

File No. MA 024-99

L. Kamerman)
Mining and Lands Commissioner) Thursday, the 9th day
of March, 2000.

THE MINING ACT

IN THE MATTER OF

Mining Claims L-1076929, 1076932, 1220348 to 1220351, both inclusive, 1222527, 1225634, 1225635 and 1227311, recorded in the names of David F. Burda and Marty Ed Thurston, each as to a 50% interest as Joint Tenants, situate in the Township of Knight, in the Larder 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 the transfer of ownership of 17.5% of the Mining Claims from the Respondents to the Applicant pursuant to an Agreement between the Applicant and the Respondents Marty Ed Thurston and Veronica Thurston, dated April 18, 1999.

B E T W E E N:

RENE BOURQUE
Applicant

- and -

DAVID F. BURDA, MARTY ED THURSTON
AND VERONICA THURSTON
Respondents

CONDITIONAL ORDER ON CONSENT

WHEREAS after the commencement of the hearing in this matter set down for the 7th and 8th days of March, 2000, in the Larry Brown Room of the Royal Canadian Legion, Summerhays Avenue, Kirkland Lake, in the Province of Ontario, the parties reached a settlement;

UPON hearing from the parties:

1. THIS TRIBUNAL ORDERS on consent of the parties that, conditional upon the meeting of the terms set out below, this application will be granted, in part, with respect to Mining Claim L-1227311 and dismissed in part, with respect to Mining Claims L-1076929, 1076932, 1220348 to 1220351, both inclusive, 1222527 and 1225634, as follows:

(a) that 100 percent ownership in Mining Claim L-1227311 be transferred to the Applicant, Rene Bourque on a date to be determined by the tribunal, upon meeting the terms set out in Paragraph 1(b) or Paragraph 2 of this Conditional Order On Consent;

(b) that the Respondents, Marty Ed Thurston and David F. Burda, shall stake or cause to be staked and recorded, a nine unit mining claim on lands being contiguous to Mining Claim L-1227311, as soon as may be practical and not later than March 28, 2000, and advise the tribunal of the date of staking and recording and the Mining Claim number;

AND UPON consideration of the alternative arrangement consented to by the parties whose details have not been finalized:

(c) that, should the terms of Paragraph 1(b) of this Conditional Order not be possible due to the staking of the contiguous lands by a licensee adverse in interest, the tribunal shall seek additional submissions from the parties to determine the terms, if any, by which a portion of Mining Claim L-1225635 shall be transferred to the Applicant, Rene Bourque, on a date to be further determined by the tribunal.

2. THIS TRIBUNAL FURTHER ORDERS that, should the terms of Paragraph 1(b) of this Conditional Order on Consent be complied with, with notice from the Respondents of the filing of the Application to Record the nine unit contiguous mining claim, upon the elapse of a further 31 days from the date of recording to ensure that no adverse interest exists, the tribunal will Order the transfer of Mining Claim L-1227311 and the newly staked nine unit mining claim to the Applicant, Rene Bourque, along with relevant assays and Mag Map, thereby allowing the application in part and dismissing the application, with respect to Mining Claims L-1076929, 1076932, 1220348 to 1220351, both inclusive, 1222527, 1225634 and 1225635.

3. THIS TRIBUNAL FURTHER ORDERS, in the alternative, that should the terms of Paragraph 1(c) of this Conditional Order on Consent be complied with, the tribunal will Order the transfer of Mining Claim L-1227311 and such interest in L-1225635 as the parties may advise, to the Applicant, Rene Bourque, along with relevant assays and Mag Map, thereby allowing the application in part, dismissing the application, with respect to Mining Claims L-1076929, 1076932, 1220348 to 1220351, both inclusive, 1222527 and 1225634, and the application with respect to Mining Claim L-1225635 to be allowed in part.

4. THIS TRIBUNAL FURTHER ORDERS that the failure to meet the terms of settlement agreed to by the parties, as set out in Paragraph 1(a) and one of Paragraphs 1(b) or 1(c) of this Conditional Order on Consent will result in the reconvening of the hearing to determine the application on its merits.

THIS TRIBUNAL FURTHER ADVISES that, pursuant to subsection 129(4) of the **Mining Act**, 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 in accordance with the aforementioned subsection 129(4).

DATED this 9th day of March, 2000.

Original signed by

L. Kamerman
MINING AND LANDS COMMISSIONER

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B E T W E E N:

RENE BOURQUE
Applicant

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AND VERONICA THURSTON
Respondents

REASONS

This matter was set down for hearing in Kirkland Lake, Ontario for March 7th and 8th, 2000. The Applicant, Mr. Rene Bourque, was present and represented himself. Mr. Marty Thurston attended in person and Mr. David Burda was present via telephone conference, on behalf of the Respondents. Veronica Thurston was a signatory to certain pieces of documentation, appearing to act in the role of witness and is not properly a party to this proceeding.

The hearing commenced, with evidence heard from Messrs. Bourque and Thurston. Prior to hearing evidence from Mr. Burda, a short break was taken in the proceedings, during which time the parties reached their own settlement in the matter.

