

## *Beals v Nova Scotia (Attorney General),*

### 2020 NSSC 60

[This case addresses the interpretation of the *Land Titles Clarification Act*, successor legislation to the *Community Land Titles Clarification Act*, which was enacted in 1964 to address the problem of unclear land titles in African Nova Scotian communities. We will not address the specific facts in *Beals*, but read the case to understand some of the relevant historical background.]

*Bodurtha J.* —

#### **The LTCA [*Land Titles Clarification Act*] - Historical background**

[1] The *Community Land Titles Clarification Act*, the predecessor to the LTCA, was assented to on March 18, 1964. On second reading of the proposed legislation, the Honourable W. S. Kennedy Jones stated:

The purpose of this legislation is to provide a simpler and less expensive machinery for the clarification of titles within areas or communities.

The second section of the Act is the definition section, and therein the minister is defined as being the Minister of Lands and Forests, and I perhaps should point out that my particular interest in the preparation and presentation of the present legislation is as the chairman of the Interdepartmental Committee on Human Rights.

The third section of the bill provides that the Governor-in-Council may define an area for consideration under the Act, if there is a lack of development which can be traced to confusion or obscurity in titles. It further provides that the designation must be approved by the municipal authorities.

The fourth section of the Act sets forward the procedure to be followed by the minister, and under certain circumstances by a commissioner appointed under the Act.

The final section of the Act makes provision for any party who feels he has suffered because of the operation of the Act to make application to the Governor-in-Council for adjustment.

This act will be of particular use in communities such as New Roads within the county of Halifax, and it has, of course, general application in many areas throughout the province.

[Nova Scotia House of Assembly, Hansard, 48th Gen. Ass. (4 March 1964) at 887-888 (Hon. W. S. Kennedy Jones)]

These brief comments are the only contemporaneous information available as to the purpose of the legislation.

[2] The current *Land Titles Clarification Act* contains many of the same provisions as the *Community Land Titles Clarification Act*. It is clear from Hansard that the Act was intended to provide a simpler and less expensive means for clarifying title in areas where “there is a lack of development which can be traced to confusion or obscurity in titles”. What is unclear from the debates, however, is how these areas came to exist. The only hint is in the comment by the Honourable W.S. Kennedy Jones that his interest in the legislation was as chairman of the Interdepartmental Committee on Human Rights (the predecessor to the Nova Scotia Human Rights Commission). The applicant attempted to fill in this information gap by including excerpts from various secondary sources in his brief. These sources include: (1) a Masters of Arts thesis submitted to Dalhousie University in 2006 by Erica Colter entitled *A State of Affairs Most Uncommon: Black Nova Scotians and the Stanfield Government’s Interdepartmental Committee on Human Rights, 1959-1967*; (2) an article by Lindsay Van Dyk entitled *Shaping a Community, Black Refugees in Nova Scotia*, available on the Canadian Museum of Immigration at Pier 21 website; (3) a report prepared for the United Nations Human Rights Council by the Working Group of Experts on People of African Descent setting out its findings following a visit to Canada in October 2016; and, (4) a report prepared by then Schulich School of Law student Angela Simmonds entitled *This Land is Our Land: African Nova Scotian Voices from the Preston Area Speak Up* (August 19, 2014). These sources discuss the experiences of black migrants who settled in Nova Scotia in the 18th and 19th centuries, and the continued impact of those experiences on subsequent generations of African Nova Scotians. Some also address how the *LTCA* has been implemented since its enactment. The respondent takes the position that these materials should not be considered by the court because they were not before the decision maker, nor were they the subject of a successful motion to admit fresh evidence. At the same time, however, counsel for the respondent conceded during argument that “it would be important for the Minister to be aware and understand the circumstances with respect to individuals living in these land clarification areas, certainly”.

[3] It is helpful to examine the contested sources more closely. In her Masters thesis, Ms. Colter explains that black settlers arrived in Nova Scotia in three main groups — the Loyalists (1783-1785), the Maroons (1796), and the refugees of the War of 1812 (1813-1815). These settlers arrived in Nova Scotia under the pretence of offers of generous land grants from the British government. Unlike their white counterparts who typically received at least 100 acres of fertile land, black families were given ten-acre lots of poor-quality land. That land was segregated from the lands given to white families. In addition, while white settlers were given deeds to their land, black settlers were given “tickets of location” and “licenses of occupation”. Without legal title to their land, black settlers could not sell or mortgage their property, or legally pass it down to their descendants upon their death. Although a limited number of land titles were eventually issued in Preston, and some settlers were able to purchase land, most

black families never attained clear title to their land. Lack of clear title and the segregated nature of their land triggered a cycle of poverty for African Nova Scotian families that persisted for generations:

