File No. MA 011-94

L. Kamerman) Monday, the 11th day
Mining and Lands Commissioner) of September, 1995

THE MINING ACT

IN THE MATTER OF

Mining Claims L-1200585, 1200587 and 1200588, situate in the Township of Arnold, in the Larder Lake Mining Division, hereinafter referred to as the "Mining Claims";

AND IN THE MATTER OF

Mining Claims L-1200853, 1202691 and 1202694, situate in the Township of Arnold, in the Larder Lake Mining Division, marked as "filed only" and hereinafter referred to as the "Filed Only Mining Claims";

B E T W E E N:

STRIKE MINERALS INC.

Disputant

- and -

SUDBURY CONTACT MINES LIMITED

Respondent

- and -

MINISTER OF NORTHERN DEVELOPMENT AND MINES

Party of the Third Part

. . . . 2

AND IN THE MATTER OF

An appeal by the Disputant from the decision of the Acting Mining Recorder for the Larder Lake Mining Division for a declaration that Mining Claims L-1200585, 1200587 and 1200588, be declared invalid and for the recording of filed only Mining Claims L-1200853, 1202691 and 1202694.

ORDER

1. **THIS TRIBUNAL ORDERS** that the appeal is dismissed.

2. **THIS TRIBUNAL FURTHER ORDERS** that costs shall be payable by the disputant, Strike Minerals Inc. to the respondent, Sudbury Contact Mines Limited in the amount of $1,153.00.

IT IS FURTHER DIRECTED that upon payment of the required fees, this Order be filed in the Office of the Mining Recorder for the Larder Lake Mining Division.

DATED this 11th day of September, 1995.

Original signed by
L. Kamerman

L. Kamerman
MINING AND LANDS COMMISSIONER

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REASONS

This matter was heard on August 28, 1995 in the Blue Room of the Royal Canadian Legion, Summerhays Avenue, Kirkland Lake, Ontario. Strike Minerals Inc. was represented by Carl Forbes, Sudbury Contact Mines Limited by counsel Gary Sullivan with David Christie also in attendance, and the Minister of Northern Development and Mines by Mark Hall, Chief Mining Recorder.

Background:

The facts in this appeal were largely not in dispute, although an attempt to produce an Agreed Statement of Facts by the tribunal was unsuccessful and the matter went to an in-person hearing.

Two sixteen hectare mining claims (the "Mining Lands") were staked by Strike Minerals Inc. ("Strike Minerals") on April 15, 1992 expired on Friday, April 15, 1994 at 4:30 p.m. for want of assessment work filed or an extension of time.

Pursuant to subsection 73(2) of the **Mining Act**, the Mining Lands came open for staking at 7 a.m. of the **Mining Act**, R.S.O. 1990, c. M.14, which is reproduced:

> Where forfeiture or loss of rights has occurred, the lands, mining rights or mining claims concerned are not open for staking until 7 o'clock in the forenoon of the day immediately following that upon which forfeiture or loss of rights occurred.

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During the morning of April 16, 1994, both Strike Minerals and Sudbury Contact Mines Limited ("Sudbury Contact") arranged for the staking of the Mining Lands on their behalf. For reasons which are set out in detail below, Sudbury Contact commenced the staking of three mining claims on the Mining Lands at or after 7 a.m. daylight saving time. Stakers on behalf of Strike Minerals first came onto the property at approximately 8 a.m. and commenced their staking of three mining claims at times thereafter, which for purposes of this appeal are not relevant.

Historically, the time at which the lands came open for staking was found to be 7 a.m. standard time, regardless of whether it was daylight saving time or not. However, the **Time Act** was changed by S.O. 1986, c. 56 on November 27, 1986. Relevant portions of the **Time Act**, R.S.O. 1990, c. T.9, as apply to stakings occurring after November 27, 1986 state:

> **1.** Where an expression of time occurs in any Act, proclamation, regulation, order in council, rule, order, by-law, agreement, deed or other instrument, heretofore or hereafter enacted, made or executed, or where any hour or other point in time is stated either orally or in writing, or any question as to time arises, the time referred to or intended shall, unless it is otherwise specifically stated, be held to be the time in effect as provided by this Act.
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> **2.**(4) The time in effect shall be,
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> (a) daylight saving time during the period between 2 a.m. standard time on the first Sunday in April and 2 a.m. daylight saving time on the last Sunday in October; and
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> (b) standard time during the rest of the year.

