paper title" to the Property from Reid or Lyman Shanks. He maintained that his assumption was that the Shanks had not obtained title to the Property legally.

[74] Vaughan Veinot acknowledged that in November 2017 National proposed that he enter into a licensing agreement with him whereby he could use the Property. He refused to sign the agreement because it required him to acknowledge that National was the owner of the Property.

[75] Vaughn Veinot agreed that he did not file a legal claim for the Property until after National filed the within Application.

[76] I find that these communications constitute an acknowledgement on Vaughan Veinot's part of National's ownership of the Property. In particular, the August 2016 letter signed by Vaughn Veinot is in itself sufficient to constitute an acknowledgement of title pursuant to s. 17 of the *Real Property Limitations Act* and serves to reset any claim for adverse possession which Vaughn Veinot might otherwise have. That section states:

> **Acknowledgment of title**
>
> **17** Where any acknowledgment of the title of the person entitled to any land or rent has been given to him, or to his agent, in writing, signed by the person in possession or in receipt of the profits of such land, or in receipt of such rent, then such possession, or receipt of or by the person by whom such acknowledgement was given, shall be deemed, according to the meaning of this Act, to have been the possession or receipt of or by the person to whom, or to whose agent, such acknowledgement was given, at the time of giving the same and the right of such last-mentioned person, or of any person claiming through him, to make an entry

> or distress, or bring an action to recover such land or rent, shall be deemed to have first accrued at, and not before, the time at which such acknowledgment, or the last of such acknowledgments, if more than one, was given. R.S., c. 258, s. 17.

[77] MacIntosh's *Nova Scotia Real Property Practice Manual* states at p.7-7:

> A person attempting to establish a possessory title may lose all right to claim time during which he occupied property prior to the date of a letter or writing signed by him or her in which he acknowledges the true owner's title, and a new commencement date is set by the date of the letter or writing.

[78] A letter similar to Mr. Vaughn Veinot's August 2016 letter was at issue in *R. B. Ferguson Construction Ltd.. v. Nova Scotia*, 1988CarswellNS 460. That letter was cited by the Court as follows:

> 47 In 1964, Abram LeDrew wrote the following letter which was received by Daniel MacDougall (Exhibit #27):
>
> 290 St. Peters Rd.,
>
> Sydney, Nova Scotia
>
> May 28, 1964.
>
> Mr. Daniel MacDougall
>
> 2045 Kelle St., Apt 2
>
> Toronto 15, Ontario.
>
> Dear Sir:
>
> A number of years ago I got permission from Mrs. Margaret and the Late Neil MacLean to erect a small bunglow on the land on Trout Brook Road. At that time I understood that the people mentioned above were owners of this land. However recently I find out that you own the portion of land on which I have my bungalow. I would like to know if you are interested in selling this land at a reasonable price or at least the portion on which I have built. If you are not willing to sell is it possible to obtain a lease from you and in the event you decided to sell I would like to have the first offer to this land.
>
> May I expect to hear from you at your earliest convenience, because right now I don't know really where I stand. I am quite sure we should be able to come to some agreement on this matter.

> Yours very truly ,
>
> Abram LeDrew
>
> (signed)

[79] The Court there held:

> 49 By virtue of s. 16 of the *Limitation of Actions Act* [now s. 17 of the *Real Property Limitations Act*], this letter, being an acknowledgment of the title of Daniel MacDougall, the latter's right to bring an action to recover the lands commences as of the date of the acknowledgment. At this date, Daniel MacDougall, by virtue of s. 18 and 19 of the said Statute of Limitations, as a resident outside the province, would have forty years within which to bring action to recover his lands.

[80] The decision on this point was affirmed by the Court of Appeal in *R. B. Ferguson Construction Ltd. v. Nova Scotia (Attorney General)*, 1989 CarswellNS 83 (NSCA).

[81] Although Vaughn Veinot repeatedly stated before this Court that his references to National's ownership of the Property and his desire to purchase the Property were only with respect to "paper title", and that he considered that he and his brothers owned the Property by virtue of their various uses of the Property, the fact remains that that is not a distinction he ever made in his communications, at the time, with National. He stated that he was interested in purchasing the land, referred to National as owning it, and in this Court's view, asked if National would give him permission to continue to skate on the pond and tap the maples trees on the Property.

[82] Accordingly, any claim for adverse possession by Vaughn Veinot was reset in 2016 and again in 2017.

Issue 3: Have the Respondents Proven Adverse Possession?

