

CHAPTER 58

An Act Respecting the Boundaries of the Land
Adjacent to the Okanagan River

[Assented to 27th March 1963.]

Preamble.

WHEREAS discrepancies have been found to exist between the river boundary of certain parcels of land abutting on the Okanagan River as shown on the plan of the parcels of land deposited in the Land Registry Office for the Kamloops Land Registration District and the river boundary as it was surveyed on the surveys of the flood-control canal or right-of-way constructed pursuant to the *Okanagan Flood-control Act*, being chapter 47 of the Statutes of British Columbia, 1949:

And whereas, by reason of the said discrepancies, confusion and doubt have arisen regarding the true location of the river boundary of many parcels of land in the vicinity of the canal:

And whereas it is desirable that the confusion and doubt be eliminated and the location of the boundaries be settled:

Therefore, Her Majesty by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

Short title.

1. This Act may be cited as the *Okanagan River Boundaries Settlement Act*.

Interpretation.

2. In this Act, unless the context otherwise requires,

"canal" means that part of the flood-control canal or right-of-way constructed pursuant to the *Okanagan Flood-control Act* shown on the canal plans;

"canal plans" mean the right-of-way plans deposited in the Land Registry Office under numbers A1182, A1211, A1272, A1273, and A1274;

"canal surveys" mean that part of the surveys of the canal and Okanagan River shown on the canal plans;

"Commissioner" means any person appointed a Commissioner pursuant to this Act;

"instrument" has the meaning assigned to it by section 2 of the *Land Registry Act*;

"Okanagan River" means that part of the Okanagan River shown on the canal plans;

"Land Registry Office" means the Land Registry Office for the Kamloops Land Registration District;

"Minister" means the Attorney-General;

"Registrar" means the Registrar of the Kamloops Land Registration District;

"present river boundary" or "present boundary" of any parcel of land means respectively the river boundary or boundary of the parcel of land as described in or shown on the plan referred to in the certificate of title to the parcel of land at the date of coming into force of this Act.

River bound-
aries of
parcels.

3. (1) In any case where the present river boundary of a parcel of land abutting on the Okanagan River does not coincide with the corresponding river boundary as surveyed on the canal surveys, the river boundary of the parcel of land shall be the corresponding river boundary as surveyed on the canal surveys (hereinafter referred to as the "established river boundary"); and where a present boundary of the parcel of land which intersects the present river boundary of the parcel of land does not intersect the established river boundary of the parcel of land at the same point or at any point, the boundary shall terminate at its point of intersection with the established river boundary of the parcel of land or be extended on the same bearing to its point of intersection with the established river boundary of the parcel of land, as the circumstances of the case may require.

Adjustments
by Registrar.

(2) In any case where, in the opinion of the Registrar, it is impossible or doubtful how to apply the provisions of the preceding subsection to any parcel of land abutting on the Okanagan River or the application of the said provisions would cause an undue hardship or injustice to anyone, the Registrar may make such order as he thinks fair and reasonable for the adjustment of the discrepancies between the present river boundary of the parcel of land and the river boundary as surveyed on the canal surveys, and may cause the parcel of land to be surveyed in accordance with his order and a plan of the survey deposited in the Land Registry Office.

Terms of
order.

(3) An order made under subsection (2) may be made on such terms, as to costs or otherwise, as the Registrar thinks just, including an order against the Crown.

Alteration of
descriptions

(4) A description, in a certificate of title or instrument of a parcel of land a boundary of which has been altered by this Act, which describes, by reference to a plan or otherwise, the land within the present boundaries of the parcel shall be construed as describing and referring to the land within the boundaries of the parcel as altered and established by or under this Act.

Certificates
of title

(5) A certificate of title to a parcel of land a boundary of which has been altered by this Act, in which the parcel is described as aforesaid, shall be the certificate of title to and constitute registration of the land within the boundaries of the parcel as altered and established by or under this Act, and so long as that description is used in the current certificate of title to the parcel of land, that description is sufficient for the purpose of conveying or otherwise dealing with the land within the

boundaries of the parcel as altered and established by or under this Act. and any instrument containing that description shall be deemed to refer to and deal with the land within the boundaries of the parcel as altered and established by or under this Act.

Endorsement (6) The Registrar shall endorse on the face of every certificate of title which, in his opinion, may be affected by this section the words "The description of the land in this certificate may be affected by the *Okanagan River Boundaries Settlement Act*."

Confirmation of sub-lots. 4. (1) The parcels of land shown as lettered and numbered parcels on the canal plans and outlined in any colour whatsoever are confirmed as sub-lots of the lots within whose boundaries as altered and established by this Act they lie.

Vesting of land in Crown (2) All the lettered and numbered parcels and any part or parts thereof not now vested in Her Majesty are vested in Her Majesty in right of the Province of British Columbia, except those that Her Majesty has purported to grant as such to any person, which grants are confirmed and declared to have vested in the grantee thereof all the land within the parcel purported to be granted regardless of any defect in the description thereof or in Her Majesty's title thereto, and the Registrar may make such amendments to his records, including amendments to certificates of indefeasible title, as may be necessary to correct any such defects in the description of any such parcel of land.

