

File No. MA 022-00

M. Orr )  
Deputy Mining and Lands Commissioner )

Friday, the 10th day  
of November, 2000.

**THE MINING ACT**

**IN THE MATTER OF**

Mining Claims S-1247209, recorded in the name of Richard August Cayer, situate in the Township of Aylmer, in the Sudbury Mining Division, (hereinafter referred to as the "Cayer Mining Claim");

**AND IN THE MATTER OF**

An application under section 105 of the **Mining Act** to become the recorded holder of a 100% interest in the Cayer Mining Claim;

**B E T W E E N:**

EDGAR TAILLEFER, SR.  
Applicant of the First Part

- and -

EDGAR TAILLEFER, JR.  
Applicant of the Second Part

- and -

RICHARD AUGUST CAYER  
Respondent

(Amended November 10, 2000)

**ORDER**

**WHEREAS** at the hearing of this matter on the 26th day of September, 2000, Edgar Taillefer, Jr. changed his position and sought an interest in the Mining Claim;

**1. THIS TRIBUNAL ORDERS** that the applications of Edgar Taillefer, Sr. and Edgar Taillefer, Jr. be and are hereby granted in part.

**2. THIS TRIBUNAL FURTHER ORDERS** the ownership of Mining Claim S-1247209, be and is hereby divided between Edgar Taillefer, Sr., Richard August Cayer and Edgar Taillefer, Jr., as to a 33.34%, 33.33% and 33.33% interest, respectively.

**3. THIS TRIBUNAL FURTHER ORDERS** that the notation "Pending Proceedings", which is recorded on the abstract of Mining Claim S-1247209, to be effective from the 18th day of May, 2000, be removed from the abstract of Mining Claim S-1247209.

**4. THIS TRIBUNAL FURTHER ORDERS** that the time during which Mining Claim S-1247209 was under pending proceedings, being the 18th day of May, 2000 to the 10th day of November, 2000, a total of 177 days, be excluded in computing time within which work upon the Mining Claim is to be performed and filed.

**5. THIS TRIBUNAL FURTHER ORDERS** that the 9th day of November, 2002, be fixed as the due date for the performance and filing of prescribed assessment work on Mining Claim S-1247209, as set out in Schedule "A" attached to this Order, pursuant to subsection 67(3) of the **Mining Act** and subsequent anniversary dates are deemed to be November 9 pursuant to subsection 67(4) of the **Mining Act**.

**6. THIS TRIBUNAL FURTHER ORDERS** that no costs shall be payable by either party to this application.

**THIS TRIBUNAL FURTHER ADVISES** that pursuant to subsection 129(4) of the **Mining Act** as amended, a copy of this Order shall be forwarded by this tribunal to the Provincial Mining Recorder **WHO IS HEREBY DIRECTED** to amend the records in the Provincial Recording Office as necessary and in accordance with the aforementioned subsection 129(4).

Reasons for this Order are attached.

**DATED** this 10th day of November, 2000.

Original signed by M. Orr

M. Orr  
DEPUTY MINING AND LANDS COMMISSIONER

**SCHEDULE "A"**

**Mining Claim**

**Due Date**

**New Due Date**

S-1247209

May 18, 2002

November 9, 2002

File No. MA 022-00

M. Orr )  
Deputy Mining and Lands Commissioner )

Friday, the 10th day  
of November, 2000.

**THE MINING ACT**

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**B E T W E E N:**

EDGAR TAILLEFER, SR.

Applicant of the First Part

- and -

EDGAR TAILLEFER, JR.

Applicant of the Second Part

- and -

RICHARD AUGUST CAYER

Respondent

(Amended November 10, 2000)

**REASONS**

This matter was heard on September 26, 2000, in Sudbury. Those appearing were Mr. Edgar Taillefer Sr., ("Taillefer Sr."), Mr. Robert K. G. Komarechka (on Mr. Taillefer Sr.'s behalf), Mr. Edgar Taillefer Jr., ("Taillefer Jr."), and Mr. Richard Cayer ("Cayer").

