

File No. MA 029-96

L. Kamerman)
Mining and Lands Commissioner)

Wednesday, the 4th day
of February, 1998.

THE MINING ACT

IN THE MATTER OF

Mining Claims 1220084 and 1220085, situate in the Township of Tyrrell, in the Larder Lake Mining Division, to have been recorded in the name of Michael Taylor, marked "filed only", hereinafter referred to as the "Taylor Filed Only Mining Claims" or "Taylor Filed Only Mining Claim 1220084" and "Taylor Filed Only Mining Claim 1220085";

AND IN THE MATTER OF

Those parts of the lands included in the Filed Only Mining Claims which are not part of Mining Claim L-1221669, recorded in the name of Alexander Harris Clark (the "Clark Mining Claim) being a mining claim whose priority under subsection 44(2) of the **Mining Act** is not challenged;

AND IN THE MATTER OF

Mining Claim L-1220359, situate in the Township of Tyrrell, in the Larder Lake Mining Division, staked by Marco Joseph Chouinard and recorded in the name of Battle Mountain Canada Ltd., hereinafter referred to as the "Battle Mountain Mining Claim";

AND IN THE MATTER OF

Subsections 44(2), 44(4) and 46(2) of the **Mining Act**;

B E T W E E N:

MICHAEL TAYLOR

Appellant

- and -

BATTLE MOUNTAIN CANADA LTD.

Respondent

- and -

THE MINISTER OF NORTHERN DEVELOPMENT AND MINES

Party of the Third Part

AND IN THE MATTER OF

An appeal from the decision of the Mining Recorder for the Larder Lake Mining Division dated the 13th day of November, 1996 for the recording of the Taylor Filed Only Mining Claim 1220085 which is not part of the Clark Mining Claim, and for the amending of the application to record the Taylor Filed Only Mining Claim 1220085 to delete those lands covered by the Clark Mining Claim;

AND IN THE MATTER OF

An application for an order pursuant to subsection 105 of the **Mining Act** for the cancellation of the Battle Mountain Mining Claim, for the recording of those parts of the Taylor Filed Only Mining Claim 1220084 which are not part of the Clark Mining Claim and for the amending of the application to record the Taylor Filed Only Mining Claim 1220084 to delete those lands covered by the Clark Mining Claim.

ORDER

WHEREAS the tribunal issued its' Interlocutory Order in this matter on the 6th day of October, 1997, setting out by declaration the circumstances under which the non-overlapping portion may be allowed, pursuant to subsection 44(4) of the **Mining Act**, R.S.O. 1990, c. M.14, as amended;

AND WHEREAS additional information as required by the tribunal's direction that parties be given 45 days to consider its' Interlocutory Order and provide additional information as required by the first criteria set out in its' declaration, was not complied with by the appellant, Mr. Michael Taylor and his request for an extension of time to perform an inspection to August, 1998 having been found to be unreasonable in the circumstances;

1. THIS TRIBUNAL ORDERS that the appeal from the decision of the Mining Recorder for the Larder Lake Mining Division dated the 13th day of November, 1996 for the recording of Mining Claims L-1220084 and 1220085 which are not part of Mining Claim L-1221669 and for the amending of the applications for the Filed Only Mining Claims to delete those lands covered by Mining Claim L-1221669 is hereby dismissed.

2. THIS TRIBUNAL FURTHER ORDERS that the notation "Pending Proceedings" which was recorded on the abstract of Mining Claim L-1220359, to be effective from the 10th day of December, 1996, be removed from the abstract of the Mining Claim.

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3. THIS TRIBUNAL FURTHER ORDERS that the time during which Mining Claim L-1220359 was under pending proceedings, being the 10th day of December, 1996 to the 4th day of February, 1998, a total of 422 days, be excluded in computing time within this work upon this Mining Claim is to be performed and filed on the Mining Claim.

4. THIS TRIBUNAL FURTHER ORDERS that the 13th day of November, 1999, be fixed as the date by which the first and second units of prescribed assessment work must be performed and filed on Mining Claim L-1220359, pursuant to subsection 67(3) of the **Mining Act** and all subsequent anniversary dates are deemed to be November 13 pursuant to subsection 67(4) of the **Mining Act**.

