

**Mining and Lands Tribunal**  
Tribunal des Mines et des Terres



**ISSUE DATE:** November 26, 2018

**CASE NO.:** MA 015-18

**PROCEEDING COMMENCED UNDER** sections 48 and 112 of the *Mining Act*, R.S.O. 1990, c. M. 14, as amended

**Appellant:** Eric Marion  
**Respondent:** Ministry of Energy, Northern Development and Mines  
**Subject:** Appeal of Decision of Provincial Mining Recorder To Not Record Mining Claims  
**Cell Numbers:** 31M05G040, 31M05G060, 31M05G080, 31M05G120, 31M05G139, 31M05G140 , 31M05H001 to 31M05H003, both inclusive, 31M05H041, 31M05H042, 31M05H061 to 31M05H063, both inclusive, 31M05H081, 31M05H082, 31M05H101 and 31M05H121  
**Township/Division:** Bucke Township, Larder Lake Mining Division  
**MLT Case No.:** MA 015-18  
**MLT Case Name:** Marion v. Ontario (Energy, Northern Development and Mines)  
**Heard:** In writing

**APPEARANCES:**

**Parties**

**Representative**

Eric Marion

Self-represented

**DECISION OF THE TRIBUNAL DELIVERED BY MAUREEN CARTER-WHITNEY**

---

## REASONS

### Background

[1] Eric Marion filed an appeal pursuant to s. 48 and s. 112 of the *Mining Act* with the Mining and Lands Tribunal (“Tribunal”) on July 24, 2018.

[2] The appeal relates to Mr. Marion’s June 2018 request for the registration of 18 mining claims that were cancelled by the Ministry of Energy and Northern Development and Mines (“ENDM”) on June 25, 2018. With his appeal materials, Mr. Marion filed an excerpt from a letter that he received from Scott Cousineau, Provincial Mining Recorder at ENDM, dated June 25, 2018, which stated as follows:

As you know, there was a problem with the June 1<sup>st</sup> openings this year, some mining claims were registered with respect to lands that were not legally open at the time of registration. Those mining claims are not valid and they have been cancelled.

The 18 mining claims identified in your dispute were registered for lands that were not legally open for mining claim registration at the time and they have been cancelled. I am therefore dismissing your dispute because it is moot; the claims have been cancelled. Under the new mining claim registration system, if you dispute a mining claim and it is cancelled, you do not get any priority of registration when the lands for that cancelled claim are re-opened. A refund of the dispute fees paid will be provided to you via the same method of payment used within 60 days of this letter.

The lands where mining claims were invalidly registered on June 1<sup>st</sup> have been withdrawn from mining claim registration and will be re-opened at a later date on a competitive basis....

[3] On October 5, 2018, Tribunal staff wrote to Mr. Marion, stating it appeared that the Tribunal may not have jurisdiction to consider his appeal or that there is no substantive basis upon which his appeal could be allowed. Tribunal staff directed Mr. Marion to file written submissions on this question by October 26, 2018. Tribunal staff also directed that, should additional submissions be received, the Minister of Energy, Northern Development and Mines (“Minister”) would have an opportunity to file responding submissions by November 2, 2018. The October 5, 2018 letter was sent by email and by regular mail that day.

[4] The October 5, 2018 letter from Tribunal staff informed Mr. Marion that if submissions were not received by October 26, 2018, the Tribunal would proceed to dismiss this appeal.

[5] Mr. Marion did not file any submissions with the Tribunal in response to the October 5, 2018 letter from Tribunal staff. As a result, the Tribunal did not seek submissions from the Minister.

[6] Tribunal staff made subsequent attempts to contact Mr. Marion, by email on November 6, 2018 and by telephone/voicemail on November 13, 2018, in order to confirm whether he had submitted anything in response to the October 5, 2018 letter.

[7] This matter was referred to me for a decision.

