

File No. MA 039-98

L. Kamerman)
Mining and Lands Commissioner)

Monday, the 7th day
of December, 1998.

THE MINING ACT

IN THE MATTER OF

An application pursuant to paragraph 48(5)(c)(ii) of the **Mining Act** for leave to file a dispute against Recorded Mining Claim L-1227181 by the staker of the Tremblay Filed Only Mining Claim 1235349 (staked by Michael A. Tremblay, to have been recorded in the names of Michael Tremblay, Jacques Robert, Pat Coyne and Woody Ouderkirk, each as to a 25% interest);

IN THE MATTER OF

The Queenston Recorded Mining Claim L-1227181 (staked by David Jones and recorded in the name of Queenston Mining Inc.) and Dispute against the Queenston Recorded Mining Claim L-1227181 in favour of the Strike Filed Only Mining Claim 1227144 (staked by James Forbes and to have been recorded in the name of Strike Minerals Inc.);

AND IN THE MATTER OF

Queenston Recorded Mining Claim L-1227181, Strike Filed Only Mining Claim 1227144 and Tremblay Filed Only Mining Claim 1235349, all being situate in the Township of Gauthier, in the Larder Lake Mining Division;

AND IN THE MATTER OF

Subsection 63(2) and paragraph 48(5)(c)(ii) of the **Mining Act** and Ontario Regulation 7/96.

B E T W E E N:

MICHAEL TREMBLAY

Applicant of the First Part

JACQUES ROBERT, PAT COYNE and WOODY OUDERKIRK

Additional Parties of the First Part

- and -

MINISTER OF NORTHERN DEVELOPMENT AND MINES

Respondent

- and -

STRIKE MINERALS INC.

Party of the Third Part

ORDER

WHEREAS application for leave to file a dispute against the Queenston Recorded Mining Claim L-1227181 pursuant to paragraph 48(5)(c)(ii) of the **Mining Act** was received from Mr. Michael Tremblay, applicant on his own behalf and on behalf of the additional parties of the first part, on the 16th day of October, 1998;

UPON hearing from Mr. Tremblay, applicant in this matter and from Mr. Carl Forbes on behalf of Strike Minerals Inc., party of the third part;

1. THIS TRIBUNAL ORDERS that leave is hereby granted pursuant to paragraph 48(5)(c)(ii) of the **Mining Act** to the applicant, Michael Tremblay and to the additional parties of the first part, Jacques Robert, Pat Coyne and Woody Ouderkirk, to file a dispute against the Queenston Recorded Mining Claim L-1227181, situate in the Township of Gauthier, in the Larder Lake Mining Division.

2. THIS TRIBUNAL FURTHER ORDERS that no costs shall be payable by any party to this application.

3. THIS TRIBUNAL FURTHER ORDERS that this Order be filed without fee in the Office of the Provincial Mining Recorder in Sudbury, Ontario, pursuant to subsection 129(4) of the **Mining Act**.

DATED this 7th day of December, 1998.

Original signed by

L. Kamerman
MINING AND LANDS COMMISSIONER

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IN THE MATTER OF

An application pursuant to paragraph 48(5)(c)(ii) of the **Mining Act** for leave to file a dispute against Recorded Mining Claim L-1227181 by the staker of the Tremblay Filed Only Mining Claim 1235349 (staked by Michael A. Tremblay, to have been recorded in the names of Michael Tremblay, Jacques Robert, Pat Coyne and Woody Ouderkirk, each as to a 25% interest);

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AND IN THE MATTER OF

Subsection 63(2) and paragraph 48(5)(c)(ii) of the **Mining Act** and Ontario Regulation 7/96.

B E T W E E N:

MICHAEL TREMBLAY

Applicant of the First Part

JACQUES ROBERT, PAT COYNE and WOODY OUDERKIRK

Additional Parties of the First Part

- and -

MINISTER OF NORTHERN DEVELOPMENT AND MINES

Respondent

- and -

STRIKE MINERALS INC.

Party of the Third Part

REASONS

This matter was heard by telephone conference call on December 7, 1998. Mr. Michael Tremblay attended by telephone along with one of the additional parties of the first part, Mr. Jacques Robert. Mr. Carl Forbes attended on behalf of Strike Minerals.

Background and Facts Not in Dispute

The mining claims involved in this application and others within the Township of Gauthier, were open for staking on the morning of June 1, 1998 in a competitive situation. The following facts do not appear to be disputed:

- David Samuel Jones staked Mining Claim L-1227181 on behalf of Queenston Mining Inc. on June 1, 1998. The application to record was filed June 3, 1998.
- Filed Only Mining Claim to have been tagged 1227144 was staked by James Forbes on June 1, 1998. The application to record the claim in the name of Strike Minerals Inc. was filed with the Provincial Mining Recorder on June 1, 1998.
- Michael Tremblay staked a mining claim which would have been tagged L-1235349 on June 2, 1998 and filed the application to record on June 2, 1998.
- Ultimately, it was the Queenston Mining Claim which the Provincial Mining Recorder accepted for recording. The actual date for this decision is discussed further below, but based upon the provisions of subsection 63(2) of the **Mining Act**, it was deemed to have been recorded on June 3, 1998.
- Strike Minerals filed a dispute against the Queenston Mining Claim on August 5, 1998.

- On September 28, 1998, Michael Tremblay also filed a dispute against the Queenston Mining Claim. On September 30, 1998, the Provincial Mining Recorder wrote to Mr. Tremblay indicating that his Mining Claim had been marked "filed only" in error, and that pursuant to the provisions of paragraph 48(5)(c)(ii), as it had been more than 60 days from the date of recording **and** there was a valid dispute filed, no additional dispute could be filed without leave of the Commissioner.