This matter arose when a mining lease covering certain mining claims in the Township of Aylmer expired. The lands covered by the said mining claims subsequently came open for staking. The parties entered into discussions concerning the re-staking of the claim and possible business arrangements. The lands were staked by Cayer (in the company of Taillefer Jr.) and recorded in the name of Richard August Cayer, as to a 100% interest. There was no issue with the staking itself; nor was there an issue associated with the manner in which the lands had originally come open for staking. The recording of the claim seemed to bring matters to a head, with the resulting hearing before this Tribunal. Taillefer Sr., who was not the recorded holder, sought 100% ownership of the recorded claim (the “Cayer” claim).

**Issues:**

1. Is Taillefer Sr. entitled to an interest in the Cayer claim?
2. If the answer to issue #1 is yes, is he entitled to a 100% per cent in the claim? What interest, if any, are the remaining parties entitled to?

**Evidence of Edgar Taillefer Sr.**

Edgar Taillefer Sr. runs a lodge in Sturgeon Falls and is a supplier of architectural building stone. The latter business has been built up over a number of years. He was a partner on certain mining claims and these were made the subject of a lease for both the mining and surface rights. He and another person had originally staked the claims forty years ago. The lease was held by a number of companies over a period of time. It was with one of these companies, Northern Industrial Quarries, that Edgar Taillefer Sr. entered into an agreement allowing him to take stone out of the ground and sell what he had removed. He said that sales occurred every 2-3 years, indicating that there were periodic gaps in his quarrying work. In return for being allowed to work the quarry, he was required to pay the mining lands tax. This requirement was to be in effect until March 31, 2001. Coincidentally, the lease was due to terminate in 2001 as well. Edgar Taillefer Sr. testified that he paid the subject tax regularly on annual basis. He produced two cancelled cheques for March 1999 and April 2000. However, it was his evidence that the last payment, which was made in April, 2000, was returned by the government and that no reason was given. Edgar Taillefer Sr. also said that he was told of late payments, although he denied having made any late payments. His memory of events leading up to his being made aware that the lease had expired and that the lands had come open for staking was not entirely clear. He contended that he never received notice of the lands having come open for staking. Early in May, 2000, he began checking on the status of the lease mentioned above and the associated claims. One reason he gave for doing this was that he wished to incorporate an old company name to carry on his quarrying business. On May 10, 2000, he was informed by Mr. R. Schienbein (MNDM) that the lease had expired and that the land had come open for staking on June 1, 1999. This was the first he had heard of the status of the subject lands. However, he claimed to be getting correspondence from the government even after the lands had come open.

Having learned that the lands had come open for staking, he sought help in staking them again. He left a message with Mr. R. Komarechka who he considered to be reliable. He did not

actually talk to anyone other than his son and the Respondent. Edgar Taillefer Sr. talked to his son Edgar Taillefer Jr. and said that they were going to get somebody to stake the claims. He said that he did not start looking for names right away as he had to get back to his lodge. Edgar Taillefer Sr. testified that the hiring of stakers takes place “sometimes ...by phone, sometimes ...by words”. Edgar Taillefer Jr. suggested that he and the Respondent Cayer would go out and stake the claim. Since the Respondent had never staked a claim it would be necessary to hire someone to do that. Edgar Taillefer Sr. said that he asked his son if the Respondent was “honest enough”. He also asked about the fact that the Respondent had no staking experience. After being satisfied by his son, he then acted on his son’s suggestion. He told his son to phone him when they got to the site, which they did. He also talked to his son about registering the claim on the 15<sup>th</sup> of May, 2000. He also said that he was going to pay the Respondent for “whatever kind of deal they had going.”

Edgar Taillefer Sr. said that he was contacted by his son on May 11, 2000, from the site and was told of difficulties in locating old pickets or posts. A decision was made to stake without trying to locate old markers and the staking was apparently completed on May 12, 2000.

