

File No. MA 014-17

J. O’Kane)
Deputy Mining and Lands Commissioner)

Tuesday, the 12th day
of December, 2017.

THE MINING ACT

IN THE MATTER OF

Mining Lands Patent 9094 Timiskaming, dated the 17th day of September, 1929, registered on the 19th day of October, 1929 as Parcel 2933, granted in fee simple in accordance with the **Mining Act**, R.S.O. 1927, c. 45, as amended by 1929, 19 Geo. V, c. 15, and comprised of forty and two-tenths acres, situate in the Township of Gauthier, in the District of Timiskaming, (being the surface rights of Patented Mining Claim L-9931) bearing PIN Number 31169-0280;

AND IN THE MATTER OF

Certificate of Forfeiture No. 142899 Timiskaming, issued by the Honourable Minister of Mines of the Province of Ontario, dated the 15th day of December, 1964, registered on the 21st day of December, 1964, and issued under the provisions of Chapter 241, s. 656 of the **Mining Act**, R.S.O. 1960, as amended, on Parcel 7600 SEC, Centre Section Timiskaming, situate in the Township of Gauthier, SRO, District of Timiskaming;

AND IN THE MATTER OF

Forfeit Parcel 7600, SEC, Centre Section Timiskaming, situate in the Township of Gauthier, SRO, District of Timiskaming, *being lands that were formerly a part of Mining Lands Patent 9094*;

AND IN THE MATTER OF

The Vesting Orders of the Mining Commissioner, dated the 12th and 18th days of December, 1961, respectively, attached hereto as Schedules “A” and “B” and forming part of this Order;

AND IN THE MATTER OF

Chapter 241, s. 656, 670 and 671 of the **Mining Act**, R.S.O. 1960, as amended, and s. 105, 121 and 196 of the **Mining Act**, R.S.O. 1990, c.M.14, as amended;

AND IN THE MATTER OF

An application for Relief from Forfeiture and for the Vesting of Parcel 7600 in the Applicant;

AND IN THE MATTER OF

An application from JEAN KAPLAN, ESTATE TRUSTEE OF THE ESTATE OF GERALD KAPLAN, to correct an omission contained in the Vesting Orders of the Mining Commissioner of the 12th and 18th days of December, 1961.

Applicant

O R D E R

WHEREAS THIS APPLICATION, with documentation filed in support, from Ms. Jean Kaplan, wife of the late Gerald Kaplan and daughter-in-law of the late Max Kaplan and executrix on behalf of the Estate of Gerald Kaplan, was filed with this tribunal on the 16th day of September, 2017, seeking relief from forfeiture and for the vesting of Parcel 7600 in the Estate of Gerald Kaplan, effective the 12th and 18th days of December, 1961, *nunc pro tunc*, pursuant to its jurisdiction under sections 105 and 121 of the **Mining Act**, R.S.O. 1990, c.M.14, as amended and Chapter 241, s. 656, 670 and 671 of the **Mining Act**, R.S.O. 1960;

AND WHEREAS the tribunal has determined from a review of the documentation filed, that in its Vesting Orders of the 12th and the 18th days of December, 1961, when it vested the interests of Crystal Kirkland Mines Limited in Parcel 2933 in Max Kaplan, it did not vest the surface rights Parcel 7600 in Max Kaplan;

AND WHEREAS Parcel 7601 CST was subsequently transferred and is now owned by a third party and contained in both Parcel 12183 CST and Parcel 10373 CST and as such, the tribunal will not make any findings with regards to this parcel;

AND WHEREAS this tribunal has found that it does not possess the requisite jurisdiction to grant the requested relief **AND WITH DUE REGARD TO** the real merits and substantial justice of this application, pursuant to section 121 of the **Mining Act**;

1. IT IS ORDERED THAT the Application of Jean Kaplan be and is hereby dismissed.

2. THIS TRIBUNAL HEREBY DIRECTS that this matter be referred to the Minister of Northern Development and Mines for a determination pursuant to subsection 185(1) of the **Mining Act**.

3. IT IS FURTHER DECLARED that the following constitutes a timeline with regards to Patented Mining Claim L-9931:

1929 Crown issues patent for Mining Claim L-9931 as Land Registry Parcel 2933 CST; Patent 9094 (along with four additional and contiguous mining claims and two Licences of Occupation) to Crystal Kirkland Mines Limited. Max Kaplan is a founding shareholder of the corporation. The patented parcels include both surface and mining rights in fee simple.

1949 Crystal Kirkland Mines Limited severs the surface rights from the mining rights of Mining Claim L-9931, Parcel 2933 CST. As a result, Mining Claim L-9931/Parcel 2933 CST becomes severed into two parts:

1. Mining Rights – become Parcel 8958 CST
2. Surface Rights – become Parcel 7600

Subsequently in 1949, a small cottage lot is sold to a third party out of surface rights Parcel 7600 which becomes surface rights Parcel 7601 (0.248 acre parcel).

1960 Max Kaplan is diagnosed with terminal cancer

1960 Max Kaplan applied to the Mining Commissioner for Vesting Orders for a vesting of the interests of Crystal Kirkland Mines Limited, (being Mining Claims L-9931, 9932, 9933, 9934 and 9935 and Licences of Occupation L-2109 and 2110.

Directors of Crystal Kirkland Mines were notified of the application of Max Kaplan. No objections were filed and the Vesting Order of the Mining Commissioner was granted and issued on the 12th day of December, 1961 and an Amended Order was issued on the 18th day of December, 1961.

1961 Crown noted that Mining Claim L-9931 was described incorrectly on the aforementioned Vesting Order of the 12th day of December, 1961. No notice of any change to the application was issued to the directors of the corporation for their approval. An amended Vesting Order was issued by the Mining Commissioner for the Province of Ontario, which did not include the surface rights of Parcel 7600, thereby leaving the surface rights parcel in the ownership of Crystal Kirkland Mines Limited.

Upon payment of the fees for the vesting of the Licences of Occupation, the Crown confirmed that Max Kaplan had “acquired the interests” of Crystal Kirkland Mines Limited”.

1964 Max Kaplan allowed the charter of the corporation to lapse as per the recommendation of the Office of the Provincial Secretary.

The cancellation of the charter triggered the forfeiture of Parcel 7600 CST,

On the 21st day of December, 1964, Certificate of Forfeiture #142899 was issued and reads "Parcel Closed".

1965 Parcel 7600 was "thrown open" and published in the Ontario Gazette.

1961-1982 Property tax bills for the 40.2 acres of surface rights (Parcel 7600) for Mining Claim L-9931 continued to be billed to Max Kaplan, then to the Estate of Max Kaplan and then to his son, Gerald Kaplan.

