File No. MA 028-97

L. Kamerman	)	Friday, the 28th day
Mining and Lands Commissioner	)	of August, 1998.

THE MINING ACT

IN THE MATTER OF

An application for an aggregate permit dated April 2nd, 1997, having been made pursuant to subsection 34(1) of the **Aggregate Resources Act**, R.S.O. 1990, c. A.8, as amended, made by Nordic Group, which application was placed in abeyance by the District of the Ministry of Natural Resources, neither having been allowed nor refused, hereafter referred to as the "Nordic Aggregate Application";

AND IN THE MATTER OF

A second subsequent application for an aggregate permit made by Marcel J. Labelle on a date subsequent to the Nordic Application, and issued by the Ministry of Natural Resources on July 11, 1997 for lands which overlap some of the lands in the Nordic Aggregate Application, hereinafter referred to as the Labelle Aggregate Permit;

AND IN THE MATTER OF

Mining Claims P-1213801 and 1213802, situate in the Township of Pitt, in the Porcupine Division, recorded in the name of Marcel J. Labelle, covering the same lands as the Labelle Aggregate Permit and the Nordic Aggregate Application, hereinafter referred to as the "Labelle Mining Claims";

B E T W E E N:

NORDIC GROUP

Applicant

- and -

MARCEL J. LABELLE

Respondent

- and -

MINISTER OF NATURAL RESOURCES

Party of the Third Part

- and -

MINISTER OF NORTHERN DEVELOPMENT AND MINES

Party of the Fourth Part

AND IN THE MATTER OF

An application under section 105 of the **Mining Act** for a declaration that the lands covered by the Labelle Mining Claims should have been removed from staking, by the Mining Recorder for the Porcupine Mining Division, pursuant to clause 30(b) of the **Mining Act**, being land "for which an application brought in good faith is pending in the Ministry of Natural Resources under the *Public Lands Act*, or otherwise, ...", for a declaration of the respective rights of the applicant, Nordic Group and Marcel J. Labelle and such other relief as the tribunal may allow;

AND IN THE MATTER OF

An appeal pursuant to subsection 112(1) of the **Mining Act** from the decision of the Mining Recorder for the Porcupine Mining Division, dated the 20th day of May, 1997, to record the Mining Claims.

INTERLOCUTORY ORDER

UPON READING the submissions filed;

1. THIS TRIBUNAL ORDERS that the appeal pursuant to subsection 112(1) of the **Mining Act** from the decision of the Provincial Mining Recorder be and is hereby dismissed.

2. THIS TRIBUNAL FURTHER ORDERS that the application pursuant to section 105 for a declaration that the lands included in the Labelle Mining Claims were not open for staking within the meaning of clause 30(f) of the **Mining Act** be and is hereby dismissed, without prejudice at such time as a validly conducted review of the actions of MNR has occurred.

3. THIS TRIBUNAL FURTHER DIRECTS that the notation of "pending proceedings" will remain on the abstracts for the Labelle Mining Claims for a period of thirty (30) days from the date of this Order, whereupon, failing notification that other actions have been commenced in connection with issues raised in this matter, will be ordered removed from the aforementioned abstracts.

4. THIS TRIBUNAL FURTHER ORDERS that this Order be filed without fee in the Office of the Provincial Mining Recorder in Sudbury, Ontario, pursuant to subsection 129(4) of the **Mining Act**.

Reasons for this Order are attached.

DATED this 28th day of August, 1998.