Edgar Taillefer Sr. next saw the Respondent on May 14, 2000, in the company of Edgar Taillefer Jr. A discussion took place regarding names for a new company and the sharing of interests. Edgar Taillefer Sr. testified that he wanted the claim to be recorded in the new company’s name. He also testified that they discussed registering the claim on May 15, 2000. He was told that the Respondent was busy on the 15<sup>th</sup>, but that they could meet at the Respondent’s house and go together to register the claim on the 16<sup>th</sup>. When he arrived at the Respondent’s house on May 16<sup>th</sup>, he was informed that the claim had already been recorded on the previous day (the 15<sup>th</sup>) in the Respondent’s name only. Edgar Taillefer Sr. was not satisfied with this result and met with his son who informed him that he and the Respondent had planned to form some sort of partnership and that he (Edgar Taillefer Sr.) could still be involved in selling the quarried stone.

When questioned by the Tribunal, Edgar Taillefer Sr. testified that he had entered into discussions with both his son and the Respondent as to future business relationships prior to recording the claim. The Respondent recorded the claim in his name subsequent to these conversations. Edgar Taillefer Sr. testified that it had been his intention to register an old company name and then work things out with his son and the Respondent later.

### **Evidence of Edgar Taillefer Jr.**

Edgar Taillefer Jr. was a Respondent initially, but changed his position after his father launched this application and prior to this hearing. He supported his father’s position at the hearing and sought an interest in the claim. His evidence is not much different from that of his father in terms of his father having learned that the lease had expired and that the lands had come open for staking. He testified that he had initially posed a working arrangement to the Respondent prior to being told that the lease had expired. He had proposed that he and the Respondent lease the property from Edgar Taillefer Sr. who would act as a salesman for the quarried rock. Apparently

the Respondent did not make a commitment to this proposal at that time. Edgar Taillefer Jr. also testified that he posed the same idea to his father but was turned down. These discussions took place in April of 2000.

On May 9<sup>th</sup>, 2000, Taillefer Sr. informed Taillefer Jr. that he was looking into the status of the quarry rights and he was then told on the 10<sup>th</sup> of May that the mining rights had returned to the Crown. That same day, Taillefer Jr. received the same information from the Respondent. Taillefer Jr. was also urged by the Respondent to stake the claim “right away”. The concern was that someone could go in and stake the claim or that the Ministry of Natural Resources would come in and close down the camp situated on the land. Edgar Taillefer Jr. was further informed that the Respondent was ready with tags to do the re-staking. Edgar Taillefer Jr. told the Respondent that he was aware of the need for re-staking and that his father would “take care of it”. However, Edgar Taillefer Jr. called his father saying that the Respondent had tags and a licence ready to do the staking. His father expressed some concerns about trusting the Respondent, but gave his son permission to go ahead and stake the quarry with the Respondent. Edgar Taillefer Jr. testified that he would not have gone to stake without his father’s permission. He also said that at that time, there had not been an agreement on partnerships.

Edgar Taillefer Jr. testified that both he and the Respondent (accompanied by Mr. Marty Wahnamaa), actually began staking the claim on the 12<sup>th</sup> of May, 2000. At some point during the staking exercise, Edgar Taillefer Sr. was called because the stakers were unable to locate the pickets for the original staking. (Taillefer Sr. had been the original staker, and the original pickets were being sought in order to avoid new survey costs.) The staking was not completed until the next day by the Respondent and Mr. Wahnamaa. Edgar Taillefer Jr. had business matters to attend to and so was not able to be present for the completion. He was advised by the Respondent that he (the Respondent) could finish the staking. Edgar Taillefer Jr. also testified that the Respondent may have indicated at the time of staking that he (the Respondent) did not want Edgar Taillefer Sr. involved.

Edgar Taillefer Jr. testified that he called the Respondent to ask about the staking and was told that it had been completed. When asked by this Tribunal if any discussion was held regarding the recording of the claim, he said that “it was ... a mutual understanding we were going to probably do it in a three-way claim.” He also indicated that he and the Respondent met with his father at his father’s lodge on May 14, 2000 and discussed company names for their “venture”. They also discussed registering the claim. He testified that the Respondent and his father (Edgar Taillefer Sr.) were originally intending to carry out that task on May 15, 2000. An alternate date of the 16<sup>th</sup> was arranged. Edgar Taillefer Jr. testified that he, his father (Taillefer Sr.) and the Respondent shook hands and went their separate ways.

