

File No. MA-005-01

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

Thursday, the 12th day  
of July, 2001.

**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 14<sup>th</sup> 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 6<sup>th</sup> 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 27<sup>th</sup> 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which it was issued to be otherwise granted until the appeal of 2001352 Ontario Inc., as being heard and determined or withdrawn or abandoned in writing;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respect of which MLO No. 10,872 was issued, until the appeal of 2001352 Ontario Inc. has been heard and determined or withdrawn or abandoned in writing.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 TO FILE  
ORDER FOR DISCLOSURE  
ORDER FOR DISCOVERIES  
NOTICE**

**WHEREAS** a procedural conference in this matter was held on the 10th day of July, 2001, at which time certain determinations were made concerning this proceeding;

**AND WHEREAS** the tribunal has determined that the particular facts of this appeal would be best served by varying its usual issuance of an Order to File complete documentation with an integrated approach involving elements of disclosure, discovery and filings to complete the record;

**AND WHEREAS** the objective throughout this and any other procedures involving this appeal is the complete and timely disclosure by all parties of the facts to be relied upon, filing of their documentary evidence and statements of their witnesses to facilitate the identification of issues and to permit adequate preparation for the hearing on the merits, scheduled to commence on the 3rd day of December, 2001;

**AND WHEREAS** notwithstanding the generality of the requirements of this Order, "document and thing" is understood to include all correspondence, facsimile copy correspondence, electronic transmissions and/or e-mail writings, disks and computer documents, notes, memoranda, invoices, receipts, notifications and acknowledgements, agreements, title documents, maps, photographs, copies of reports of experts or consultants along with all documentation used in the preparation of such reports, such as field notes, computer program print-outs, excerpts from textbooks or journals, maps, photographs and video-cassette recordings;

**UNDER** the power vested in this tribunal under sections 116 and 119 of the **Mining Act**, R.S.O. 1990, c. M. 14, as amended, the **Statutory Powers Procedure Act**, R.S.O. 1990, c. S.22, as amended, and its *Procedural Guidelines for Hearings under the Mining Act*;

**1. THIS TRIBUNAL ORDERS**, pursuant to clause 116(1)(b) of the **Mining Act**, that the Appellant, 2001352 Ontario Inc. (the "Wallbridge Subsidiary") file two copies with the tribunal and serve on the Respondent, the Minister of Northern Development and Mines ("MNDM") and the Party of the Third Part, Inco Limited ("Inco"), no later than the 23rd day of July, 2001, a statement of its position, including a summary of the facts alleged, disclosure in the form of a list of documents and things within its power or possession or that of Wallbridge Mining Company Limited, including brief particulars of such documents or things (as to dates, parties), indicating whether privilege is claimed in relation thereto, and any affidavits currently in existence which will be relied upon in the hearing on the merits **AND THE TRIBUNAL FURTHER ADVISES** that the filings required in this Paragraph 1 are by way of preliminary filings only, and that clause 116(1)(b) applies only insofar as amendments to the filings are either ordered or sought.

**2. THIS TRIBUNAL FURTHER ORDERS** pursuant to clause 116(1)(b) of the **Mining Act**, that the Respondent, MNDM, produce certified copies of the following documents to the Appellant, the Wallbridge Subsidiary, with one copy to be served on the Party of the Third Part, Inco, by no later than the 19th day of July, 2001:

- a) all copies of invoices for rents payable by Inco Ltd. in respect of Mining License of Occupation 10,872 from the 6th day of May, 1947 to and including the calendar year, 1953, together with all invoices for rents payable by Inco Ltd. after the 1953 calendar year which pertain to the relevant period, namely the 6th day of May, 1947 to and including the 1st day of June, 1953;
- b) all records indicating the dates and amounts of payments made under Mining License of Occupation 10,872 from the 6th day of May, 1947 to and including the calendar year, 1953, together with all records for payments made by Inco Ltd. after the 1953 calendar year which pertain to the relevant period, namely the 6th day of May, 1947 to and including the 1st day of June, 1953;
- c) all copies of receipts issued or acknowledged by the Treasurer of Ontario in respect of payments made by Inco Limited under Mining License of Occupation 10,872, from the 6th day of May, 1947 to and including the calendar year, 1953, together with all receipts issued

or acknowledged by the Treasurer of Ontario after the 1953 calendar year which pertain to the relevant period, namely the 6th day of May, 1947 to and including the 1st day of June, 1953;

- d) All copies of default notifications prepared and/or delivered regarding Mining License of Occupation 10,872, dating from the 6th day of May, 1947 to the end of the calendar year, 1953, together with all default notifications prepared and/or delivered after the 1953 calendar year which pertain to the relevant period, namely the 6th day of May, 1947 to and including the 1st day of June, 1953;
- e) Any and all documents relevant to the issue of whether Mining License of Occupation 10,872 is actually or potentially void, with "documents" in this context to be understood to include but not be limited to any and all notes, memoranda, electronic mail ("e-mail") writings, computer disks, electronic documents, correspondence sent via facsimile and draft copies of any such documents not otherwise processed into final form.

**AND FURTHER ORDERS** that the parties and their counsel shall not use these documents for any purposes other than for the purposes of this Appeal:

**3. THIS TRIBUNAL FURTHER ORDERS** pursuant to clause 116(1)(b) the **Mining Act**, that the Party of the Third Part, Inco, produce certified copies of the following documents to the Appellant, with one copy to be served on the Respondent, by no later than the 19<sup>th</sup> day of July, 2001:

- a) all copies of invoices for rents payable by Inco Ltd. in respect of Mining License of Occupation 10,872 from the 6<sup>th</sup> day of May, 1947 to and including the calendar year, 1953, together with all invoices for rents payable by Inco Ltd. after the 1953 calendar year which pertain to the relevant period, namely the 6<sup>th</sup> day of May, 1947 to and including the 1<sup>st</sup> day of June, 1953;
- b) all records indicating the dates and amounts of payments made under Mining License of Occupation 10,872 from the 6<sup>th</sup> day of May, 1947 to and including the calendar year, 1953, together with all records for payments made by Inco Ltd. after the 1953 calendar year which pertain to the relevant period, namely the 6<sup>th</sup> day of May, 1947 to and including the 1<sup>st</sup> day of June, 1953;
- c) all copies of receipts issued or acknowledged by the Treasurer of Ontario in respect of payments made by Inco Limited under Mining License of Occupation 10,872, from the 6<sup>th</sup> day of May, 1947 to and including the calendar year, 1953, together with all receipts issued or acknowledged by the Treasurer of Ontario after the 1953 calendar year which pertain to the relevant period, namely the 6<sup>th</sup> day of May, 1947 to and including the 1<sup>st</sup> day of June, 1953;
- d) all copies of default notifications prepared and/or delivered regarding Mining License of Occupation 10,872, dating from the 6th day of May, 1947 to the end of the calendar year,

1953, together with all default notifications prepared and/or delivered after the 1953 calendar year which pertain to the relevant period, namely the 6th day of May, 1947 to and including the 1st day of June, 1953;

- e) any and all documents relevant to the issue of whether Mining License of Occupation 10,872 is actually or potentially void, with "documents" in this context to be understood to include but not be limited to any and all notes, memoranda, electronic mail ("e-mail") writings, computer disks, electronic documents, correspondence sent via facsimile and draft copies of any such documents not otherwise processed into final form.

