

File No. MA 013-97

L. Kamerman)
Mining and Lands Commissioner)

Monday, the 1st day
of December, 1997.

THE MINING ACT

IN THE MATTER OF

Mining Claims KRL-1143524 to 1143526, both inclusive, 1143528, 1143541 and 1143545, situate in the Shabumeni Lake Area, in the Red Lake Mining Division, hereinafter referred to as the "Mining Claims";

AND IN THE MATTER OF

An application under section 105 of the **Mining Act** for a vesting of the beneficial interest of one third each in the Mining Claims in the Applicant, Rand G. Hodgson and the Party of the Third Part, Gerald J. Desmeules whose legal interest is held by the Respondent, Dennis Brian Smith;

AND IN THE MATTER OF

An application under section 68 of the **Mining Act** for the vesting of a further two thirds legal interest in the Mining Claims of the Respondent, Dennis Brian Smith and the Party of the Third Part, Gerald J. Desmeules, in the Applicant, Rand G. Hodgson.

B E T W E E N:

RAND G. HODGSON

Applicant

- and -

DENNIS BRIAN SMITH

Respondent

- and -

GERALD J. DESMEULES

Party of the Third Part

ORDER

WHEREAS this application was received by this tribunal on the 11th day of April, 1997;

AND WHEREAS on the 9th day of July, 1997, Dennis Brian Smith, Respondent and on behalf of Gerald J. Desmeules, Party of the Third Part, requested that this matter be decided on the basis of the written submissions only and that an oral hearing was therefore unnecessary;

AND FURTHER TO the consent of Rand G. Hodgson, Applicant, to the above request on the 10th day of July, 1997;

UPON reading the submissions filed;

1. THIS TRIBUNAL ORDERS that one third of the legal interest of Dennis Smith in the Mining Claims be vested in Rand G. Hodgson, being found the owner of a one third beneficial interest, pursuant to section 105 of the **Mining Act**.

2. THIS TRIBUNAL FURTHER ORDERS that one third of the legal interest of Dennis Smith in the Mining Claims be vested in Gerald J. Desmeules, being found the owner of a one third beneficial interest, pursuant to section 105 of the **Mining Act**.

3. THIS TRIBUNAL FURTHER ORDERS that the interests of Dennis Smith and Gerald J. Desmeules, defaulters, in the Mining Claims be vested in Rand G. Hodgson pursuant to section 68 of the **Act**.

4. THIS TRIBUNAL FURTHER ORDERS that the notation "Pending Proceedings" which is recorded on the abstracts of the Mining Claims, to be effective from the 11th day of April, 1997, be removed from the abstracts of the Mining Claims.

5. THIS TRIBUNAL FURTHER ORDERS that the time during which the Mining Claims were pending before the tribunal, being the 11th day of April, 1997, to the 1st day of December, 1997, a total of 235 days, be excluded in computing time within which work upon the Mining Claims is to be performed.

6. THIS TRIBUNAL FURTHER ORDERS that the 3rd day of December, 1997, be fixed as the date by which the next unit of prescribed assessment work must be performed and filed on the Mining Claims pursuant to subsection 67(3) of the **Mining Act** and all subsequent anniversary dates are deemed to be December 3 pursuant to subsection 67(4) of the **Act**.

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

8. THIS TRIBUNAL FURTHER ORDERS that the 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**.

Reasons for this Order are attached.

DATED this 1st day of December, 1997.

Original signed by
L. Kamerman

L. Kamerman
MINING AND LANDS COMMISSIONER

File No. MA 013-97

L. Kamerman)
Mining and Lands Commissioner)

Monday, the 1st day
of December, 1997.

