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The Mining and Lands Commissioner Le Commissaire aux mines et aux terres

File No. MA 014-95

B. Goodman) Friday, the 17th day
Deputy Mining and Lands Commissioner) of May, 1996.

THE MINING ACT

IN THE MATTER OF

An appeal from the decision of the Mining Recorder for the Southern Ontario Mining Division dated the 9th day of June, 1995, under subsection 112(3) of the **Mining Act** for the recording of Mining Claim SO-1195093, situate in the Township of Cardiff, marked as "filed only";

B E T W E E N:

RENE DALLAIRE

Appellant

- and -

MINISTER OF NORTHERN DEVELOPMENT AND MINES

Respondent

- and -

MINISTER OF NATURAL RESOURCES

Party of the Third Part

O R D E R

WHEREAS THIS APPEAL was received by this tribunal on the 21st day of June, 1995;

AND WHEREAS on the 17th day of November, 1995, the Respondent requested, pursuant to Section 122 of the **Mining Act**, that security for costs in the amount of \$3,000 be posted by the Appellant prior to the hearing of this matter.

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AND WHEREAS on the 22nd day of February, 1996, the tribunal issued to each of the parties by registered mail an Appointment For Preliminary Motion By Telephone Conference Call;

AND WHEREAS a hearing of the Respondent's motion was held by telephone conference call on Wednesday, the 1st day of May, 1996;

AND WHEREAS the Appellant did not participate in this preliminary motion, which proceeded without his participation pursuant to subsection 7(3) of the **Statutory Powers Procedure Act**;

UPON HEARING from John Norwood for the Respondent;

1. **THIS TRIBUNAL ORDERS** that the Respondent's motion is allowed.

2. **THIS TRIBUNAL FURTHER ORDERS THAT** security for costs in the amount of \$3,000 be filed and posted by the Appellant by the 1st day of August, 1996, or this appeal as identified in paragraph one of this Order will be dismissed.

IT IS FURTHER DIRECTED under section 178 of the **Mining Act**, that the Mining Recorder for the Southern Ontario Mining Division record this Order without fee.

DATED this 17th day of May, 1996.

Original signed by B. Goodman

B. GOODMAN
DEPUTY MINING AND LANDS COMMISSIONER

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Party of the Third Part

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B E F O R E:

B. Goodman, Deputy Mining and Lands Commissioner

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HELD AT: Office of the Mining and Lands Commissioner
700 Bay Street, 24th Floor
Toronto, Ontario

DATE: May 1, 1996

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RULING ON PRELIMINARY MOTION
BY TELEPHONE CONFERENCE CALL



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APPEARANCES:

John Norwood

counsel for the Respondent

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--- Upon resuming at 11:24 a.m.

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THE COMMISSIONER: Based on the evidence that I've heard, and the submissions that I've received today, I'm prepared to make a decision now.

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And let me say at the outset that I've decided that this motion for security for costs ought to succeed. I have determined that there is ample evidence before me to persuade me that this matter or proceeding is vexatious, in particular the evidence of Mr. DeNomme and Mr. Hall, to which I'll refer in a moment.

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As I indicated earlier, I have had an opportunity to read the decision of Commissioner Kamerman in the matter of Osiel and the Minister of Northern Development and Mines, heard on April 11th, 1994, at which time Ms. Kamerman also issued an oral decision following the motion. The appeal number is MA 015-92, and as Mr. Norwood indicated, Ms. Kamerman referred to the leading case on the issue of what is vexatious, the case of Re Lang Michener et al. and Fabian, and the citation is found in the transcript of her decision.

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Now, Mr. Norwood, on behalf of the Ministry, has argued that three and perhaps four of the principles referred to in the Lang Michener decision by the Court apply here. And the first one that he has



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relied on is b), found on page 4 of the Commissioner's decision, where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief, the action is vexatious.

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Now, in this case, the evidence of Mr. DeNomme, and of Mr. Hall is that the land was not open for staking for reasons that I'll refer to in a moment, and that therefore the Recorder was not entitled to record the claim, nor was Mr. Dallaire entitled to stake it.

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In our file there is a letter from Dawn Jolleymore, who is the acting Mining Recorder for Sudbury and Southern Ontario Mining Divisions, dated June 9th, 1995, to Mr. Dallaire, and in the letter she refers to having received Mr. Dallaire's application to record two mining claims, along with his money order.

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And I'll read now the second paragraph of that letter:

"A copy of your application is being returned showing that mining claim 1195093 has been refused. The lands in question were in the use of the Crown, and subject to an application for disposition under the Public



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Lands Act at the time staking took place, and therefore not open for staking."

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Now, the Mining Act contains a number of sections dealing with lands open for staking and lands not open for staking, sections 27 and 28, dealing with lands open, and 29 to 37 dealing with lands not open for staking.

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I've determined that the lands here were not open for staking, as part of this motion, on the basis that section 1(b) of The Act indicates that land in the actual use or occupation of the Crown or a Ministry of the Government of Ontario -- and I'm just reading the relevant words -- that Crown land doesn't include those lands, and the evidence here, of both Mr. DeNomme and Mr. Hall, is that the lands here were in use as a Junior Ranger Camp.

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In addition I've determined that section 30(b) of The Act applies, that is, that:

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"No mining claim shall be staked out or recorded on any land for which an application brought in good faith is pending in the Ministry of Natural Resources under the Public Lands Act,"



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And I'm just reading the relevant words,
and we have evidence from both Mr. Denomme and Mr. Hall
that there was an application pending before the Ministry
of Natural Resources for the disposition of the land, a
large part of the lands in question to the Sick
Children's Hospital.

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Thirdly, under section 32 of The Act:

"No person shall prospect for
minerals or stake out a mining claim
upon the part of a lot that is used
as ..."

