

Appeal No. MA 025-93
Appeal No. MA 010-94

L. Kamerman)
Mining and Lands Commissioner)

Thursday, the 13th day
of October, 1994.

THE MINING ACT

IN THE MATTER OF

An application under section 105 of the **Mining Act** in respect of Mining Claims P-993840 to 993851, both inclusive, 993907, 994548 to 994553, both inclusive, 1072211 to 1072220, both inclusive, 1087218 to 1087277, both inclusive and 1088860 to 1088874, both inclusive, situate in the Township of Denyes, in the Porcupine Mining Division, hereinafter referred to as the "Denyes Mining Claims";

AND IN THE MATTER OF

An application for the enforcement of a December 10, 1991 contract involving the applicants and the respondent.

B E T W E E N:

ELLIOT STRASHIN, DANIEL PATRIE, ANNE MARIE CROSBY,
GERALD HALL and CARL HALL

Applicants

- and -

JEAN-PAUL PATRIE

Respondent

- AND -

IN THE MATTER OF

An application under section 105 of the **Mining Act** in respect of Mining Claims P-1179250 to 1179252, both inclusive, situate in the Township of Halcrow, in the Porcupine Mining Division, hereinafter referred to as the "Taylor Mining Claims".

B E T W E E N:

JEAN-PAUL PATRIE

Applicant By Counterclaim

- and -

ELLIOT STRASHIN, DANIEL PATRIE, ANNE MARIE CROSBY,
GERALD HALL and CARL HALL

Respondents By Counterclaim

- and -

PETER TAYLOR

Respondent of the Second Part

ORDER

WHEREAS the application bearing tribunal file number MA 025-93 was received by this tribunal on the 25th day of June, 1993;

AND WHEREAS the application bearing tribunal file number MA 010-94 was received by this tribunal on the 29th day of April, 1994;

AND WHEREAS Mining Claims P-993812 to 993820, both inclusive and 993830 to 993831, both inclusive, situate in the Township of Denyes, in the Porcupine Mining Division, forfeit on the 16th day of June, 1993;

AND WHEREAS a notation of "pending proceedings" was entered on Mining Claims P-993840 to 993851, both inclusive, 993907 and 994548 to 994553, both inclusive, on the 11th day of May, 1994 to be effective from the 25th day of June, 1993;

AND WHEREAS a notation of "pending proceedings" was entered on Mining Claims P-1072211 to 1072220, both inclusive, 1087218 to 1087277, both inclusive and 1088860 to 1088874, both inclusive, on the 27th day of April, 1994 to be effective from the 25th day of June, 1993;

AND WHEREAS a notation of "pending proceedings" was entered on the Taylor Mining Claims on the 11th day of May, 1994 to be effective from the 29th day of April, 1994;

AND FURTHER TO the verbal request of Jean-Paul Patrie, Respondent and Applicant By Counterclaim, and Elliot Strashin, Applicant and Respondent By Counterclaim, on the 20th day of July, 1994, that these matters be consolidated and heard at the same time;

UPON hearing from the parties and reading the documentation filed;

1. THIS TRIBUNAL ORDERS THAT the interest of Jean-Paul Patrie, also known as Jack Patrie in Mining Claims P-993840 to 993851, both inclusive, 993907, 994548 to 994553, both inclusive, 1072211 to 1072220, both inclusive, 1087218 to 1087277, both inclusive and 1088860 to 1088874, both inclusive, situate in the Township of Denyes, in the Porcupine Mining Division is vested in the applicants in the following proportion: Daniel Patrie 42.86 percent; Elliot Strashin 36.51 percent; Anne Marie Crosby 13.01 percent; Gerald Hall 3.81 percent and Carl Hall 3.81 percent.

2. THIS TRIBUNAL FURTHER ORDERS THAT the counterclaim be and is hereby dismissed.

3. THIS TRIBUNAL FURTHER ORDERS THAT no costs shall be payable by either party in respect of this appeal.

4. THIS TRIBUNAL FURTHER ORDERS THAT the time during which the Denyes Mining Claims were under "pending proceedings" being the 25th day of June, 1993 to the 13th day of October, 1994, a total of 475 days, be excluded in computing time within which work upon the Denyes Mining Claims is to be performed.

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5. THIS TRIBUNAL FURTHER ORDERS THAT the time during which the Taylor Mining Claims were under "pending proceedings" being the 29th day of April, 1994 to the 13th day of October, 1994, a total of 167 days, be excluded in computing time within which work upon the Taylor Mining Claims is to be performed.

6. THIS TRIBUNAL FURTHER ORDERS THAT the 1st day of January, 1995 is fixed as the date by which the fifth unit of assessment work shall be performed and filed on Mining Claims P-993840 to 993851, both inclusive, 993907 and 994548 to 994553, both inclusive.

7. THIS TRIBUNAL FURTHER ORDERS THAT the 17th January, 1995 is fixed as the date by which the fifth unit of assessment work shall be performed and filed on Mining Claims P-1072211 to 1072220, both inclusive and 1087218 to 1087277, both inclusive.

8. THIS TRIBUNAL FURTHER ORDERS THAT the 24th day of April, 1995 is fixed as the date by which the fifth unit of assessment work shall be performed and filed on Mining Claims P-1088860 to 1088874, both inclusive.

9. THIS TRIBUNAL FURTHER ORDERS THAT the 11th day of May, 1995 is fixed as the date by which the first and second units of assessment work shall be performed and filed on Mining Claims P-1179250 to 1179252, both inclusive and September 8, 1995 is fixed as the anniversary date pursuant to subsection 67(2) of the **Mining Act**.

10. THIS TRIBUNAL FURTHER ORDERS THAT the notation of "pending proceedings" be vacated from the abstracts for the Denyes Mining Claims and the Taylor Mining Claims.

IT IS FURTHER DIRECTED that upon payment of the required fees, this Order be filed in the Office of the Mining Recorder for the Porcupine Mining Division.