THE MINING ACT

IN THE MATTER OF

Mining Claims KRL-1143524 to 1143526, both inclusive, 1143528, 1143541 and 1143545, situate in the Shabumeni Lake Area, in the Red Lake Mining Division, hereinafter referred to as the "Mining Claims";

AND IN THE MATTER OF

An application under section 105 of the **Mining Act** for a vesting of the beneficial interest of one third each in the Mining Claims in the Applicant, Rand G. Hodgson and the Party of the Third Part, Gerald J. Desmeules whose legal interest is held by the Respondent, Dennis Brian Smith;

AND IN THE MATTER OF

An application under section 68 of the **Mining Act** for the vesting of a further two thirds legal interest in the Mining Claims of the Respondent, Dennis Brian Smith and the Party of the Third Part, Gerald J. Desmeules, in the Applicant, Rand G. Hodgson.

B E T W E E N:

RAND G. HODGSON

Applicant

- and -

DENNIS BRIAN SMITH

Respondent

- and -

GERALD J. DESMEULES

Party of the Third Part

REASONS

This matter was considered on the basis of written submissions and documentation only, with the consent of all the parties pursuant to their conversations with the tribunal Registrar, Mr. Daniel Pascoe, the authority of the tribunal found in clauses 116(1)(a) and (d) of the **Mining Act**, subsection 6(4) of the **Statutory Powers Procedure Act** and an Appointment for Written Hearing issued by the tribunal on November 13, 1997.

Background

The subject matter of this application involves six mining claims, being Mining Claims KRL-1143524 to 1143526, both inclusive, 1143528, 1143541 and 1143545, situate in the Shabumeni Lake Area, in the Red Lake Mining Division, hereinafter referred to as the "Mining Claims". The Mining Claims were staked on March 15 through 17, 1991, and all were recorded on April 12, 1991 in the name of Dennis Brian Smith, Party of the Second Part in these proceedings.

On September 3, 1991, Rand Hodgson, the applicant in these proceedings, entered into an agreement with Mr. Smith, whereby a one third interest in the Mining Claims, along with four other claims bearing numbers KLR-1143527, 1143542 through 1143544, both inclusive, were granted to Mr. Hodgson for consideration of \$500.00. A photocopy of the hand-written agreement was filed as an exhibit in these proceedings (Ex. 1). Although there is no documentary evidence of this fact, Gerald J. Desmeules also has an agreement with Mr. Smith for a further one third interest in the Mining Claims. Neither the agreement with Mr. Hodgson nor that involving Mr. Desmeules was filed with the Mining Recorder, nor was a transfer executed, indicating the interest of Messrs. Hodgson or Desmeules.

Over time, Mining Claims KLR-1143527, 1143542 through 1143544, both inclusive did not receive the requisite assessment work filed and were allowed to lapse into forfeiture.

The agreement (Ex. 1) does not set out any details regarding responsibility for the performance and filing of assessment work. Mr. Hodgson filed two maps, three reports and a handwritten costing of his 1992 and 1995 exploration on the Mining Claims. (See Exhibits 2 through 5, 10 and 13). The remaining documentation filed by Mr. Hodgson is to demonstrate the interest of mining companies in the property, which he is prevented from dealing with, as he cannot obtain the agreement of Messrs. Smith and Desmeules (See Exhibits 6 through 9, from Sante Fe Canadian Mining Limited, Rio Algom Exploration Inc., Inco Exploration and Technical Services Inc. and Asarco Exploration).

In his letter commencing this matter, Mr. Hodgson states that he has expended between \$25,000 and \$30,000 in assessment work on the Mining Claims and is seeking \$15,000 from Mr. Smith or a vesting in him of the interest of Mr. Smith in the Mining Claims.

No copies of the Form 12 Report of Work Conducted After Recording Claim were supplied with the application. The tribunal directed a question to Mr. Blair Kite, Supervisor, Geoscience Approvals Office, Ministry of Northern Development and Mines ("MND&M"), concerning the filing of assessment work. Mr. Kite verbally confirmed the following from the copies of the Reports of Work filed, although the tribunal did not seek copies for the file. In November, 1992, Mr. Hodgson applied for and was credited with \$13,000 worth of assessment work on the Mining Claims. In April, 1996, Mr. Hodgson applied for and was allowed \$3,745 worth of assessment work. In both cases, Mr. Hodgson did the work and certified the Report.

