



# The Mining and Lands Commissioner Le Commissaire aux mines et aux terres

File No. MA-005-01

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

Friday, the 15th day  
of November, 2002.

## 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which it was issued to be otherwise granted until the appeal of 2001352 Ontario Inc., as being heard and determined or withdrawn or abandoned in writing;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respect of which MLO No. 10,872 was issued, until the appeal of 2001352 Ontario Inc. has been heard and determined or withdrawn or abandoned in writing.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**

**WHEREAS** on the 8th day of November, 2002, the tribunal heard submissions from the parties on the following issue:

In making a case for costs, should counsel for Inco Limited be open to cross-examination on their dockets and if so, should there be any limits imposed by the tribunal on that cross-examination?

**THIS TRIBUNAL HAS DETERMINED** that answering this question at this time is premature given that the tribunal itself has not decided whether *viva voce* evidence is needed to make a finding in respect of a specific heading in the Bills of Costs or in respect of the work of a particular individual listed under that heading in the Bills of Costs **AND FURTHER** that the question may be moot, as Inco Limited has not indicated that it would intend to produce witnesses in response to comments or decisions made by the tribunal in respect of a specific heading or in respect of the work of a particular individual listed under that heading in the Bills of Costs;

**THIS TRIBUNAL HAS FURTHER DETERMINED** that prolonging of the hearing of the motion on costs is not in the best interests of the parties given the length of time that has been taken to date;

**THIS TRIBUNAL HAS FUTHER DETERMINED** that it will proceed commencing on the 18th day of November, 2002, to hear the application on costs, in the following manner:

1. Submissions from counsel for both parties concerning the fixing as opposed to assessment of costs.
2. The Bills of Costs shall be initially dealt with according to each successive heading, e.g. **"A. Investigate Facts and Law in response to Notice of Appeal, Preparing Inco Submissions"** will be heard first.
3. The tribunal will hear information relevant to the work done under the particular heading, presented by counsel for the Party of the Third Part, Ms. Valerie Dyer.
4. Ms. Dyer will provide a description or particulars of the work done under the heading with respect to the various individuals listed.
5. The tribunal will ask questions of Ms. Dyer.
6. Mr. Blue will make his submissions regarding the appropriateness of the items listed under each heading as it is completed in the manner just described. At this time, Mr. Blue will be permitted to pose questions for the use of the tribunal solely at is discretion.
7. Ms. Dyer will then advise the tribunal if she elects to produce a witness or witnesses to provide *viva voce* evidence or to produce an individual or individuals listed to provide a further description or particulars of the work done in light of the tribunal's questions.
8. Mr. Blue, counsel for the Appellant, will then advise the tribunal if he elects to produce a witness or witnesses in response.
9. Should Ms. Dyer produce individuals to provide further description or particulars of the work done, the matter will proceed in a similar manner as outlined in items 3 and 4 above.
10. Should Ms. Dyer or Mr. Blue produce witnesses, the matter will proceed with sworn evidence, tribunal questions, cross-examination and re-direct examination.
11. Ms. Dyer will then proceed to deal in a similar fashion with the next heading.
12. Final submissions from counsel concerning whether costs, if awarded, should be Party and Party costs or Solicitor and Client costs.
13. This tribunal also puts counsel for the parties on notice that it may set time limits for the above, should it feel that time limits are necessary.

**THIS TRIBUNAL HAS FURTHER DETERMINED** that the operation of section 10.1 of the **Statutory Powers Procedure Act** is normally limited to a hearing on the merits and as such, does not apply to a hearing on costs insofar as a proceeding on costs may proceed without the production of witnesses;

**THIS TRIBUNAL FURTHER ADVISES** counsel for the parties that the provisions of section 5.1 and subsections 5.4(3) and (4) of the **Statutory Powers Procedure Act** do not apply to a proceeding for costs **AND FURTHER ADVISES** notwithstanding the request by Ms. Dyer for an oral hearing in respect of costs, that it has and reserves the right at any time to adjourn the hearing on costs and proceed with a written hearing;

**THIS TRIBUNAL FURTHER ADVISES** that arguments as to privilege, if any, should be made under the appropriate heading.

**DATED** this 15th day of November, 2002.

Original signed by L. Kamerman

L. Kamerman  
MINING AND LANDS COMMISSIONER

Original signed by M. Orr

M. Orr  
DEPUTY MINING AND LANDS COMMISSIONER