Reasons for this order are attached.

DATED this 13th day of October, 1994.

Original signed by

L. Kamerman
MINING AND LANDS COMMISSIONER

Appeal No. MA 025-93
Appeal No. MA 010-94

L. Kamerman) Thursday, the 13th day
Mining and Lands Commissioner) of October, 1994.

THE MINING ACT

IN THE MATTER OF

An application under section 105 of the **Mining Act** in respect of Mining Claims P-993840 to 993851, both inclusive, 993907, 994548 to 994553, both inclusive, 1072211 to 1072220, both inclusive, 1087218 to 1087277, both inclusive and 1088860 to 1088874, both inclusive, situate in the Township of Denyes, in the Porcupine Mining Division, hereinafter referred to as the "Denyes Mining Claims";

AND IN THE MATTER OF

An application for the enforcement of a December 10, 1991 contract involving the applicants and the respondent.

B E T W E E N:

ELLIOT STRASHIN, DANIEL PATRIE, ANNE MARIE CROSBY,
GERALD HALL and CARL HALL

Applicants

- and -

JEAN-PAUL PATRIE

Respondent

- AND -

IN THE MATTER OF

An application under section 105 of the **Mining Act** in respect of Mining Claims P-1179250 to 1179252, both inclusive, situate in the Township of Halcrow, in the Porcupine Mining Division, hereinafter referred to as the "Taylor Mining Claims".

B E T W E E N:

JEAN-PAUL PATRIE

Applicant By Counterclaim

- and -

ELLIOT STRASHIN, DANIEL PATRIE, ANNE MARIE CROSBY,
GERALD HALL and CARL HALL

Respondents By Counterclaim

- and -

PETER TAYLOR

Respondent of the Second Part

REASONS

This matter was heard in the Commissioner's Court Room, 24th Floor, 700 Bay Street, Toronto, Ontario, on August 29, 1994.

Appearances:

Dr. Elliot Strashin

Appearing on his own behalf and as agent for Daniel Patrie,
Anne Marie Crosby, Gerald Hall and Carl Hall

purporting to supersede any other agreement. **Exhibit 5C** deals with the 25 Hemlo mining claims. **Exhibit 5D** refers to a further 20 mining claims contiguous to the initial claims (the "20 Hemlo mining claims"). It was explained that Jack and Daniel Patrie also had a partnership agreement, so that these contracts were an attempt to clarify the respective interest of those involved.

Exhibit 5E outlines Dr. Strashin's desire to invest in a mining exploration involving mining claims within a 3 mile radius of the 25 and 20 Hemlo mining claims, being contiguous so that at least one claim in a block touches. **Exhibit 5E** has a Schedule "C" attached, which lists 148 mining claims, 89 of which are included in the Denyes Mining Claims.

Exhibits 5F and 5G involve a further farming out of a portion of interest, the former between Anne Marie Crosby and Gerald and Carl Hall, the latter between Randolph Knipping, Dr. Strashin and Murray Naiberg. **Exhibit 5I** is an agreement whereby Mr. Knipping and Dr. Strashin agree to buy out Mr. Naiberg at the latter's option, which was subsequently acted on in **Exhibit 5K**. In **Exhibit 5L**, Dr. Strashin buys out all of Mr. Knipping's interest as well.

Exhibit 5H is between Dr. Strashin and Jack Patrie, referring to moneys spent on the initial 25 and 20 Hemlo mining claims. Dr. Strashin explained that Jack and Daniel Patrie did all of the work and incurred cost overruns in 1988. The agreement provides that the investors would cover the cost overruns for 1988 in exchange for being relieved of the contract obligations for further amounts owing.

Exhibit 5J is an attempt to once again outline the responsibilities and percentage ownership of all involved, having Jack Patrie, Daniel Patrie, Elliot Strashin, Anne Marie Crosby, Randolph Knipping, Murray Naiberg, Gerald Hall and Carl Hall as signatories. There are five schedules of mining claims listed. Schedules "A" and "B" are the initial 25 and 20 Hemlo mining claims respectively. Schedule "C" lists those mining claims set out on Schedule "C" of **Exhibit 5E** plus,

"Any further Claims staked within a three mile radius of or contiguous to a Claim in Denyes Township registered as Numbers:

960491 to 960515, inclusive
 994536 to 994547, inclusive
 993832 to 993839, inclusive"

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and,

"15 Claims in Denyes Township

1088860 to 1088874".

Exhibit 5M, which is not signed, was another attempt to clarify matters in an attempt to option the initial 25 and 20 mining claims to Noranda Explorations Limited ("Noranda"). Noranda wanted the agreement to be entered into with Hemlo Gold Mines Inc. ("Hemlo") instead, resulting in a similar agreement outlining the interests of the various partners in **Exhibit 5N**, along with authority for Dr. Strashin and Jack Patrie to enter into an option agreement with Hemlo.

Exhibit 5O is a letter agreement addressed to Jean P. Patrie and Elliot Strashin from Hemlo involving the 45 mining claims. Attached to the agreement is a copy of **Exhibit 5N**.

Exhibit 5P, described by Dr. Strashin as the contract currently under dispute, is between the remaining partners, Jack Patrie, Daniel Patrie, Elliot Strashin, Anne Marie Crosby, Gerald Hall and Carl Hall, which sets out that the parties wish to divide the remaining mining claims they own in Denyes and Halcrow Townships and sets out the specific breakdown of ownership. 48 mining claims are to be transferred to Jack Patrie and the remaining 115 mining claims, the Denyes Mining Claims, are to be transferred to the rest of the partners.

Dr. Strashin testified that the outcome of splitting the mining claims was as a result of delays incurred by both Jack Patrie in getting his O.P.A.P. and Dr. Strashin getting his O.M.E.P. funding until September. The split was believed to be equitable by dividing up the mining claims on the basis of percentage ownership, while allowing the owners with a block of mining claims which they could work.