Original signed by

L. Kamerman
MINING AND LANDS COMMISSIONER

File No. MA 028-97

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THE MINING ACT

IN THE MATTER OF

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AND IN THE MATTER OF

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B E T W E E N:

NORDIC GROUP

Applicant

- and -

MARCEL J. LABELLE

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- and -

MINISTER OF NATURAL RESOURCES

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AND IN THE MATTER OF

An application under section 105 of the **Mining Act** for a declaration that the lands covered by the Labelle Mining Claims should have been removed from staking, by the Mining Recorder for the Porcupine Mining Division, pursuant to clause 30(b) of the **Mining Act**, being land "for which an application brought in good faith is pending in the Ministry of Natural Resources under the *Public Lands Act*, or otherwise, ...", for a declaration of the respective rights of the applicant, Nordic Group and Marcel J. Labelle and such other relief as the tribunal may allow;

AND IN THE MATTER OF

An appeal pursuant to subsection 112(1) of the **Mining Act** from the decision of the Mining Recorder for the Porcupine Mining Division, dated the 20th day of May, 1997, to record the Mining Claims.

REASONS

Agreed Statement of Facts

The parties agreed to a number of facts in this matter, which have been compiled by the Tribunal in an Agreed Statement of Facts which is reproduced:

1. An Application for an Aggregate Permit from "Nordic Enterprises" signed by Mr. Ray Bradette and dated April 2, 1997, along with a site plan dated April 9, 1997, was submitted to the Cochrane District Office, Ministry of Natural Resources.

2. On April 22, 1997, the Cochrane District Office, in a letter to Nordic Enterprises dated April 22, 1997, requested further information (i.e. need for this aggregate, through contracts, etc.), from Mr. Bradette in order to process his Application.

3. In a letter dated May 28, 1997, Nordic Group (formerly Nordic Enterprises) submitted further information to the Cochrane District Office.

4. In a letter to Nordic Group dated July 10, 1997, the Cochrane District Office requested further information (i.e. equipment types and sizes to be used, proof of contract) in order to process the Application.

5. In a letter dated July 31, 1997, Nordic Group responds to the Cochrane District Office noting that Nordic Group does not yet own any equipment and that the company has no contracts but intends to submit tenders when the supply of material has been secured.

6. Mining Claims P-1213801 and 1213802 were staked on May 6, 1997, by Marcel J. Labelle.

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7. Each of the aforementioned Mining Claims were recorded in the Office of the Mining Recorder for the Porcupine Mining Division in the name of Marcel J. Labelle (Client Number 154970) on May 20, 1997.

8. A Quarry Permit for rock was issued on July 11, 1997 by the Cochrane District Office and recorded on Mining Claims P-1213801 and 1213802, on July 16, 1997.

9. On August 5, 1997, Mr. W. Ray Bradette of the Nordic Group, sent a letter to the Office of the Mining and Lands Commissioner objecting to MNR's issuance of an Aggregate Permit to Marcel J. Labelle (which was issued on July 11, 1997).

10. On August 8, 1997, the Office of the Mining and Lands Commissioner requested the Office of the Mining Recorder, Porcupine Mining Division, to note "pending proceedings" on the abstracts of the subject Mining Claims, to be effective August 5, 1997, the date of the receipt by the Office of the Mining and Lands Commissioner of Mr. Bradette's August 5, 1997 correspondence.

11. On October 7, 1997, Mining Claims P-1213801 and 1213802 are transferred from Marcel J. Labelle to M.J. Labelle Co. Ltd. (Client Number 301822).

12. It is the position of the Nordic Group that they submitted a complete application for an aggregate permit, meeting all Ministry of Natural Resources' requirements under the **Aggregate Resources Act,** along with other pertinent information prior to the subject Mining Claims being staked and recorded.

13. It is the position of counsel for the Ministry of Natural Resources that the appellant did not file a complete application for an aggregate permit, as dictated by MNR Policy (AR 5.02.03) and determined from the information received, that there was insufficient justification as to the, "need" for the material requested. Subsequently a complete application from Marcel J. Labelle took priority and a permit was issued.

14. It is the position of counsel for the Ministry of Northern Development and Mines, that the 15 day appeal period and the 15 day extension period contemplated by subsection 112(3), of the **Mining Act** (being the time for an appeal of the decision of the Mining Recorder, Porcupine Mining Division to record Mining Claims P-1213801 and 1213802) has long since passed.