Issues:

1. Did the Mining Lands come open for staking at 7 a.m. daylight saving time, meaning 8 a.m. standard time, on the morning of April 16, 1994?

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2. What relevance, if any, must be given to the Ministry of Northern Development and Mines ("MNDM") Policy UC 303-2, dated June 3, 1993?

3. What notice, if any, should be required for such a policy?

Facts:

Mr. Forbes commenced his case with an opening address. He pointed out that the old **Time Act** was revised in the 1990 Revised Statutes of Ontario. Under the old system, land always came open at 7 a.m. standard time. Now, it is the case that they come open at 7 a.m. local time, except for forfeited patents under subsection 197(7), which come open at "7 o'clock standard time" on the next June 1st after they have been gazetted, which means 8 o'clock daylight saving time.

Mr. Forbes pointed out that this change was not incorporated in any of the revisions to MNDM's regulations under the **Mining Act**. He suggested that Policy UC 303-2 was a means of compensating for openings to occur at local time.

John David Michael Leahy gave evidence on behalf of the disputant. Mr. Leahy has been a prospector since March, 1974. He has been affiliated with the Northern Prospectors Association as either president or vice president for the past eight years. He has also been a member of the Minister's Advisory Committee ("MAC"), which meets to consider changes to the **Mining Act** and regulations. He is a member of the Prospectors and Developers Association of Canada and a Director of Strike Minerals.

Mr. Leahy testified that Policy UC 303-2 was brought to his attention in April, 1994, although he was not aware of it at the time of its issuance on June 3, 1993.

Under cross-examination by Mr. Sullivan, Mr. Leahy stated that he was unaware of the Policy because he had no reason to inquire into its existence. Mr. Leahy agreed that he does monitor changes to the **Mining Act** and the regulations once recommendations have been made by the MAC.

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Asked whether he followed policies issued, Mr. Leahy stated that their existence is not well publicized. There is a policy book in each mining recorder's office which is open to the public. However, photocopies are discouraged and not readily given to the public unless requested. Changes to these policies are not always posted or advertised.

Mr. Leahy stated that he had not seen Policy UC 303-2 posted between the time immediately after its issuance and April, 1994. Although he could not recall specific dates, he generally is in the office of the resident geologist at least three times a week and usually goes into the mining recorders office as well. Mr. Leahy admitted that he never asked for the binder containing the policies prior to 1994, stating that it would take a day to read and digest. Rather, it was his practice to ask to see a policy if there was something which he did not understand. Mr. Leahy did not request a copy of Policy UC 303-2 until after April, 1994. He could recall no dates prior to that time when he asked to see the binder.

Under cross-examination by Mark Hall, Mr. Leahy agreed that he was familiar with the hierarchy involving legislation, regulations, and policy, in that an Act cannot be overridden by either regulations or policy. Mr. Leahy agreed that the purpose of policy to give direction on grey areas where the legislation is not clear, thereby interpreting legislation which is ambiguous, too broad or not specific enough. However, where the legislation is not clear, the policy can operate as **de facto** legislation.

Asked whether he was aware that policies are vetted through the MAC before they are put into service, Mr. Leahy reiterated that he had not seen Policy UC 303-2.

Mr. Leahy agreed that the public can request copies of policies, but the ease of obtaining copies was not true some years ago.

George Daniel Thomas Harkin gave evidence on behalf of the disputant. Mr. Harkin has been a prospector since 1981. He attends the office of the mining recorder up to a couple of times per month for the purposes of purchasing tags, maps and the like.

In April, 1994, Mr. Harkin stated that he was not aware of Policy UC 303-2. Accordingly, land which came open for staking due to the forfeiture of the mining claims was, to the best of his knowledge, did so at 8 a.m. local time.

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Under cross-examination by Mr. Sullivan, Mr. Harkin agreed that he never inquired into any changes. Although he works at the staking of mining claims, he could not recall when he did his first staking, in 1994.

Mr. Harkin stated that in addition to Strike Minerals, he is employed by other companies. He did not make inquiries into changes in policy concerning staking, nor did anyone who employed him ask about such changes. The common practice is for him to be told to stake certain lands at a certain time.

There were no questions by Mr. Hall.

In re-direct, Mr. Harkin stated that he does ask questions of mining recorders, for example on the way to stake a mining claim which is not square. Although he works for two or three companies or more per year, no one ever advised him of the Policy.