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

6. 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 4th day of February, 1998.

Original signed by

L. Kamerman
MINING AND LANDS COMMISSIONER

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B E T W E E N:

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REASONS

In its' Interlocutory Order dated October 6, 1997, the tribunal set out in a declaration the criteria under which the recording of the non-overlapping portion of an overlapping staking of a mining claim would be considered for recording.

The first criteria was to require the party wishing to have an overlapping mining claim return to the field to obtain detailed information concerning the non-overlapping portion of the mining claim. The rationale behind this was that this information was not available at the time the original staking had occurred.

On December 8, 1997, the tribunal Registrar, Mr. Daniel Pascoe, contacted Mr. Michael Taylor by telephone inquiring whether additional information would be forthcoming. He was advised that a letter would be coming by the end of the week. On December 18, 1997, a letter was received from Mr. Taylor, which is reproduced:

In the matter of Mining Claim L-1220084, we submit that the claim falls within the '15%' rule of them. The claim sketches indicate that claim 1220084 has an overlap of exactly 15%. The claim is contiguous to claim 1220080 which is registered to Michael Taylor. Even if the overlap were substantial, the claim should be allowed under item 3 on page 58 of the Interlocutory Order

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Claim 12[2]0084 qualifies under item 9 of the Interlocutory Order in that it is completely surrounded by land which is staked and therefore not open for staking. It is bounded to the east by 1221669, to the south by 1220355, to the west by 1220086 and to the north by 1220360.

In the matter of claim 1220085, the north boundary of this claim is completely contiguous to 1220083 and 1220084, both registered to M. Taylor. The non-overlapping portion is contiguous to 1220083 and 1220084 and should be recorded under item 3, page 58 of the Interlocutory Order. There are no third party disputes to 1220085.

Attached is a sketch A indicating the overlap of 1220084 and B which indicates the contiguous boundary between 1220065 and 1220063.

The tribunal was concerned that the forgoing information did not yet comply with paragraph 1 of its' Interlocutory Order or otherwise provide dimensions of the non-overlapping portions of Mining Claims 1220084 and 1220085. In this regard, on December 19, 1997 it wrote to Mr. Taylor, with copies to Battle Mountain and MNDM. Portions of that letter are reproduced:

While I am prepared to consider the situation with regard to your Mining Claim L-1220084 and the criteria set out in my Interlocutory Order of October 6, 1997, I draw your attention to paragraph 1 of that Order. I believe that it is quite specific in paragraph 1, requiring the party seeking the Order to return to the field and obtain accurate measurements which would form the basis not only of the adjudication but of any resulting Mining Recorder's Order pursuant to subsection 110(6) of the **Mining Act**, should the recording indeed be allowed.

Therefore, would you please advise this office as soon as possible of whether it is your intent to provide such measurements and if so, within what time frame.

On January 7, 1998, the tribunal received the following reply:

Your letter dated December 19, 1997 indicates that we are required to complete an inspection of the claims subject to the Interlocutory Order. In response, we will do an inspection on the

claims. However, it is not feasible for us to do this inspection under winter conditions. We therefore request a seven month time period ending August 31, 1998 to complete the inspection and submit a report.

Findings

The request for an eight month time frame within which to reattend the site of Mining Claim 1220084 is found by the tribunal to be unreasonable. While a delay until the spring following snow melt conditions could be seen to be reasonable, in point of fact, the inspection could have and should have taken place immediately following the issuance of the Interlocutory Order on October 6, 1997. The request, if granted would result in a significant delay until a final determination could be made. If favourable to Mr. Taylor's position, there would then be another delay while a mining recorder's order pursuant to subsection 110(6) is complied with. Taken together, this would put the 1998 field season in jeopardy. These lands were staked and filed on September 17, 1996. Normally, the first two units of assessment work would be due on September 17, 1998. With the length of time it has taken to hear this matter up to the Interlocutory Order on October 6, 1997, the time to inspect requested to August, 1998, time for Battle Mountain to respond and ultimately for the tribunal to issue a final Order, it is not unreasonable to foresee these proceedings completed late in 1998, resulting in dates for the filing of the first two units of assessment work in late 2000. This extent of delay was not anticipated by the tribunal.