Submissions

Mr. Mark S. Ansara, Solicitor for the Applicant, Nordic Group, made written submissions dated June 15, 1998 which are reproduced. A "Book of Authorities of the Applicant, Nordic Group" was received by this office on July 3, 1998.

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The applicant has been asked to address two preliminary issues these being:

1. Does section 105 of the ***Mining Act*** apply to the case at hand, and in particular, in conjunction with section 30(b) of the ***Mining Act***?

2. Is the applicant, Nordic Group, time barred due to the provisions of section 112(3)?

Issue No. 1

Section 105 of the ***Mining Act*** confers broad, wide ranging powers upon the Commissioner. This particular section states as follows:

> Except as provided by section 171, no action lies and no other proceeding shall be taken in any court as to any matter or thing concerning any right, privilege or interest conferred by or under the authority of this Act, but, except as in this Act otherwise provided, every claim, question and dispute in respect of the matter or thing shall be determined by the Commissioner, and in the exercise of the power conferred by this section the Commissioner may make such order or give such directions as he or she considers necessary to make effectual and enforce compliance with his or her decision. R.S.O. 1990, c. M.14, s. 105"

The key words are "every claim, question and dispute in respect of the matter or thing shall be determined by the Commissioner ...". In order to enforce any decisions the Commissioner may *make such order or give such directions as he or she considers necessary to make effectual and enforce compliance with his or her decision.*

In effect the Commissioner is given exclusive jurisdiction to deal with all disputes and issues flowing from the ***Mining Act***. This power is somewhat modified by section 107 of the ***Mining Act*** which provides for the transfer of a hearing to Ontario Court (General Division).

Section 105 of the ***Mining Act*** has recently been considered in the case of Minescape Exploration Inc. v. Bolen,[[1998] O.J. 1528, March 31, 1998, (unreported)] a decision of the Ontario Court (General Division) rendered this year.

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At paragraph 23 of his decision, Kurisko, J. (referring to the Mining and Lands Commissioner as the Mining Court) stated:

> "In short, the Mining Court has exclusive jurisdiction relating to *any matter or thing arising under the **Mining Act** or involving interpretation of the provisions hereof or involving any right or claim under the Act.* (See Hogg J. in McDougall v. Campbell quoted above in paragraph 15.)"

It is the position of the applicant, Nordic Group, that a Mining Recorder should not have recorded M.J. Labelle's claims because a bona fide application was pending. This application being of course Nordic Group's application pursuant to the *Aggregate Resources Act*.

Nordic Group further contends that its application clearly falls within the provisions of section 30(b) of the ***Mining Act*** which states:

> "No mining claim shall be staked out or recorded on any land, ...
>
> (b) for which an application brought in good faith is "pending" in the Ministry of Natural Resources under the *Public Lands Act* "or otherwise" and in which the applicant may acquire the minerals ..."

Since there is a bona fide application pending the Mining Recorder erred in recording the mining claims of the respondent, Labelle. This is a palpable error and an improper exercise of power by the recorder which the Commissioner has the power to rectify.

It is submitted that all parties would agree that Nordic Group's application was submitted in good faith. If this is in fact the case we must then consider the legal definition of the word *pending*.

Black's Law Dictionary (6th Edition) defines pending as:

> "begun, but not yet completed; during; before the conclusion of; prior to the completion of; unsettled; undetermined; in the process of settlement of adjustment."

It is submitted that the Nordic Group's application certainly falls within all of the above-mentioned definitions of pending.

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This now leaves us to consider the definition of *or otherwise*, i.e. does this phrase include other pieces of legislation such as the *Aggregate Resources Act*.

The case of Quebec North Shore Paper v. C.P. Ltd. [1976] 65 D.L.R. (3d) 525 considered the provisions of section 23 of the *Federal Court Act*.