If blacks had attained legal ownership of their land, this would have afforded them a substantially helpful financial asset. Without this asset, blacks held little collateral and therefore had great difficulty making financial advancements; while many whites turned their land grants into successful agricultural holdings and pursued other business interests, blacks struggled to survive. Such financial hardships supported a cycle of poverty that soon included a failing or non-existent education system. Blacks seeking an education through secular schools were challenged by the Nova Scotia School Act of 1811 which virtually denied access of education to poor communities. The Act stated that the government would only fund a school after the community built a schoolhouse, hired a teacher, and raised a requisite amount of money. If these conditions were not first in place, the government would not provide the community with funds for the building costs or provide further, ongoing support for the school. Most black communities were too poor to initiate such arrangements and therefore the members of the community could not access an education through this manner. An educated black community might have broken or eased this cycle of poverty, but unfortunately, most black regions could not end the cycle under these circumstances. Until 1954, issues of legal school segregation and discrimination persisted in Nova Scotia; certain black regions went years without schools as qualified teachers were not available or were not willing to accept the small salaries offered.

[Colter, Erica. *A State of Affairs Most Uncommon: Black Nova Scotians and the Stanfield Government's Interdepartmental Committee on Human Rights, 1959-1967* (Master of Arts, Dalhousie University, 2006), at pp. 19-20]

[4] The isolated nature of rural black communities was accompanied by a lack of community development. Ms. Colter writes at p. 23:

Life for black Nova Scotians by the 1960s, therefore, was still difficult, and blacks continued to face challenges similar to those faced by the early Loyalists, Maroons, and Refugees. The mid twentieth century marked a turning point in black history, however, as black problems began to gain wider attention. Urban communities, such as Africville, had long been recognized as a dire problem, but black communities in Nova Scotia's rural areas began to share Africville's notoriety.

Life was worse for rural blacks as their isolation had led them to be forgotten by urban dwellers and government officials. Blacks in both urban and rural areas tended to live closely together, but

the urban-living blacks frequently lived in areas also inhabited by whites. Black communities in rural areas were usually segregated and remote, and this isolation often was accompanied by an absence of typical community developments such as water, sewage, sanitation, garbage removal, road improvements, and other related services regularly provided in white or mixed communities. When blacks first arrived in the eighteenth century, the public's initial response of benevolence and financial assistance was short-lived. This attention waned, and black communities remained forgotten until the improved communication systems and better roads of the 1950s and 1960s, both initiatives of Stanfield's government, uncovered the state of these remote communities and public interest and concern returned. Stanfield recognized that, contrary to the long-held belief that black poverty was a black problem, "their problems have been exposed, and even more important, are recognized as problems of the whole community." (citing Gwendolyn Shand, *Adult Education Among the Negroes of Nova Scotia* (Halifax: Institute of Public Affairs, Dalhousie University, 1961) at p. 3.)

[5] In 1962, Premier Robert Stanfield created the Interdepartmental Committee on Human Rights (ICHR). It was charged with giving immediate attention to housing, education and employment issues faced by African Nova Scotians. Ms. Colter reviewed the minutes of ICHR meetings as part of her research. In relation to land titles, she notes at p. 98:

In the 1960s, blacks were encountering discrimination and confusion over land titles. Many blacks were without documentation proving ownership of their land, even though the land had stayed within a family for generations. Clear titles would have helped blacks who were in the midst of relocation and improvement projects; as well, proof of land ownership would have increased a black family's livelihood. Without a clear title, a family would be unable to sell or lease the land, or even to use the property as collateral to secure credit.

Stanfield's government recognized this concern, and one of the ICHR's noteworthy accomplishments was its creation of the *Community Land Titles Act* on 18 March 1964. This Act was intended to facilitate the process by which Nova Scotians could apply to clear their land titles.

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[6] The article by Lindsay Van Dyk that is published on the Canadian Museum of Immigration at Pier 21 website contains similar historical information as the Colter thesis. The author describes the migration of people of African descent to Nova Scotia, starting in the late 1700s. In relation to land grants, she writes:

Upon their arrival in Nova Scotia, the Black Refugees experienced many hardships. The government withheld land grants, an influx of white immigration increased competition for the few jobs available,

and the rocky, infertile land proved difficult to cultivate. Under these conditions, extreme poverty became a reality for many Black Refugees. . . .

