

File No. MA 014-98B

L. Kamerman)
Mining and Lands Commissioner) Wednesday, the 26th day
of April, 2000.

THE MINING ACT

IN THE MATTER OF

Mining Claim L-801850, situate in the Township of McVittie, in the Larder Lake Mining Division, recorded in the name of Skead Holdings Ltd., hereinafter referred to as the "Mining Claim";

AND IN THE MATTER OF

The Surface Rights of that certain parcel of land granted by the Crown as Mining Land registered under The **Land Titles Act** as Parcel 9936 in the Register for Centre Section Temiskaming, situate in the Township of McVittie, in the District of Temiskaming, Province of Ontario;
(Amended April 26, 2000)

AND IN THE MATTER OF

An application under clause 81(2)(c) of the **Mining Act** in respect of surface rights of the Mining Claim;
(Amended April 26, 2000)

B E T W E E N:

SKEAD HOLDINGS LTD.

Applicant

- and -

ERHARD EDWARD POWILEIT and KRIMHILD JOHANNA MAGEE

Respondents

ORDER

WHEREAS THIS APPLICATION was received by this tribunal on the 7th day of May, 1998, from Mr. Robert A. MacGregor, Agent for the Applicant, Skead Holdings Ltd., with a notation of "Pending Proceedings" having been recorded on Mining Claim L-801850 on the 7th day of May, 1998;

AND WHEREAS an undated surface rights consent form as required by clause 81(2)(c) of the **Mining Act**, signed by the Respondent, Krimhild Johanna Magee, was received by the tribunal on the 24th day of February, 2000, with Respondent, Erhard Edward Powileit having refused his consent in this matter until the date of the hearing;

UPON reading the materials filed in support and hearing from the parties:

1. THIS TRIBUNAL ORDERS that the surface rights compensation payable to the Respondents, Krimhild Johanna Magee and Erhard Edward Powileit up to and including the date of this Order, be and is hereby settled.

2. THIS TRIBUNAL FURTHER DECLARES that the aforementioned Krimhild Johanna Magee and Erhard Edward Powileit are not precluded from obtaining compensation for any injury or damage caused hereafter by any mining operations of the Applicant, Skead Holdings Ltd. or its successors in title, pursuant to section 79 of the **Mining Act**.

3. THIS TRIBUNAL FURTHER ORDERS that the notation "Pending Proceedings" which is recorded on the abstract of Mining Claim L-801850, to be effective from the 7th day of May, 1998, be removed from the abstract of Mining Claim L-801850.

4. THIS TRIBUNAL FURTHER ORDERS that the time during which Mining Claim L-801850 was under pending proceedings, being the 7th day of May, 1998 to the 26th day of April, 2000, a total of 721 days, be excluded in computing time within which work upon the Mining Claim is to be performed.

5. THIS TRIBUNAL FURTHER ORDERS that the 9th day of June, 2000, be fixed as the date by which the next unit of prescribed assessment work must be performed and filed on Mining Claim L-801850, pursuant to subsection 67(3) of the **Mining Act** and in the event that the 21 year Mining Rights Only Lease is not granted, all subsequent anniversary dates are deemed to be June 9 pursuant to subsection 67(4) of the **Mining Act**.

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 26th day of April, 2000.

Original signed by
L. Kamerman

L. Kamerman
MINING AND LANDS COMMISSIONER

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Mining and Lands Commissioner)

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(Amended April 26, 2000)

B E T W E E N:

SKEAD HOLDINGS LTD.

Applicant

- and -

ERHARD EDWARD POWILEIT and KRIMHILD JOHANNA MAGEE

Respondents

REASONS

This matter was heard by telephone conference call on the 25th day of April, 2000. In attendance were Mr. Robert MacGregor, President, on behalf of Skead Holdings Ltd. (Skead Holdings), Mr. William Hagarty, Counsel for the Respondent, Ms. Krimhild Johanna Magee, the aforementioned Ms. Magee and Mr. Erhard Edward Powileit on his own behalf.

The application for an Order pursuant to clause 81(2)(c) arises out of a number of mining claims held by Skead Holdings, all of which have been settled on consent. Some confusion was encountered prior to the convening of the hearing in this matter, as the original patent was issued as a Mining Lands Patent, Parcel 9936, in the Register for Centre Section Temiskaming, in the Township of McVittie and involved Mining Claim H.S. 92 (recorded as L.9514). Notwithstanding the confusing wording used, the mining rights of the lands covered by the Skead Holdings Mining Claim L-801850 forfeit to the Crown on January 1, 1956 for failure to pay taxes under the **Mining Tax Act**. The mining rights subsequently came open for staking on June 1, 1956.

On February 24, 2000, the tribunal received a signed consent from Ms. Magee, indicating that she had reached agreement with Skead Holdings and that no damage to the surface rights had occurred.

At the commencement of the hearing, Mr. MacGregor stated that agreement as to surface rights compensation, failing which an Order of the tribunal, was necessary before the Provincial Mining Recorder would be able to consider Skead Holdings' application for a 21 year lease. The Mining Claim had been staked in 1984 and considerable prospecting work had been done. Mr. MacGregor stated that the Mining Claim was part of a larger block in which Skead Holdings was hoping to interest a mining company to proceed with mining activity. Mr. MacGregor stated that no damage had occurred to the surface rights during the prospecting and should any damage occur in the future, the owners of the surface rights would be entitled to compensation. The application in no way precludes Ms. Magee or Mr. Powileit from asserting such rights in the future.

Mr. Powileit asked what the impact of a lease on rights of access was, as well as whether he would be entitled to compensation for time spent on the Mining Claim. Mr. MacGregor reiterated that there were no plans at this point to proceed with any further mining activity. Mr. Powileit expressed a number of concerns regarding the environmental impacts of mining, on standing trees and on groundwater. He mentioned specifically arsenic used in gold mining. He also questioned what the impact had been to date on the subject lands through prospecting. Mr. MacGregor explained that the prospecting which had occurred was non-invasive, amounting to chipping at rocks, rather than any clearing of the surface or digging of trenches with large machinery.

The tribunal explained that access to a mining claim could not be denied by a surface rights owner, as such access is inherent in the mining rights. The tribunal also explained that Part VII of the **Mining Act** regulates all advanced exploration activity as well as actual mineral extraction, none of which may be carried out without an approved Closure Plan. The tribunal indicated that it would provide Mr. Powileit with a photocopy of these provisions as well as section 79 of the **Mining Act** which allows both surface rights owners and mineral workings owners to apply for compensation for damage which has occurred.

Exclusion of Time

Pursuant to subsection 67(2) of the **Mining Act**, the time during which Mining Claim L-801850 was pending before the Tribunal, being the 7th day of May, 1998, to the 26th day of April, 2000, a total of 721 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. 1996, c.1, Sched. O, s.18, June 9, 2000, is deemed to be the date for the performance and filing of the next unit of assessment work in Mining Claim L-801850.

Pursuant to subsection 67(4) of the **Mining Act**, all subsequent anniversary dates for Mining Claim L-801850 are deemed to be June 9.

Findings

The tribunal finds that Skead Holdings has not caused any damage to the surface rights of mining claim L-801850 to the date of this Order for which compensation should be required. Nothing in this finding precludes the parties from bringing an application in future pursuant to section 79 of the **Mining Act**, should damage occur. Therefore, the matter of surface rights compensation will be ordered as settled.