The relevant part of this section stated:

> "The Trial Division has concurrent original jurisdiction as well between subject and subject as otherwise, in all cases in which a claim for relief is made or a remedy is sought under an Act of the Parliament of Canada *or otherwise*..."

Le Daine, J. at page 530 held that *or otherwise* referred to other acts:

> "The claim for relief must be made or the remedy sought under an act of Parliament of Canada *or otherwise*. By the words or otherwise I understand that any other law that can be considered to form part of the *Laws of Canada* within the meaning of section 101 of the *British North America Act 1867*, since Parliament only has legislative confidence by virtue of that section to confer jurisdiction of the Court to administer the *Laws of Canada.*

It therefore stands to reason that the phrase *or otherwise* as used in section 30(b) of the ***Mining Act*** refers to other irrelevant (**sic**) pieces of provincial legislation such as the Aggregate Resources Act.

Issue no. 2 - Is Nordic Group time barred due to the provisions of section 112(3) of the ***Mining Act***?

Section 112(3) of the ***Mining Act*** states:

> "An appeal to the Commissioner shall be ... filed in the office of the recorder from whom the appeal is being taken and served upon all parties interested within fifteen days from the entry of the decision on the books of the recorder ... or within such further period of not more than fifteen days as the Commissioner may allow..."

The applicant, Nordic Group, contends that the provisions of the *Discoverability Rule* applies to this particular situation. Therefore the limitation as set out in section 112(3) of the ***Mining Act*** would not begin to run until after Mr. Bradette learned that

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M.J. Labelle had been issued an aggregate permit in spite of Mr. Bradette's *pending* application. At paragraph 21 in the case of Bourne v. Saunby [1998] C.J. No. 1255, Laskin, J.A. set out the raison d'etre and the workings of the Discoverability Rule:

> "The discoverability principle postpones the running of a statutory limitation period. The rationale for the principle is that it would be unjust to permit limitation period to begin to run before the plaintiff knew or by reasonable diligence could have known that they could bring an action. In Peixeiro v Haberman, [1997] 3 S.C.R. 548 the Supreme Court of Canada held that the discoverability principle applies to the two-year limitation period in s. 206(1) of the Ontario's Highway Traffic Act, which like s. 284(2) of the Municipal Act, being "from the time when the damages were sustained"."

The applicant further submits that the time limitation should not begin running until October 7, 1997, the date that the mining claims were transferred from Marcel J. Labelle to M.J. Labelle Company Ltd. It is unfortunate that the applicant has not been provided with a copy of the original aggregate application of the respondent, Labelle, and the rock quarry permit to see if both were issued in the same name or whether the original application was in Mr. Labelle's personal name and the permit was issued in the corporate name, M.J. Labelle.

Mr. John Norwood, Counsel for the Party of the Fourth Part, the Minister of Northern Development and Mines (MNDM), made the following submissions with respect to the above-noted appeal by letter dated July 15, 1998:

1. Scope of Section 105. MNDM agrees with the applicant that Section 105 of the **Mining Act** confers broad, wide-ranging powers upon the Commissioner in accordance with the recent comment of Kurisko, J. at paragraph 23 of Minescape Exploration Inc. v. Bolen.

2. Appeal period under Section 112(3). MNDM submits that the imperative of administrative certainty in the recording system requires that the 15 day period in Section 112(3) of the **Mining Act** be adhered to. The application of the so-called Discoverability Rule may be appropriate for consideration in situations dealing with a statutory limitation period as in Peixeiro v. Haberman [1997]3.S.C.R. 549 (S.C.C.), but is inappropriate for application to the stipulation of a finite appeal period, as under Section 112 of the **Mining Act**.

Ms. Krystine Linttell, Counsel for the Party of the Third Part, the Minister of Natural Resources, advised in a letter dated July 15, 1998 that the Ministry of Natural Resources MNR adopts the position of MNDM.