Edgar Taillefer Jr. was informed by his father on May 16, 2000, that the Respondent had recorded the claim in the Respondent’s name only. When he questioned the Respondent about this later, he was told that registering the claim in the Respondent’s name had been done only “for ... staking purposes” and that “we could put anybody else’s name any time we want or whatever.” Edgar Taillefer Jr. testified that he expressed his feelings about this course of action

indicating to the Respondent that “[i]t should have been in all three names.” Edgar Taillefer Jr. further testified that the Respondent indicated that he did not want Taillefer Sr. to be involved and that he preferred a 50/50 partnership. When asked whether it was his intention to exclude his father from the business “venture”, Edgar Taillefer Jr. answered “no” and indicated that his father had built up business connections over the years for selling the quarried rock.

Under questioning by the Respondent, Edgar Taillefer Jr. said that the last time rock was actually removed from the property was two and a half years ago. When questioned about the proposal he had made regarding sharing a leasing arrangement, Edgar Taillefer Jr. indicated that the Respondent never got back to him until the day he arrived with the tags for staking.

### **Evidence of Robert K.G. Komarechka**

This witness, who appeared on behalf of Edgar Taillefer Sr., testified that he (Komarechka) thought that he had been contacted by Edgar Taillefer Sr. on the 9<sup>th</sup> of May, 2000. Mr. Komarechka couldn't actually identify the caller, because his wife had taken the message. The caller indicated that he had gotten someone else to do the staking. Edgar Taillefer Sr. contacted Mr. Komarechka later, indicating that he had concerns with surface and mining rights on the subject lands.

Most of this witness' evidence repeated what Edgar Taillefer Sr. had told the Tribunal. Mr. Komarechka did actually make contact with the government (MNDM) and the company in an attempt to understand why Edgar Taillefer Sr. had not been warned about the impending expiration of the lease. His efforts were after the fact though as the claim had already come open. He provided some advice to Edgar Taillefer Sr. with respect to his options including seeking relief from forfeiture after re-acquiring the claim.

### **Evidence of Shari Cayer**

The Respondent's first witness was his wife, Shari Cayer who testified that she was present during a conversation in which Edgar Taillefer Jr. indicated that he did not want his father involved in a partnership agreement with the Respondent. When questioned by Edgar Taillefer Jr., she indicated that both he and her husband (the Respondent) had agreed that neither of them wanted Edgar Taillefer Sr. involved in the partnership arrangement.

### **Evidence of Marty Wahnamaa**

The Respondent also produced a witness (Mr. M. Wahnamaa) who testified as to the staking of the claim in question. Mr. Wahnamaa testified that he was working for Mr. Cayer and that although he spoke at one point to Mr. Taillefer Sr., he did not know whether Edgar Taillefer Sr. was “in that or out of it” with respect to the subject claim.

Under questioning by Edgar Taillefer Jr., Mr. Wahnamaa said that prior to the staking, no mention was made of partnership. He also indicated that while he had been paid by Mr. Cayer for his staking work, he had not been told the source for the money.

### **Evidence of Richard Cayer**

The Respondent Cayer told the Tribunal about Edgar Taillefer Jr. having offered him a partnership working the quarry with Taillefer Sr. selling the quarried stone. He testified that he did not commit himself to anything as he was “unclear and uncertain on the conditions of [the] lease and the rightful ownership of the property.” He told Taillefer Jr. that he would look into the matter before giving him an answer.

After researching the status of the subject land on the Internet on May 3rd, 2000 and checking with government officials, the Respondent learned that the lands needed to be re-staked since the lease had expired. The Respondent testified that he spoke to Mr. Wahnamaa on May 8<sup>th</sup>, 2000, about staking – offering him employment for two days. The Respondent testified that he did not speak to either of the Taillefers at this time and that it was his intention to act alone.