**AND FURTHER ORDERS** that the parties and their counsel shall not use these documents for any purposes other than for the purposes of this Appeal:

**4. THE TRIBUNAL FURTHER ADVISES** that the further treatments of all documents filed in compliance with the foregoing two paragraphs, numbered 2 and 3, respectively, as to whether they will become part of the public record, be sealed and not be made part of the public record or filed and returned to the parties at the conclusion of the hearing, upon the issuance by the tribunal of its final Order in this matter will be determined conclusively, upon hearing from counsel, either prior to or during the hearing on the merits, as the tribunal may advise.

**5. THIS TRIBUNAL FURTHER ORDERS** pursuant to clauses 116(1)(b) of the **Mining Act**, that the Respondent, MNDM file two copies with the tribunal, and serve on the Appellant, the Wallbridge Subsidiary, and the Party of the Third Part, Inco, by no later than the 26th day of July, 2001, a statement of its position, including a summary of the facts that the Respondents admit, the facts that the Respondents deny, and any other facts that the Respondent alleges, disclosure in the form of a list of documents and things within its power or possession which may be relevant to the hearing of the appeal, and excepting those disclosed in Paragraph 2 above, including brief particulars of such documents or things (as to dates, parties), indicating whether privilege is claimed in relation thereto, **AND THE TRIBUNAL FURTHER ADVISES** that the filings required in this Paragraph 5 are by way of preliminary filings only, and that clause 116(1)(b) applies only insofar as amendments to the filings are either ordered or sought.

**6. THIS TRIBUNAL FURTHER ORDERS** pursuant to clauses 116(1)(b) of the **Mining Act**, that the Party of the Third Part, Inco file two copies with the tribunal, and serve on the Appellant, the Wallbridge Subsidiary, and the Respondent, MNDM, by no later than the 30th day of July, 2001, a statement of its position, including a summary of the facts that the Party of the Third Part admit, the facts that the Party of the Third Part deny, and any other facts that the Party of the Third Part allege, disclosure in the form of a list of documents and things within its power or possession which may be relevant to the hearing of the appeal, and excepting those disclosed in Paragraph 3 above, including brief particulars of such documents or things (as to dates, parties), indicating whether privilege is claimed in relation thereto, **AND THE TRIBUNAL FURTHER ADVISES** that the filings required in this Paragraph 6 are by way of preliminary filings only, and that clause 116(1)(b) applies only insofar as amendments to the filings are either ordered or sought.

7. **THIS TRIBUNAL FURTHER ORDERS**, that the Appellant file two copies with the tribunal and serve on the Respondent and the Party of the Third Part, by no later than the 7th day of August, 2001, its amended or supplementary filings, being its statement of its position, any additional facts alleged, facts as alleged by the Respondent or Party of the Third Part which it denies, along with its supplementary list of all documentation, evidence and things to be relied upon in the hearing of the appeal **AND HEREBY FURTHER ADVISES** that the filings in this Paragraph 7 are by way of first supplementary filings, and that clause 116(1)(b) applies only insofar as amendments to the filings are either ordered or sought.

8. **THIS TRIBUNAL FURTHER ORDERS**, pursuant to clause 116(1)(f) of the **Mining Act**, that Oral Examination for Discovery before an official examiner appointed under the **Courts of Justice Act** of Mr. Brian Randa, representative of Inco and whose answers shall bind Inco, be conducted by the Wallbridge Subsidiary, during the week of August 13th, 2001, at a time and place to be agreed upon by the parties, subject to such further Orders as may be required due to failure to agree regarding the conduct of said Oral Examination for Discovery.

9. **THIS TRIBUNAL FURTHER ORDERS**, pursuant to clause 116(1)(f) of the **Mining Act**, that Oral Examination for Discovery before an official examiner appointed under the **Courts of Justice Act** of Mr. Mark Hall, representative of the Wallbridge Subsidiary and whose answers shall bind the Wallbridge Subsidiary, be conducted by MNDM and Inco during the week of August 13th, 2001, at a time and place to be agreed upon by the parties, subject to such further Orders as may be required due to failure to agree regarding the conduct of the said Oral Examination for Discovery.