Michael Joseph Barrett gave evidence on behalf of the disputant. He has been a prospector since 1984. He attends regularly at the office of the mining recorder, buying tags, maps and the like and to ask questions concerning conditions and problems. In April, 1994, when staking part of the Mining Lands for Strike Minerals, he was unaware of Policy UC 303-2 and assumed that land still came open for staking under what he called the old method, meaning under the **Time Act** prior to the 1986 amendments.

Under cross-examination by Mr. Sullivan, Mr. Barrett stated that he always started staking at 8 a.m. and was never told of any changes. He had been hired and told to be there at 8 a.m.

Under cross-examination by Mr. Hall, Mr. Barrett stated that generally his questions for the mining recorder concern the physical attributes of a property. He also confirmed that he generally staked on contract for others.

Mitchell Earnest Lavery gave evidence on behalf of the disputant. He has been a consulting geologist since 1991, before which he has worked for many companies in the mining industry since 1973. Mr. Lavery stated that he is familiar with staking in both Ontario and Quebec. He was never aware of Policy UC 303-2 until April, 1994.

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Under cross-examination by Mr. Sullivan, Mr. Lavery stated that he was aware of other policies which were brought to his attention. However, his general means of proceeding was to refer to the various Mining Acts and regulations when a question does arise. In other words, he looks to the legislation itself. Any time Mr. Lavery works on a job, he stated that he acquires a copy of the relevant **Mining Act** and does not refer to the regulations or policy.

During the last five years, Mr. Lavery has worked in Ontario 25 percent of the time, although he does work full time. Prior to April, 1994, Mr. Lavery was last in Ontario in February, 1994 doing a staking or a geophysical job. At that time, he did not check with the mining recorder for the Larder Lake Mining Division for changes in staking.

Mr. Lavery stated that he was aware that there are policies, but that they are only policies. Personally, he looks to the **Act** and regulations and if more difficult questions arise, he refers them to a lawyer. Mr. Lavery indicated that he normally becomes aware of policies by word of mouth. He stated that in other provinces, such changes are sent out personally to all holders of prospectors licenses.

Under cross-examination by Mr. Hall, Mr. Lavery stated that he normally hires out for staking if he can afford it. Depending on the case, he will direct stakers if he anticipates problems or entrust the staking to them on simple matters.

Mark Dixson Hall was called as a witness by Mr. Forbes. Mr. Hall is currently the Chief Mining Recorder for MNDM where he has worked since 1981. Asked for the history of Policy UC 303-2, Mr. Hall stated that a mining recorder, in doing work on an unrelated matter, discovered that the **Time Act** had been changed. The policy was as a result of this discovery. Asked whether this demonstrated professionalism on his part, Mr. Hall stated that legislation does get changed without him or others picking up on the changes. This was the case with the **Time Act**.

Asked about the procedure for notifying prospectors of the changes, Mr. Hall stated that in Saskatchewan, where there is a change or discrepancy in legislation or policy all license holders are notified. He agreed that it would be helpful for the MNDM to do so as well.

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Mr. Hall stated that most contractors would not review all policies issued by the MNDM and that generally, prospectors deal with the specifics of their staking. Mr. Hall stated that the Policy was developed to advise all mining recorders, staff in the recording offices, the Minister's Advisory Committee and the public at large of the change in the **Time Act** as it did directly affect when lands came open for staking. Upon being questioned, Mr. Hall stated that the Policy was intended to inform staff and steps were taken to advise the public.

Under cross-examination by Mr. Sullivan, Mr. Hall stated that the manual of policies, located in the office of each mining recorder, may be found on the counter, on a book shelf or in the mining recorder's office. It is, however, available to all who ask to see it. While most offices do not have it on the counter, there is no problem for public to gain access. Also, policies are posted in mining recorder's offices.

Policy UC 303-2 became effective on June 9, 1993. Mr. Hall stated that the MNDM became aware of problem several months before it became effective. Mr. Hall stated that he is not aware of other disputes which have arisen because of the changes to the **Time Act**.

Mr. Hall stated that Mr. Forbes was aware of the change before the Mining Lands were staked on April 16, 1994, having been advised by staff that the lands came open at 7 a.m. on that day. Mr. Hall reiterated that the lands properly came open for staking at 7 a.m. local time.