The tax bills continued to be billed to and paid by Gerald Kaplan until 1982, when the billing was interrupted by the Ontario Ministry of Municipal Affairs who deemed Gerald Kaplan to be a tenant. Gerald Kaplan was never made aware of the **fact** that the surface rights forfeit to the Crown.

4. IT IS ORDERED THAT no cost shall be payable by the Applicant.

THIS TRIBUNAL FURTHER ADVISES that it will send a copy of this Order to Mr. Michael William Sutton, the owner of the mining lands under Parcel 7600, being Parcel 8958 **AND** that it will send a copy of this Order and the Record (Exhibits) to the Minister of Northern Development and Mines.

REASONS for this Order are included.

DATED this 12th day of December, 2017.

J. O'Kane
DEPUTY MINING AND LANDS COMMISSIONER

File No. MA 014-17

J. O’Kane)
Deputy Mining and Lands Commissioner)

Tuesday, the 12th day
of December, 2017.

THE MINING ACT

IN THE MATTER OF

Mining Lands Patent 9094 Timiskaming, dated the 17th day of September, 1929, registered on the 19th day of October, 1929 as Parcel 2933, granted in fee simple in accordance with the **Mining Act**, R.S.O. 1927, c. 45, as amended by 1929, 19 Geo. V, c. 15, and comprised of forty and two-tenths acres, situate in the Township of Gauthier, in the District of Timiskaming, (being the surface rights of Patented Mining Claim L-9931) bearing PIN Number 31169-0280;

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AND IN THE MATTER OF

Forfeit Parcel 7600, SEC, Centre Section Timiskaming, situate in the Township of Gauthier, SRO, District of Timiskaming, *being lands that were formerly a part of* Mining Lands Patent 9094;

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The Vesting Orders of the Mining Commissioner, dated the 12th and 18th days of December, 1961, respectively, attached hereto as Schedules “A” and “B” and forming part of this Order;

AND IN THE MATTER OF

Chapter 241, s. 656, 670 and 671 of the **Mining Act**, R.S.O. 1960, as amended, and s. 105, 121 and 196 of the **Mining Act**, R.S.O. 1990, c.M.14, as amended;

AND IN THE MATTER OF

An application for Relief from Forfeiture and for the Vesting of Parcel 7600 in the Applicant;

AND IN THE MATTER OF

An application from JEAN KAPLAN, ESTATE TRUSTEE OF THE ESTATE OF GERALD KAPLAN, to correct an omission contained in the Vesting Orders of the Mining Commissioner of the 12th and 18th days of December, 1961.

Applicant

REASONS FOR DECISION

[1] These reasons arise from Jean Kaplan's September 16, 2017 application made to the Office of the Mining and Lands Commissioner (the "Tribunal") for an Order vesting the surface rights of patented Mining Claim L-9931, Temiskaming District, Parcel 7600 Centre Section Temiskaming ("CST") in the name of the Estate of the Gerald Kaplan.

Parcel 7600 is on the northern shore of Crystal Lake, adjacent to where the Kaplan family maintains a seasonal residential compound.

[2] Section 105 of the **Mining Act**, R.S.O. 1990, c. M.14 (the "**Act**") authorizes the Tribunal to determine any "claim, question and dispute" concerning any "right, privilege or interest conferred by or under" the **Act**, except for a short list of excluded matters, none of which exclusions apply in these circumstances.

[3] Section 121 of the **Act** directs the Tribunal to give a decision on the "real merits and substantial justice of the case".

[4] As will be explained in greater detail, the Tribunal has no jurisdiction in these circumstances to make the requested vesting order and, because the surface rights of Parcel 7600 forfeit to Crown, relief from forfeiture under the **Act**, is an authority reserved to the Minister of Northern Development and Mines .

[5] Therefore, for the following reasons, the Tribunal will deny this application.

Historical Context – From Crown Patent to December 1961

[6] The late Max Kaplan was a shareholder of Crystal Kirkland Mines Limited (“CKML”).

CKML held rights in five contiguous parcels (designated Parcel 2930, 2931, 2933, 2934, 2935) located on the north side of Crystal Lake in the District of Timiskaming.

Parcel 2933 is the relevant “parent” parcel for this historical context and for this application for a vesting order and consequential correcting orders. The word “parent” is used because as this history explains Parcel 2933 evolved from the Crown Patent in 1929 to the present and that evolution of the property is central to this application.

[7] Parcel 2933 contained forty and two-tenths (40 2/10) acres located on the north shore of Crystal Lake, in the Township of Gauthier and was described as patented Mining Claim L-9931, District of Temiskaming, registered in the Register for Centre Section Temiskaming (Patent No. 9094). Each unique parcel is recorded in the Register CST with its own page(s).

CKML had obtained a patent from the Crown on October 19th, 1929. That patent is described on page 329 of Volume 15 in the Register for CST as “Parcel 2933”:

“Under Mining Lands Patent 9094 Temiskaming, Dated 17th September, 1929, Crystal Kirkland Mines Limited, is the owner in fee simple with an Absolute Title of

that certain parcel of lands granted by the Crown as Mining Land, situated in the Township of Gauthier, in the District of Temiskaming, and Province of Ontario, namely: Mining Claim L-9931, situate in the said Township of Gauthier as shown outlined in red on plan of survey by Ontario Land Surveyor, A. Matheson, dated March 26th, 1929, of record in the Department of Lands and Forests, a copy of which plan is attached and forms part of the Letters Patent containing by admeasurement Forty and two-tenths Acres more or less. Saving and Excepting the reservations and exceptions contained in the original patent from the Crown namely:”

[8] As described in the Register for CST, CKML was the owner in “fee simple”, subject only to the reservations to the Crown in Patent 9094, none of which are relevant to these circumstances. “Fee simple” is the greatest bundle of property ownership rights possible and in this context CKML’s bundle of rights included both mining rights (the right to minerals in, on or under land) and surface rights (every right in land other than the mining rights). It is possible to own mining rights or surface rights or both. In this case, arising from the 1929 Crown Patent 9094, CKML owned both the mining rights and the surface rights.

[9] It is also possible for the fee simple in mining lands to become stratified by severance of the surface rights and mining rights and thereby create strata ownership in multiple parcels that once were a unified fee simple parcel. That is important because as this history will explain, the mining rights and the surface rights of Parcel 2933 CST became stratified.