At some point during their dealings, transfers had been executed in blank, in the event that something were to happen which would prevent the partners from executing the transfers at the appropriate time. However, in his attempt to use five transfers signed by Jack Patrie (Attachments to Ex. 7), Dr. Strashin discovered that the forms had been changed by the Ministry of Northern Development and Mines and could not be registered. Jack Patrie refused to sign new forms and the matter was left in limbo.

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Anthony D. Wilkins, a lawyer in Sudbury sent a letter to Jack Patrie requesting execution of the new transfers (Exhibit 5Q), but no response was received.

The parties attempted to resolve the matter through further meetings, but in failing to find common ground, resolved to have the matter brought before the tribunal.

Exhibits 5R and **5S**, described by Dr. Strashin as two agreements between Jack Patrie and Daniel Patrie, dated May 31, 1991 and March 11, 1992 respectively. **Exhibit 5R** concerns the 25 and 20 Hemlo mining claims, stating that Jack and Daniel will hold their interest in those claims jointly. **Exhibit 5S** purports to modify all agreements prior to its signing and sets out that all mining claims in and around Denyes Township which may be contiguous to the 25 and 20 Hemlo mining claims (listed), having been acquired on or after April 4, 1988, will be considered to be held jointly to be divided equally. Dr. Strashin suggested that, through his execution of **Exhibit 5S**, Jack Patrie has demonstrated his belief that **Exhibit 5P** was binding.

Under cross-examination, Dr. Strashin was asked to confirm that there was no dispute with the terms of **Exhibit 5E**, which refers to all contiguous mining claims within a 3 mile radius. Referring to the cost overrun referred to in **Exhibit 5H**, Jack Patrie clarified that the costs which should have been paid were \$130,000, but that \$45,000 was accepted in full settlement.

Jack Patrie asked whether it was not true that the large anomaly had been discovered in the eastern claims, suggesting that by being entitled to the western claims, there was in fact nothing of interest which would come to him as a result of the proposed split. Dr. Strashin replied that the anomaly ran in an east to west orientation. He suggested that the split had been agreed to. An airborne survey had been done, but he could not recall whether anything else had been disclosed.

Jack Patrie asked whether it was the understanding that he would receive 48 mining claims in Halcrow Township and that Strashin et al. would do no further staking in Halcrow Township.

Jack Patrie asked about the \$1,400 which he claims he is owed. Dr. Strashin stated that at the time of execution of **Exhibit 5P**, the money had not been discussed. It represented money left over from a previous exploration program which Jack had returned because it had not been spent in the particular O.P.A.P. year. According to Dr. Strashin,

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the money represented payment for work which the partnership had not compensated him going many years back. There had been discussions to tag the money onto a subsequent program. Dr. Strashin stated that he had agreed to pay the money to cement the deal, having believed it was cheaper to pay than to argue the merits, not being fully convinced that the money was deserving. Dr. Strashin pointed out that payment of the \$1,400 was not mentioned in **Exhibit 5P**. Had Jack agreed, he would have signed the transfers. Dr. Strashin stated that he sent the \$1,400 to Stuart Winter of Norwin Geological Exploration. There was a delay in the submission of the O.M.E.P. application, by which a deadline was missed. At this time, Dr. Strashin does not feel that Jack Patrie was entitled to the money.

Upon further questioning, Dr. Strashin did not deny the fact that payment of the \$1,400 was discussed one evening at his apartment, plus on many other occasions. Dr. Strashin stated that he did not recall what had been specifically discussed with respect to the transfers. However, he did agree that the old transfers had been executed in connection with possible option agreements arising with Placer Dome or Hemlo Gold. It was clarified that the original transfers had not been signed with a view to splitting up the partnership.

In re-direct, Dr. Strashin stated that he believed that the applicants had documented a long involvement, intending that respective responsibilities had been reflected in the contracts. He submitted that each of the **Exhibits 5A** through **5P** followed one another. When asked by the tribunal, Dr. Strashin stated that Ken Crosby, a lawyer and husband of Anne Marie Crosby had drafted several of the agreements. Some had also been drafted by himself and Jack Patrie.

Jean-Paul (Jack) Patrie referred to his letter to the tribunal of November 30, 1993 (Ex. 8). He stated that he was willing to admit **Exhibits 5A** through **5O**, having no dispute with them.

According to Jack Patrie, the reason for the splitting of the partnership was because of Dr. Strashin bringing forth paperwork in disregard for deadlines. Property had been lost as a result on at least one occasion.

Referring to a meeting in June, 1991 in Ken Crosby's office, Jack Patrie stated that all partners were present. The agreement at that time had been that Dr. Strashin was to have an O.M.E.P. plan in place no later than August 31, 1991 so that

work could begin on the eastern mining claims, being those which are the subject matter of the application. It was determined that Daniel and Jack Patrie would participate in the funding of the O.M.E.P. as they had not received their O.P.A.P. grants. According to Jack Patrie, things went sour because the O.M.E.P. application had not been submitted in time, which he found out in a trip to Sudbury with Daniel Patrie. As a result of Dr. Strashin's response to questioning of why the application had not been submitted, Jack Patrie determined that it would be best to dissolve the partnership. It is Jack Patrie's position that the opportunity to do exploration work had been lost due to Dr. Strashin's failure to observe time restraints.

On December 7, 1991, Jack Patrie met with Daniel in Spanish, Ontario and discussed the splitting of the mining claims. Jack Patrie believed that the agreement was that Strashin and partners would take the eastern mining claims, while he would take the western mining claims and be able to continue moving westward.