Mr. Hall stated that ministry staff do make copies of this and other policies upon request. The policy manual is open to everyone. However, policies are only policies and are dependent on the Act and regulations which are in effect. A policy is simply an administrative policy to assist in interpretation. However, it does not change or override the **Act**.

Policy UC 303-2 quotes the relevant sections of the legislation relied upon. There were a lot of questions by persons wishing to better understand the Policy. There is only this one proceeding which arises around the issue of whether lands come open for staking at 7 a.m. versus 8 a.m.

Under cross-examination on behalf of the MNDM, Mr. Hall stated that the legislation itself is clear in this matter. The Policy was never intended to clarify the legislation. Rather, the Policy was a means of bringing the change to the **Time Act**

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to the attention of recording staff and the public.

Upon questioning by the tribunal, Mr. Hall agreed that changes to the **Time Act** occurred in November, 1986, but MNDM did not become aware of them until 1993. He admitted that prospectors would have erroneously proceeded with the assumption that lands came open under subsection 73(2) at 8 a.m. daylight saving time. He also stated that the Minister's Advisory Committee was formed in late 1991 or January 1992. It had not been in existence at the time of the changes to the **Time Act**.

Under re-direct, Mr. Hall stated that Terra Larsen drafted the Policy. Mr. Forbes pointed out an error at page 2, which purports to quote section 3 of the **Time Act** instead of section 2. Mr. Hall suggested that this was a minor mistake.

Larry James Stoliker, Deputy Mining Recorder for the Larder Lake Mining Division since 1991 was called as a witness by Sudbury Contact. Prior to the staking of the Mining Lands in April, 1994, Mr. Stoliker stated that he was contacted at home by Mr. Forbes during the evening of April 15, 1994, between 8 and 9 p.m. Although he could not recall the specifics of the conversation, he was asked generally if mining claims forfeited at 4:30 p.m. on a Friday, when would they be open for staking. His response was 7 a.m. the next morning. Mr. Stoliker stated that there was a policy in place because the **Mining Act** did not state whether it was standard time or daylight saving time.

Mr. Stoliker could not recall whether it was over the telephone or on the following Monday that there was a policy posted on the board in the mining recorder's office setting out the information requested.

Mr. Stoliker stated that normally policies are posted when he sees that they have been signed by the Senior Manager and the Chief Mining Recorder. He could not recall when Policy UC 303-2 was received, but stated that it would have been posted within days of signing because it had an effect on the time lands came open for staking. He believed that it would have been posted by July, 1993, and was still posted in April, 1994.

The Policy was not highlighted in any way. Mr. Stoliker recalls having discussed the time claims came open for staking with Dave Christie on behalf of Sudbury

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Contact, who came into the office one of the days prior to April 15, 1994. Mr. Christie was interested in the Mining Lands held at that time by Strike Minerals. Mr. Stoliker explained to him that, if no assessment work were filed and if no extension of time were requested, then the Mining Lands would come open for staking on the Saturday morning at 7 a.m. Mr. Christie requested a letter confirming this in writing.

Mr. Stoliker stated that there are no other disputes filed concerning the issue of the **Time Act** in the Larder Lake Mining Division. He estimated that one mining claim comes open for staking daily.

Under cross-examination by Mr. Forbes, Mr. Stoliker could not recall exactly what was said on the Friday evening. He recalls referring to the Policy. When asked if he was positive, he stated that to the best of his recollection, the land would come open at 7 a.m. Mr. Stoliker could not get a copy of the Policy for Mr. Forbes because the mining recorder's office was closed. Mr. Stoliker stated that if he returned to the office for one person, he would have to do it for everyone.

Under cross-examination by Mr. Hall, Mr. Stoliker stated that he had been specific about the time he believed the land came open for staking. Occasionally he is called at night and on that particular evening, he was called twice, so he went to the office to check the Policy and called both persons back, including Mr. Forbes.

David William Christie gave evidence on behalf of Sudbury Contact. He obtained a bachelor of science in exploration geology from McMaster University in 1986. He conducts staking, drilling and mapping, doing 70 percent of his work in Ontario. Mr. Christie stated that he works for W.A. Hubachek Consultants, which has a long term contract with Sudbury Contact to provide exploration services.