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and I'm reading the relevant words here:

"... a dwelling house or public
building, except with the consent of
the owner, lessee, purchaser or
locatee of the surface rights, or by
order of the Recorder or the
Commissioner, and upon such terms as
the Commissioner seems just."

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And we have not received, nor has the Recorder received,
an application for consent for the use of the lands as
other than a building, public building or a dwelling.

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The evidence of both Mr. DeNomme and Mr.
Hall is that there was a Junior Forest Ranger Ranger camp
on the claim, on the land that was the subject of the



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claim, and that there were, I believe, two or three buildings at least, it was indicated, manicured lawns, access roads, and that it would have been obvious to Mr. Dallaire, in staking the claim, that there were buildings and dwellings there.

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So under The Act, under section 46(2) the Recorder is obliged, if an application is presented that the Recorder considers to be not in accordance with this Act:

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"the Recorder is obliged not to record the application, but shall, if desired by the Applicant, upon receiving the prescribed fee, receive and file the application, and that any question involved may be adjudicated as provided for in this Act by such ..."

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et cetera.

And that's precisely what happened here. Ms. Jolleymore determined that this application was not in accordance with this Act because the land was not open for staking. And I agree with her conclusion.

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So on that basis I've determined that it is obvious that this appeal cannot succeed, and that on that basis the appeal is vexatious.

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I now turn to the second submission of Mr.
Norwood, and in particular he relies on a combination of
principles (c) and (d), cited by the Court in the Lang
5 Michener case. And I'll just read the relevant words:

10 "Vexatious actions include those
brought for an improper purpose,
including the harassment and
oppression of other parties by
multifarious proceedings brought for
purposes other than the assertion of
legitimate rights ..."

15 and (e):

20 "In determining whether proceedings
are vexatious, the Court must look at
the whole history of the matter, and
not just whether there was originally
a good cause of action."

25 Now, it is the evidence of both Mr.
DeNomme and Mr. Hall that in pursuing this, in the first
case the application to have his claim recorded, and
secondly his appeal, that Mr. Dallaire has acted in an
abusive, in a harassing and in a threatening manner, not
only to them, but to other members of the staff at the
30 Ministry of Northern Development and Mines, and to the
Ministry of Natural Resources Staff as well, and also to



1 the Commissioner's staff, I think it was also indicated.

2 We've also heard evidence that Mr.
3 Dallaire, according to the OPP, has a history of violent
4 offences and has currently been charged with other
5 dangerous offences, and that those threats ought to be
6 taken seriously, and that in fact the Ministry of
7 Northern Development and Mines has instituted security
8 measures in both the Mining Recorder's offices in Sudbury
9 and in Southern Ontario to ensure that staff are safe
10 from Mr. Dallaire's threats.

11 So I've determined, on the basis of the
12 evidence that I've heard and the submissions, and looking
13 at the whole history of the matter under principle (e),
14 that principle (c) applies as well, and that this matter
15 is vexatious, this appeal is vexatious on that basis, as
16 well.
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18 I've heard the evidence and the
19 submissions with respect to principle (f):

20 "The failure of the person
21 instituting the proceedings to pay
22 the costs of unsuccessful proceedings
23 is one factor to be considered to in
24 determining whether proceedings are
25 vexatious ..."

26 and I don't believe that it's necessary for me to make a
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1 finding on ground (f). I believe there's ample evidence
under ground (b) and the combination of (c) and (e). (f)
refers to the failure of the person instituting the
5 proceedings to pay the cost of unsuccessful proceedings.

There's been some evidence indicating that
he has failed to pay in relation to one proceeding, and
that he hasn't paid taxes in the past and doesn't intend
10 to, but I don't believe it's necessary for me to make a
finding under principle (f), having found as I have that
the proceedings are vexatious under the Lang Michener
principles (b) and the combination of (c) and (e).

15 I agree with the submission of Mr.
Norwood, based on the evidence of Mr. Hall, that it would
be reasonable that Mr. Dallaire be required to pay
\$3,000.00 as security for costs in this matter, given the
20 number of Ministry personnel that would be involved, and
the travel costs and the number of days of hearing.

So this motion will be allowed, and I will
award for security for costs in the amount of \$3,000.00,
25 to be filed and posted by a date that I'd like to hear
from Mr. Norwood on.

What do you think, Mr. Norwood, a
reasonable date would be?

30 MR. NORWOOD: Well ---

THE COMMISSIONER: It's May 1 today.



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MR. NORWOOD: Today is May 1. I'm prepared to be flexible here, Mr. Hall. How about August 1? Is that too much time, or too little?

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MR. HALL: I think August 1 would be fine. It certainly gives Mr. Dallaire enough time to make any financial arrangements that he might have to. It would seem that -- that four months in there should be more than enough time to do that. So I'd be prepared to -- to have August -- August 1st -- three months.

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THE COMMISSIONER: All right. Well, I think that's a reasonable time period. I note ---

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MR. NORWOOD: I was noting in the Osiel decision it's roughly the same facts: the order was made on April 26th; the time for posting was August 1st, '94.

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THE COMMISSIONER: Yes, I was noting the same thing, Mr. Norwood. I have the decision in front of me. Thank you.

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So the order will be, then, that the security for costs must be filed and posted by August 1, 1996, or this appeal will be ordered dismissed.

Is there anything else, gentlemen?

MR. NORWOOD: No, I think that's all.

MR. DeNOMME: Not from Sudbury.

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THE COMMISSIONER: All right. I'd like to thank you very much for participating, and this matter is



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now concluded -- this motion is now concluded. We'll
have our order issued as soon as possible.

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--- Upon adjourning at 11:38 a.m.

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