On December 10, 1991, Jack Patrie met with Dr. Strashin and the splitting of the properties was discussed. Jack Patrie stated that Dr. Strashin agreed to pay \$1,400 owed for the compiling and filing of assessment work. He referred to a letter dated June 10, 1991, being Appendix 1 to his November 30, 1993 letter (Ex. 8), which is from Jack Patrie to Dr. Strashin, enclosing a cheque for \$1,466.39 representing the balance of money after stripping and geochemical surveys were completed. According to Jack Patrie, Dr. Strashin agreed to pay the money, but needed to figure out how the money would be applied.

On January 29, 1992, in a discussion with Daniel Patrie, Jack Patrie determined that Daniel had not yet been paid for the line cutting he had done. Jack indicated that he had not executed the transfers of the eastern mining claims, and would not do so until he received his money.

In discussions on February 7, 1992, Dr. Strashin wanted to renegotiate matters with respect to the 163 mining claims, but Jack Patrie stated that he would prefer to have the option matter settled with Noranda first.

On February 8, 1992, Jack Patrie responded to a letter dated January 29, 1993 from Daniel Patrie (Ex. 8, Appendix 2), which stated that Daniel had a buyer for the 45 mining claims representing Jack's claims in the proposed split of partnership assets.

On February 14, 1992, in a conversation with Stue Winter of Norwin Resources, Jack Patrie was told that Dr. Strashin had sent Mr. Winter a cheque for him from Dr. Strashin which he never received. No explanation was given.

On March 9, 1992 in a conversation with Daniel Patrie, Jack was told that he owed \$3,000 to Daniel's son and that Daniel wanted to see the matter settled with Strashin.

On March 11, 1992, Jack met with Daniel and drafted **Exhibit 5S**.

On March 12, 1992, Jack Patrie went to Sudbury and handed in his O.P.A.P. application. On his return trip, **Exhibit 5S** was executed. It is Jack Patrie's evidence that he then made plans for staking in Halcrow Township which would be covered by his O.P.A.P. grant.

On March 17, 1992, Jack Patrie arrived at Sylvanite Lake with Jaques Robert to stake the west ground in Halcrow Township. It was apparent that someone was staying at the camp, and Jack Patrie stated that he recognized some of his brother's gear. He later found Daniel blazing trees on what was to become the south boundary of Mining Claim P-1179250. Daniel told Jack that he was staking the ground for Peter Taylor. According to Jack, Daniel informed him that an O.P.A.P. grant had been applied for three weeks previous. Jack Patrie did not proceed to stake any ground.

On April 11, 1992, Dr. Strashin attempted to set up another meeting concerning the splitting of the partnership. He advised at that time that he was not involved with the Peter Taylor mining claims.

On June 16, 1992, Jack Patrie spoke with Dr. Strashin who apparently agreed that Daniel had no right to stake the ground in Halcrow, being the Taylor Mining Claims. Jack Patrie stated that the partnership split would not take place unless Peter Taylor's claims were transferred to him. Jack Patrie stated that the issue on the counterclaim is the primary reason he refused to sign the transfers. He agreed to transfer the property to the east, which had the most evidence of an anomaly, in exchange for being able to move west. At the time of the meeting, Jack Patrie believed that Dr. Strashin was involved in the Halcrow Staking, but it is now clear to him that this is not the case.

On March 13, 1993, Jack Patrie received the letter from Wilkins (Exhibit 5Q), but as there were errors in the description of the mining claims, he stated that he did not respond.

On April 10, 1993, Jack Patrie met with Dr. Strashin and Daniel Patrie, the latter of whom told him that he had helped Peter Taylor acquire the Taylor Mining Claims. Jack Patrie referred to the Application to Record Staked Mining Claims by Peter J. Taylor (Ex. 8 Appendix 10). In their meeting, Jack Patrie indicated that he would sign the transfers if he received the \$1,400 and the Taylor Mining Claims were signed over to him. Dr. Strashin stated that the \$1,400 had not been paid because the invoice, dated December 29, 1991 (Ex. 8, Appendix 11) had arrived too late to claim it under the O.P.A.P. program. Dan indicated that the Taylor Mining Claims were not his to transfer.

At the end of the meeting, Jack Patrie was under the impression that the partners had agreed to attempt to add all of the mining claims to the option deal with Noranda, Hemlo or Placer Dome and was in fact on his way to Toronto, Ontario to discuss the matter with Noble Peak. However, he was subsequently informed that Dr. Strashin changed his mind.

Concerning Dr. Strashin's allegations that Jack Patrie is responsible for the loss of certain mining claims, but according to Jack Patrie, they were allowed to expire due to late filing of work. The mining claims were subsequently re-staked by Daniel Patrie.

Concerning the \$85,000 spent, Jack Patrie questions where the amount comes from. However, in his agreement with Daniel, **Exhibit 5R**, they had agreed that money would not be spent without the approval and consent of the other party. The totals evidenced on two letters with attachments from the Ministry of Northern Development and Mines dated November 4, 1993 and November 8, 1993 respectively, (Ex. 8, Appendix 7 and 8 respectively) indicate that an amount just under \$55,000 was performed.

Jack Patrie finished his evidence in chief by stating that in his opinion, **Exhibits 5P** and **5S** are invalid unless he receives \$1,400 and unless the Taylor Mining Claims are transferred to him.

Not mentioned by Jack Patrie in his evidence, but filed with Exhibit 8 is an Agreement in Principal, dated August 9, 1988, between Jack Patrie and Daniel Patrie (Exhibit 8-9). The Agreement provides that all mining claims contiguous to and including

the original 25 mining claims, which have or will be acquired on or after April 4, 1988 will be held jointly for both.

Under cross-examination, Jack Patrie agreed that his evidence did not cover all encounters between the partners over several years of involvement, but only reflect his memory and brief notes from several. Dr. Strashin suggested that the recollections were subject to Jack Patrie's interpretation.

Asked what his understanding of the contracts which concerned him, he did not agree that each one with his name represented a summary of negotiations between himself and Dr. Strashin, adding that many agreements had never been followed through, so that not everything was reduced to writing. As examples he stated that the issue of the O.M.E.P. application was not put in writing, nor was the outcome of a meeting in Ken Crosby's office in Elliot Lake, Ontario.