## Relevant Legislation and Rule

### *Statutory Powers Procedure Act ("SPPA")*

- 4.6 (1) Subject to subsections (5) and (6), a tribunal may dismiss a proceeding without a hearing if,
- (a) the proceeding is frivolous, vexatious or is commenced in bad faith;
  - (b) the proceeding relates to matters that are outside the jurisdiction of the tribunal; or
  - (c) some aspect of the statutory requirements for bringing the proceeding has not been met.
- (2) Before dismissing a proceeding under this section, a tribunal shall give notice of its intention to dismiss the proceeding to,
- (a) all parties to the proceeding if the proceeding is being dismissed for reasons referred to in clause (1) (b); or
  - (b) the party who commences the proceeding if the proceeding is being dismissed for any other reason.
- (3) The notice of intention to dismiss a proceeding shall set out the reasons for the dismissal and inform the parties of their right to make written submissions to the tribunal with respect to the dismissal within the time specified in the notice.
- (4) A party who receives a notice under subsection (2) may make written submissions to the tribunal with respect to the dismissal within the time specified in the notice.
- (5) A tribunal shall not dismiss a proceeding under this section until it has given notice under subsection (2) and considered any submissions made under subsection (4).
- (6) A tribunal shall not dismiss a proceeding under this section unless it has made rules under section 25.1 respecting the early dismissal of proceedings and those rules shall

include,

- (a) any of the grounds referred to in subsection (1) upon which a proceeding may be dismissed;
- (b) the right of the parties who are entitled to receive notice under subsection (2) to make submissions with respect to the dismissal; and
- (c) the time within which the submissions must be made.

### *Procedural Rules of the Mining and Lands Tribunal (“Rules”)*

#### **Dismissal Without a Hearing**

8.(1) The Tribunal may dismiss a matter administratively, on his or her own initiative and without a hearing in any of the following circumstances:

- if he or she is satisfied that the Tribunal is without jurisdiction to hear the matter;
- ...
- the grounds set out in the notice of appeal do not disclose any substantive basis upon which all or part of the appeal could be allowed;
- ...

(2) Before a proceeding is dismissed for lack of jurisdiction, all parties to the proceeding will be given notice. Before a proceeding is dismissed for any other reason, the party who commenced it will be given notice. The notice will provide grounds for the proposed dismissal and prescribe deadlines by which parties may make written submissions to the Tribunal.

(3) This Rule supplements the authority of the Tribunal under section 122 of the *Mining Act*.

### **Analysis**

[8] Rule 8 of the Tribunal’s *Rules* states that the Tribunal may dismiss a matter administratively, without a hearing, where the Tribunal is satisfied that it is without jurisdiction to hear a matter, or when the grounds set out in the notice of appeal do not disclose any substantive basis upon which all or part of the appeal could be allowed. This accords with s. 4.6(1)(b) of the *SPPA*, which provides that a tribunal may dismiss a matter without a hearing if the proceeding relates to matters that are outside the jurisdiction of the tribunal. Both Rule 8 and s. 4.6 provide for notice and an opportunity for written submissions where the Tribunal may dismiss a proceeding without a hearing.

[9] Mr. Marion has been given notice and the opportunity to make submissions. As noted above, Mr. Marion did not file any submissions by October 26, 2018 concerning the Tribunal’s jurisdiction in this matter, nor indeed by the date of this decision, pursuant to the Tribunal’s direction in its letter of October 5, 2018.

[10] Mr. Marion seeks to register 18 mining claims that ENDM cancelled on June 25, 2018. In s. 1 of the *Mining Act*, a “mining claim” is defined as a parcel of land on which a mining claim is registered in accordance with the provisions of the Act. S. 28(1) of the *Mining Act* provides that a licensee may register a mining claim on any land open for prospecting. However, Mr. Cousineau indicated in his June 25, 2018 letter to Mr. Marion that the 18 claims, which are the subject of his appeal, were not valid mining claims because they were not legally open for mining claim registration at the time Mr. Marion attempted to register them. On this basis, the Tribunal finds that there were no legally existing mining claims for Mr. Marion to register pursuant to s. 28(1) of the *Mining Act*.

[11] For these reasons, pursuant to Rule 8 and s. 46(1)(b) of the *SPPA*, the Tribunal is satisfied that it is without jurisdiction to hear the matter, and that it should be dismissed without a hearing.

## **DECISION**

[12] The Tribunal orders that the appeal is dismissed.

*“Maureen Carter-Whitney”*

MAUREEN CARTER-WHITNEY  
VICE-CHAIR

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

### **Mining and Lands Tribunal**

A constituent tribunal of Environment and Land Tribunals Ontario  
Website: [www.elto.gov.on.ca](http://www.elto.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248