[10] The surface rights associated with Parcel 2933 CST were severed from the mining rights in 1949. That severance is described on page 330 of Volume 15 in the Register for CST as follows:

“Under application no. 94837 Temiskaming, dated 24th February, 1949, registered 24th June, 1949, Crystal Kirkland Mines Limited above named apply to have the surface rights severed from the mines and minerals in the above parcel and the surface rights are hereby severed and now entered as Parcel 7600 Centre Section Temiskaming.”

[11] As discussed above, this application relates to Parcel 7600 CST which parcel, as seen from the excerpts of the records of the relevant register, was created in February, 1949, as a fee simple surface rights parcel owned by CKML.

[12] The creation of surface rights Parcel 7600 resulted in a newly created parcel entry in the Register for CST and is located on page 627 in volume 39 CST that read, in part as follows:

“By the entry from Parcel 2933 Centre Section Temiskaming, under Mining Land Patent 9094 Temiskaming, dated 17th September, 1929, registered 19th October, 1929 and under application no. 94837 Temiskaming, dated 24th February 1949, Crystal Kirkland Mines Limited, 11 Jordan Street, Toronto, Ontario, is the owner in fee simple with an Absolute Title of the surface rights of that certain parcel of land granted by the Crown as Mining Land registered under the Land Titles **Act** as Parcel 7600 in the Register for Centre Section Temiskaming situated in the Township of Gauthier in the District of Temiskaming and Province of Ontario namely, Mining Claim L-9931, situated in the said Township of Gauthier, as shown outlined in red on plan of survey by Ontario Land Surveyor, A. Matheson, dated March 26th, 1929, of record in the Department of Lands and Forests, a copy of which is attached to and

forms part of the Letters Patent, containing by admeasurement Forty and two-tenths acres more or less. . . .”

[13] In May of 1949, some three months after the creation of the surface rights Parcel 7600, CKML conveyed a small lot (about 0.248 acres) off Parcel 7600 which became Parcel 7601. The conveyance of that lot is described on page 628 in volume 39 of the Register for CST, in part as follows:

“By Transfer no. 94838 Temiskaming, dated 16th May 1949, registered 24th June 1949, in consideration of \$1.00 and other good and valuable consideration, Crystal Kirkland Mines Limited, above named, transferred to Tom Davis, Part of Mining Claim L-9931 in the Township of Gauthier and having an area of 0.248 acres, more or less, as shown tinted red on Plan of Survey, signed by A. Matheson, Ontario Land Surveyor, dated May 12th, 1949, and attached thereto, more particularly described as follows, Now entered as Parcel 7601 Centre Section Temiskaming.”

[14] Accordingly, by June 1949, the evolution of patented Mining Claim L-9931, being Parcel 2933 (the parent parcel) spawned first a stratification of the mining rights and the surface rights into Parcel 2933 (fee simple mining rights) and Parcel 7600 (fee simple surface rights). Thereafter, the surface rights Parcel 7600 was subdivided by the conveyance of Parcel 7601 (fee simple surface rights in the 0.248-acre parcel) to a Mr. Tom Davis. At that time in June of 1949, CKML continued to own the fee simple mining rights in Parcel 2933 and the fee simple surface rights in the remnant (forty and two-tenths acres less the 0.248 acres conveyed to Davis) of Parcel 7600.

[15] By 1960, Max Kaplan became ill with cancer and a heart condition which precipitated his organizing of his affairs which included regularizing his interests in certain mining assets that included Mining Claim L-9931.

[16] In 1961 Max Kaplan applied to the Mining Commissioner under section 670¹ of the **Mining Act**, Chapter 241, R.S.O. 1960 (the “1960 **Act**”) for an order vesting in him the rights and interests of CKML in Parcel 2933, being patented Mining Claim L-9931.

[17] Additionally, at the same time in 1961, Max Kaplan applied to the Mining Commissioner for a similar vesting order in respect of the CKML rights and interests in Mining Claims L-9932, L-9933, L-9934, L-9935 and Licenses of Occupation L-2109 and L-2110 (the “Other CKML Properties”).

[18] Those Other CKML Properties are not the subject of the current application but they are referenced as supportive evidence that Max Kaplan’s steps to organize his affairs in the face of terminal illness were comprehensive and that he intended to acquire, through the vesting order process under the 1960 **Act**, all the CKML rights and interests in several mining claims and parcels including the subject Parcel 7600 CST.

[19] The genesis of Max Kaplan’s several applications for vesting orders was that CKML had not been paying the acreage tax levied on all the properties under the *Mining Act*, and that he had been paying the acreage taxes.

[20] The provisions of the 1960 **Act** that are important for these reasons include the following²:

¹ The parallel section to section 670 in the current version of the **Mining Act**, R.S.O. 1990, Chapter M.14 is section 196.

1. *In this Act,*

2. *“Commissioner” means the Mining Commissioner under this Act;*

15. *“mining lands” includes the lands and mining rights patented or leased under or by authority of a statute, regulation, or order in council, respecting mines, minerals or mining, and also lands or mining rights located, staked out, used or intended to be used for mining purposes;*

16. *“mining rights” means the ores, mines and minerals on or under any land where they are or have been dealt with separately from the surface;*

19. *“patent” means a grant from the Crown in fee simple or for a less estate made under the Great Seal;*

23. *“surface rights” means every right in land other than the mining rights;*

...

Part XIV

Acreage Tax

658. *In this Part, “municipality” means a city, town, village, township or improvement district.*

² In the current version of the **Act**, there are similar definitions and parallel sections however what was called the “acreage tax” in the 1960 **Act** is called the “mining land tax” in the **Act**.

659. (1) *There shall be paid to the Crown in right of Ontario in each year an acreage tax of 10 cents an acre on any lands or mining rights to which this Part applies.*

(2) *The minimum acreage tax is \$1 a year in a municipality and \$4 a year in territory without municipal organization.*

...

661. (1) *Except as provided in this Part,*

(a) all lands and mining rights in territory without municipal organization held either immediately or immediately under patent or lease acquired under or pursuant to any statute, regulation or law at any time in force authorizing the granting or leasing of Crown lands for mining purposes;

(b) all land in territory without municipal organization being held or used for mining purposes howsoever patented or alienated from the Crown;

(c) all mining rights in, upon or under lands in a municipality patented or leased under or pursuant to any statute, regulation or law at any time in force authorizing or granting or leasing of Crown lands for mining purposes;

(d) all mining rights in, upon or under land in a municipality and being held or used for mining purposes howsoever patented or alienated from the Crown;

(e) all mining rights howsoever patented or acquired which are severed from or held apart or separate from the surface rights, are liable for, and the owner or leasee thereof shall pay the acreage tax.