Jack Patrie agreed that he had been involved with the drafting of each agreement and had been consulted. Asked specifically about **Exhibit 5P**, he agreed that it did not refer to a payment of \$1,400 or an agreement by Strashin and the remaining partners not to stake claims to the west. In spite of the absence of these clauses, Jack Patrie believed that they had been agreed upon as they had been discussed. He felt he did not have to worry about it.

Asked why there would be a whole stack of contracts, Jack Patrie stated that it was to protect the other people involved. However, there were some mutual agreements which did not need to be put on paper. Even though such terms might have been important, Mr. Patrie stated that he did not think he would have to worry about them. For example, the \$1,400 was "between us" and did not concern the other people involved.

Asked to interpret **Exhibit 5R**, between himself and Daniel Patrie, Jack Patrie stated that it was designed to protect each other against the staking of any more mining claims in Denyes Township. **Exhibit 5S** was designed to ensure that Daniel and Jack would retain an interest in the other's property in the event the partnership did break down, as neither was willing to walk away from the interest of the other.

Jack Patrie stated that he thought Dr. Strashin was getting the better deal, because he would get the anomaly, but Jack was sick of the procrastination, losing claims. Dr. Strashin asked whether **Exhibit 5S** means that Jack Patrie has an interest in the

ground to the east, to which he replied that it did if **Exhibit 5P** were finalized. Asked whether the statement in **Contract S** that "the acquisition (**sic**) or disposition of any property other than the original 45 claims as mentioned will no longer apply." release Daniel from staking, Jack said that it did not.

Asked to explain the \$1,400, J. Patrie said that it represented money left over from the previous O.M.E.P. program. He had not charged the partnership for taking people in and out of the property, but Dr. Strashin had said that he needed the money for bookkeeping. The \$1,400 could not be accounted for, as it had not been billed. Expenses had been paid for by both Patries out of their own money. Asked why he returned the \$1,400 which had been sent, J. Patrie stated that he had sent back all O.M.E.P. money not accounted for and that Dr. Strashin had not wanted him to charge for bringing in other mining companies.

Norwin Resources paid Jack Patrie to bring them in to the property, although they were not an optionee. Rather, they had been paid by Strashin to write a report. Jack Patrie assisted Norwin.

The geophysical work was done by Dan Patrie, while Jack Patrie participated in the line cutting and stripping, having also done some mechanical and physical work. People were also hired. Jack Patrie received money from the partnership and then paid Daniel Patrie. The issue of owing Daniel Patrie money did not arise from this project.

Jack Patrie stated that he did not complete the transfers in compliance with **Exhibit 5P** because of the money owing and because he believes he is entitled to the Taylor Mining Claims.

Daniel Francis Patrie was called as a witness by Jack Patrie. He stated that the reason for the split of the partnership was that Jack wanted to work on his own, that he was not getting along with Dr. Strashin.

Daniel Patrie stated that he could not recall discussing the mining claims to the west. He could not recall that in exchange for Strashin and partners getting the anomaly on the mining claims to the east, Jack would be entitled to stake further to the west. However, Daniel Patrie did state that there was a second anomaly on Jack's western mining claims. However, this was not determined until after the geophysical survey had been done, although the airborne survey had been done previously.

Daniel Patrie stated that he does not have any interest in the three mining claims owned by Peter Taylor in Halcrow Township.

Asked to recall the meeting in Spanish, Ontario on December 7, 1991, Daniel Patrie stated that nothing had been agreed to. Jack Patrie left in a hurry to meet with Noble Peak. However, it was not his position that Strashin had changed his mind, but rather that they had failed to agree on that occasion.

The work in the Denyes Township was Jack's idea, according to Daniel, based upon 1983 discussions with Hail Newsome. Jack paid all the expenses such as fly in's, as Daniel was going to college at the time and could not afford it. Afterwards, Daniel paid all of his own men. Computer work was done at no charge by Daniel and his son, Brian who was 15 or 16 at the time.

Asked whether he agreed with Dr. Strashin that only agreements in writing were valid, Daniel stated that only when there was agreement between the parties was there a valid agreement. Asked about the fact that there was no agreement in writing with Dr. Strashin regarding O.M.E.P., Daniel indicated that they had nonetheless benefited.

Stating that there were no records kept of conversations in Ken Crosby's office in Elliot Lake, Ontario, Daniel indicated that the land to the west and the \$1,400 were not discussed. He also denies knowing that Jack had indicated his interest in exploring the land to the west in his O.P.A.P. grant, stating that he did not see the application or discuss it with Jack.

Under cross-examination, Daniel stated that the airborne survey was done in 1988 or 1989. The results were gross, but showed some interesting em conductors on the 148 mining claims to the west and the 115 mining claims to the east. Only after some geophysical work done in Bardy Lake, which was done after **Exhibit 5P** was signed, was more detailed information available.

Reference to the three mile radius is only referred to in **Exhibit 5E**, between Dr. Strashin and J. Patrie. There is no such reference in any of the agreements between Jack and Daniel.

Referring to **Exhibit 5H** and the \$45,000 paid in lieu of the contract

obligation, Daniel indicated that the work involved electromagnetic surveying and line cutting. He could not recall the exact amount of work performed, but Dr. Strashin had indicated that it was in the neighbourhood of \$60,000. Daniel's business did the work involving his men and equipment. An argument ensued between himself and Jack regarding the \$45,000. Daniel was told that if he did not give Jack a cheque for \$25,000 then he would not receive the \$45,000. The \$25,000 represented Jack's work on mapping and helping with VLF (very low frequency) electromagnetic surveying. However, Jack's involvement did not justify the amount of the payment.

In re-direct, when the line cutting was done, Jack suggested that he provided a truck and tents. Daniel indicated that he had only provided an axe and chainsaw. No tent was provided and Jack did not stay with the crew. Daniel agreed that the 45 mining claims were mapped by Jack, but it did not justify \$25,000 payment.