[83] If this Court is incorrect, and either the Property was improperly migrated for any reason, or that Vaughn Veinot's 2016 and 2017 communications with National did not constitute an admission on his part that National owned the Property, or that National should have discovered that the Veinots were occupying parts of the Property before the Property was migrated, or that each of the Veinots is an adjacent owner within the meaning of the *LRA*, or the recent filing of the amended Form 5 restarts the ten-year limitation period, then I will determine

whether the Respondents' evidence of use of the Property over the years satisfies the legal test for adverse possession.

[84] Justice van den Eyden (as she then was) summarized the relevant legal principles to adverse possession in *Gallagher v. Gallagher*, 2015 NSSC 88 as follows at para. 49:

> ● A true owner is presumed to be in possession of their land. A true owner is not required to show they are in possession by occupation or use;
>
> ● To oust a title owner, although the burden is on a balance of probabilities, the court should only act on very cogent evidence that establishes the required possession for the statutory period. (*Cook v. Podgorski*, 2013 NSCA 355, para. 58);
>
> ● Possession is fact specific. The acts of possession which must be proved with cogent evidence depends on the circumstances of each case and the nature of the land in issue. (*Cook*, para. 49);
>
> ● The claimant of possessory title…has the burden of proving with very persuasive evidence that he had possession of the land in question for a full 20 years and that his possession was open, notorious, exclusive, and continuous;
>
> ● He must also prove that his possession was inconsistent with the true owner's possession and that his occupation ousted the owner from its normal use of the land. As well, possession by a trespasser of part is not possession of the whole. Every time the owner, or its employees or agents stepped on the land, they were in actual possession. When the owner is in possession, the squatter, is not in possession. (*Spicer v. Bowater Mersey Paper Co.*, 2004 NSCA 39 and *Bain v. Nova Scotia Attorney General*, 2005 NSSC 355).
>
> ● A true owner interrupts the adverse possession of an occupier the moment a true owner steps upon the lands. The limitation period begins to run from the time the true owner was last upon the lands: *Hatt v. Peralta*, 2014 NSCA 15.
>
> [emphasis added]

The evidence of Vaughn Veinot

[85] Vaughan Veinot claims that his claim in adverse possession started in 1986 and that he has proven adverse possession for 20 years.

[86] Vaughn was born in 1958 and grew up at the home of his parents on property directly opposite to the Property on Wentworth Road. In his affidavit Mr. Veinot stated that he recalled over the years being advised by his father and grandfather who both lived their whole lives in the immediate area of the Property

that they understood that at some point National Gypsum Company, Jim Hunter and Effie Mosher owned the Property but "that had been abandoned."

[87] In cross-examination, Vaughn Veinot admitted that he now saw an inaccuracy with that evidence, because what he had heard was that "a" gypsum company may have owned the Property, rather than National Gypsum.

[88] Vaughn Veinot's affidavit also provided that both of his grandparents advised him over the years that the Property was not claimed or used by anyone over the years and no one in the community had any knowledge of who owned the land. Vaughn stated that he witnessed his paternal grandparents using portions of the Property for pasture and was told by his grandfather that he started using portions of the Property around 1954. He states that he directly recalls that his grandparents openly used portions of the contested property for pasture land and "other purposes" until they passed away (1983 and 1972). He stated that while his grandparents and parents stopped pasturing portions of the Property because it wasn't good pasture land, he directly recalled that both his paternal grandparents and parents openly kept roads and trails open on the Property. His affidavit evidence was that as a child he tramped through portions of the Property, including the pastures. He recalled that he helped his grandparents and parents cut firewood off the Property on an open basis every year. He stated that he remembered that on the pasture portions of the Property his father and grandfather would fence and pasture cattle.

[89] He stated that he recalled that in the late 60s and 70s he would snare rabbits on the Property and take a hatchet and start taking limbs off trees and keep paths open. His affidavit refers to various kinds of activities he carried out on the Property including cutting pulp and firewood, picking berries and apples, three-wheeling. He testified that he would spend hours de-limbing trees to make the woods more habitable, in terms of walking through them. He described activities in removing dead trees. He described these kinds of activities as "forest management."

[90] He maintained in cross-examination that, as stated in his affidavit, that "there have been no gaps or interruptions in my above-mentioned use of various portions of the contested property from the late 1960s to the present." He did admit that he had stopped snaring rabbits for food when he was about 18 or 19 years old (mid to late 1970's), both because he was older and had jobs and no longer needed or wished to kill animals.