670. (1) Where lands or mining rights liable to acreage tax are held by two or more co-owners and the whole of the taxes have been paid by one or more of the co-owners and the other co-owner or co-owners has or have neglected or refused to pay his or their proportion of the taxes for a period of four years, the Commissioner, upon the application of to co-owner or co-owners who have paid the taxes, may make an order requiring the delinquent co-owner or co-owners to pay, within three months from the date of the order or such further time as the Commissioner fixes, their proper proportion of the taxes to the co-owner or co-owners who have paid them, together with interest at the rate of 6 per cent per annum compounded yearly, and such costs of the application as are allowed by the Commissioner.

...

(3) The order shall be served in such a manner as the Commissioner directs and, if at the expiration of the period fixed by the order it appears to the Commissioner that payment has not been made in accordance therewith, the Commissioner may make an order vesting the interest of the delinquent co-owner or co-owners in the co-owner or co-owners who have

paid the taxes, and that order shall be registered in the proper registry or land titles office and a duplicate original thereof forwarded by the Commissioner to the Minister.

...

(5) For the purpose of this section, two or more co-holders or co-lessees shall be deemed to be co-owners, and an incorporated company and a shareholder therein shall be deemed to be co-owners of the lands of the company.

[21] As noted from subsection 670(5) of 1960 **Act**, Max Kaplan, as a shareholder of CKML was deemed to be a co-owner of the lands of that company and was therefore entitled to apply for a vesting order in circumstances where he paid all the acreage taxes for four years, where his co-shareholders were delinquent in paying their proportionate share and where the co-shareholders were delinquent in responding to the Commissioner's Order to Pay their proportionate share of the acreage taxes.

[22] Max Kaplan was prepared to pay the acreage taxes otherwise owed by CKML or its shareholders and, in the 1961 application for vesting, presented the Commissioner with sufficient evidence of payment to support an application to obtain vesting orders.

[23] On December 12th, 1961, the Mining Commissioner granted Max Kaplan's application and made a Vesting Order that provided, in part:

"I HEREBY ORDER that the interest of Crystal Kirkland Mines Limited aforesaid in Parcel 2933 being Mining Claim L.9931, containing forty and two-

tenths acres, situate in the Township of Gauthier, . . . is hereby vested in the Applicant, Max Kaplan “

[24] Less than a week after the Commissioner made that December 12, 1961 Vesting Order he issued a correcting Vesting Order on December 18, 1961. The correction made in that subsequent Vesting Order was to identify the interest vested in Max Kaplan as the “mines, minerals and mining rights”, rather than “the interest of CKML” as appeared in the December 12, 1961 Vesting Order. The material portion of that December 18, 1961 Vesting Order provided, in part:

“I HEREBY ORDER that the said vesting order of the 12th day of December, 1961, be altered and amended so as to read “Parcel 2933, being the mines, minerals and mining rights in Mining Claim L.9931, containing forty and two-tenths acres, situate in the Township of Gauthier.”

[25] The December 18, 1961 correcting Vesting Order vested in Max Kaplan a smaller interest than the original December 12, 1961 Vesting Order.

[26] There is nothing in either the December 12, 1961 Vesting Order or the December 18, 1961 Vesting Order that explains why the Commissioner made that correction.

[27] However, a recent review of the Commissioner’s historical file suggests that correction to the Vesting Order may have had as its genesis a letter from the then Department of Mines, Mining Lands Branch, of the provincial government dated December 15, 1961 that was in response to a copy of the Vesting Order sent by the Commissioner to the Minister pursuant to

subsection 670(3) of the 1960 **Act**. The material portions of that letter are reproduced as follows:

I have just received a copy of your Vesting Order dated December 12th.

However, before altering our records, I would like to point out that Mining Claim L. 9931, being Parcel 2933 C.S.T., is located within the boundaries of an organized township, namely Gauthier.

My question is, as our tax is levied against the mineral rights only in this case, are you in a position to vest both surface and mineral rights in the name of the applicant, Max Kaplan?

[28] When the December 15, 1961 letter from the Department of Mines is read together with the December 18, 1961 Vesting Order correcting the December 12, 1961 Vesting Order, an inference³ that can be drawn is that the Commissioner at that time in 1961 determined that his authority to make a vesting order under section 670 of the 1960 **Act** was limited to vesting the “mines, minerals and mining rights” of CKML in Parcel 2933, being Mining Claim L. 9931, rather than all the interests of CKML, because the lands were located an organized municipality⁴.

[29] The original December 12, 1961 Vesting Order vested in Max Kaplan both parcels then owned by CKML, Parcel 2933 (mines, minerals and mining rights) and Parcel 7600

³ As will become clear in these reasons, the Commissioner in 1961 was right to issue the correcting Vesting Order, but if that inference is correct, the Commissioner was right, for the wrong reasons.

⁴ The issue of vesting surface rights versus mining rights on lands within an organized municipality was the subject of extensive historical analysis in the case of *Citadel Gold Mines Inc.*, November 30, 2005 MCC, unreported. This authority will be addressed more extensively in these reasons. The reasons for decision in *Citadel Gold Mines* can be found at http://files.ontario.ca/environment-and-energy/mining-decisions/mnr_e001864.pdf and http://files.ontario.ca/environment-and-energy/mining-decisions/mnr_e001865.pdf

(surface rights). However, the December 18, 1961 correcting Vesting Order vested only Parcel 2933 (mines, minerals and mining rights) in Max Kaplan.

[30] The correcting December 18, 1961 Vesting Order resulted in a newly created parcel entry (Parcel 8958) in the Register for CST and located in volume 46 and provides in part as follows:

“UNDER Vesting Order No. 132600 Temiskaming, dated 12th December, 1961, MAX KAPLAN, Kirkland Lake, Ontario, is the owner in fee simple with an Absolute Title of the Mines, minerals and Mining Rights, of that certain parcel of land, granted by the Crown as Mining Land, registered under the Land Titles Act as parcel 8958, in the Register for Centre Timiskaming, situate in the Township of Gauthier, Municipality of Gauthier, in the District of Temiskaming, and Province of Ontario, namely: MINING RIGHTS OF Mining Claim L-9931, situate in the said Township of Gauthier, as shown outlined in red on plan of survey by Ontario Land Surveyor, A. Matheson, dated March 26th, 1929, of record in the Department of Lands and Forests, a copy of which plan is attached to and forms part of the Letters Patent, containing by admeasurement Forty and Two-tenths (20 2/10) acres, more or less. . . .”