Peter James Taylor was called as a witness by Jack Patrie. He stated that in 1988 he started an exploration business, having received his license after he retired. Not wishing to stake out just any property, he nosed around and talked to the guys around the creek. He asked Daniel whether he would be staking any of the property, and Daniel indicated that he would not. He proposed to Daniel that in exchange for coming along during the staking to ensure that it was done correctly, he would pay him. At the time when Jack allegedly had his argument with Daniel, Daniel was at the lake and not in the bush. Mr. Taylor indicated that he never saw Jack in the bush.

The land in question had not been staked in years, although there had been lots of opportunity. The land to the west of his could have also been staked. It has now been picked up by another company.

Mr. Taylor stated that he had never met Dr. Strashin prior to the hearing, nor has he ever spoken with him.

He found out about the mining claims from Charlie Mortimer. He does not have any involvement with Jack Patrie. He already had an experienced guy, Tony, but they had made a mistake and did not want to make another. Gary White, the mining recorder, had spoken to him about a mistake. So he hired Daniel.

Mr. Taylor indicated that he does not see why he has been involved in the hearing. He did not have a clue what was on the ground but might have done more if

the economy were better. He only knew something was going on from those fellows at the creek. Mr. Taylor agreed that he had assisted Daniel with work on Bardy Lake, having done work on Jack Patrie's mining claims and staying at the camp at Sylvanite Lake.

Mr. Taylor indicated that he had staked this particular land as he wanted to be close to Daniel who could give him advice. He spoke to the three fellows who picked up the mining claims on Cree Lake that Jack allowed to elapse. The property in question is on the other side. It may seem like the same geological structure, but it is a long way away.

The only question on cross-examination was to clarify the relationship between Mr. Taylor and Daniel. The tribunal verified that Mr. Taylor only has 48 units, being three 16 block claims in question here.

Submissions:

Dr. Strashin submitted that there are a series of agreements which clearly set out the relationships between the parties. Any time anything was agreed upon, it was put in writing.

The reason for the dissolution of the partnership was because of skimming by Jack. The issues of the O.M.E.P. or O.P.A.P. programmes, in his submission, are irrelevant.

The issue of payment of the \$1,400 or the additional staking to the west were not terms of **Exhibit 5P**. The money issue was never resolved, although at one point Dr. Strashin had agreed to pay to make the matter go away.

With respect to the Taylor Mining Claims, Daniel did advise Mr. Taylor. However, in the matter of the Denyes Mining Claims it is irrelevant.

Jack Patrie submitted that he still believes he has a 30 percent ownership of the property. Mr. Taylor gained his ground through the knowledge acquired from the joint efforts of the partnership.

Findings of Fact:

Notwithstanding that the parties admitted **Exhibits 5A** through **5O** and the August 9, 1988 agreement between Daniel and Jack Patrie, the effect in law of these various documents must be examined and applied before the tribunal can reach its decision.

As between Jack Patrie and Strashin, there are five relevant documents, being **Exhibits 5A, 5C, 5D, 5E** and **5H**. **A** and **C** involve the 25 Hemlo mining claims. **A** involves the 25 Hemlo mining claims and includes an option to acquire mining claims within a two mile radius. **A** is replaced by **C, D** and **E** as follows. With respect to the 25 Hemlo mining claims, **A** is replaced by **C**, which changes several terms involving disbursement of exploration funds and accounting in the event that the mining claims are optioned to a third party.

D involves additional mining claims which have been staked in the interim, being the 20 Hemlo mining claims and sets out the terms by which these mining claims will be governed.

E replaces **A** in respect of any option on additional mining claims to be staked, now changed to those within a 3 mile radius and contiguous to the 25 and 20 Hemlo mining claims.

C, D and **E** are all dated November 27, 1988. In each of these documents, it is agreed that Strashin may transfer his interest to third parties. There is no mention of the transfer which has already taken place in **B**.

B involves the dilution of Strashin's interest in the 25 Hemlo mining claims, whereby 25 percent is given to each of Knipping and Crosby. The tribunal must determine whether **B** gives Crosby and Knipping rights to the 20 Hemlo mining claims or to the mining claims which are the subject matter of the application.

B does not specifically mention of the option to acquire further mining claims. The recitals do refer to "various agreements with respect to certain mining claims set out in Schedule "A" (the 25 Hemlo mining claims) and it is open to interpretation as to whether all of the agreements are included in **B**. The tribunal notes that the method of payment listed in **B** refers to a proportionate share of the expenses incurred rather than

a fixed dollar amount. Payments arising from **A** are fixed so that a formula of payment rather than a list of specific amounts, in the opinion of the tribunal, is evidence that the parties intended that the option to acquire additional mining claims is part of what was agreed to in **B**.

In the co-ownership agreement between Crosby and Gerald and Carl Hall in **F**, all of the mining claims listed in **E** are included. Based upon the finding that **B** included the option to acquire additional mining claims, the tribunal finds that Gerald and Carl Hall did acquire an interest in all of the mining claims which Strashin would acquire by virtue of **A**, **C**, **D**, and **E**.

Similarly in **G**, the co-ownership agreement between Strashin, Knipping and Naiberg, the tribunal finds that the interest involved the 25 and 20 Hemlo mining claims, the 148 mining claims and the option to acquire those claims within a 3 mile radius of the 25 and 20 Hemlo mining claims, based upon its findings with respect to **B**.

The result of **J** is to summarize the proportionate share of each of the signatories and confirms recognition of all of the co-ownership agreements including that of August 9, 1988 between Daniel and Jack Patrie. There is an acknowledgement additional payment may be required as a result of additional mining claims acquired by Strashin in his various agreements with Jack Patrie. The tribunal finds that, by virtue of the various documents which culminate in **J**, the relationship between all of the individual signatories is interconnected. As such, notwithstanding that there may be future agreements between only some of the signatories to **J**, there is an intention to affect the relationship between all involved.