In his hand-written response dated June 30, 1997 (Ex. 14), Mr. Smith, who is also representing the interest of Mr. Desmeules, states that, notwithstanding that Messrs. Hodgson and Desmeules were each made partners for a one third interest in ten mining claims, four were allowed to lapse, leaving only six remaining claims which are the subject matter of this application. He does not state so directly, but it is implied that Mr. Hodgson is somehow responsible for the lapsing of the four other mining claims. Mr. Smith also points out that the work done on the Mining Claims formed part of the OPAP program, for which Mr. Hodgson received \$20,000. He submitted that this money was sufficient to provide for the legitimate work claimed, some questionable expenses and money left over to stake additional claims.

Of those expenses listed on the hand-written sheet (Ex. 5), Mr. Smith asserts that in the first trip to Ontario, Mr. Hodgson travelled with two ladies and obtained a new tire and muffler for his truck. Mr. Smith questions the legitimacy of the latter two expenses, stating that travel would have been on a gravel road. On the second trip, Mr. Smith alleges that Mr. Hodgson travelled with his wife and infant child from Vancouver, and questions whether this is properly chargeable to OPAP.

Mr. Smith stated that he staked the Mining Claims on his own, in the snow, necessitating two trips, all paid for out of his own pocket. He had never asked Mr. Hodgson to work on the claims, which was done on his own initiative and Mr. Smith alleges that Mr. Hodgson was able to pocket the OPAP money as a result. Mr. Smith goes on at some length questioning the propriety of obtaining additional claims and enriching oneself from the OPAP program.

Mr. Smith questions that any mining companies are interested in the Mining Claims, indicating that Noranda, the only company who had demonstrated an interest, was not prepared to cover even the cost of staking. He also indicated that there has been no interest until the last one and a half to two years, which does not coincide with the dates in the letters submitted by Mr. Hodgson. Mr. Smith is involved with many option arrangements with his current partner, Mr. Perry English,

In conclusion, Mr. Smith states that he is not willing to pay Mr. Hodgson for the work done on the Mining Claims.

Findings

The tribunal has considered the submissions and the documentation filed by the parties in this matter. The fact is and the tribunal will accept it in its findings, that nowhere does Mr. Smith deny having taken Messrs. Hodgson and Desmeules on as partners, each obtaining a one third interest in the Mining Claims. There is no explanation of the fact that a transfer of their respective interests was not executed and filed with the Mining Recorder. Nonetheless, the tribunal is persuaded that Messrs. Hodgson and Desmeules each having a beneficial one third interest in the Mining Claims, are entitled to have their legal interest reflected on the abstracts.

Based upon the jurisdiction given to the tribunal pursuant to section 105 of the **Mining Act**, the tribunal will order that a one third interest in the Mining Claims, currently recorded in the name of Dennis Brian Smith, be transferred to Rand Hodgson and Gerald Desmeules respectively.

A pre-requisite to the exercise of the tribunal's jurisdiction in section 68 is that there be two or more recorded holders. Based upon its findings above and upon its jurisdiction pursuant to section 121 of the **Mining Act**, the tribunal finds that it does have the jurisdiction to consider the application for a vesting of the interest of Dennis Brian Smith and Gerald Desmeules in the applicant, Rand G. Hodgson.

The amount of work necessary to keep the mining claims, all comprised of one unit, in good standing is considered. The Mining Claims were recorded on April 12, 1991. As of April 12, 1997, an aggregate total of \$2,000 would have been required on each of the Mining Claims, but for the notation of "pending proceedings", coinciding with the date of the application, namely April 11, 1997. The abstracts (Ex. 15) show a total of \$1,950 on five of the Mining Claims and \$1,951 on the sixth Mining Claim. Once "pending proceedings" has been removed from the abstracts, \$50 for the five Mining Claims and \$49 for the sixth respectively, will be required immediately upon the following day to keep the Mining Claims in good standing, for a total of \$299 in assessment work.