Mr. Christie stated that he was involved in staking in Arnold Township. He had a discussion with Mr. Stoliker one week prior to the Mining Lands coming open for staking, asking when they would come open. His stakers had questions. He became aware of the changes to the **Time Act** by virtue of his questions. Mr. Christie stated that he had not been involved in claims staking since the changes to the **Mining Act** in 1991. Mr. Stoliker told him that if no work was filed or no extension requested, then the Mining Lands would come open on Saturday, April 16, 1994. As a result of his discussions with Mr. Stoliker, he had his stakers on the ground at 7 a.m. on the 16th.

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Mr. Christie stated that he was interested in the Mining Lands in April, 1992 when he attempted to stake them, but Strike Minerals obtained them first. He obtained a copy of the abstracts and determined that nothing had been done as of 4 p.m. Friday afternoon. Sudbury Contact had large claim holdings in the area, so the Mining Lands were of interest.

Mr. Christie stated that after the staking, he spoke with Mark Hall and Terra Larsen about the Policy. Ms. Larsen advised that she requested that it be posted in all of the mining recorder's offices. He saw it the week after the staking in the Larder Lake mining recorder's office.

Under cross-examination by Mr. Forbes, Mr. Christie stated that he did not know what the watching principle means. He reiterated that Sudbury Contact was interested in acquiring the claims.

Submissions:

Mr. Forbes submitted that, according to the evidence, some but not all of the Ministry's policies go through the Minister's Advisory Committee, which was created to reflect the direction of intention of the **Mining Act** and any changes reflected through it. Mr. Leahy has been a member of the Committee since 1991 and was unaware of the Policy. Therefore, the conclusion must be drawn that the Policy did not go through it.

Mr. Forbes expressed concern that there is no adequate procedure in place advising the public of any changes in the **Mining Act**. Within the context of municipal and planning law, changes must be advertised and there must be adequate public notice. This is very important, and he submitted that such information should be advertised in three newspapers, one of which is the Northern Miner. He questioned Mr. Hall's evidence that there was no budget for advertising.

Mr. Forbes referred to the evidence of Mr. Stoliker that Policy UC 303-2 was not implemented until five years after the changes were made to the **Time Act**. He submitted that the tribunal should not rely on the Policy, but only on the **Mining Act**, which is the straight guide book to go by. Mr. Forbes also pointed out that Mr. Stoliker could not recall whether the Policy had been posted, or exactly when the posting took place.

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Concerning the fact that the current appeal is the first known dispute concerning this issue is not relevant. The question is, rather, what may be relied upon, the legislation or the policy. Mr. Forbes stated that witnesses having 95 years of staking experience have established known procedures in the industry. The only interpretation available to the tribunal is to rely on the **Mining Act** and find that previous procedure demonstrates that the staking must be done according to standard time.

Mr. Forbes pointed out that the mining recorders' offices stamp policies in red which state "subject to change without notice". He questioned what a staker may rely on in this regard, the legislation, regulations or policies which can change without notice.

Mr. Forbes submitted that Mr. Christie had little experience in these matters and that if he had asked the same question in 1991, the answer would have been to commence staking at 8 a.m. if daylight saving time was in effect. Therefore, one can only conclude only that the verbal instructions of the MNDM must be taken with a grain of salt.

Mr. Forbes submitted that the lands were originally owned by Strike Minerals. The attempts to stake were made under what he considered good information and acting on the best interests of the shareholders. He submitted that the shareholders had a vested interest in the mining claims and that the **Time Act** issue should be decided on the real merits and justice of the case.

Mr. Sullivan commenced his submissions by commenting on several of Mr. Forbes' comments which he submitted did not jibe with the evidence heard. He submitted that there is no evidence that the Policy was never put before the Minister's Advisory Committee. He suggested that Mr. Leahy may have been unaware of it, but that is not conclusive as to whether or not it had been considered. Mr. Sullivan submitted that it is a valid policy according to MNDM procedure as outlined by Mr. Hall in his evidence.

Similarly, Mr. Forbes' suggestion that information concerning the change in policy is not correct. This is evidenced by the fact that no dispute has been filed either before or after the issuance of the Policy, with the exception of the current one. Also, there is a procedure for distributing policies and the evidence is clear that Policy UC 303-2 was posted. Mr. Sullivan acknowledged that there is constantly room for improvement.