Of particular note in **J** is the last clause of paragraph 5, which states:

The parties acknowledge that the payments set out in Schedule "G" are still outstanding with respect to the various agreements entered into between the parties prior to the execution of this Agreement.

Schedule "G" refers to \$4,500 in after tax dollars to be spent on the 25 or 20 Hemlo mining claims. The amount of \$4,500 is also mentioned in **H**, where Strashin is released

from his obligation to spend \$130,000, wherein it further states:

A further sum of \$4,500 (four thousand five hundred dollars) is to be paid once the property is dealt (**sic**) or its pre-tax equivalent is to be spent in 1989 for development work.

It is interesting to note that **H** refers to a previous agreement dated September 1, 1988. There is no such agreement bearing this date between Strashin and Jack Patrie, although the date coincides with **G**.

N, which authorizes the parties to enter into the option agreement with Hemlo for the 25 and 20 Hemlo mining claims, is silent with respect to whether this or any other amount remains outstanding.

In **O**, which is the option agreement with Hemlo, paragraph 1 f) states:

1 f) other than the Underlying Agreement, there are no other agreements or adverse interests affecting the Property;

P is the dissolution agreement between all of the remaining parties whereby they agree to go their separate ways. Paragraphs 6 and 7 are reproduced:

6. Each party acknowledges that all monies are paid with respect to work done on the Mining Claims to date and each party releases all other parties from any claims with respect to the Mining Claims set out in paragraphs 1, 2 and 3.

7. The parties acknowledge that J. Patrie is no longer involved with the other parties in any form of partnership or joint venture with respect to the staking of further Mining claims in Denyes township and Halcrow township.

The mining claims which are specifically referred to in **P** are the 163 mining

claims mentioned in **J**. None of the Swayze or Patton Townships mining claims mentioned are included.

The tribunal relies on the General Principles of Interpretation of Contract in the **Contracts** portion of the **Canadian Encyclopedic Digest** at page 441 for its interpretation of **J**:

492 The objective sought in interpreting contracts is the discovery of the intention of the parties as determined in accordance with the plain or ordinary and popular meaning of the words used by them. In the absence of ambiguity, the natural or literal meaning of the words set out in the contract should be adopted. Contract interpretation thus becomes an exercise in searching for the objective meaning of language, unless it can be proven that both parties mutually interpreted the contract in a manner that might not have been apparent to an ordinary person.

at page 446:

504 A party seeking to have a contract interpreted in a particular manner bears the burden of establishing with reasonable clearness the correctness of such an interpretation. The plaintiff in an action to recover on an arrangement understood in a fundamentally different sense by the opposite party is bound to prove strictly that his or her construction of the arrangement is the proper one.

at page 452:

517 In the case of ambiguity appearing on the face of a contract, extrinsic or parol evidence is admissible to resolve the ambiguity and interpret the contract properly. Extrinsic evidence is not, however, admissible to demonstrate the existence of a latent ambiguity, except where necessary to

ascertain the parties to the contract or to establish its subject matter. Extrinsic evidence is admissible where the circumstances show that the contract document does not contain the whole agreement of the parties.

and at pages 453 and 454:

519 Extrinsic evidence is not admissible to construe plain terminology in the absence of any ambiguity, or even where a clause is merely difficult to interpret. In any event, except for the purpose of determining the true nature or class of agreement between the parties, prior draft contracts and statements of intention made during the course of negotiations are not admissible even under the rubric of "surrounding circumstances", since all preceding and contemporaneous expressions of the parties merge in or are displaced by the final contract, particularly where the contract document expressly excludes collateral agreements or representations not set out in the document. Moreover, extrinsic evidence of collateral arrangements will not be admitted if such arrangements are contradictory to the basic written contract or where a matter of benevolent indulgence may be converted to a binding contract, unless the arrangements relate to unfulfilled conditions precedent to the enforceability of the contract. But an express clause excluding collateral agreements will not exclude evidence of a true collateral agreement ancillary to but not inconsistent with the primary agreement.

P describes the subject matter of the agreement as "Mining Claims in Denyes and Halcrow townships" and recognizes that 45 of the mining claims have been optioned to Hemlo.

Paragraph 6 is ambiguous in that payment with respect to work done on all of the mining claims is acknowledged, but provides a release only with respect to the 163

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mining claims which are divided in **P**. Evidence concerning discussions of the payment of the \$4,500 are found to not be admissible as it is clear such a term should have been embodied in the agreement.

The tribunal finds that payment of \$4,500 as claimed by Jack Patrie relates specifically to the 25 and 20 Hemlo mining claims, as is evidenced by **H**. There is jurisdiction in the tribunal under section 68 of the **Mining Act**, as between co-owners who fail to contribute proportionately in accordance with their respective interests, application may be made to the tribunal for a vesting of the defaulting co-owner's interest in the other. This type of application has not been made by Jack Patrie and it does not appear to survive the option of the 25 mining claims to Hemlo. The tribunal does not have jurisdiction to order the payment of money in these circumstances and whether or not this amount remains outstanding in spite of the terms of **O** is a matter for the courts to decide.

As the payment of \$4,500 is not found in any way to be connected with **P**, Jack Patrie does not succeed on this ground in his opposition to the application.

There is no mention in **P** of a granting of the right to stake any open land west of the 25 and 20 Hemlo mining claims exclusively to Jack Patrie. Jack Patrie raised the issue of the value of the mining claims to which he is entitled under **P**, suggesting that as an anomaly had been found in the 115 mining claims to the east, which go to Strashin et al. pursuant to **P**, he would not have agreed to accept mining claims without any anomaly, unless there was something else in it for him.