[91] Vaughn also admitted that he stopped cutting pulpwood when he was around twenty-five years old (early 1980's), although he said that he continued to cut dead limbs and collect firewood for his fireplace every four months or so.

[92] In terms of his use of three-wheelers on the Property, he admitted in cross-examination that he had not used a three-wheeler on the Property for at least as long as 15 years. In terms of tapping maple trees for syrup, Vaughn Veinot admitted that the maple sugar season is about six weeks long in late winter. However, his evidence was that during the off-season he would maintain the maple trees to ensure their growth and survival.

[93] Vaughan Veinot said that he recalled that during the 1970's he and his brothers cut pulpwood off portions of the Property and sold it to various third parties.

[94] His evidence was that in November, 1996 he purchased his property on the west side of the Wentworth Road to the immediate south of the Property. His property and the Property share a border. He stated that he openly and continuously maintained roads and trails on the Property since 1996. His evidence was that for ten years prior to 1996 he openly and continuously tapped the maple trees on the Property for maple syrup and kept the roads and trails clear from growing over.

[95] In cross-examination Vaughn Veinot testified that he recalled that in the late 60's or early 70's Reid Shanks brought two bulldozers onto the Property and used this equipment to clear two to two and a half acres of land on the Property. Vaughn was a young child at the time and when he went to look at the bulldozers, Reid Shanks yelled at him and he ran away. His evidence was also that he vaguely remembered that the Shanks family had put up a small fence as a gate close to Wentworth Road and improved an access road to the Property from Wentworth Road. His evidence was that Reid Shanks used dirt to completely fill in one pond and half of another pond on the Property. He stated that Reid Shanks was on the Property doing the bulldozing and filling the ponds for about two weeks.

[96] Vaughn Veinot testified in cross-examination that Lyman Shanks also created a vegetable garden on the Property at some point in the 1970's. He disagreed with his brother about the size of the garden. His brother Blaine's evidence was that the garden was 40 x 60 feet in size. Vaughn's evidence was that the garden was at most 6 x 10 feet in size. His evidence was that Lyman had the

garden for two consecutive summers, but didn't maintain it. He identified the garden as being on the Property just off the southwest corner of LS-1.

[97] Vaughn Veinot's evidence was that there is a pond partly on his property, but mostly on the Property. His evidence was that when he was young, he and his brothers played hockey on the pond on most winter days. Since 1996 when he purchased his property, he has kept the pond clear of snow so people in the neighbourhood and children could go skating. He denied that community members skated on the pond without asking his permission to do so. He said that if the ice was clear, community members knew that they had an "open invitation" to play hockey or skate on the pond. If the pond was not cleared, he said that they would ask him.

[98] His evidence was that in the early 2000's he built a walking path around the pond and he and his spouse walk around that path almost every day.

The evidence of Geoff Veinot

[99] Geoff Veinot was born in 1960. He claims adverse possession since 1986. He lives on Lot LS-1. Geoff Veinot acknowledges that he does not own this land. He states in his affidavit that Blaine Veinot purchased this lot from their father. His evidence was that in 1984 he and his wife moved onto LS-1 with the permission of his brother, Blaine. He put a mini-mobile home on the land and Nova Scotia Power connected power to the mini-home. He does not pay property taxes or rent for Lot LS-1.

[100] Geoff's evidence was that during the summer of 1986 he and Blaine moved a small barn from Blaine's property to a location which is called a "shed" on Michael Allison's location certificate and is partially on the Property, but mostly on Lot LS-1. His evidence was that he wanted the shed located there because he intended to raise chickens and that has been the use of that shed since then to the present.

[101] Geoff Veinot's affidavit evidence was that in the early 1990's he started to grow and raise a few turkeys, but ran out of room and therefore decided to turn the shed sideways and build another structure over the top of it. This structure also appears on the Allison location certificate. Geoff uses the structure to store a motor bike, lawn tractors and other items. He did not obtain a building permit when he built the new structure. The structure is entirely on the Property.

[102] Geoff Veinot's evidence was that in 1993 he constructed a second driveway to LS-1 with the help of Blaine. The driveway is gravel and is totally located on the Property.

[103] Geoff Veinot's evidence was that he and his wife planted blueberry bushes and put a stack of split stones around the bushes. He says that these bushes and the surrounding walls are totally located on the Property. The following year, 1988, Geoff and his wife built a flower bed which is also totally located on the Property.

