



## ABORIGINAL PEOPLES

### LANDS

Judicial review of Specific Claims Tribunal (Tribunal) decision determining that applicant's specific claim was unfounded given that applicant had failed to establish that lands in issue had been wrongfully transferred or that respondent (Her Majesty the Queen in Right of Canada) had breached fiduciary duties owed to applicant — Circumstances giving rise to applicant's specific claim centre on 1914-1915 sale to Pacific Great Eastern Railway Company (PGER) of 4.37 acres of much larger parcel of land that had been set aside for applicant — Brief review of historical backdrop, which disclosed considerable delay in establishment of many reserves for Indigenous peoples in British Columbia, including Williams Lake Indian Reserve No. 1 (WLIR No. 1), reserve at issue in this application, carried out — In 1914, PGER sought approval for right-of-way through WLIR No.1 — In 1938, British Columbia conveying WLIR No. 1 minus Railway Parcel Lands acquired by PGER for railway purposes to Canada — In its decision, Tribunal addressed applicant's primary submission that WLIR No. 1 was full reserve rather than provisional one in 1914-1915, rejecting this submission — Concluded that status of WLIR No. 1 reserve lands from 1881 to 1938 was provisional only — Tribunal found that applicable provincial railway legislation, despite certain inherent limitations, were not impediment to provincial Crown taking action to grant Crown land to be used for railway purposes — Concluded that *Land Act*, R.S.B.C. 1911, c. 129 provided express authority for provincial Crown grant of Railway Parcel Lands to PGER — Tribunal also found that irrespective of provisional status of reserve, respondent owed fiduciary duty to applicant to take action on its behalf in reserve creation process — Also noted that respondent had duty of minimal impairment as facet of its fiduciary obligation — Tribunal concluded that Canada had not breached its fiduciary duty in weighing options, applying compensation to other applicant needs rather than pursuing unlikely remedy by way of acquisition of replacement provincial land — As such, Tribunal determined that grounds advanced under *Specific Claims Tribunal Act*, S.C. 2008, c. 22 (SCTA), s. 14 not established — Main issue was whether Tribunal's conclusion that respondent did not breach its fiduciary duties to applicant was unreasonable since not conforming to applicable law governing scope of fiduciary duties established by courts, Tribunal itself in previous cases — In decision under review, Tribunal found that British Columbia's likely unwillingness to cooperate in transfer of replacement lands effectively absolved respondent from needing to pursue such an option — Such conclusion failed to respect applicable common law principles governing scope of Crown's duty of minimal impairment — In short, it was not open to respondent to rely on likely provincial intransigence as excuse for failure to meet its own fiduciary obligations, even if such intransigence might be, in and of itself, also breach of fiduciary duty — Tribunal thus reached unreasonable conclusion in finding that British Columbia's likely intransigence justified respondent's actions in present case — Tribunal also failed to consider whether respondent ought to have sought to have easement over Railway Parcel Lands granted to PGER, as opposed to grant in fee simple — Further failed to analyze impact of timing of various actions taken by respondent, notably its rapid concurrence with PGER's request, speedy acceptance of assessed value of Railway Parcel Lands as compared to its lack of urgency in pursuing applicant's request for replacement lands — Each of these alternatives ought to have been considered by Tribunal prior to deciding that applicant's specific claim was unfounded as principle of minimal impairment required their examination — Each represented less invasive option that may well have been one that respondent ought to have pursued, irrespective of which level of government held Crown's interest in Railway Parcel Lands — Because Tribunal failed to adequately examine these less invasive options, its decision could not stand — Therefore, Tribunal's decision set aside, applicant's claim remitted to Tribunal for

redetermination in accordance with present reasons — Application allowed.

WILLIAMS LAKE FIRST NATION V. CANADA (INDIAN AFFAIRS AND NORTHERN DEVELOPMENT) (A-341-18, 2021 FCA 30, Gleason J.A., reasons for judgment dated February 17, 2021, 23 pp.)