In examining all of the mining claims listed in **P**, which are single unit claims, the tribunal notes that the result of the split leaves Jack Patrie with 29.45 percent of the total while leaving Strashin et al. with 70.55 percent of the total number of mining claims. This corresponds to the proportionate share listed in **J** with respect to these 163 mining claims.

Paragraph 7 of **P** is the only reference to further staking of mining claims in Denyes or Halcrow Townships. Its terms are quite specific, indicating that Jack Patrie is no longer involved with the others in respect of this area. Had it been the intention to grant Jack Patrie exclusive right to stake mining claims west of the 25 and 20 Hemlo mining claims, it should have been so stated.

Subsection 58(1) of the **Mining Act** provides that a person may not enforce a right, claim or interest in mining claims prior to their being staked unless there is a

written and signed document to that effect or some other material evidence corroborating the assertion of the right, in which case the requirements of the **Statute of Frauds** will not apply.

The tribunal finds that the wording of paragraph 7 of **P** is clear and unambiguous in dissolving the relationship between the parties, including the one between Jack and Daniel Patrie. The tribunal also finds that there is no material evidence which corroborates Jack Patrie's assertion that only he is entitled to the claims which lie to the west, including the Taylor Mining Claims.

Having determined that **P** represents the entire agreement between the signatories, the tribunal finds that the application will be granted and that the interest of Jack Patrie, also known as Jean-Paul Patrie in the Mining Claims will be vested in the applicants.

The counterclaim is for 48 units found in three mining claims, being the Taylor Mining Claims. Exhibit 9 - 10 is comprised of the Application to Record of Peter J. Taylor, along with the sketch, an order of Gary White, Mining Recorder for the Porcupine Mining Division requiring correction of an improper inscription on a witness post, and copies of the three abstracts. A review of these documents indicates that Anthony Burli assisted in the staking. The evidence of Jack Patrie was that Daniel Patrie was present during the staking, although this was not clear from Taylor's evidence, having suggested that Daniel assisted with the correction of the witness post inscription required by the mining recorder's order.

There is no evidence that Daniel Patrie has an interest in the Taylor Mining Claims. However, it was suggested that Daniel improperly used the information acquired as a result of the various agreements between the parties to the application.

The issue of breach of confidence has been addressed in two recent cases involving mining interests, those of **Ontex Resources Ltd. v. Metalore Resources Ltd.** (1993) 13 O.R. (3d) 229 (C.A), appeal to the Supreme Court of Canada refused [citation] and **International Corona Resources Ltd. v. LAC Minerals Ltd.**, [1989] 2 S.C.R. 574, 61 D.L.R. (4th) 14, 6 R.P.R. (2nd) 1. While the tribunal will not delve into the merits of a claim for breach of confidence, it will rely on the findings of Sopinka J at page 614 S.C.R., page 74 D.L.R., page 76 R.P.R. in the **International Corona** case, which are set out:

In a breach of confidence case, the focus is on the loss to the plaintiff and, as in tort actions, the particular position of the

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plaintiff must be examined. The object is to restore the plaintiff monetarily to the position he would have been in if no wrong had been committed: see **Dowson & Mason Ltd. v. Potter**, [1986] 2 All E.R. 418, [1986] 1 W.L.R. 1419 (C.A.) and **Talbot v. General Television Corp. Pty. Ltd.**, [1980] V.R. 224. Accordingly, this object is generally achieved by an award of damages, and a restitutionary remedy is inappropriate.

Therefore, the tribunal finds that a vesting of the Taylor Mining Claims in Jack Patrie is an inappropriate remedy for an allegation of breach of confidence. The tribunal does not have the jurisdiction to entertain applications for damages, this having been reserved to the Courts. Based on the foregoing, the tribunal finds that the counterclaim will be dismissed.

Exclusion of Time:

Notations of "pending proceedings" have been placed against all of the Denyes Mining Claims and the Taylor Mining Claims. The tribunal finds that all notations of "pending proceedings" should be vacated from the abstracts.

Pursuant to subsection 67(1) of the **Mining Act**, the tribunal has jurisdiction to exclude time during which assessment work should be performed and filed where there is a proceeding before the tribunal, so long as the delay in settling the matter is not the fault of the recorded holder.

The result of this order is that the Denyes Mining Claims will be vested in the applicants. As the recorded holders, the tribunal finds that they did not contribute to any delay in settling these proceedings. As such, time during which these proceedings were before the tribunal will be excluded and a new date for performing the next unit of assessment work will be fixed in accordance with subsection 67(2). The dates are set out in the order.

It should be noted that the tribunal has jurisdiction only to exclude time during which proceedings were pending. As a total of 365 days is allowed for performance of each unit of assessment work, the tribunal must consider the time elapsed prior to the

commencement of proceedings in its calculations. With respect to the Denyes Mining Claims, a considerable portion of the 365 days had elapsed prior to the commencement of proceedings. Therefore, the date(s) fixed are not far in the future, reflecting the remainder between 365 days and time elapsed. It is recognized that the Denyes Mining Claims were recorded in the name of Jack Patrie and as such the applicants did not feel in a position to conduct assessment work. However, the tribunal does not have the jurisdiction to take this factor into account. It is recommended that, should the new date(s) fixed be insufficient, an application be made to the Mining Recorder for an extension of time.

The tribunal finds that the delay in settling proceedings involving the Taylor Mining Claims is not the fault of Mr. Taylor. In computing time for performance and filing of assessment work, the tribunal has included the eight month extension of time granted by the Mining Recorder on March 22, 1994, resulting in May 5, 1995 being the date by which the first and second units of assessment work must be performed and filed.

However, the anniversary date can be changed only by the 167 days which have elapsed, so that the new anniversary date will be September 8. Therefore, the third unit of assessment work must be performed and filed by September 8, 1995.

Conclusions:

The application is allowed, and the interest of Jack Patrie, also known as Jean-Paul Patrie in the Mining Claims is vested in the applicants.

The counterclaim is hereby dismissed.