Mr. Marcel Labelle, President, M.J. Labelle Co. Ltd., the respondent, in a fax received July 21, 1998, advised the M.J. Labelle Co. Ltd. will not be forwarding a submission with respect to the above.

Findings

Preliminary Discussion

The meaning of clause 30(b) bears discussion, although no submissions were made on this point and indeed the tribunal did not raise it with the parties.

Clause 30(b) refers to applications pending before MNR, having been made in good faith, under the **Public Lands Act** or otherwise, in which the applicant may acquire the minerals. The tribunal has no difficulty in finding that "or otherwise" indeed includes applications under the **Aggregate Resources Act**. This is borne out by other references in the **Mining Act**, such as subsections 81(15) or 89(2), both of which permit the acquisition of surface rights for lands, the mining rights of which have been acquired by lease pursuant to the **Mining Act**. Given that the aforementioned provisions deal with the situation where a lease of the mining rights has been granted, it would appear that there is nothing in such lands remaining for any staking to take place pursuant to Part II of the **Mining Act**. This is only conjecture, as this matter has not been fully canvassed with the parties or argued.

Subsection 103(2) of the **Mining Act** appears to apply to the facts of this case, namely the surface mining of aggregate (in this case crushed rock), in which the person is required to obtain a permit or licence under the **Aggregate Resources Act**, but also is permitted to avail him or herself of the provisions of Part II of the **Mining Act**. Section 104 of the **Mining Act** permits a licensee to stake out a mining claim on lands for which there is an existing aggregate permit or license.

Mining Lands Policy LP 505-1 entitled "Leases, Licences and Patents" (Ex. 2) indicates that there is general agreement between MNR and MNDM that a licensee who is the recorded holder of a mining claim staked prior to an aggregate permit application is protected from seeing an aggregate permit issued to another. In other words, the right which flows from a recorded mining claim to investigate the mineral potential of those lands comprising the mining claim will be unimpeded by the threat that some of those minerals which may also be aggregates could become subject to an aggregate permit.

Mining Lands Policy LP 505-2 entitled, "Issuance of Aggregate Permits on Mining Claims" (also forming part of Exhibit 2) commences with the following comment:

This procedure reflects the cooperation between the Minister of

> Natural Resources [MNR] and the Ministry of Northern Development and Mines [MNDM] that is integral in the issuance of an aggregate permit or licence.

The application for an aggregate permit which is made in good faith prior to the staking of Crown lands has the effect, if granted, of making any subsequent staking of a mining claim subject to the aggregates listed in the permit being within the exclusive right of the permit holder.

In the situation where the proposed activity to take place on the land is limited to extraction or surface mining of non-metallic minerals and/or aggregates, it would appear strategically more advantageous to stake a mining claim prior to applying for an aggregate permit, so as to ensure the type of exclusivity which may be desired.

The quality of the cooperation between MNR and MNDM appears to be at the heart of this matter. However, it remains to be determined whether the actions of the MNR are properly a subject within the jurisdiction of this tribunal and the scope of this application to determine.

Second Issue

The whole matter of the time bar to an appeal of the decision of the Provincial Mining Recorder to record the Labelle Mining Claim pursuant to subsection 112(3) is not determinative. The tribunal finds that the question which must be determined is not whether the staking of the Labelle Mining Claim was in accordance with the **Act**, but namely whether the staking itself could be only a nullity. In other words, were the lands not open for staking by virtue of clause 30(b).