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Mr. Sullivan submitted that Mr. Forbes must accept the facts as they exist. Mr. Christie determined the correct time for staking after taking steps to ascertain it. Mr. Forbes took similar steps, and even received a phone call after hours from Mr. Stoliker on the Friday evening. However, he still failed to proceed at 7 a.m. daylight saving time. Notwithstanding that he could only obtain a copy of the Policy during regular business hours, nonetheless, he did receive the information.

Concerning the posting, the evidence of Mr. Stoliker is that the Policy was posted in July, 1993 and was still posted in April, 1994. The evidence given was that on average at least one mining claim comes open daily, yet there have been no other disputes. Only Mr. Forbes had a problem.

Mr. Sullivan submitted that the legislation is binding on the tribunal. The Policy was merely informational to deal with the change in legislation. Ignorance of the law is no excuse. The legislation clearly sets out that the time to commence staking is 7 a.m.

As to the fact that Strike Minerals was the previous holder of the mining claims, Mr. Sullivan submitted that this is totally irrelevant.

In conclusion, Mr. Sullivan submitted that there is no merit to the appeal and it should be dismissed.

Mr. Hall submitted that the legislation, namely the **Mining Act** and the **Time Act**, is clear. The Policy does not purport to change the legislation, but was simply introduced to avoid complications.

In its attempts to notify the public, the MNDM arranged for posting of the Policy in all of the recorders' offices. Mr. Forbes was advised personally. As to the cost of advertisement, Mr. Hall reiterated that it is prohibitive.

Mr. Hall stated that the Ministry is responsible for the mining claims coming open. Strike Minerals had the mining claims for two years and failed to keep them in good standing.

In reply, Mr. Forbes reiterated his belief that the Policy had not been posted in the mining recorder's office until April, 1994.

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Concerning the matter of costs, Mr. Forbes submitted that the decision should be made at the outcome of the hearing of the dispute which was to commence the following day.

Mr. Sullivan submitted that the appeal should have been dealt with by telephone conference call. There are no facts in dispute. The proposed Agreed Statement of Fact presents the position of the parties as presented at the hearing and the decision could have been based upon it. Mr. Sullivan submitted that it would be proper to have the decision at the commencement of the hearing of the dispute the following day.

Mr. Hall stated that MNDM is not seeking costs.

Findings:

The facts in this case are largely not in dispute and have been set out in the background of these reasons, rather than in the evidence of the parties and the facts set out under the heading "**Background**" will be adopted by the tribunal as its findings. The evidence of many of the witnesses on behalf of the disputant, while largely irrelevant, does point out the largely inadequate method employed by the MNDM to inform prospectors of changes in staking.

While the outcome of this case may not have differed markedly if Mr. Forbes had not known of the Policy prior April 16, 1994, it is the finding of this tribunal, based upon the evidence of Mr. Stoliker, that he did have such prior knowledge. However, Mr. Forbes' subsequent actions remain a mystery to this tribunal as he did not testify in these proceedings. Although several witnesses were called advising that they had no knowledge of Policy UC 303-2 prior to April 16, 1995, the tribunal can only speculate on why Mr. Forbes nonetheless elected to proceed to have stakings on behalf of Strike Minerals commence at 8 a.m. daylight saving time. If his reasons were that he believed that such a monumental change to the time of commencement of staking required something more than the issuance of a policy which he had, at the time of his decision, not yet seen, then one can have sympathy with this approach.

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There is a presumption in the law of statutory interpretation that the existing law is not changed unless the legislature intends that it do so. In **Driedger on the Construction of Statutes** (3rd Ed., 1994. Butterworths: Toronto) at page 368:

> It is presumed that the legislature does not intend to change existing law or to depart from established principles, policies or practices. In *Goodyear Tire & Rubber Co. of Canada v. T. Eaton Co.*, Fauteux J. wrote:
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> > ... a Legislature is not presumed to depart from the general system of the law without expressing its intentions to do so with irresistible clearness, failing which the law remains undisturbed.[59]

The intention of the legislature to change existing legislation is not found in its actions purporting to advertise such changes nor on consultations with the public at large. Rather, the intention that the Courts and tribunals must rely on is to be found within the wording of the legislation itself.

