

SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES

Date: 20120704

Docket: SCT-7002-11

OTTAWA, ONTARIO July 4, 2012

PRESENT: Justice Harry Slade

BETWEEN:

OSOYOOS INDIAN BAND

Claimant

and

HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA

Respondent

SYNOPSIS OF DECISION

1. In 1877, by joint action of the Province of British Columbia and Canada, a parcel of land comprising 32,097 acres was set apart to become a reserve of the Osoyoos Indian Band.
2. In 1922 the Kettle Value Railway acquired a Right of Way, comprising 3.97 acres, through the reserve. A line of rail was constructed. The interest of the Kettle Value Railway was later taken over by the CPR.
3. In 1978, the line of rail through the reserve was abandoned.
4. *The Railway Act* in force in 1922 prohibited the alienation of Crown land taken by a railway company for railway purposes. This applies to a taking of reserve land, as the legal title to reserves is held by the Crown.

5. Despite the prohibition of the sale of land acquired under the *Railway Act*, the CPR sold the Right of Way land to the Province of British Columbia. The Crown, Canada, although under a duty to protect the Indian interest in reserve land, did not intervene at the time of the sale, or in 1981 despite a request of the Band that it do so.
6. The Osoyoos Indian Band filed a Specific Claim with the Tribunal on July 29, 2011. The claim was heard in Vancouver on May 30-31, 2012.
7. Harry Slade, Chairperson of the Tribunal, found that the Crown, Canada, breached its fiduciary duty to the Osoyoos Band when it failed to take action to restore the interest of the Band in the Right of Way land.
8. The issue of compensation will be dealt with in a further hearing.
9. The English language version of the full decision will be posted on the Website of the Tribunal at the same time as this synopsis. The French language version will be posted after translation.