[104] His evidence was that in 1985 or 1986 his brother Blaine built a large barn on Lot LS-1. The barn holds about 25 cows. This was an expansion of Blaine's cattle business. The baby barn moved partly onto the Property in 1986 had been Blaine's cow barn.

[105] Geoff's evidence was that in 1994 he and Blaine relocated a small shed from Blaine's property to the Property. This too is shown on the Allison location certificate. Geoff said that the shed rotted and that in 2010 he constructed a larger building beside the shed. This building is completely on the Property.

[106] Geoff's evidence was that in 1994 he and Blaine relocated an 8 x 10 building (shed) that Blaine no longer wanted on the Property. The following year, 1995, Geoff and his wife planted 11 black cedars along a line, entirely on the Property.

[107] Geoff Veinot's evidence was that on a daily basis since 1986 he and his spouse have constantly maintained the flower beds and grass on the Property and in the winter plowed the driveway on the Property. His evidence was that he tends the buildings he put and constructed on the Property.

[108] Geoff Veinot's affidavit evidence was that in 1992 an individual by the name of Lyman Shanks came to him and claimed he owned the Property and wanted him to get off of it. He said that after a few years of complaining about his use of the Property, Lyman Shanks stopped doing so. His evidence was that he always thought that the Property had been abandoned.

[109] Geoff Veinot's evidence was that for ten years until 1990 he would go to the Property every year and cut Christmas trees for his grandmother and that starting in 1990 he began pruning trees in different portions of the Property. He described snaring rabbits during the time period 1970 to 1982. He said that he cut pulpwood. His affidavit, like that of Vaughn, set out similar activities he and his family carried out on the Property over the years.

[110] Geoff Veinot's evidence was that his first contact from anyone from National was a visit in September of 2017 when Jeff Newton came to Lot LS-1. Until that point, he didn't know who owned the Property, apart from what he was told by family and community members. Until that point, Geoff thought that the large shed he'd built on the Property in 1990 was on "Veinot land." His evidence was that Jeff Newton wasn't sure when he spoke to him whether that was the case, but Mr. Newton told him that the shed constructed in 2010 was certainly on the Property. His evidence was that he thought in 2017 and to this day, that the Property was "Veinot land" and had been since 1954.

[111] In cross-examination, Geoff Veinot recalled that Reid Shanks came to the Property with a bulldozer at some point in the late 60's or early 70's and that he used the bulldozers to clear two or three acres, to fill in a pond and make a road.

[112] Geoff Veinot's evidence was that Lyman Shanks also had a garden on the Property in a 20 x 30-foot clearing, with the garden being about 8 x 10 feet. He said that Lyman Shanks had tended to the garden for about three years. He recalled that Mr. Shanks would drive a garden tractor to the plot. He thought that Mr. Shanks still had the garden for a short period after he moved to Lot LS-1 in 1984.

[113] Geoff Veinot's evidence was that Jeff Newton proposed a lease agreement for the Property. However, when he received it, it was a license agreement. He rejected this agreement.

[114] Geoff Veinot testified that he first saw the emails that his brother Vaughn had sent to Jeff Newton concerning the Property after the within proceeding started. He said that he thought the letters were unnecessary because the Property was Veinot land.

[115] Geoff Veinot's affidavit states that his use and possession of the Property over time was open and continuous and uninterrupted since 1986 to the date of his Affidavit. However, he admitted in cross-examination that he stopped cutting pulpwood, hunting deer and trapping, cutting Christmas trees and using a four-wheeler many years ago, at least since 1990. He described his main activities, apart from using the structures on the Property as maintaining the lawn, planting shrubs and blueberry bushes and using his four-wheeler with a winch to clear trails on the Property.

The evidence of Blaine Veinot

[116] Blaine Veinot was born in 1954. He claims adverse possession of the majority of his uses of the Property since 1986. He claims adverse possession of the pasture portion of the Property since the early 1970's. His affidavit states that his paternal grandparents owned property on the Wentworth Road which they purchased in 1950 and which is directly and contiguously north of the Property.

[117] His affidavit outlines what he says is his use of the Property. He states that from 1966 to 1975 he and his uncle used the ponds on the Property, that from 1966 to 1970 he cut pulpwood from all over the Property and sold it to a third party. He states that from 1966 to 1974 he helped his father maintain a fence on the front half of the Property as his father had cattle pastured on the Property during this time period. Blaine's evidence is that from 1974 to 1990 he cut fence posts from a portion of the Property and in 1985 he cut approximately 7,000 board feet of logs from various portions of all of the Property in order to build a new barn on his property.