The request was conveyed to Mr. George Kolezar of Battle Mountain in a telephone conversation by Mr. Daniel Pascoe of this Office. Mr. Kolezar took the position that there is sufficient information currently on file for a final determination to be made. He also suggested that the delay created by the request would be contrary to the purpose of the **Mining Act**.

Without accurate field measurements, the tribunal finds Mr. Taylor's position in this matter to be tenuous. While the sketches submitted by Mr. Taylor, which appear to be taken from a larger claim staking map which was not submitted in evidence, indicate that the overlap involving Mining Claim 1220084 to be in the neighbourhood of 15 percent, no accurate determinations can be made. What is required are actual field measurements which would disclose the length and depth of actual overlap with the Clark Mining Claim L-1221669 as it exists in the field.

The tribunal recognizes that Mr. Taylor resides out of province. Even his agent, Mr. Daniel Godin, lives in Ingleside, which is located on the extreme southeastern boundary of Ontario, near Cornwall, which is a considerable distance from the Temagami lands. The tribunal has also noted that the stakings done on behalf of Mr. Taylor were done by Mr. Michel Gauthier and Mr. Gilbert Frenette, both of Beresford, New Brunswick, so that engaging them to obtain further field data would also be an onerous undertaking.

The tribunal has weighed the equities in this matter. While it is sensitive to the position of an out of province recorded holder, as Mr. Taylor wishes to become in this matter, nonetheless, the tribunal finds that Mr. Taylor has not convinced it that his plan to revisit the site of the staking to obtain accurate measurements is reasonable. Furthermore, the tribunal finds that to allow this extent of time would not be in keeping with the objects of the **Mining Act**, found in section 2, namely to encourage exploration of mineral resources, which, it is implied, should be done in a timely manner. It would seem that the tribunal has gone so far as to pursue Mr. Taylor to keep alive his appeal, having made numerous phone calls to elicit further particulars. The request for a seven to eight month period of time leads the tribunal to speculate that there may be additional reasons for the delay. If Mr. Taylor were serious and in a position to engage someone to inspect on his behalf, surely he would have dispatched Mr. Godin within a reasonable time frame, or sought out some other individual to do so.

Based upon its' refusal to allow Mr. Taylor the time requested for the inspection, and based upon the fact that the information contained in the appeal is insufficient in particulars to successfully meet the criteria in its' Interlocutory Order of October 6, 1997, the tribunal finds that Mr. Taylor's appeal concerning Mining Claim 1220084 will be dismissed.

With respect to Taylor's Mining Claim 1220085, the sketches indicate an overlap well in excess of 15 percent, leaving an "L" shaped configuration whose non-overlapping dimensions may be less than 100 metres along the southern boundary and as much as 125 metres along the eastern boundary. The tribunal finds that the extent of the overlap is such that its' criteria for the non-overlapping portion of a single unit claim, having dimensions of at least 340 metres, have not been met, and in this regard, the appeal concerning Mining Claim 1220085 will be dismissed.

There will be no costs to any party in this appeal.

Exclusion of Time

Pursuant to subsection 67(2) of the **Act**, as amended by S.O. 1996, c. 1, Sched. O., s. 18, the time during which Mining Claim L-1220359 was pending before the tribunal, being a total of 422 days, will be excluded in computing time within which work upon the Mining Claim is to be performed and filed.

Pursuant to subsection 67(3) of the **Act**, as amended, November 13, 1999, is deemed to be the date for the performance and filing of the first two units of prescribed assessment work on Mining Claim L-1220359. Pursuant to subsection 67(4) of the **Act**, as amended, all subsequent anniversary dates are deemed to be November 13.

Conclusions

The appeal of Michael Taylor concerning Mining Claim 1220085 will be

dismissed as there is inadequate information to apply the criteria set out in the tribunal's Interlocutory Order dated October 6, 1997. The appeal concerning Mining Claim 1220084 will be dismissed as it is found to not meet the criteria set out.

Time during which the proceedings were pending against Mining Claim L-1220359, having been found to not be the fault of the recorded holder, Battle Mountain Canada Ltd., will be excluded. The date for the performance and filing of the first two units of prescribed assessment work will be fixed accordingly. A new anniversary date will be deemed.