It is true that one is presumed to know the law whether or not one has notice of changes. This is true of government ministries as well as the public. There is no governing principle of statutory interpretation which permits inquiry into whether there was actual knowledge of the change in order that it be effective. Perhaps it is fortunate, in this case, that daylight saving time does not operate differently. If standard time were an hour behind instead of an hour ahead of daylight saving time, then we would have the

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[59] [1956] S.C.R. 610, at 614. For similar statements, see *Slaight Communications Inc. v. Davidson* (1989), 93 N.R. 183, at 225 (S.C.C.), *per* Lamer J.: "... in the absence of a clear provision to the contrary, the legislator should not be assumed to have intended to alter the pre-existing ordinary rules of common law"; *Rawluk v. Rawluk* (1990), 103 N.R. 321, at 339 (S.C.C.), *per* Cory J.: "It is trite but true to state that as a general rule a legislature is presumed not to depart from prevailing law 'without expressing its intentions to do so with irresistible clearness'" (*Goodyear Tire & Rubber Co. of Canada v. T. Eaton Co.*, *supra*, at 614, quoted with approval in *Gendron v. Supply and Services Union*, [1990] 1 S.C.R. 1298, at 1316). See also *Canadian Assn. of Industrial, Mechanical & Allied Workers, Loc. 14 v. Paccar of Canada Ltd.* (1989), 62 D.L.R. (4th) 437, at 480 (S.C.C.); *Bhatnager v. Canada (Minister of Employment & Immigration)* [1990] 2 S.C.R. 217, at 228.

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situation where, ignorant of the changes to the **Time Act** between November 1987 and June 1993, all mining claims staked at 6 a.m. standard time would have been invalid. Luckily, this is not the situation and the result of the confusion is to have stakers in the field an hour later than they are otherwise entitled.

The issue of whether prospectors generally had notice of Policy UC 303-2 is irrelevant to the findings in this case. Normally, policies are issued to outline how a decision making body will exercise its discretion where the legislation grants such discretion or is unclear. In this case, it is the **Mining Act** and the **Time Act** which will govern. The Policy merely serves as an information bulletin or notice, the efficacy of which remains in doubt.

The tribunal finds that there is no question of ambiguity or discretion which requires interpretation in this case. It is the provision of the **Time Act**, as amended, and their effect on subsection 73(2), which are decisive. Based upon section 1 and subsection 2(4) of the **Time Act**, lands come open for staking at 7 a.m. standard time, during those times of the year when standard time is in effect and 7 a.m. daylight saving time during those times of the year when daylight saving time is in effect.

The changes to the **Time Act** were extraordinary and perhaps call for extraordinary measures. The oversight which occurred cannot be seen as the fault of the MNDM. Generally, legal offices receiving copies of the Ontario Gazette will be able to check for changes to regulation. Changes to the statutes are not gazetted. There is no evidence concerning which Ministry was responsible for changes to the **Time Act**, but it is safe to say that it was not a sufficiently charged issue to be widely published in the media. Normally, to be aware of legislative changes, one would either have to review copies of **Hansard** setting out legislative debates and activities. The other option would be to review the Statutes of Ontario issued annually. This is not a normal exercise within this tribunal either now or in 1987, when the **Time Act** was changed. Clearly, such a review should be part of procedures.

To alleviate this problem, the only solution would be to change the time reference in subsection 73(2) to remove the applicability of the **Time Act** and prevent another change going undetected for years. Such a provision can already be found at subsection 197(7) in reference to patents which have forfeit. After having been gazetted in May of a given year, the lands come open for staking on June 1st at 7 a.m. standard time. This comment is merely a recommendation to avoid inadvertent oversight in future.

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Concerning the quality of the notice given by the MNDM, policies clearly do not have the same urgency as notices. Whether these are published in newspapers or not, they can still be highlighted and brought to the attention of the public, either through posting on the bulletin board in the mining recorder's offices or through publication by the MNDM.

Costs:

The submission for costs made by Mr. Sullivan is largely dependent upon the fact that this matter could have been readily handled by telephone conference call. Based upon the findings of fact and with the exception of evidence that Mr. Forbes knew of the Policy and correct time for staking in advance, nothing new was heard during the in- person hearing. However, the tribunal has no jurisdiction to force parties into a telephone conference call hearing.

The other matter which is relevant to a determination for costs is that the parties must be in attendance for the second hearing involving the dispute. Therefore, it can be assumed that travel costs would have been incurred in any event. Additional costs are recognized for one night's accommodation and expenses for Sudbury Contact witness, legal representative and principal. Similarly, Mr. Sullivan would have had to be in attendance for a telephone conference hearing so that the tribunal estimates that an additional half day of his time was required. Costs are allowed in the amount of $1,153.00.