[31] The Vesting Orders (as corrected) obtained by Max Kaplan in December 1961 (and obtained subsequently with respect to some of the other CKML Properties) vested in him CKML’s rights and interests in all the several properties that were the subject of the application(s), **except for the surface rights of Parcel 7600** (emphasis added).

[32] A recent review of the Commissioner's historical file shows that notice of the December 18, 1961 correcting Vesting Order was sent by letter dated December 18, 1961 to the lawyers representing Max Kaplan on the application for the Vesting Order, so from that historical file the inference is that Max Kaplan should have been aware that he had not met his goal of acquiring all the CKML interests, at least insofar as the surface rights in Parcel 7600.

In this application to the Tribunal, Jean Kaplan characterizes the "omission" from the December 1961 Vesting Order of the surface rights to Parcel 7600 as an error and that is the genesis of Jean Kaplan's application herein.

Surface Rights Parcel 7600 Forfeits to the Crown

[33] According to the evidence of Jean Kaplan, Max Kaplan allowed the corporate charter of CKML to lapse in 1964 because he believed that he had achieved his goal of consolidating all his mining interests through the vesting order process and because allowing the corporate charter to lapse was recommended to him by the Provincial Secretary.

It is unclear from the evidence before the Tribunal **exactly** how CKML's charter "lapsed". According to Max Kaplan's May 1, 1961 affidavit (filed with the Commissioner in 1961) in support of the vesting order CKML was a "company which has not been operating for many years".

[34] The consequence of that "lapsed" charter was that any property remaining in CKML's ownership forfeit to the Crown.

[35] The consequence of that forfeiture was reflected on the Register for CST of Parcel 7600 at page 628 of volume 39 as follows:

“By No. 142899 Temiskaming, being the Certificate of The Honourable Minister of Mines of the Province of Ontario, dated 15th December, 1964, registered 21st December, 1964, issued under the provisions of Section 656, Chap. 241, R.S.O., 1960, the remainder of the above parcel was thereby forfeited to and vested in the Crown, through the cancellation of the Charter of the above Company. Parcel Closed.”

[36] Section 656 of the 1960 **Act** referred to in the Register for CST noted above is reproduced below:

656. Where mining lands are forfeited to the Crown under **The Corporations Act** or **The Mortmain and Charitable Uses Act**, or any predecessor thereof, the Minister may cause a certificate to be registered in the proper land titles or registry office stating that forfeiture has been effected under that **Act** and that by reason of such forfeiture the patent, lease or other title whereby such lands were granted has been cancelled and annulled, and upon the registration of the certificate such lands may be dealt with in the manner provided in this **Act**.

[37] The combined reading of the forfeiture entry in the Register for CST Parcel 7600 and section 656 of the 1960 **Act** is that CKML’s corporate charter “lapse” was probably a corporate dissolution under the provisions of the **Corporations Act** in force in 1961.

The relevant provisions of the **Corporations Act**, Chapter 71, R.S.O. 1960 are as follows:

330. Any real or personal property of a corporation that has not been disposed of at the date of its dissolution is forfeit to the Crown.

[38] Ordinarily when corporate property forfeit to the Crown the **Escheats Act** would apply, however, the **Escheats Act**, Chapter 123, R.S.O. 1960 created a specific exception for mining lands as follows:

3. Notwithstanding section 2, where mining lands as defined in the **Mining Act** have become forfeited to the Crown, such mining lands shall be dealt with and disposed of as Crown Lands in the manner provided in the **Mining Act**.

[39] A further section of the 1960 **Act** that is relevant to this application is section 674, which provided as follows:

674. (1) The Lieutenant Governor in Council may by order revoke, cancel or annul the forfeiture of any lands or mining rights under this Part, and the Deputy Minister shall cause the order to be registered in the proper land titles office or registry office and thereupon the lands or mining rights revert in the owner or lessee of the lands or mining rights at the time of forfeiture, his heirs, successors or assigns, subject to any lien, mortgage or charge entered or registered prior to the forfeiture and still outstanding.

[40] The reference in subsection 674(1)⁵ to “this Part” is a reference to Part XIV, which is that part of the 1960 **Act** dealing with “acreage tax”.

Events Since Max Kaplan’s Death

[41] Max Kaplan died on February 26, 1967.

⁵ The analogous section in the current *Act* to section 674 is section 185, which is worded somewhat differently in that the Minister rather than the Lieutenant Governor in Council, may “by order revoke, cancel or annul the forfeiture of any mining lands or mining rights under this Act ... on such terms and conditions as the Minister considers appropriate.”

[42] According to the evidence of Jean Kaplan, beginning with the Vesting Order(s) made in December 1961, Max Kaplan paid any property taxes associated with Parcel 7600 CST.

After Max Kaplan's death, his Estate continued to pay the property taxes⁶ associated with Parcel 7600 CST. The evidence filed as proof that the Estate continued to pay the property taxes included copies of:

- a) a Tax Notice dated August 15, 1970 from the Improvement District of Gauthier addressed to the Representative of Max Kaplan Deceased related to the property taxes in respect of "Part M C 9931 Summer Cottage 40.200 acres";
- b) a Notice of Assessment dated January 7, 1980 for the Gauthier Improvement District addressed to the Estate of Max Kaplan, care of Gerald Kaplan related to the property assessment in respect of "Gauthier MC L9931PT, PCL 7600 CST PT, Summer Cottage, FRTG: 100.00, ACRES: 40.20". The property is classified on the Notice of Assessment as "residential other";
- c) a Notice of Assessment dated January 1, 1982 for the Gauthier Improvement District addressed to the Estate of Max Kaplan, care of Gerald Kaplan related to the property assessment in respect of "Gauthier MC L9931 PT, PCL 7600 CST, Summer Cottage, 40.20AC, 100.00FR". The property is classified on the Notice of Assessment as "recreational" and taxed as "RES/FARM".

⁶ Property taxes in this context are taken to be distinct from acreage taxes under Part XIV of the *1960 Act*. Property taxes are typically imposed by a local municipality under some version of the *Municipal Act* or the *Education Act*.

[43] Max Kaplan's Last Will and Testament does not mention Parcel 7600 specifically, but it does contain a clause that the rest and residue of his Estate shall be divided into three equal parts for his children Gerald Kaplan, Pearl Retchin and Sonia Roth.

