

File No. MA 026-06

M. Orr)
Deputy Mining and Lands Commissioner)

Tuesday, the 21st day
of October, 2008.

L. Kamerman)
Mining and Lands Commissioner)

THE MINING ACT

IN THE MATTER OF

Mining Claims S-3016181, 3016187 and 3016188, situate in the Township of Dill, in the Sudbury Mining Division, all recorded on the 15th day of April, 2003, in the name of 1520658 Ontario Inc., as to a 100% interest (hereinafter referred to as the "Mining Claims");

AND IN THE MATTER OF

Ministry of Northern Development and Mines Order No. W-SO-25-03, dated the 23rd day of June, 2003, Orders In Council 2502/92 and 368/04, clause (1)(1)(a), section 27(a), subsections 51(1), 51(6) and sections 75 and 79 of the **Mining Act**;

AND IN THE MATTER OF:

The transfer of proceedings from the Ontario Superior Court of Justice (Court File 06-CV-315192PD1) to the tribunal, pursuant to the Order of Low, J., dated the 22nd day of January, 2007;

B E T W E E N :

MINISTER OF TRANSPORTATION
Applicant

- and -

1520658 ONTARIO INC.
Respondent

AND IN THE MATTER OF

An application for a declaration that the Mining Claims are invalid;

AND IN THE MATTER OF

An application for a declaration that the lands upon which the Mining Claims were staked were in the actual use and occupation of the Crown or the Ministry on or prior to the 15th day of April, 2003 and therefore, excluded from staking pursuant to subsection 1(1) and section 27(a) of the **Mining Act**;
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AND IN THE MATTER OF

An application for a declaration that if the Mining Claims are valid, that the Respondent is a tenant at will of the Crown and that the Crown may terminate the tenancy upon notice, pursuant to section 50 of the **Mining Act**;

AND IN THE MATTER OF

An application for costs and such further relief as the tribunal deems just;

AND IN THE MATTER OF

A cross application for the dismissal of the application of the Ministry of Transportation seeking a declaration that the Mining Claims of 1520658 Ontario Inc. are invalid and, in the alternative, a declaration that 1520658 Ontario Inc. is a tenant at will of the Crown and that the Crown may terminate the tenancy upon notice;

AND IN THE MATTER OF

A cross application for a declaration that the Mining Claims are validly staked and recorded, pursuant to the provisions of the **Mining Act**, and are not subject to dispute;

AND IN THE MATTER OF

A cross application for a declaration that 1520658 Ontario Inc. has a prior right to the use of the surface rights on the Mining Claims in connection with prospecting, exploration and mineral rights pursuant to subsection 51(1) of the **Mining Act**;

AND IN THE MATTER OF

A cross application for a declaration that the Ministry of Transportation failed to comply with the provisions of Section 51(6) of the **Mining Act** prior to acquiring surface rights to the area encompassing the Mining Claims;

AND IN THE MATTER OF

A cross application for an order for compensation for damage caused by the Ministry of Transportation, or its agents, to mineral exploration workings, claim posts, line posts, and tags on the Mining Claims pursuant to Section 79(3) of the **Mining Act**, such request being in addition to and not in lieu of any request for compensation made in other proceedings before the Ontario Superior Court of Justice;

AND IN THE MATTER OF

A cross application for costs and such further relief as the tribunal deems just.

AMENDED ORDER

WHEREAS this matter was heard by this tribunal on the 12th to the 15th days of May, 2008, with Final Argument being heard on the 26th day of June, 2008;

AND WHEREAS the Order in this matter was issued by this tribunal on the 14th day of October, 2008;

AND WHEREAS page 4 of the Order section of the aforementioned Order contained an omission;

AND WHEREAS page 16 of the Decision and Reasons section of the aforementioned Order contained errors;

1. IT IS ORDERED that the following paragraph be added after sub-order 5, found on page 4 of its Order section, dated the 14th day of October, 2008:

5. IT IS FURTHER ORDERED that the Applicant pay compensation in the amount of \$800.00 (Cdn.) to the Respondent within 30 days of the date of issuance of this Order, pursuant to subsection 79(3) of the **Mining Act**.

2. IT IS FURTHER ORDERED that page 16 of the Decision and Reasons section of the tribunal's Order, dated the 14th day of October, 2008, be rescinded and replaced by the page 16 attached hereto and forming a part of this Amended Order.

THIS TRIBUNAL FURTHER ADVISES that pursuant to subsection 129(4) of the **Mining Act**, R.S.O. 1990, c. M.14, as amended, a copy of this Order shall be forwarded by the tribunal to the Provincial Mining Recorder **WHO IS HEREBY DIRECTED** to amend the records in the Provincial Recording Office as necessary and in accordance with the aforementioned subsection 129(4).

DATED this 21st day of October, 2008.

Original signed by M. Orr

M. Orr
DEPUTY MINING AND LANDS COMMISSIONER

Original signed by L. Kamerman

L. Kamerman
MINING AND LANDS COMMISSIONER

need for the tribunal to make an order with respect to the exclusion of time related to the impact of the Withdrawal Order that affects these Mining Claims, at least at this time. If it becomes an issue, the Respondent Company can resort to the process set out under section 67 of the **Act**. The section itself sets out the information that would be needed to address the matter.

The tribunal has noted the Respondent Company's request for a declaration that the Applicant failed to comply with subsection 51(6). Section 51 deals with the right of the holder of an unpatented mining claim to use the surface rights (for prospecting and the like) and it sets out a process to deal with the possible frictions that might ensue where the surface rights are sold off or otherwise separated from the mining rights. In this case, the Respondent Company has indicated that it staked its Mining Claims solely for the purpose of protecting its aggregate interests and this in itself may raise issues for the parties at some point. As the process under section 51 has not been initiated (and the tribunal has made no ruling on whether it even applies), there is no need for such a declaration.

As the tribunal has found that the Mining Claims are valid, the imposition of the Withdrawal Order on their existence means that the parties have moved to another level in their dealings with one another. It is not for this tribunal to pose solutions to their problems; however, from the tribunal's standpoint, the issues do not seem insurmountable.

The tribunal notes the Respondent's submissions regarding a "tenant at will of the Crown" and the Respondent's assumption that the issue was abandoned. While the issue may have been raised at some point in the hearing, the Applicant has not pursued it and the tribunal is not prepared to deal with it.

The issue of compensation has been raised by the Respondent Company saying that the Ministry through its contractors has damaged "mineral exploration workings, claim posts, line posts and tags" The evidence pertaining to this claim consisted of some photographs and the issue was not developed beyond producing the photos and making the complaint. The tribunal has considered the Respondent's request and sets the amount at \$800.00.

This matter raised serious and complicated issues and undoubtedly both sides have paid a heavy price to get those issues addressed. There will be no costs awarded to either side.

Exclusion of Time

Pursuant to subsection 67(2) of the **Mining Act**, the time during which Mining Claims S-3016181, 3016187 and 3016188, were pending before the tribunal, being the 15th day of June, 2006 to the 14th day of October, 2008, a total of 853 days, will be excluded in computing time within which work upon the Mining Claims is to be performed and filed.

Pursuant to subsection 67(3) of the **Mining Act**, as amended by S.O. 1996, c.1, Sched. O, s. 18, August 15, 2012, is deemed to be the date for the performance and filing of the next unit(s) of prescribed assessment work on Mining Claims S-3016181, 3016187 and 3016188

Pursuant to subsection 67(4) of the **Mining Act**, all subsequent anniversary dates for Mining Claims S-3016181, 3016187 and 3016188 are deemed to be August 15.