



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)
Wednesday, the 25th day
of September, 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which it was issued to be otherwise granted until the appeal of 2001352 Ontario Inc., as being heard and determined or withdrawn or abandoned in writing;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respect of which MLO No. 10,872 was issued, until the appeal of 2001352 Ontario Inc. has been heard and determined or withdrawn or abandoned in writing.

GENERAL ORDER FOR:

**GRANTING OF REQUESTED ADJOURNMENT (NOT ON CONSENT)
CONDITIONAL UPON COMPLIANCE WITH UNDERTAKING REQUIRED FROM
SOLICITORS FOR THE APPELLANT**

**AMENDED (CONDITIONAL) APPOINTMENT
FOR HEARING ON COSTS**

NOTICE OF ISSUES**ORDER TO FILE DOCUMENTATION AND PROVIDE NOTICE OF ISSUES**

WHEREAS this matter was dismissed without prejudice, without a hearing on the merits **AND WHEREAS** the motion to hear the application of Inco Limited for costs against the Appellant, 2001352 Ontario Inc., as well as against Wallbridge Mining Company Limited, Mr. Wayne Whymark and Mr. Mark Hall was granted;

AND WHEREAS by Appointment for Hearing dated the 5th day of June, 2002, the tribunal appointed the 9th through the 11th days of October, 2002, in consultation with and with the consent of Mr. Ian Blue and Mr. Arthur Hamilton, Counsel for 2001352 Ontario Inc. and Ms. Valerie Dyer, Counsel for Inco Limited, for the hearing of the motion;

AND WHEREAS the tribunal received a letter from Mr. Blue, dated the 8th day of August, 2002, requesting that the motion on costs be rescheduled **AND FURTHER ADVISING** that another tribunal, without consultation, had re-scheduled a two-week long hearing in which he is counsel, "involving numerous counsel from across Canada to be held in New Brunswick";

AND WHEREAS the tribunal received a letter from Mr. Robert D. Kligman, of the firm of Cassels Brock & Blackwell LLP and speaking for Mr. Blue, dated the 15th day of August, 2002, setting out that, in the event that the tribunal is unprepared to change the dates as requested, Mr. Blue will arrange for one of his partners to respond to the motion on costs;

AND WHEREAS the tribunal received a letter from Mr. Blue, dated the 6th day of September, 2002, wherein he states that 2001352 Ontario Inc. has requested that he and Mr. Hamilton and not some other partner from their office, represent it before the tribunal for the cost hearing **AND FURTHER SUBMITTED** that, given the issues and history of the proceeding, a new counsel seeking to understand all of the issues to and prepare effective arguments would be at a disadvantage such that it would prejudice 2001352 Ontario Inc. in the hearing of the motion;

AND WHEREAS the tribunal received a letter from Ms. Valerie Dyer, Counsel for Inco Limited, dated the 13th day of September, 2002, stating that she objected to the request to reschedule the motion hearing **AND ALTERNATIVELY**, that any adjournment to new dates be pre-emptory to 2001352 Ontario Inc., as well as to other parties potentially liable for Inco's costs, being Wallbridge Mining Company Limited, Mr. Wayne Whymark and Mr. Mark Hall, respectively, being conditions to which Mr. Blue does not agree;

AND WHEREAS counsel met by telephone conference call with tribunal Registrar, Mr. Daniel Pascoe, on the 19th day of September, 2002, to determine whether an accommodation in this matter could be reached **AND FURTHER** alternative dates for a rescheduled hearing were discussed as workable to all parties;

AND WHEREAS the tribunal is concerned that the administration of justice is not served by the re-arranging of hearing dates, once set and confirmed, to alleviate scheduling conflicts of counsel;

AND WHEREAS the tribunal has reviewed the correspondence filed and the history of this matter, which goes back to the fall of 2001 and determined, that it will allow the requested adjournment on conditions and that it will hold all the parties and potential parties to the new dates and that scheduling conflicts and lack of hearing readiness will no longer be accepted as a basis for adjournment;

1. THIS TRIBUNAL ORDERS that the requested rescheduling of the costs motion will be allowed to the 8th day of November, 2002 and the 18th, 19th and 20th days of November, 2002, conditional upon the receipt by the tribunal (copies to opposing counsel) of personal undertakings from Mr. Ian Blue and Mr. Arthur Hamilton, respectively, (the "condition") by no later than the 30th day of September, 2002, that, in the event they are unable to attend the hearing of Inco Limited's costs motion for any reason, that alternative counsel from their firm will be briefed and prepared to proceed on the above-noted dates.

2. THIS TRIBUNAL FURTHER ORDERS that its Appointment for Hearing dated the 5th day of June, 2002, be rescinded upon the compliance by Mr. Ian Blue and Mr. Arthur Hamilton with the condition of each filing a personal undertaking as set out in Para-

graph 1 of this General Order, failing which the aforementioned Appointment for Hearing will remain in full force and effect, **AND FURTHER ORDERS** that all parties and interested persons, including 2001352 Ontario Inc., Mr. Wayne Whymark and Mr. Mark Hall, be to be prepared to proceed on either the original dates set out in the aforementioned Appointment for Hearing or new dates set out below and that scheduling conflicts and lack of hearing preparedness will not be accepted by the tribunal as a basis for any further adjournments.