Idem. (3) All parts of the Okanagan River bed
(a) that are shown on the canal plans as within the canal but not included in the hereinbefore-mentioned lettered and numbered parcels of land; and
(b) that were not at the date of this Act coming into force vested in Her Majesty
are hereby vested in Her Majesty in right of the Province of British Columbia.

Copy of canal plans 5. The Surveyor-General of the Province shall prepare and file with the Minister, Registrar, and Project Manager of the Southern Okanagan Lands Project a transparent copy of the canal plans, on which he shall have drawn the present river boundary of the parcels of land abutting on the Okanagan River.

Application for compensation 6. (1) Any person deprived of any estate or interest in land by reason of this Act may apply to the Minister for compensation therefor.

Application (2) The application shall state
(a) the full name, address, and occupation of the applicant;
(b) the description of the parcel of land affected by this Act and a brief description or illustration of how it has been affected;
(c) the names and addresses of all other persons having any estate or interest in the land;

(d) the nature of their and the applicant's respective estates or interests in the land; and

(e) the amount of compensation claimed.

Reference to
Commissioner

(3) If the Minister and the applicant do not agree on the amount of compensation and to whom it shall be paid and credited within six months after the receipt of the application by the Minister, he shall refer the application to a Commissioner for investigation and determination of the amount of compensation (if any) that should be paid in respect thereto and to whom it should be paid and credited.

Limitation

(4) No compensation shall be paid in respect to any application therefor unless the application is received by the Minister within one year from the coming into force of this Act.

Determination
of compen-
sation

(5) In determining the amount of the compensation, the Minister or Commissioner shall take into account the value of any estate or interest in land the applicant will acquire under the provisions of this Act and any sum or sums of money already paid the applicant by Her Majesty for any estate or interest in land which, due to the above-mentioned confusion of boundaries, was at the time of payment therefor believed to have been the applicant's, but was not in fact the applicant's.

Appointment
of Commis-
sioner

7. (1) The Lieutenant-Governor in Council shall, from time to time as he deems necessary or expedient, appoint one or more persons a Commissioner under this Act, and each Commissioner shall inquire into and determine such applications for compensation under this Act as may be referred to him by the Minister.

Authority of
Commissioner

(2) Any person appointed a Commissioner pursuant to this Act shall have all the privileges, powers, and authority of a Commissioner appointed under the *Public Inquiries Act*, and his determination of the amount of compensation and to whom it shall be paid and credited is final, unless an appeal is taken as in the next section provided.

Application to
Supreme
Court

8 (1) The Minister or other person affected may, within twenty-one days after the Commissioner's order is made appeal to a Judge of the Supreme Court in Chambers in a summary way by petition, which shall be supported by affidavit of the appellant and of other persons if necessary, stating fully and fairly all the material facts of the case, and that to the best of the information, knowledge, and belief of the deponents all facts and things material to the claim for compensation have been fairly and fully disclosed.

Service of
petition

(2) All parties interested, including the Commissioner, shall be served with the petition, together with copies of all material and exhibits proposed to be used on the hearing.

Notice of
hearing

(3) At least ten days' notice shall be given of the time and place of hearing, and at that time and place all parties interested (whether served with the petition or not) may appear and be heard.

Order.

(4) The Judge may by order require that notice of the hearing be given to any other party, and upon the hearing may, subject to the provisions of subsection (5) of section 6, make such order in the premises as the circumstances of the case require, and may, subject to the *Crown Costs Act*, make such order for costs of the parties appearing as he may see fit.

Payment of
expenses and
compensation.

9. In the absence of a special appropriation of the Legislature for the payment of the expenses of the administration of this Act and the payment of compensation under this Act, the expenses and compensation shall be paid out of the Consolidated Revenue Fund.

Additional
plans.

10. The Lieutenant-Governor may direct by Order in Council that the definition of "canal plans" in section 2 shall include in addition to the plans enumerated any or all of the plans of the flood-control canal or right-of-way deposited in the Land Registry Office under numbers A1189, A1266, A1267, A1382, A1385, A1432, A1481, A1533, A1542, and A1604, and thereafter this Act shall be read and construed as if the plan or plans mentioned in the Order in Council had been enumerated in the definition of "canal"; but in the case of an application for compensation for loss suffered by reason of any such Order in Council, the time mentioned in subsection (4) of section 6 of this Act shall be one year from the date of the Order in Council giving rise to the alleged loss.

Regulations.

11. Notwithstanding anything in this Act contained, the Lieutenant-Governor in Council may make any regulations deemed necessary for the carrying-out of the provisions of this Act according to their true intent and meaning.

Commence-
ment.

12. This Act shall come into force on a day to be fixed by the Lieutenant-Governor by his Proclamation.