The tribunal has considered and is inclined to believe that even section 71, which provides additional bars to challenges concerning mining claims, cannot be used as a shield to prevent an inquiry of whether the lands were validly open. Subsection 71(1) refers to "non-compliance by the licensee or holder of a mining claim with any requirement of this Act or the regulations as to the time or manner of the staking out ...", being deemed to be abandoned. Subsection 71(2) provides that, despite this deemed abandonment, where one year has elapsed from the time of staking or where the first prescribed unit of assessment work has been performed, filed and approved, the mining claim will be conclusively deemed to have been recorded in accordance with the requirements of the legislation. Nothing in this section, however, can either be seen to strike down a staking which is neither to be deemed abandoned nor conclusively deemed in accordance with the **Act**, when the fact that the lands were not open at the relevant time would render the staking and recording of that mining claim a nullity. The meaning of section 71 has not been argued in this case, so that this interpretation by the tribunal has been made without the benefit of full legal argument and may be subject to revision in future.

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The tribunal finds that the facts of this case do not lend themselves to a true appeal within the meaning of subsection 112(1) of the **Mining Act**. The tribunal agrees with the submissions of Mr. Norwood that the statutory limitations for appeal would override the Discovery Principal. The matter of short time frames for appeals or judicial reviews found in the **Mining Act** [ss. 134 and 135] are fundamental to the certainty required in the mining field, allowing parties to move forward quickly to fulfil assessment work requirements and otherwise comply with the objects and purpose of the **Act**.

First Issue

The first issue in this matter, if decided in favour of the applicant, would see a determination pursuant to section 105 for a declaration that the facts as they have occurred would amount to the lands subject to the Labelle Mining Claim being not properly open for staking within the meaning of clause 30(b) at the time the staking occurred.

The facts in this case are not disputed, except that there has been no concession by any of the parties to the Nordic Group assertion that a valid application for an aggregate permit had been in existence at the time of the Labelle staking. In other words, was the application of Nordic Group pending or was it simply not perfected at the date of the staking of the Labelle Mining Claim.

One factor which influences the tribunal in this matter are the provisions of section 43 of the **Aggregate Resources Act**, R.S.O. 1990, c. A.8, as amended by S.O 1996, c. 30, s. 39. There is no right in the applicant who is refused a permit to be entitled to a hearing before the tribunal. Hearings pursuant to the provisions of this legislation are not appeals *per se*, resulting in recommendations to the Minister of Natural Resources. Therefore, it becomes quite clear that the legislature did not intend for the actions of staff where there has been a refusal or failure to issue a permit by MNR to be subject to a hearing by the tribunal. Indeed, the subject matter of such hearings pursuant to sections 43 and 44 are quite limited being: to refusals to issue an aggregate permit for topsoil or aggregate which is not the property of the Crown [not the case here]; to revocations of existing permits; additions, recisions or variances to existing permits; and amendments to site plans.

The question which is posed by the application of clause 30(b) is whether the lands were open for staking. The tribunal finds that this is normally a question which is within the competence of the tribunal to decide, but not in all cases.

The tribunal finds that it does have jurisdiction to determine and declare whether lands are open for staking or in fact closed, within the meaning of the clauses of section 30 of the **Act**. This is in keeping with the findings of the Divisional Court in **Minescape**, as per paragraph 33, wherein Kurisko, J. states:

> * The Mining Court has exclusive jurisdiction over any matter or thing arising under the **Mining Act** or involving interpretation of the provisions thereof or involving any right or claim under that Act.

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Based upon the documentation filed, it would appear that the Nordic Group an application for an aggregate permit, which encompasses crushed stone and rock, is caught by the words in clause 30(f) "and in which the applicant may acquire the minerals".

Notwithstanding the above finding, the Court has recognized that there are times when the tribunal may decline jurisdiction, as per Kurisko, J. at paragraph 32:

> The Mining Court can decline to hear a question or dispute. In Arnott and Walli the Mining Commissioner said whether or not there was a fiduciary relationship between the parties depended on whether there had been a breach of agreement or trust that should be determined before the Supreme Court of Ontario.