Although somewhat unusual or unorthodox, Messrs. Burda and Thurston agreed that one of the Mining Claims which is the subject of this application, L-1227311, being a four unit claim, would be transferred to Mr. Bourque, along with assays and a confidential Mag Map related to this Mining Claim. In addition, a nine unit mining claim contiguous to L-1227311 on lands which were, according to the best knowledge available to the parties at the time of the hearing not yet staked, would be staked by Mr. Thurston for transfer to Mr. Bourque.

Mr. Bourque was aware that no assessment work had been done on the existing Mining Claim L-1227311 and that it would not forfeit for a period of time, although the responsibility to perform and file the required assessment work would be his. The tribunal was told that there were approximately 18 months before the assessment work was due.

Upon adjourning the hearing, the tribunal was able to verify the following facts. L-1227311 was recorded on November 12, 1998. In the normal course of events, assessment work would be due on this four unit claim on November 12, 2000. However, pending proceedings, pursuant to Mr. Bourque's application, were noted on the abstract on August 24, 1999. Pending proceedings, in this case, will have the effect of removing the time from August 24, 1999 to the date of the tribunal's final order, from computation when determining when assessment work is due. As the day of the final Order is not yet known, a simple method of determining how much time would run before assessment work becomes due would be to calculate how much time was left before pending proceedings were commenced, namely the period of August 24, 1999 to November 12, 2000, keeping in mind that the year 2000 is a leap year.

There are 80 days from August 24th up to and including November 11th. There are 367 days from November 12, 1999 to November 12, 2000, so that the time for doing assessment work, once a final order is issued in this matter, will total 447 days. This is somewhat shorter than the approximately 18 months estimated by Mr. Thurston, which would be 549 days. As to whether this shortfall will be acceptable to Mr. Bourque when it is pointed out to him, remains to be seen.

It is hoped that Mr. Thurston will be able to successfully stake a nine unit claim on open lands contiguous to Mining Claim L-1227311, as that would conclude the matter. To do so, in theory, even if there are no other Applications to Record this land filed with the Provincial Mining Recorder, it would be necessary to wait the 31 days, as set out in subsection 44(1), to ensure that there is no adverse interest. This means that, even if there is no Application to Record for the lands on file, it will take 31 days after Mr. Thurston's Application to Record is filed, to ensure that another party has not already staked these lands. Therefore, any final order in this matter would be issued once the 31 days have elapsed, with no indication of adverse interest.

If Mr. Thurston is not successful in securing these lands as a nine unit claim for Mr. Bourque, Messrs. Burda and Thurston agreed that nine units of Mining Claim L-1225635, another of the Mining Claims which are the subject matter of the application, would be transferred to Mr. Bourque. Although it is acknowledged that this is unusual and there was no discussion as to how these nine units would be circumscribed, both parties were agreeable to this settlement.

Upon reflection, the tribunal must advise the parties that there is no direct means within the Mining Act to permit the dividing of one mining claim into two new mining claims, each with their own number. However, such division can be accomplished by a number of less direct means and it would be up to the parties to advise as to whether any of the means described would meet with their approval.

The parties could come to an agreement to divide the mining claim physically on the ground to reflect nine units held by Mr. Bourque and seven units held by Messrs. Thurston and Burda. The tribunal could order that the abstract show Mr. Bourque as having a 56.25 percent interest in the mining claim as a tenant-in-common. It is pointed out to the parties that they would remain jointly liable for the annual assessment work, which would total \$6,400 for the first two years and for each year thereafter. Therefore, even if one of either Mr. Bourque or Messrs. Thurston and Burda together, do not perform and file their proportionate share of assessment work, the entire claim would be in jeopardy of forfeiture. Given that the solution proposed by the parties appears to involve severing their relationship in order that they work independently, Mr. Bourque from Messrs. Thurston and Burda, this situation may not be what they had envisioned.

Another alternative not actually discussed and which would involve not nine, but eight units, would be to surrender half of the mining claim to the Crown and order that the other half be retained in the name of the Applicant, Rene Bourque. While this would sever the relationship as desired, there would be no guarantee to Messrs. Thurston and Burda that they would be able to successfully stake the surrendered half and record it in their names, as the ground would be open.

This being the case and should it become necessary, the parties should consider the alternatives outlined above, and reconsider whether they wish to proceed on the basis as set out, on some other basis, or whether they wish to reconvene the hearing, given that the tribunal may not be able to put into effect the desired outcome of their alternative settlement terms. In spite of the parties' efforts to work this matter out to their mutual satisfaction, there are two possible alternatives. Either, the parties could continue, with the assistance of Mr. Daniel Pascoe, tribunal Registrar, to attempt to reach an alternative solution or the tribunal would have no choice but to reconvene the hearing and proceed to its conclusion.

If the hearing is reconvened, given that the evidence of Messrs. Bourque and Thurston had been completed, allowing of course the opportunity to Mr. Bourque to be recalled and provide rebuttal evidence, the only witness remaining was Mr. Burda, who was in attendance by telephone. As this is the case and the tribunal has already had relevant visual information pointed out, it is hoped that the matter could, if necessary, be reconvened by telephone. Mr. Thurston would be asked, in such a case, to find a reliable telephone he could use, failing which the tribunal will attempt to locate a government telephone in Kirkland Lake to place at his disposal.