

File No. MA-006-01

L. Kamerman)
Mining and Lands Commissioner)

Friday, the 4th day
of May, 2001.

THE MINING ACT

IN THE MATTER OF

The application of Douglas Raymond Robinson pursuant to clause 30(1)(g) of the **Mining Act** for certification that proceedings are pending in respect of land;

BETWEEN:

DOUGLAS RAYMOND ROBINSON
Applicant

- and -

THE MINISTERS OF NORTHERN DEVELOPMENT
AND MINES AND NATURAL RESOURCES
Respondents

AND IN THE MATTER OF

Mining Claim L-1225461, situate in the Township of Morissette, in the Larder Lake Mining Division, recorded on the 6th day of January, 1998 and most recently held by Douglas Raymond Robinson and Barry Ken McCombe, each as to an undivided 50 percent interest.

CERTIFICATION

THIS TRIBUNAL HEREBY CERTIFIES that an action was commenced by the Applicant, Douglas Raymond Robinson, in the Kirkland Lake Small Claims Court on January 8, 2001, involving Mining Claim L-1225461, situate in the Township of Morissette, in the Province of Ontario, of which the aforementioned Douglas Raymond Robinson is the recorded holder of an undivided 50 percent interest.

Reasons for this Certification are attached.

DATED this 4th day of May, 2001.

Original signed by L. Kamerman

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MINING AND LANDS COMMISSISONER

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REASONS

This application was received on March 6, 2001. It was made pursuant to a new provision of the **Mining Act**, S.O. 2000, c. 26, Schedule O:

30. No mining claims shall be staked out or recorded on any land,
- (1)(g) until the proceeding has been finally determined, in the case of a proceeding that the Commissioner certifies is pending in a court in respect of the land.
- (2) If a proceeding described in clause (1)(g) is pending in a court, the Commissioner, the Recorder or the Minister may make an order for an exclusion of time with respect to the Mining Claim.

Despite the considerable material which was filed in support of the application, the matter before the Commissioner for certification was not immediately clear. As a result a Telephone Conference was held to elicit an explanation and additional information from Mr. Robinson and the Ministries of Northern Development and Mines and Natural Resources.

Appearances

Mr. Douglas Raymond Robinson, on his own behalf.

Mr. John Norwood, Counsel, Ministry of Northern Development and Mines (MNDM) and Mr. Ron Gashinski, Senior Manager, Mining Lands Section and Mr. Roy Spooner, Provincial Mining Recorder, also attending.

Ms. Krystine Lintell, Counsel, Ministry of Natural Resources (MNR).

Facts

The application for certification concerns Mining Claim L-1225461, in the Township of Morrisette, which was cancelled on January 15, 2001, but in fact, the Mining Claim was deemed to have been forfeited at the end of business on January 8th, 2001, through the operation of provisions of the **Mining Act**. The certification applied for would have the effect of negating the forfeiture.

With clarification provided by Mr. Norwood, the tribunal was able to establish the following. Through the operation of the MNR's Living Legacy, certain lands identified as the Esker Park Addition, or E40, selected 2882 acres to add to the existing park. Mining Claim L-1225461 was located within the boundaries of the Esker Park Addition. The lands encompassed by the proposed addition were also made subject to a Withdrawal Order made pursuant to section 35, being No. W-LL-P1621/99. -

The proposed creation and enlargement of provincial parks became an issue for the holders of unpatented mining claims such as Mr. Robinson, in that an issue arose regarding the continuing obligation for the performance of prescribed assessment work on any mining claims caught within the proposed park boundaries. Also, recorded holders are effectively prohibited from expanding their holdings, due to the applicable orders which have withdrawn the lands from further staking.

In 1999, Mr. Robinson purported to commence an application in the Kirkland Lake Small Claims Court against the Ministries of Natural Resource and Northern Development and Mines. The performance of the prescribed assessment work or its value may have been an issue. At that time, Mr. Robinson failed to provide the Crown with Notice of Intended Action, as required by the **Proceedings Against the Crown Act**. However, the Crown Law Office, Civil, Ministry of the Attorney General, accepted the 1999 Statement of Claim as the required Notice for any future proceedings which Mr. Robinson might bring.

In the intervening time frame, Mr. Robinson participated in a class action brought by the Prospectors and Developers Association regarding mining claims caught up in the Living Legacy and parks identification. Details of this action were not provided with this application, but the tribunal finds that it accepts Mr. Robinson's statement that he had sought to participate in this other action, and then determined that he would recommence his own action, given the delays involved in the class action. He impressed upon the tribunal that he was intending to proceed with some manner of application at all times, be it the class action or his own individual action. However, he did not provide any information as to the status of any mining claims caught by the class action or how they were dealt with, concerning the matter of performance of assessment work.

On January 8, 2001, Mr. Robinson filed Application 5/01 with the Kirkland Lake Small Claims Court. In connection with the 2001 application and his earlier attempts to commence proceedings, he has applied to the Minister of Northern Development and Mines for an extension of time to perform assessment work, pursuant to subsection 67(2) and (5) of the **Mining Act**. It was Mr. Gashinski, Senior Manager of Mining Lands, who referred Mr. Robinson to the tribunal for a certification pursuant to clause 30(g) of the **Mining Act**.

It was explained that not all applications made to the Minister pursuant to subsection 67(5) would require a certification of the Commissioner pursuant to clause 30(g). However, on the facts of this case, such a certification would serve to preserve the subject Mining Claim from forfeiture pending the judicial proceedings. Had a mining claim forfeited prior to the commencement of proceedings, as was the case with several of Mr. Robinson's other mining claims, then nothing could be done to preserve them and an Order pursuant to section 185 would be the only recourse to relieve such claims from forfeiture.