[44] On June 3, 1978, Max Kaplan's daughters Pearl Rechin and Sonia (Roth) Kaplan executed a document titled "WAIVER" that provided as follows:

"WE, the undersigned, hereby waive all our right, title and interest in and to the real property and buildings situate, lying and being in the Township of Gauthier in the County of Timiskaming and more particularly described as Mining Claim L-9931."

[45] According to the evidence of Jean Kaplan, the Estate and/or Gerald Kaplan continued paying the property taxes in respect of Parcel 7600 until 1982 when the Ministry of Municipal Affairs deemed Gerald Kaplan to be a tenant on Crown lands.

[46] The fee simple interest in the mining rights (mines, minerals and mining rights) associated with Mining Claim L-9931 and crystallized in Parcel 8958 by the registration of the 1961 Vesting Order was vested in Max Kaplan and on his death, passed to the Estate of Max Kaplan.

- a) The fee simple interest in Parcel 8958 (the mining rights) was transferred to Kaplan Bros. Limited by transfer No. 192741 registered in Timiskaming on November 10, 1976.
- b) Parcel 8958 was subsequently transferred by Transfer No. LT315187 to Northern Pressure Treated Wood (N.P.T.W.) Ltd. on August 23, 2001 and subsequently

transferred to Michael William Sutton by Transfer No. DT59902 on July 28, 2017.

[47] According to the evidence of Jean Kaplan, around 1995 Gerald Kaplan obtained title to a nearby lot (0.6 acres) by way of a Crown Grant.

[48] Gerald Kaplan died on August 21, 2003. The applicant Jean Kaplan is the spouse and Executrix and Estate Trustee of the Late Gerald Kaplan as well as the sole beneficiary under Gerald Kaplan's Last Will and Testament.

[49] The Kaplan family continue to use property on the north shore of Crystal Lake as a seasonal family compound.

[50] Jean Kaplan now wants to correct the historical omission from the December 12, 1961 Vesting Order, obtain relief from the Crown forfeiture, and obtain an Order Vesting the fee simple surface rights in Parcel 7600 in herself or in her late husband's Estate.

Application Relief Sought

[51] Jean Kaplan's application to the Tribunal posed several questions, one of which was whether there had been a further vesting order that vested the surface rights in Parcel 7600 in Max Kaplan. The short answer to that question is no. A review of the historical records of the Commissioner and the various property and parcel registers confirms that after the December 18, 1961 correction the Commissioner made to the December 12, 1961 Vesting Order, there is no further Vesting Order which vests the surface rights in Parcel 7600 in Max Kaplan.

[52] Another of the questions posed by Jean Kaplan's application was whether the Commissioner could (in 1961) vest surface rights. There is no short answer to that question.

[53] The final question posed by Jean Kaplan's application was whether there was a remedy within the Commissioner's purview to correct the error. The short answer to that question is no.

[54] The explanation for those short answers is set out in the following paragraphs.

Acreege Taxes Under Part XIV of the 1960 Act

[55] The February 24, 1949 application by CKML, the then owner of the fee simple interest in the Mining Land granted by Crown Patent as Mining Claim L-9931 and designated in the relevant parcel registry as "Parcel 2933", to sever the "surface" rights from the "mines and minerals" (the mining rights) was unequivocal.

[56] That 1949 severance application evinced the owner's clear intention to create a stratification of the interests originally granted by Crown patent into two unique parcels designated as Parcel 7600 CST (the "surface" rights) and Parcel 2933 CST (the "mining" rights).

[57] Subsection 659(1) of the 1960 **Act** created an acreage tax of \$0.10 on "any lands or mining rights to which this Part applies". The reference to "Part" is to Part XIV of the 1960 **Act**.

[58] Subsection 661 of the 1960 **Act** established what "lands or mining rights" were subject to that acreage tax. In other words, subsections 661(1) and (2) inform the scope the application of the acreage tax. Subsections 661(1) and (2) detail which "lands and mining rights" are liable to the acreage tax and which are not.

[59] The following excerpt from section 661 is particularly apposite Parcel 2933 and Parcel 7600 of the 1961 Max Kaplan application for a vesting order:

661. (1) Except as provided in this Part,

...

(e) all mining rights howsoever patented or acquired which are severed from or held apart or separate from the surface rights,

are liable for, and the owner or leasee thereof shall pay the acreage tax.

[60] Parsing clause 661(1)(e) assists with developing an understanding of its meaning:

- a) All mining rights severed from surface rights are liable for the acreage tax.
- b) All mining rights held apart from the surface rights are liable for the acreage tax.
- c) All mining rights separate from the surface rights are liable for the acreage tax.

[61] It is apparent that the legislature intended that when surface rights and mining rights become stratified, regardless of how that stratification occurs (ie. “severance” versus “held apart” versus “separate”), no acreage tax liability arises in respect of the surface rights under Part XIV of the 1960 **Act**.

[62] That interpretation is reinforced by examining the other provisions of Part XIV of the 1960 **Act** that reference surface rights. For example, subsection 661(2), which subsection identifies the circumstances “where no acreage tax is payable” or the acreage tax exemptions.

(2) No acreage tax is payable,

(a) in respect of mining rights in, upon or under any land in a municipality, or any other land and mineral rights in territory without municipal organization, where the land,

(i) has been subdivided into lots or parcels for city, town, village or summer resort purposes, or

(ii) is being actually used for public park, educational, religious or cemetery purposes,

but this clause does not exempt mining rights from taxation on lots or parcels of more than two acres in area where the mining rights are severed or held apart or separate from the surface rights;

[63] As seen in that subsection, the legislature created exemptions from the acreage tax in respect of certain mining rights on lands, but then carved out specific exceptions to the exemptions where “mining rights are severed or held apart or separate from the surface rights”. Therefore, as an example no acreage tax would be payable on mining rights on land in a municipality where the land had been subdivided into lots for summer resort purposes. However, if the subdivided summer resort lot(s) in the example was more than two acres in area and the mining rights and surface rights had been severed, the lot would still be liable to an acreage tax on the mining rights.

[64] Under section 662 of Part XIV of the 1960 Act, the Minister retained limited discretion to exempt certain land from the acreage tax where the land was in *bona fide* use for farming

or agricultural purposes. The limit on the Minister's discretion related to where mining rights and surface rights had become disconnected.

662.(1) The Minister may exempt such lands as are in *bona fide* use for farming or agricultural purposes from the tax under this Part, but the exemption does not apply to the mining rights that are severed from or held apart or separate from the surface rights.

[65] The final reference to surface rights in Part XIV of the 1960 **Act** is in section 663 which granted the Minister discretion to impose the acreage tax where satisfied that the surface rights were being used for non-mining purposes.