Mr. Hodgson has claimed \$15,000 for work expended or a vesting of the Mining Claims. The value of the work for which assessment work credit was granted totals \$16,345.00, for which a third share would be \$5,448.33. The amounts listed in the claim, in the \$25,000 to \$30,000 range, result a third share would run between \$8,333.33 to \$10,000. In an application to order payment of money owed, Mr. Hodgson is cautioned that a better explanation in support of his figures for this discrepancy would be required before any such order for payment of money would be made, including whether or not some of this money was used on other mining claims, not the subject matter of the action.

Mr. Hodgson has indicated that he seeking ownership of the Mining Claims, and would seek an order for payment of money only in the alternative. The specific jurisdiction of the tribunal in section 68 is to order the vesting of the interests of the defaulters in the holder who has performed or paid for the assessment work. In this case, the tribunal is satisfied that Mr. Hodgson has performed the assessment work shown on the abstracts. This fact is confirmed by its conversation with Mr. Kite of MND&M.

The tribunal has considered the evidence presented by the parties and the information obtained upon its own initiative. Section 68 is different from the vesting order sections involving leases or patents, found in sections 181 and 196 of the **Mining Act**. In those sections, when applying for a vesting order, the tribunal will first make an order for the payment of the delinquent co-owners' proportionate share of rent or taxes. There is no such requirement under section 68. Rather, the jurisdiction is limited to a vesting of the interests of the defaulter or defaulters in the other co-owner upon such terms and conditions and in such proportions as deemed just.

The issue of the OPAP grant is not material to the considerations before the tribunal. The fact is that Messrs. Smith and Desmeules also had the option of performing assessment work on the Mining Claims or on those claims which have forfeit. The means of financing such work would have been up to them, including making application for an OPAP grant. The source of the money used by Mr. Hodgson is irrelevant in determining whether to vest the interests of Messrs. Smith and Desmeules in Mr. Hodgson.

The tribunal finds that it is satisfied that Mr. Hodgson has performed the assessment work necessary to keep the Mining Claims in good standing. The tribunal further finds that Messrs. Smith and Desmeules were aware of this work and while they might have objected to the amounts claimed, did not engage in any attempt to come to an agreement as to their respective proportionate share for the work. As such, the tribunal finds both of Messrs. Smith and Desmeules to be delinquent co-owners within the meaning of section 68 and will order the vesting of the one third interest of each in the applicant, Rand Hodgson.

Exclusion of Time

Pursuant to subsection 67(2) of the **Mining Act**, the time during which the Mining Claims were pending before the tribunal, being the 11th day of April, 1997 to the 1st day of December, 1997, a total of 235 days, will be excluded in computing time within which work upon the Mining Claims is to be performed.

Pursuant to subsection 67(3) of the **Act**, as amended by S.O. 1996, c.1. Sched. O, s.18, December 3, 1997, is deemed to be the date for the filing of the next unit of prescribed assessment work on the Mining Claims. Pursuant to subsection 67(4) of the **Act**, all subsequent anniversary dates are deemed to be December 3.

Conclusions

The application of Rand G. Hodgson will be allowed. The tribunal will order the vesting of a one third interest currently held by Dennis Smith, in each of the beneficial owners, Rand G. Hodgson and Gerald J. Desmeules, pursuant to its jurisdiction found in section 105 of the **Act**. The tribunal will further order that the one third interest of each of Dennis Smith and Gerald J. Desmeules will be vested in the applicant, Rand G. Hodgson pursuant to section 68 of the **Act**. Time during which the mining claims were pending before the tribunal will be excluded and a new anniversary date will be set.