However, with respect to Mining Claim L-1225461, it was due to forfeit on Saturday, January 6, 2001, which, through the operation of subsection 73(2) and section 138, resulted in the Mining Claim not forfeiting until 4:30 p.m. on Monday, January 8, 2001.

There was some discussion concerning the operation of sections 30 and 67, in connection with the making of an application for an exclusion of time. Mr. Robinson, however, was clear that his application for exclusion was to the Minister, and that MNDM was requiring a certification from the Commissioner prior to consideration of his application.

Mr. Robinson stated that, owing to the Esker Park extension, a purchase agreement he had in place with Goldrose Mining Company fell through. Through his action he is requesting that the Crown perform \$5,000 worth of mining exploration work.

Mr. Gashinski stated that throughout the Living Legacy process, the Government's position with respect to mining claims has been business as usual, so that assessment work would have to be carried out as though no park or park extensions were proposed. The criteria for extensions of time and exclusions of time have been communicated to the community. Mr. Robinson never met the criteria as required. The test imposed was that the delay in solving any pending matter was not the recorded holders fault. MNDM felt and feels today that this test cannot be met. It remains up to the recorded holders to perform the work. Some have and some have not and lose their claims as a result.

With respect to Mr. Robinson's case, his court application came in at 3 p.m. on January 8, 2001, a time when his claim was in good standing, albeit for a matter of less than two hours. Mr. Gashinski stated that he had attempted to come to an agreement with Mr. Robinson, and his offer is still good. Mr. Robinson declined.

Mr. Norwood raised one other issue in this matter, that being that Mr. Robinson is the recorded holder of a 50 percent interest in the Mining Claim. The question was then whether he was acting with the authority of the other recorded holder, Mr. Barry McCombe. Mr. Robinson was given the opportunity to obtain written confirmation from Mr. McCombe. This was received, in a manner of speaking, via a letter to Mr. Norwood dated April 20, 2001, in which the second last paragraph states,

"I, Barry McCombe have approved and continue to approve of Mr. Robinson making Application pursuant to clause 30(g) and 67 of the Mining Act for certification (now before the Mining and Lands Commissioner's in File # MA-006-01)."

Findings

The tribunal accepts that clause 30(g), which is a new provision, effective December 26, 2000, is available in cases where, but for certification, a mining claim would forfeit. Otherwise, it would be unclear as to what meaning could be given to the inclusion of a mining claim in a section which provides that no mining claim can be staked out. This would run counter to the assumption that a mining claim may be staked only where one does not already exist.

The materials filed by Mr. Robinson are lengthy and confusing. It would certainly have helped his case in seeking this certification if he could have been clearer as to what had actually occurred, relying on succinct and material facts. In this case, it would have been of assistance to know the mining claim number, township and date upon which the action commenced.

Mr. Robinson's attempts to commence proceedings in 1999 failed because he did not comply with the requirements of the **Proceedings Against the Crown Act**. Subsection 7(1) requires that the Crown be given notice prior to the commencement of any action sixty days prior to the commencement of the action, and contain sufficient particulars (information) so as to enable the Crown to identify the situation out of which the action arose. The Notice does not, however, constitute the commencement of the action, as is quite clear from the words used in subsection 7(1). It is not clear whether Mr. Robinson appreciates the distinction even at this time. For clarification, the Notice is a prior condition which must be met before an action may be commenced. The date of the Notice is relevant only for purposes of allowing sufficient time to elapse before filing a Statement of Claim. The date on which a Statement of Claim is filed is the date on which the proceeding commences.

Therefore, despite what occurred in 1999, Mr. Robinson's initial filing of a statement of claim was a nullity, being of no force and effect in this determination of whether there are proceedings involving the subject Mining Claim. The Crown, however, did accept the statement of claim in satisfaction of the notice requirement, so that Mr. Robinson was free to file a new statement of claim any time on or after June 21, 1999. He did not do so until January 8, 2001. Whether to his detriment or otherwise, he came to rely on the class action he referred to, for which the Commissioner has no details. It would be only speculation as to what that action might involve.

Therefore, the only action for which sufficient detail is provided in this application and which was actually commenced is that of January 8, 2001.

In an application for certification, the only requirement is that there be an action pending in a court in respect of the land. It is clear from the Statement of Claim for Small Claims Court File 5/01 that a mining property is involved, although again, Mr. Robinson has neglected to specify the claim number in that statement of claim. It does occur elsewhere in his documentation, but so do several others. From details provided with the application, as well as during the discussion at the Telephone Conference, there is no argument that Mining Claim L-1225461 is involved. From Mr. Gashinski's comments, as well as the operation of law, it is also clear that any other mining claims in which Mr. Robinson held an interest have forfeit well before January 8, 2001 and are not involved.

The tribunal finds that an application for certification does not require that any determination be made regarding the merits of the proceedings, merely that one exists and involves a mining claim. To the extent that this is the case, the tribunal so finds.

As to the matter of Mr. Robinson being the recorded holder of a 50 percent interest in the Mining Claim, the Commissioner makes no findings as to whether the above-noted action is properly brought before the Small Claims Court. The Commissioner is reluctant to purport to deal with the preliminary and jurisdictional matters which are properly before the Court and will go only so far as to note that the other recorded holder, while not appearing to be a party to the action, is aware of the action and appears to have given it his blessing. As to whether this is sufficient to allow Mr. Robinson to proceed will be up to the Small Claims Court.

For the foregoing reasons, the tribunal finds that it will certify that an action is pending involving Mining Claim L-1225461, in the Township of Morrisette, which commenced on the 8th day of January, 2001.