663. Where the Minister is satisfied that the surface rights in respect of a mining claim or mining location are being used for purposes other than that of mining or the mineral industry, this Part only applies to the mining rights.

[66] Taken together, these references to "surface rights" and "mining rights" in Part XIV of the 1960 **Act** inform an interpretation that where "surface rights" had been severed or held apart or separate from "mining rights", those separated "surface rights" were not liable to the acreage tax.

[67] Since Parcel 7600 was a surface rights parcel since 1949, no acreage tax liability arose under Part XIV of the 1960 **Act**. Accordingly, the Commissioner's jurisdiction under subsection 670(1) of the 1960 **Act** was circumscribed by the words of that section "where lands or mining rights liable to acreage tax". However, Parcel 7600, being a surface rights parcel was not "liable to acreage tax".

[68] The Commissioner's jurisdiction under subsection 670(2) of the 1960 **Act** was further circumscribed by the words of that section "the Commissioner may make an order vesting the interest of the delinquent co-owners ... in the co-owners ... who have paid the taxes". However, since no acreage tax was imposed on the surface rights Parcel 7600, the taxes paid by Max Kaplan were not paid in respect of Parcel 7600, but rather were the acreage tax paid in respect of the mining rights of Parcel 2933.

[69] Based on the evidence provided by Jean Kaplan, the Tribunal is satisfied on a balance of probabilities that in 1961 Max Kaplan applied to the Commissioner to obtain an order vesting **all the interests of CKML** in the various parcels in Max Kaplan, based on his co-owners' delinquency in failing to pay their proportionate share of the acreage taxes under Part XIV of the 1960 **Act**.

[70] However, because of the 1949 severance of the surface rights and the mining rights into surface rights Parcel 7600 and mining rights Parcel 2933, there was no acreage tax imposed in respect of surface rights Parcel 7600 and consequently, no acreage tax payment delinquency by his co-owners in respect of surface rights Parcel 7600. Therefore, the Commissioner, in 1961, had no jurisdiction under Part XIV of the 1960 **Act** to make a vesting order to vest the surface rights Parcel 7600 in Max Kaplan⁷. Accordingly, there is no basis today for the Commissioner to issue a correcting Vesting Order.

⁷ The facts of this case should be distinguished from the facts of the *Citadel Gold Mines* case which will be discussed in greater detail below. The important distinction is that the lands in issue in *Citadel* were mining lands within an organized municipality where the surface rights and mining rights remained united and there had been no severance of the surface rights and mining rights.

Relief from Forfeiture

[71] The case of *Citadel Gold Mines Inc.*⁸ is a 2005 decision of the Commissioner that has parallels with the Jean Kaplan application and is therefore worthy of discussion.

[72] In the *Citadel Gold Mines* case, a 1969 vesting order made by the Commissioner vested the interest of Sandra Gold Mines Limited in patented mining lands in Jack Koza, a shareholder under the same “delinquent acreage tax” procedure used by Max Kaplan in 1961.

- a) In 1969, concern developed about whether that 1969 vesting order properly vested the interest of Sandra Gold Mines in the surface rights.
- b) The 1996 amending vesting order focused on the Commissioner’s jurisdiction being limited to mining rights because the lands in question were located within an organized municipality.
- c) Sandra Gold Mines had become dissolved in 1973 and in 1997, the Minister of Northern Development and Mines certified that the lands of Sandra Gold Mines had been forfeited to the Crown.

[73] In the *Citadel Gold Mines* case, the applications to the Commissioner were made under the current version of the **Act** and were to correct or amend previous vesting orders dating from 1969 (and 1996) that had the effect of severing mining lands into stratified “surface rights” parcels and “mines, ores, minerals and mining rights” parcels.

[74] The severance of those rights into stratified parcels in the *Citadel Gold Mines* case had occurred because the Commissioner at the time of those 1969 vesting orders⁹ believed that

⁸ November 30, 2005, Unreported M.C.C., MLC Files MA 002-96 & MA 020-04.

his jurisdiction to make a vesting order related to acreage tax¹⁰ under the 1960 **Act**, was limited to only “mines, ores, minerals and mining rights” when the property in issue was located within an organized municipality. The Commissioner’s 1969 vesting order had the effect of severing the “surface” rights from the “mines, ores, minerals and mining rights”.

[75] In addition, in the *Citadel Gold Mines* case, the corporation that had originally owned the Crown Patent had been dissolved under the relevant version of the **Corporations Act** and the surface rights parcel had been forfeited to the Crown.

[76] In the 2005 *Citadel Gold Mines* decision, the Commissioner framed one of the several issues¹¹ as follows:

“... in 1969, pursuant to section 670, where land within a municipality is concerned, can the tribunal vest the entire interest held by the owner as mining lands or is it limited to vesting the mining rights only?”

[77] In respect of the issue identified above, the Commissioner in the *Citadel Gold Mines* case conducted an extensive analysis of the history of the legislation as it was in 1960 and as it is today.

⁹ The Commissioner making the 1969 vesting orders acted under section 670 of the 1960 **Act**, the same section that was the basis for the 1961 vesting order obtained by Max Kaplan.

¹⁰ The applicant for the 1969 vesting orders was a shareholder of a corporation that had obtained a Crown Patent of the mining lands. That shareholder applied for a vesting order as a “co-owner” under subsection 670(5) of the 1960 **Act**, because his fellow shareholders had neglected or refused to pay their proportionate share of the acreage tax, like the situation with Max Kaplan.

¹¹ The Commissioner in the *Citadel Gold Mines* case also dealt with the issue that the surface rights parcel had been forfeited to the local municipality in a tax sale process under the **Municipal Affairs Act**. That issue does not arise in the present case.

- a) The focus of her analysis was about the extent of the interest intended to be vested in an application under section 670 of the 1960 **Act** (or section 196 of the **Act**), before making the following conclusion at page 33 of that decision:

The tribunal finds considerable support through these provisions that the interest which must vest in section 670 and 196 is the entire estate which the delinquent co-owner has an interest. This interpretation is in keeping with the reference in subsection 196(5) for the vesting of the interests of the lands or mining rights, a reference of general application to the entire body of rights, or the entire estate, as they were at time of alienation from the Crown.

