

File No. MA-005-01

L. Kamerman)
Mining and Lands Commissioner)
M. Orr)
Deputy Mining and Lands Commissioner)

Thursday, the 14th day
of October, 2004.

THE MINING ACT

IN THE MATTER OF

An appeal by 2001352 Ontario Inc. pursuant to subsection 112(1) of the **Mining Act** from the decision of the Provincial Mining Recorder, dated the 14th day of February, 2001, to not record its Filed Only Mining Claims 1246177, being for the land under the waters of Kelly Lake, being part of projected Lot 1, Con. VI and part of projected Lot 1, Con. V, in Waters Township and 1246178, being for the land under the waters of Kelly Lake, being part of projected Lot 12, Con. VI, Broder Township, in the Sudbury Mining Division, hereinafter referred to as the "2001352 Filed Only Mining Claims";

AND IN THE MATTER OF

Section 30(a) and Section 41 of the **Mining Act**;

BETWEEN:

2001352 Ontario Inc.

Appellant

- and -

THE MINISTER OF NORTHERN DEVELOPMENT AND MINES

Respondent

- and -

INCO LIMITED

(formerly known as International Nickel Company of Canada Limited)

Party of the Third Part

AND IN THE MATTER OF

Mining License of Occupation No. 10,872 dated the 6th day of May, 1947 for lands under the waters of Kelly Lake, comprised of unpatented Mining Claims S. 37335 through S. 37343, both inclusive, and S. 37429 through S. 37531, both inclusive; and evidence that the monthly payments due on Mining License of Occupation No. 10, 872 were in default for one month or more between the date of issue and the 27th day of March, 1958;

AND IN THE MATTER OF

An application pursuant to S.105 of the **Mining Act** for an Order by the Mining and Lands Commissioner that the Minister of Northern Development and Mines shall be prohibited from amending MLO No. 10,872 or allowing that the lands and lands covered by water in respect of which it was issued to be otherwise granted until the appeal of 2001352 Ontario Inc., as being heard and determined or withdrawn or abandoned in writing;

AND IN THE MATTER OF

An application pursuant to S.105 of the **Mining Act** for an Order by the Mining and Lands Commissioner that the Recorder shall be prohibited from recording any claim in respect of the lands and lands covered by water in respect of which MLO No. 10,872 was issued, until the appeal of 2001352 Ontario Inc. has been heard and determined or withdrawn or abandoned in writing.

ORDER FOR COSTS

WHEREAS THIS TRIBUNAL made an Order for the exchange of written submissions on the issue of whether costs should be awarded to Inco Limited by 2001352 Ontario Inc. (the “Wallbridge Subsidiary”) for the period commencing the 11th day of October, 2002, up to and including the date of the parties making their submissions on this issue;

AND WHEREAS this Tribunal was advised by counsel for the parties, being Ms. Valerie Dyer on behalf of Inco Limited and Mr. Ian Blue on behalf of 2001352 Ontario Inc. (the “Wallbridge Subsidiary”) respectively, on the 13th day of October, 2004, that the parties have settled the issue of the aforementioned additional costs;

1. THIS TRIBUNAL ORDERS that costs in this matter for the period from the 11th day of October, 2002, up to and including the date of this Order For Costs, be and are hereby fixed on a Substantial Indemnity basis in the agreed upon amount of \$47,990.00, plus GST in the amount of \$3,359.30, for a total amount of \$51,349.30, being inclusive of fees, disbursements and GST, to be paid by 2001352 Ontario Inc. (the “Wallbridge Subsidiary”) to Inco Limited within 30 days of the 6th day of October, 2004.

2. THIS TRIBUNAL FURTHER ORDERS AND DIRECTS that, further to the Wallbridge Mining Company's transmittal to this tribunal, wherein it agreed with Inco that it guaranteed payment of all costs, interest and GST due under any Order For Costs issued by this Tribunal with respect to this proceeding against the Wallbridge Subsidiary, if the aforementioned costs payable by 2001352 Ontario Inc. (the "Wallbridge Subsidiary") are not paid in full within 30 days of the date of this Order For Costs, this Tribunal may be spoken to.

3. THIS TRIBUNAL FURTHER ORDERS AND DIRECTS that in the event that 2001352 Ontario Inc. (the "Wallbridge Subsidiary") successfully appeals the Order For Costs of this Tribunal, dated the 20th day of September, 2004 and in the event that the said Order For Costs is set aside and costs are ultimately awarded to Inco Limited in an amount less than \$80,000.00 plus GST, then this Tribunal will set a schedule for the exchange of written submissions on the issue of whether costs should be awarded to Inco Limited for the period commencing the 11th day of October, 2002 up to and including the date of the submissions, but that no argument will be received or considered on the following items:

- (a) that the hours claimed by Inco Limited as provided to Cassels, Brock and Blackwell LLP, on the 24th day of September, 2004, were not spent or were reasonably incurred, or
- (b) that Inco Limited did not pay for such work, or
- (c) that the Osler, Hoskin and Harcourt LLP lawyers or employees ought to be cross-examined, or
- (d) that Wallbridge Mining Company Limited is not liable to pay such costs as this Tribunal may award.

4. THIS TRIBUNAL FURTHER ORDERS that this Order shall be stayed pending the disposition, dismissal, discontinuance or abandonment of any appeal of this Tribunal's Order For Costs, dated the 20th day of September, 2004 and if no appeal is filed, then this Order For Costs shall remain in full force and effect.

5. THIS TRIBUNAL FURTHER ORDERS that if an appeal is filed and subsequently dismissed, discontinued or abandoned, the costs payable pursuant to paragraph 1 of this Order For Costs shall be payable within 30 days of the dismissal, discontinuance or abandonment of the appeal (if any).

DATED this 14th day of October, 2004.

Original signed by

L. Kamerman
MINING AND LANDS COMMISSIONER

Original signed by

M. Orr
DEPUTY MINING AND LANDS COMMISSIONER