AND WHEREAS the tribunal has determined, upon certain conditions being met, that it will appoint new dates for the hearing of the motion on costs;

UNDER the power vested in this tribunal under paragraph 116(1)(d) of the **Mining Act**, R.S.O. 1990, c. M. 14, as amended, **WE HEREBY APPOINT** Friday, the 8th day of November, 2002, and Monday, the 18th day of November, 2002, Tuesday, the 19th of November, 2002 and Wednesday the 20th day of November, 2002, at the hour of ten o'clock in the forenoon, on each of the aforementioned days in the Courtroom of this tribunal, 700 Bay Street, 24th Floor, in the City of Toronto to hear and determine this matter, as further set out according to the schedule and Notice of Issues set out below, conditional upon the compliance by both Mr. Ian Blue and Mr. Arthur Hamilton with the undertaking required by the tribunal prior to granting the requested adjournment.

3. THIS TRIBUNAL FURTHER ORDERS that 2001352 Ontario Inc., the Ministry of Northern Development and Mines, Inco Limited, Wallbridge Mining Company Limited, Mr. Wayne Whymark and Mr. Mark Hall, file two copies with the tribunal and serve on each of the other parties one copy of all additional documentation, law and case law or any other material or thing not yet having been filed to be relied upon, by no later than the 18th day of October, 2002, or alternatively, should the condition set out in Paragraph 1 of this General Order not be met, by no later than the 1st day of October, 2002 **AND FURTHER ORDERS** that any response materials be filed by no later than the 1st day of November, 2002, or alternatively, should the condition set out in Paragraph 1 of this General Order not be met, by no later than the 4th day of October, 2002.

AND WHEREAS the tribunal has determined that it will provide notice to the parties of the issues involved in the costs motion upon which it will require submissions;

THE TRIBUNAL HEREBY PROVIDES NOTICE to the parties and all interested persons of the following issues and schedule:

To be heard on the 8th day of November, 2002, or alternatively, should the condition set out in Paragraph 1 of this General Order not be met, at the commencement of the hearing on the 9th day of October, 2002:

1. 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?

To be heard commencing on the 18th day of November, 2002 and each day thereafter respectively, or alternatively, should the condition set out in Paragraph 1 of this General Order not be met, immediately following the hearing and determination of the issue set out in Number 1 above, commencing on the 9th day of October, 2002, and each day thereafter:

2. Are the appellant's witnesses, Mr. Wayne Whymark and Mr. Mark Hall, and its related company, Wallbridge Mining Inc., being non parties to the original appeal which was dismissed, liable for costs?
3. What costs, if any, should be awarded against the appellant 2001352 Ontario Inc., given that no hearing on the merits took place, since the appellant sought to withdraw and the tribunal decided to dismiss the appeal?
4. What treatment should be given to the documents ordered produced and disclosed prior to the issuance by the tribunal of its Order to Dismiss the appeal?

AND WHEREAS the tribunal has been advised that further witnesses may be produced;

4. **THIS TRIBUNAL FURTHER ORDERS** that 2001352 Ontario Inc., the Ministry of Northern Development and Mines, Inco Limited, Wallbridge Mining Company Limited, Mr. Wayne Whymark and Mr. Mark Hall, no later than the 18th day of October, 2002, or in the alternative, should the condition set out in Paragraph 1 of this General Order not be met, no later than the 1st day of October, 2002, file two copies with the tribunal and serve on each of the other parties and on Wallbridge Mining Company Limited, Mr. Wayne Whymark and Mr. Mark Hall, one copy a list of potential witnesses **AND FURTHER ORDERS** that, in so doing, shall also include a brief but comprehensive summary of the evidence to be provided by each witness.

AND WHEREAS the tribunal has reviewed the correspondence between the parties in this matter and is concerned by the nature and number of motions which are either threatened or actually come into fruition, and is further concerned about the potential impact of such motions on the existing scheduling and hearing of matters to be determined;

5. **THIS TRIBUNAL FURTHER ORDERS** that any additional preliminary motions must be raised no later than the 18th day of October, 2002, or alternatively, should the condition set out in Paragraph 1 of this General Order not be met, no later than the 4th day of October, 2002, by serving two copies with the tribunal and serve on each of the other parties and on Wallbridge Mining Company Limited, Mr. Wayne Whymark and Mr. Mark Hall, along with all affidavits, documentary evidence and case law to be relied upon in support, **FURTHER ORDERS** that that any response materials be filed no later than the 1st day of November, 2002, or alternatively, should the condition set out in Paragraph 1 of this General Order not be met, no later than the 7th day of October, 2002, **AND THIS TRIBUNAL**

FURTHER ADVISES that the tribunal will summarily dispose of all preliminary motions raised pursuant to this paragraph in a summary manner on the 8th day of November, 2002, or in the alternative, should condition set out in Paragraph 1 of this General Order not be met, on the 9th of October, 2002;

TAKE NOTICE that if you do not participate at this proceeding, the tribunal may proceed in your absence and you will not be entitled to notice of any further proceedings.

AND TAKE FURTHER NOTICE that all parties are expected to have in their possession at the hearing any and all material including copies of documentation upon which they may wish to rely, and notwithstanding the generality of the foregoing, including all materials served on them by the other party or parties in this proceeding; **AND TAKE FURTHER NOTICE** that additional copies may be unavailable.

DATED this 25th day of September, 2002.

Original signed by

L. Kamerman
MINING AND LANDS COMMISSIONER

Original signed by

M. Orr
DEPUTY MINING AND LANDS COMMISSIONER

NOTE:

Section 10 and subsection 10.1 of the **Statutory Powers Procedure Act** read as follows:

10. A party to a proceeding may be represented by counsel or an agent.
- 10.1 A party to a proceeding may, at an oral or electronic hearing,
 - (a) call and examine witnesses and present evidence and submissions;
and
 - (b) conduct cross-examination of witnesses at the hearing reasonably required for a full and fair disclosure of all matters relevant to the issues in the proceeding.