[118] Blaine's evidence is that he purchased Lot LS-1 from his father in 1984 for $1.00. He stated that he purchased that lot in order to allow his brother Geoff and his wife to move onto LS-1 and treat it as their own. He said that starting in the 1970's he used portions of the Property as pasture land for cattle and that in 1982 he erected and maintained a fence down to Wentworth Road. He removed part of this fence when his brother Geoff moved onto Lot LS-1.

[119] Like his brothers, Blaine states that starting in 1987 he and his brothers used three-wheelers on the Property and cut numerous trails through it. His evidence is that he has cut firewood on the Property and has heated his home with approximately five to six cords of wood annually which he cuts from the Property.

[120] In his cross-examination Blaine stated that he stores some machinery on the Property not far from the border between LS-1 and the Property. He said that he thought that there were two small structures, with the smaller one being 10 x 14 or 10 by 16 and the larger one being 20 x 10. He stores equipment and supplies in these structures. He did not refer to such structures in his affidavit.

[121] Also similar to his brother Respondents, Blaine Veinot's evidence was that Reid Shanks brought bulldozers onto the Property in the late 60's or early 70's, that he cleared land on the Property. He said that this was about three to four acres. Mr. Shanks also put up a fence all along Wentworth Road which was up for four or five years. He said that Reid Shanks would tell him a couple of times a years for four to five years that he owned the Property. His evidence was that

Lyman Shanks constructed a large vegetable garden. He admitted that during his discovery examination he said that the garden was 40 x 60 feet. He said that Lyman Shanks tended the garden for approximately ten years during the 70's and 80's.

[122] Blaine Veinot admitted in cross-examination that he no longer uses three-wheelers on the Property, although in the late 80's he bought a three-wheeler and used it throughout the Property on a regular basis. He sold the three-wheeler in the early 2000's. He also admitted that he hasn't cut wood on the Property for the last three or four years. He does continue to walk on the trails cut on the Property.

[123] His evidence was that the first time he knew of the National's objection to his and his brothers' use of the Property was when a representative of National visited his brother Geoff.

Analysis of Claims for Adverse Possession

The Veinot Brothers' Claims in Adverse Possession from 1986

[124] As noted previously in this decision, Mr. Pat Mills visited the Property in 2004. He did so in his capacity as a manager of National. I find that Mr. Mills knew that National had paper title to the Property, and that his actions in 2004 were the actions of an owner and an act of possession. So were Mr. Mills' actions in 2005. Mr. Mills was looking for signs of occupation. The limitation period is reset when the true owner sets foot on the lands in dispute: *Hatt v. Peralta*, 2014 NSCA 15 at para. 12. The same applies to Mr. Jeff Newton's visit to the Property, as a manager of National, in 2017.

[125] This Court finds that Mr. Mills' visit and actions on the Property in 2004 were sufficient to reset any of the Respondents' claims in adverse possession. Counsel for the Respondents argued that Mr. Mills did not step foot on the portions of the Property occupied by the Veinots, and that therefore his activities did not restart the limitation clock. No case law was provided to this Court in support of this argument. The Respondents say that their adverse possession claims began in 1986. This Court finds that the Respondents therefore have not established 20 years of adverse possession.

[126] If this Court is incorrect, and the visits of Mr. Mills and Mr. Newton did not serve to reset the limitation period, none of the Respondents has proven, with cogent evidence, adverse exclusive possession for 20 years.

The Claim of Geoff Veinot

[127] Geoff Veinot's claim dates from 1986.

[128] His main uses of the Property, apart from using the structures he placed on the Property are maintaining the lawn, planting shrubs and using his four-wheeler with a winch to clear trails.

[129] This Court finds that these uses of the Property are intermittent and insufficient to meet the requirements for adverse possession.

[130] Further, none of those uses are adverse to National. Walking on the Property and clearing dead trees and tree limbs are not exercises of exclusive use and not adverse to National, which doesn't have any use of the Property at present.

[131] Geoff Veinot's construction of structures on the Property is adverse. However, the Court only has the evidence of the Veinot brothers as to when these structures were placed. There was not corroborating evidence from third parties to support their evidence.

The Claim of Blaine Veinot

[132] This Court finds that any use by Blaine Veinot of the pasture land on the Property since the 1970's was interrupted by the acts of the Shanks family beginning in the late 1960's. The bulldozing of a large area of the Property and the improvement of the access road took place in the late 60's or early 1970's. Lyman Shanks' garden was on the Property and maintained by him, including with use of a tractor, for one to ten years, until nearly 1985, depending on which version of the Respondents' evidence is accurate. The Shanks also erected a fence along the Wentworth frontage to the Property.