*The operative sections which give rise to the vesting commence with the references in subsections 670(5) and 196(1), which refer specifically to “lands or mining rights”. The application of this provision by this and other Commissioners has been to refer back to the particular clause in 189(1) to which the mining tax relates, and vest that particular interest in the non-delinquent co-owner. However, a narrower, but more purposeful reading of sections 670 and 196 would be to vest the entire undivided interest in the “lands or mining rights” held by the co-owners. That is the interest which was alienated from the Crown, **unless a severance has intervened**. The tribunal is strongly persuaded that to sever mining from surface rights in a vesting provision under the Mining **Act** should state so in clear and unequivocal language. That is not the case here. (My bold emphasis added.)*

- b) The Commissioner's decision also considered the nature of "mining lands" and the relationship between mining rights and surface rights under the legislation and at page 36 of the decision stated the following principle:

Lands which have been patented as mining lands will remain mining lands until some step is taken to change their nature. Such would be the case where the surface rights have been severed and sold with the intent that they be used for non-mining purposes.

- c) That principle remains equally apposite the circumstances of this case.

[78] A clear distinction in the present application is that unlike the single unified parcel of "surface" rights and "mines, ores, minerals and mining" rights that existed before the 1969 vesting order in the *Citadel Gold Mines* case, CKML had, in 1949, made application to formerly sever the "surface" rights from the "mines, ores, minerals and mining rights". That distinction is emphasized in the passage from that case "**unless a severance has intervened**" (bold emphasis added).

[79] An important element of the Commissioner's decision in the *Citadel Gold Mines* case is that the essential nature of the lands in issue remained "mining lands" and the unintended severance of "surface" rights from "mining rights" in the 1969 vesting order did not alter that essential nature of the lands as "mining lands".

[80] However, in the current case, the property owner created a formal severance of "surface" rights from the "mining rights". Additionally, the evidence filed in this application supports the conclusion that along with that formal severance came a formalization that the

surface rights parcel(s) were being used for something other than mining or mineral related uses.

- a) The June 1949 conveyance to Tom Davis, described as “a close friend” of Max Kaplan was for a cottage lot (Parcel 7601) that was subdivided from surface rights Parcel 7600;
- b) The material filed by Jean Kaplan included an aerial photograph identifying “Max’s Summer House” on part of Surface Rights Parcel 7600, adjacent to Tom Davis’s cottage lot;
- c) The several property assessment and property tax documents relied on by Jean Kaplan refer to Surface Rights Parcel 7600 as a “summer cottage”;
- d) On May 25, 1978, a Mr. Thomas Abraham Assad, obtained a Crown Grant of 0.80 acres of part of Mining Claim L 9931. The legal description of that grant is Part 1 on Reference Plan 54R-2101. When that Reference Plan is compared to the Claim PIN Maps and aerial photography and sketches filed by the applicant, it is apparent that Part 1, Reference Plan 54R-2101 is a further subdivision of Surface Rights Parcel 7600.
- e) On February 10, 1995, Gerald Kaplan obtained a Crown Grant of 0.256 hectares of part of Mining Claim L 9931. The legal description of that grant is Part 1 on Reference Plan 54R-2460. When that Reference Plan is compared to the Claim PIN Maps and aerial photography and sketches filed by the applicant, it is

apparent that Part 1 Reference Plan 54R2460 is a further subdivision of Surface Rights Parcel 7600.

[81] Taken together, the evidence referenced immediately above supports the inference that the surface rights associated with Parcel 7600 have been used, for some considerable time dating back to beginning around 1949, for purposes other than mining or mineral purposes.

[82] Another issue addressed by the Commissioner in the *Citadel Gold Mines* case related to the Crown forfeiture of the land under the **Corporations Act** and the **1960 Act**. The Commissioner framed that issue as follows:

- a) "... can the tribunal issue an Order to nullify the" notice of forfeiture, "or, is this solely within the jurisdiction of the Minister?"
- b) The Commissioner in the *Citadel Gold Mines* case determined that in 1969, the acreage tax under the **1960 Act**, on lands located within an organized municipality applied only to the "mining rights" in "mining lands", but in an "acreage tax delinquency" procedure, for a parcel where "surface rights" and "mining rights" remained unified, the Commissioner's jurisdiction was to vest the entire interest as patented by the Crown.
- c) Accordingly, the Commissioner in the *Citadel Gold Mines* case, corrected the 1969 vesting order *nunc pro tunc*, meaning that the 1969 vesting order was of both the mining rights and surface rights, thereby undoing the unintended severance of those rights.

- d) The effect of that correcting vesting order was that the entirety of the unified rights parcel, as of 1969 vested in Jack Koza and therefore, when Sandra Gold Mines was dissolved in 1973, Sandra Gold Mines held no lands and therefore there was nothing to forfeit to the Crown.
- e) That 2005 correcting vesting order, made *nunc pro tunc* as of 1969 had the effect of erasing the forfeiture of those surface rights and thereby afforded the applicant a satisfactory remedy rather than formal relief from forfeiture under the legislation.

[83] In the circumstances of the present case, the facts related to the severance of the surface rights and mining rights by CKML in 1949 are distinct from the unintended severance of surface rights and mining rights by the Commissioner's 1969 vesting order in the *Citadel Gold Mines* case.

[84] Unlike the *Citadel Gold Mines* circumstances, the Tribunal has no jurisdiction in the present case to undo the 1949 severance of surface rights and mining rights.

[85] There is no provision in the **Act** or in the 1960 **Act** for the Tribunal to reverse the CKML's severance of the surface rights (Parcel 7600) from the mining rights (Parcel 2933).

[86] The Tribunal is sympathetic to the applicant because there was a lack of clarity and explanation associated with the December 1961 vesting orders. Better communication about the property rights that had not passed could have obviated almost fifty years of confusion over surface rights Parcel 7600.

[87] The Tribunal is also sympathetic to the applicant particularly since the evidence reflects that Max Kaplan and subsequently his Estate or his son Gerald Kaplan paid the property taxes associated with the surface rights of Parcel 7600 from 1961 until 1982 based on their belief, albeit mistaken, that they had secured ownership of the surface rights of Parcel 7600. There is no evidence before the Tribunal to suggest that the Kaplan's recovered any of those property taxes.

[88] Finally, the Tribunal is sympathetic to the applicant because the evidence suggests that the only party prejudiced in these circumstances is the applicant's family.

[89] Given the evidence before the Tribunal, these are circumstances where providing relief from forfeiture would have been appropriate if the Tribunal had jurisdiction to do so.

[90] If there is any possibility of relief from forfeiture in these circumstances, that possibility lies with the Minister of Northern Development and Mines pursuant to section 185 of the **Act**. The Tribunal will therefore refer this matter to the Minister for determination.

[91] This application will be dismissed without costs.