10. **THIS TRIBUNAL FURTHER ORDERS**, pursuant to clause 116(1)(f) of the **Mining Act**, that Oral Examination for Discovery before an official examiner appointed under the **Courts of Justice Act** of Mr. Ron Gashinski, representative of MNDM and whose answers shall bind MNDM, be conducted by the Wallbridge Subsidiary and Inco on any one or more days of September 26th, 27th, and 28th, 2001, as may be required, at a time and place to be agreed upon by the parties, subject to such further Orders as may be required due to failure to agree regarding the conduct of said Oral Examination for Discovery.

11. **THIS TRIBUNAL FURTHER ORDERS AND ADVISES**, pursuant to clause 116(1)(f), subsection 119(1) section 120 of the **Mining Act**, that it will take such steps as may be necessary to declare Mr. William J. Good as a tribunal witness for purposes of evidence and information regarding his knowledge as a former employee of the now Ministry of Northern Development and Mines with respect to his specialized knowledge or experience concerning practices in the former Department of Mines concerning Mining Licences of Occupation as they existed at any time during the period of 1947 to 1953; **FURTHER**, that it will take no steps to receive evidence directly from Mr. William J. Good **AND FURTHER** that Oral Examination for Discovery of Mr. William J. Good before an official examiner appointed under the **Courts of Justice Act**, may be conducted by the Wallbridge Subsidiary, Inco and MNDM, on such day or days as the tribunal will advise.

12. **THIS TRIBUNAL FURTHER ADVISES** that a further Procedural Conference will be held at a date and time to be fixed, following the Oral Examination for Dis-

coveries as set out in Paragraphs 8 through 11 above and prior to the middle of October, 2001, for purposes of ordering any necessary final supplementary revisions to the parties' positions, ensuring that all documentation to be relied upon will be filed, hearing submissions concerning the manner in which documentation to be relied upon at the hearing commencing December 3rd, 2001 is to be filed, including such Compendium of Documents as may be agreed upon or ordered, the filing of Witness Lists, *Curricula Vitae*, and Witness Statements, and potentially the matter of the handling of those documents referred to in Paragraphs 2 and 3 above, insofar as their further treatments is concerned for purposes of the aforementioned hearing on the merits, **AND FURTHER ADVISES** that the final filings to be ordered shall be no later than the 15th day of November, 2001.

**13. THIS TRIBUNAL FURTHER ORDERS**, that any matter which remains in dispute between the parties, or may arise in the course of these pre-hearing requirements, shall be disposed of by way of a Procedural Hearing before the Commissioner or Deputy Commissioner, according to availability, based upon the filing by counsel of brief statements of their respective positions, statement of the Order sought, along with any supporting material, to be filed one day in advance of such Procedural Hearing, which may be heard either in person or via Telephone Conference Call, at a time and date fixed, which shall be within one day of such application, as the schedule of the Commissioner or Deputy Commissioner will allow, and for this purpose waives the recording provision set out in Part IX Hearing Procedures, paragraph 11(7) of its *Procedural Guidelines*.

**AND WHEREAS** this tribunal has undertaken to produce a list of issues and questions for the parties to consider and address in the hearing commencing the 3rd day of December, 2001;

**14. THIS TRIBUNAL FURTHER ADVISES** that any comprehensive list of questions and issues prepared by the tribunal may only be based on such documentation as may be available to it at the time of drafting, and **THEREFORE** it will issue a preliminary list as soon as may be practicable following the filings of the various positions of the parties, a supplementary list, if necessary, and a final list following the completion of filings scheduled for the 15th day of November, 2001.

**DATED** this 12th day of July, 2001.

ORIGINAL SIGNED BY  
L. KAMERMAN

L. Kamerman  
MINING AND LANDS COMMISSIONER

ORIGINAL SIGNED BY  
M. ORR

M. Orr  
DEPUTY MINING AND LANDS COMMISSIONER