It is interesting to note that it is the actions of the Mining Recorder in having recorded the Labelle Mining Claims which are being put into question. This is rather a distortion of the facts. The Mining Recorder has only that knowledge of ongoing interest in aggregate matters involving licences or permits as MNR is inclined to provide, either in accordance with Policy LP 505-2 or otherwise. Bringing the review into the ambit of the **Mining Act** amounts to a back-door attempt to review the actions of another ministry, and surely this is not what is contemplated by the very comprehensive, but nonetheless exclusive wording found in section 105 of the **Mining Act**.

The tribunal fails to see how the Mining Recorder can be held accountable, through a review of his or her failure to remove the lands from staking, involving matters of which he or she had no knowledge. Given the lack of appeal which would capture the facts of this case under appeal provisions of the **Aggregate Resources Act**, the appropriate avenue would appear to be that of judicial review. It would be contrary to the intent of the legislature in granting such sweeping powers to the tribunal to have intended to grant powers amounting to a judicial review of the actions of MNR. The likely outcome of any such inquiry is equally unseemly; in the event the tribunal had proceeded to hear this matter and did in fact find that there was a valid application made under the **Aggregate Resources Act**, it could result in a declaration that the lands were not properly open for staking, that the Labelle Mining Claim was not valid, but there would and could be no jurisdiction in the tribunal to make any determinations on the aggregate permit application itself. Therefore, unless recourse were taken to the Courts, the Labelle permit application would stand.

The facts which give rise to this matter are as a result of what has taken place between the applicant and the Ministry of Natural Resources. Had Counsel for MNR been in agreement that an application was pending within the meaning of clause 30(f), the tribunal would not hesitate to exercise the jurisdiction of making a declaration as to whether the lands were open for staking. However, MNR does not agree to this fact. It does not follow from this that

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the Provincial Mining Recorder should be called upon to justify and defend the recording of a mining claim before the tribunal, without knowing the facts which were in the knowledge and control of MNR. Clearly, if there was a valid aggregate application, the Provincial Mining Recorder would be in a position to determine whether the Labelle Mining Claims would be nullities and MNDM would be in a position to respond accordingly. Failing any action by MNDM, the tribunal could be called upon to exercise its jurisdiction under section 105.

The facts in this matter are not the exclusive jurisdiction of this tribunal. While lands being open for staking are tangentially at issue here, the real question for determination are the actions of MNR in its dealing with Nordic Group. This is clearly a matter for judicial review. The tribunal cannot see its way clear to purport to judicially review the actions of a ministry official when the court-like powers of this Office clearly do not extend to those of the superior courts. Indeed, any attempt to conduct this type of inquiry would be arguably unconstitutional on the part of the tribunal.

Conclusions

The tribunal will dismiss the appeal made pursuant to subsection 112(1) of the **Mining Act**, as the facts of this case do not fall within a true appeal of a decision of a Mining Recorder. Had this been a proper matter for appeal, the Applicant would nonetheless be time-barred from bringing such an appeal, as provided by subsection 112(3), which takes precedence over the Discovery Principal.

The tribunal declines to exercise jurisdiction to determine this matter pursuant to section 105 of the **Mining Act**. The substance of this application is found to be an attempt to have the tribunal judicially review the actions of the MNR. This is not a proper use of the extensive and exclusive powers granted to the tribunal under section 105 of the **Mining Act** and more closely aligns with the powers of a superior court exercised under the **Judicial Review Procedures Act**.

The tribunal will dismiss the application without prejudice to bring any further application involving a question of whether the subject lands were open to staking within the meaning of clause 30(b) at such time as there may have been a validly conducted review in the proper forum of the actions of MNR.

The matter of pending proceedings will remain on the abstracts for the Labelle Mining Claims for a period of thirty days from the date of this Order to allow parties to determine whether further action will be taken, either in the form of a review of the actions of MNR or an application to the Ontario Court (General Division) to appeal or judicially review the decision of the tribunal. Unless the tribunal has been otherwise advised by the parties, the notation of "pending proceedings" will be ordered removed at that time.