The Respondent went back to Edgar Taillefer Jr. and after giving him the news regarding the status of the claim, asked him if he was interested in a 50 % partnership on the claim. Edgar Taillefer Jr. insisted on discussing the matter with his father. The Respondent did not want to speak with Edgar Taillefer Sr. but did eventually and his evidence was that Taillefer Sr. wanted a three-way partnership. The Respondent did not commit himself at that time to a partnership involving Edgar Taillefer Sr., but did tell him “we would discuss this later once we had the property staked and we were out of the bush.”

As for the actual staking, the Respondent testified that he met with both Taillefer Sr. and his son (at Taillefer Sr.’s home) after the staking. They discussed business names and office locations but failed to come to an agreement on any of these items. Mr. Cayer testified that the argument left him weighing the fact that Mr. Taillefer Sr. was “trying to run the boat” after Mr. Cayer had staked the property and paid the prospector. He testified that “[t]his is what turned me off on the partnership with Mr. Taillefer.”

The Respondent’s evidence regarding his decision to record the claim on May 15, 2000, was that he managed to get free time and was in the area. He went to record the claim and did so in his name only. He was confident that the claim could be “re-recorded” differently later. He indicated that he was uncertain about having Taillefer Sr. as a partner and “still had in mind only to have [Taillefer Sr.’s son] as my collaborate”. He also indicated that a Ministry of Natural Resources official had provided information which could have an impact on the feasibility of having a three-way partnership “under a quarry lease instead of a Mining Claim”.

The Respondent informed Taillefer Sr. about the recording of the claim and that it was a temporary thing; that he, the Respondent wanted a partnership with Taillefer Jr. only and that Taillefer Sr. could be rewarded for his assistance “if he made money for us”.

The Respondent also testified about an offer he had made to Taillefer Sr. prior to this hearing. This was for a 25% interest. Taillefer Sr. turned it down.

The Respondent set out a variety of reasons in his written and oral evidence for his not wanting Taillefer Sr. as a partner. The reasons varied – from Taillefer Sr.’s age (73 years), to the fact that the Respondent had been in a three-way partnership arrangement in the past and found it difficult to get a “fair decision”.

When questioned by Mr. Taillefer Jr., the Respondent admitted that all three parties had shaken hands after the discussion about business names. He also replied to questions regarding the hiring and paying of Mr. Wahnamaa to the effect that he “never asked ... for monies until [the] partnership deal was made. And then we would share the bill.”

When questioned by the Tribunal as to what he was shaking hands on, the Respondent replied that it concerned “the partnership in the making” between all three parties. Also, his registering the claim in his own name was done after talking to the Provincial Recording Office. After discussing the intentions to operate a quarry he was advised that the claim had to be registered in one name first. The recording could be changed later to reflect three names once the quarry matters had been put in order. He indicated that registering the claim in his own name was temporary, pending the future change to quarry status. He testified that Mr. Taillefer Jr. agreed to his registering the claim in his own name while they were staking the subject claim. When questioned further by the Tribunal, the Respondent indicated that it never was his intention to register Taillefer Sr. on the claim, even though he was advised by the Provincial Recording Office that he could put as many names on title as he wished.

Upon being questioned about the partnership discussions, Mr. Cayer also indicated that nothing was finalized when the parties met at Mr. Taillefer Sr.’s home on May 15th, 2000. “It was going to be the three of us but nothing was decided at that time.”

## **Findings**

This appeal raises two issues; first, is Taillefer Sr. entitled to an interest in the claim registered in Cayer’s name; secondly, if Taillefer Sr. is entitled, is it for 100% per cent of the claim?

Subsection 58(1) of the **Mining Act** reads:

No person is entitled to enforce any claim, right or interest, contracted for or acquired before the staking out or recording of a mining claim or of any mining lands or mining rights done by another person unless the fact that the first-mentioned person is so entitled is made to appear by a writing signed by the holder of the claim or by the licensee by whom the staking out or recording was done or the evidence of the first-mentioned person is corroborated by some other material evidence, and, where a right or interest is so made to appear, the *Statute of Frauds* does not apply.