[133] This Court finds that the Shanks' use of the Property is extensive enough to prevent Blaine Veinot from proving that his use of the Property was continuous or exclusive through at least 1985 or 1986 when Lyman Shanks abandoned his use of the vegetable garden.

[134] I refer to *O'Neil v. MacAuley*, 1976 NSJ No 518 (NSSCTD) where the Court held:

> 70. Nor am I satisfied as to the exclusiveness of the use of the land by the plaintiffs and their predecessors. There is some evidence before me that other

> parties used the land for the cutting of timber and for passageway, and were never at any time interfered with by the plaintiffs, or their predecessors. The evidence seems to indicate that many of the residents of the area considered the lands to be unoccupied.

[135] Blaine Veinot has failed to prove exclusive use of the pasture land area of the Property since 1982.

[136] Further, Blaine's use of the Property as pasture land in more recent years is not adverse to National. Nor is the use of fencing to keep cattle in sufficient to prove a claim in adverse possession. See: *McLeod v. McRae*, [1918] OJ No. 106 (ONCA) and *Board of Trustees of Common Lands v. Tanner*, 2005 NSSC 245 at paras. 71-75.

The Claim of Vaughn Veinot

[137] Vaughn's uses of the Property since 1986 in terms of clearing trails, walking the trails and maintaining the wooded areas is not inconsistent with National's. Tapping maple trees is an intermittent use, not adverse to National and not continual enough to constitute adverse possession. Walking and maintaining the trails is not adverse to National and those acts are not exclusive.

[138] The Nova Scotia case law is clear that persuasive and cogent evidence is required to prove adverse possession.

[139] The evidence of the Veinot brothers about their uses of the Property was not corroborated by the evidence of neighbours or anyone else with knowledge of their uses over time. Their evidence was not cogent.

Issue 4: What remedies follow from the Court's decision?

[140] National seeks a mandatory injunction requiring that the Veinot brothers remove all structures on the Property and an order prohibiting further trespass. This includes the use of the driveway constructed on the Property. National seeks nominal damages of $1.00.

[141] Counsel for the Veinot brother proposes that his clients pay $8,000 to National as damages, in lieu of the relief sought, as a kind of compulsory purchase or expropriation.

[142] Counsel for the Veinot brothers suggested to the Court that the assessed value of the Property was $37,000, and his clients were seeking only about 14 per

cent of the Property, so that an award of damages of $8,000 to National would be an adequate amount in the circumstances.

[143] However, the assessed value of a property may be different from its market value. I have no evidence of either value.

[144] Trespassers should not be encouraged to continue their encroachments. Each of the Veinot brothers knew he did not have paper title to the Property, and certainly Vaughn Veinot knew others had paper title. National offered Vaughn and Blaine Veinot licensing agreements for use of the Property in 2017 and 2018. Each declined.

[145] This Court finds that the circumstances of this case therefore do not constitute the kind of extraordinary circumstances referred to by Cowan C.J.T.D. in *Gallant v. MacDonald*, 1970 CarswellNS 144, which would allow the award of damages in lieu of a mandatory injunction.

Conclusions:

[146] National's migration of the Property in 2005 was appropriate.

[147] The ten-year limitation on adverse possession claims stipulated in s. 74 of the *LRA* is an absolute bar to adverse possession claims, subject to s. 75 of the *LRA.*

[148] Only Vaughn Veinot is an adjacent parcel owner, and his claim fails because he acknowledged National owned the Property.

[149] Provisionally, none of the Veinots have shown adverse possession for 20 years because their uses were not exclusive, given National's entry onto the Property (Patrick Mills) in 2004, 2005, and 2017(Jeff Newton). Uses by Blaine Veinot prior to 1986, i.e. pasturing cows, were interrupted by the Shanks' use of the Property.

[150] National is awarded the following:

1. A declaration that it has legal title to the Property;
2. Damages for the Respondents' trespass on the Property in the amount of $1.00;

3. A mandatory injunction requiring the Respondents to remove all structures and property from the Property and restore the Property within six (6) months of the date of this decision;

4. An injunction enjoining the Respondents from any further trespass;

5. Costs of this application.

[151] If the parties cannot agree on costs, I will receive written submissions within 20 calendar days of this decision.

Smith, J.