The Black Refugees settled in the rural areas around Halifax, with the largest communities established at Preston, Hammonds Plains and Beechville. *Initially, the settlers were “well pleased and satisfied” at the prospect of having land to call their own. However, the government did not give the Black Refugees outright grants to the land, but rather tickets of location or licenses of occupation. This denied the Black Refugees the opportunity to own land or sell it for a profit. The lots provided by the government were limited to ten acres and located on rocky, infertile soil.* In these conditions, crops planted by the Black Refugees repeatedly failed. A series of devastating natural events made efforts to cultivate the land even more difficult. In 1815, entire fields were destroyed by hordes of mice that swept across Nova Scotia’s countryside. The following year became known as the “Year without a Summer,” as the ground stayed frozen until June and ten inches of snow fell that same month. Even when the Black Refugees did achieve some success in producing crops, the long, cold winter seasons generally depleted their resources. Many Black Refugees were forced to rely on government assistance and private charity despite their best efforts to become independent.

The white population of Nova Scotia resented the dependence of the Black Refugees and did not accept them as equal members of society. Provincial authorities protested that the Refugees were “unfitted by nature to this climate, or to an association with the rest of His Majesty’s Colonists.” The general poverty of the Black Refugees was regarded as proof that the black population was more suited to slavery than freedom. . . .

[Emphasis added]

[7] The Report of the Working Group of Experts on People of African Descent on its mission to Canada contains the following references to land titles in Nova Scotia:

60. The Working Group is concerned about the lack of implementation of the Land Titles Clarification Act in Nova Scotia, which should assist people of African descent in obtaining titles to the lands on which they live. The Act was passed in Nova Scotia in 1963 to create a process to assist with the clarification of land title and land ownership issues for residents living in 13 specific communities in Nova Scotia. For historic and systemic reasons, there was a lack of land ownership documentation for the residents of those areas and communities, many of whom are African Nova Scotian. The Act was intended to provide

a simpler and inexpensive mechanism to obtain clarification of land titles. Under the Act, a certificate of title is issued to applicants who can show that they used and occupied the land claimed for at least 20 years. The process provides for notice to be given to the community and issues such as competing ownership claims and unsettled boundaries to be resolved before a certificate can be issued.

61. Civil society informed the Working Group that the system in place under the Act was not working as hoped. The process is reportedly unjust and discriminatory, and many have had their claims rejected. Residents must bear the burden for submitting all the documentation, as well as the application, lawyer and surveyor fees necessary to have the land title clarified. In May 2015, the Department of Natural Resources, which is responsible for processing the applications, acknowledged that the process was unclear and stated they were attempting to pilot a project to assist residents in the community to obtain the title to their property. It was recognized that there were financial and logistical hurdles for some residents wishing to obtain a certificate of title, as residents were responsible for all the costs of the process, include [sic] surveying and legal fees. However, an interdepartmental committee was currently considering various options for removing or reducing those barriers and providing support to African Nova Scotians to help them clarify titles to their properties. The Working Group emphasized that the Act must be implemented in collaboration with, and for the benefit of, the affected population group. All resources should be made available, fees should be waived and remedies should be provided for any discriminatory policies relating to the process of granting a certificate of title.

[8] The final source is *This Land is Our Land: African Nova Scotian Voices from the Preston Area Speak Up*, a report prepared by then Schulich School of Law student Angela Simmonds. Ms. Simmonds explains at p. 3 that the report contains the results from a series of interviews she conducted during the months of June, July and August 2014, with “African Nova Scotian community members who are well-informed of African Nova Scotian historical land ownership”. Interviews focused on three topics:

1. What are the historical challenges and barriers faced by African Nova Scotian people when dealing with land ownership;
2. In what ways has the Land Titles Clarification Act been used in the process to acquire title to land from government; and
3. In what ways can we move forward to address future land ownership, acquisition and community education around the process of land ownership.

[9] The report contains some of the same historical information on the migration of black families to Nova Scotia discussed in the other sources, obtained by the author from the Nova Scotia Archives website. Unlike the other sources, however, the report contains firsthand accounts from African Nova Scotians of their negative experiences dealing with government and the LTCA. The only portion of the report relied on by the applicant in his brief relates to the reason that some community members do not believe in writing wills:

During this process of interviewing members in the community I inquired about the lack of wills for some community members. Community members explained that elders in the community affiliate death with wills. To many in the community, wills represent death and with such strong religious beliefs and faith it is not something that is discussed in the home.

Culturally it is known that the land would go to the youngest child of the family or the child who was residing in the home when the parents pass away. Without a will this becomes difficult and can result in conflict.

[...]