Black's Law Dictionary defines "material evidence" as "[t]hat quality of evidence which tends to influence the trier of fact because of its logical connection with the issue. Evidence which has an effective influence or bearing on [the] question in issue is "material". Material evidence is evidence which is material to question in controversy, and which must necessarily enter in controversy, and which by itself or in connection with other evidence is determinative of the case."

The **Act** says that corroboration of Taillefer's evidence "by some other material evidence" is needed before the *Statute of Frauds* can be avoided. The Tribunal finds that corroboration is provided through the evidence of both Taillefer Jr. and Cayer.

Taillefer Sr. had a past and undisputed connection to claims covering essentially the same land before it came open in June of 1999. There was no evidence to indicate that he had willingly relinquished his interest in the claims that pre-dated the claim in dispute. How the lands actually came to be open for staking is not clear, nor is it important for the issues this Tribunal has to decide upon. Once it became known to Taillefer Sr., he acted promptly to re-establish his interest. While busy with his lodge, he acted as quickly as possible to re-claim what he had lost. He made a call to at least one staker before eventually taking up his son's suggestion that they have Cayer (and whoever Cayer hired) re-stake the claim.

While Taillefer Sr. did not actually attend on the site during the staking, his permission was sought prior to staking. His son was present on the first day of staking while Cayer re-staked the claim. Taillefer Sr.'s help was sought in locating the former claim posts, and generally Taillefer Sr. was kept informed throughout the process. While Cayer may have had thoughts of "going it alone", he never gave any such indication to anyone including Taillefer Sr. and Taillefer Sr.'s son. In fact, he cooperated with Taillefer Jr. when he insisted on contacting Taillefer Sr. to get his agreement before going to stake the claim. Mr. Wahanama, who testified on behalf of Cayer, was unable to provide a definitive answer as to what he understood to be Taillefer Sr.'s status in terms of the staking. Cayer took the information initially provided to him by the son and then the father and used it to stake the claim as requested. Furthermore, Cayer led Taillefer Sr. to understand that he (Taillefer Sr.) would accompany Cayer when he went to record the claim. The parties all agreed that their handshake signified a "partnership in the making", using the words of the Respondent Cayer. This handshake took place before the claim was recorded. While the Respondent recorded the claim in his name alone, his evidence was that this was a temporary thing. The Tribunal finds that the evidence given by the Respondent to be that material evidence needed by the **Act** to avoid the *Statute of Frauds*. Furthermore, that evidence, coupled with his actions, describes someone acting on another's behalf, or at least someone acting in cooperation with another towards a mutually beneficial conclusion – staking the claim.

As to the second issue, the Tribunal finds that the discussions between Taillefer Sr., his son and the Respondent as to future business relationships held prior to registering the claim are evidence of an agreement to share the claim three ways. The Tribunal further finds that Cayer's recording the claim in his own name was a result of his dissatisfaction over Taillefer Sr.'s busi-

ness goals. While the Tribunal sympathizes with the position that Taillefer Sr. found himself in upon learning that the land had come open for staking, the Tribunal is also of the view that the Respondent's business acumen may be of some benefit to the Taillefers. It is obvious to the Tribunal that all three parties could, if they so wished, create a viable business venture from which all could profit.

### **Exclusion of Time**

Pursuant to subsection 67(2) of the **Mining Act**, the time during which Mining Claim S-1247209 was pending before the Tribunal, being the 18<sup>th</sup> day of May, 2000, to the 10<sup>th</sup> day of November, 2000, a total of 177 days, will be excluded in computing time within which work upon the Mining Claim is to be performed and filed.

Pursuant to subsection 67(3) of the **Mining Act**, as amended by S.O. 196, c.1, Sched. O, s.18, November 9, 2002 is deemed to be the date for the performance and filing of the first and second units of assessment work on Mining Claim S-1237209.

Pursuant to subsection 67(4) of the **Mining Act**, all subsequent anniversary dates for the Cayer Mining Claim are deemed to be November 9.

### **Conclusions**

Edgar Taillefer Sr. and Edgar Taillefer Jr. are entitled to an interest in the claim recorded by Richard Cayer. All three parties are entitled to share equally in the claim. This application will be granted in part.

No costs are payable by any party to this application.