The date of the Provincial Mining Recorder's [Mr. Roy Spooner] decision to record the Queenston Mining Claim cannot be established with exact certainty. Through conversations between Mr. Spooner and this Office, it was believed that the date the decision was made might have been on or about July 16th, 1998, although there is nothing in writing to substantiate this date.

Mr. Tremblay indicated that he did not hear of Mr. Spooner's decision not to accept his Mining Claim in favour of that of Queenston until July 30, 1998. Mr. Tremblay stated that he had believed that he had 60 days from the date of Mr. Spooner's letter to file his dispute, and indicated that he had ignored provisions of subsection 63(2) of the **Act**. Mr. Tremblay was not able to provide the tribunal with a copy of Mr. Spooner's letter.

Mr. Forbes comment in regard to this matter was that Mr. Tremblay had waited a long time to file his dispute. He commented further that James Forbes had an earlier completion time than David Jones on behalf of Queenston, so that the Strike Minerals Filed Only Mining Claim should be recorded.

At this point, Mr. Tremblay raised the matter that he and Strike Minerals were not disputing the same portions of the Queenston Mining Claim. In other words, there was no overlap between the Strike Minerals Filed Only Mining Claim and the Tremblay Refused Mining Claim. There was an ensuing discussion of other recorded mining claims in the vicinity and of other disputes filed.

When the discussion came back to the matter of the Queenston Mining Claim in relation to the stakings on behalf of Strike Minerals and by Tremblay, it was established that there was no overlap as between these latter two stakings. Mr. Tremblay stated that he did not see the Forbes Mining Claim at the time of his staking. Mr. Forbes indicated that Tom O'Connor conducted an inspection of the area which established that there was no overlap as between James Forbes and Michael Tremblay.

Findings

The time frame for filing a dispute is established by paragraph 48(5)(c)(ii) of the **Act**, which sets out that once there is a dispute of a recorded mining claim, no other dispute may be filed without leave of the Commissioner after 60 days from the date of recording.

The tribunal is puzzled by Mr. Tremblay's delay in filing his dispute. There is some uncertainty in competitive staking situations, given that priority of completion of staking prevails, in that the Provincial Mining Recorders will have to consider all of the applications to record before reaching a decision. Such determinations at the earliest would not be made until 30 days after the date upon which lands came open for staking, to allow all of the applications to record to be filed.

The tribunal finds that Mr. Tremblay is incorrect in his interpretation of the time frames governing when he can file his dispute. The provisions of subsection 63(2) of the **Act** are clear, that the date of filing will be deemed to be the recording date, so that the clock will have been ticking. More puzzling is Mr. Tremblay's delay in filing his dispute until virtually the end of the 60 day period he believed he was entitled to. While nothing is gained by waiting until the last moment, if one is wrong in their interpretation of the legislation, the consequences may work to their disadvantage.

Notwithstanding the above, the test is, is paragraph 48(5)(c)(ii) discretionary, requiring the leave of the tribunal.

The tribunal finds that on the limited circumstances of this case, namely that Mr. Tremblay erroneously believed he had time to file his dispute, that the decision of the Mining Recorder was not instantaneous with some room for doubt as to the actual date and that the dispute does not overlap the Forbes staking, that it is an appropriate case for leave to be given. For purposes of clarity, the reason that leave is given is not limited to the fact that the lands of the two disputes do not overlap - the other factors also come into play in determining that discretion will be exercised in favour of the applicant.

Queenston Mining Inc. Not Having Notice

After completion of the hearing, the tribunal noted that Queenston Mining Inc. ("Queenston") did not have notice of this matter, was not listed as a party and of course, did not participate in the hearing. This occurred through the error and oversight of the tribunal. It should be noted that the Minister of Northern Development and Mines was made a party, but did not wish to participate in the hearing of this matter.

The order of the tribunal was made orally during the telephone conference call, so that it is not now possible to reconvene as it would be in a matter which was simply adjourned pending a decision.

The matter of leave to file a dispute may arguably be a final decision, from which appeal or judicial review may be had, within the meaning of the introduction of **Part XXI - Review of a Decision** in its **Procedural Guidelines for Proceedings Under the Mining Act**, re-issued February, 1997. On the other hand, it may be regarded as an intervening part of the dispute process which is currently before the Provincial Mining Recorder. If the latter, section 117 of the **Mining Act** may govern this situation.

117. Despite the *Statutory Powers Procedure Act*, the Commissioner may hear and dispose of any application not involving the final determination of the matter or proceeding, either or without notice, at any place he or she considers convenient, and his or her decision upon any such application is final and is not subject to appeal but, where the Commissioner makes his or her decision without notice, he or she may later reconsider and amend such decision.

Given that this determination was made without the benefit of Queenston being made a party to this application, through the admitted error of the tribunal and in the interests of having this matter resolved quickly and without undue formality, the tribunal proposes as follows.

The Order will be issued effective on the date shown. Queenston will be provided with a copy of the Order and Reasons. It will be given the opportunity to respond and request the matter be reopened for reconsideration. Therefore, should Queenston determine that there are matters which have not been considered by the tribunal in reaching its decision which may have an effect on that decision, it will have until Friday, December 18, 1998 to advise the tribunal of its position in writing. Otherwise, the Order will remain effective as written.

To clarify this matter further, should Queenston chose to not have the matter of the application for leave to file the dispute re-opened, it should in no way be construed as meaning that Queenston agrees that the dispute may be valid.

Conclusion

The application for leave to file a dispute pursuant to paragraph 48(5)(c)(ii) of the **Mining Act** is granted.

However, Queenston was not heard from in this matter, due to an error of the tribunal. Therefore, Queenston has until Friday, December 18, 1998 to advise the tribunal in writing that it wishes to be heard on this issue.