File Nos. MA 020-04
MA 002-96

L. Kamerman)
Mining and Lands Commissioner)

Wednesday the 30th day
of November, 2005.

MINING ACT

IN THE MATTER OF
Parcels 347, 963, 1678, 1685, 1805 and 2049, West Section, in Township twenty-nine, Range twenty-three, situate in the District of Algoma;

AND IN THE MATTER OF
Mining Lands Patents "A" 3746, 3747 and 3748 dated the 9th day of February, 1926, registered as Parcel 1551, West Section, in Township twenty-nine, Range twenty-three, situate in the District of Algoma;

AND IN THE MATTER OF
The Vesting Order of the Mining Commissioner, dated the 3rd day of January, 1969;

AND IN THE MATTER OF
The Vesting Order of this tribunal dated the 14th day of May, 1996, and amended on the 20th day of November, 1996 and on the 14th day of April, 1997;

AND IN THE MATTER OF
Section 670 of the **Mining Act**, R.S.O. 1960, as amended, sections 105, 121 and 196 of the **Mining Act**, R.S.O. 1990, c.M.14, as amended;

AND IN THE MATTER OF
CITADEL GOLD MINES INC.
Applicant

O R D E R

WHEREAS an application from Mr. Larry Peterson, counsel for the applicant, Citadel Gold Mines Inc., was filed with the tribunal on the 27th day of October, 2004;

AND UPON having read the materials filed by Mr. Peterson and Mr. Tony Scarr, Senior Lands Technician, Mining Lands Section, Ministry of Northern Development and Mines;

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AND WHEREAS the Order of the Mining Commissioner, issued on the 3rd day of January, 1969, was treated by the Land Registrar as vesting the various parcels in the applicant, Mr. Jack Koza;

1. IT IS DECLARED that the Order of the Mining Commissioner, dated the 3rd day of January, 1969, wherein it states the following:

> I ORDER that the interest of the said Sandra Gold Mines Limited in Parcel 2049, being the Mines, Ores, Minerals and Mining Rights in upon and under Mining Claim SSM 7389, containing by admeasurement nine and fifty-five one hundredths acres more or less; Parcel 1805, being the Mines, Ores, Minerals and Mining Rights in, upon and under Mining Claim SSM 3301, containing by admeasurement twenty-three (23) acres more or less; Mining Claim SSM 3470, containing by admeasurement twenty-seven and seven-tenths (27 7/10ths) acres more or less and Mining Claim SSM 3471 containing by admeasurement forty-two and eight-tenths (42 8/10ths) acres more or less; Parcel 963 being the Mines, Ores, Minerals and Mining Rights in upon and under Mining Claim SSM 886, containing by admeasurement twenty-nine and three-tenths acres more or less; Parcel 347 being the Mines, Ores, Minerals and Mining Rights in upon and under Mining Claim Y. 461, containing by admeasurement nineteen acres more or less, Mining Claim Y. 462, containing by admeasruement eighteen acres more or less and Mining Claim Y. 463, containing by admeasurement twenty-seven acres more or less, containing by admeasurement in all sixty-four acres more or less, situate about three miles south of Wawa Lake; Parcel 1678 being the Mines, Ores, Minerals and Mining Rights in upon and under Mining Claim SSM 3129, containing by admeasurement twenty-three and nine-tenths acres more or less, Mining Claim SSM 3493, containing by admeasurement twenty-one and nine-tenths acres more or less and Mining Claim SSM 3124, containing by admeasurement forty-five and seven-tenths acres more or less; Parcel 1685 being the Mines, Ores, Minerals and Mining Rights in upon and under Mining Claim SSM 3109, containing by admeasurement thirty-three and one-tenth acres more or less; and in an undivided one-half interest of the said Sandra Gold Mines Limited in Parcel 1551 being the Mines, Ores, Minerals and Mining Rights in upon and under Mining Claim SSM. 2401 (19 acres), Mining Claim SSM 2402 (19 6/10ths acres) and Mining Claim SSM 2403 (40 acres), all being situate in Township 29, Range 23, in the District of Algoma, in the Municipality of the Township of Michipicoten, registered in the Register for the District of Algoma West Section, as to Parcels 1805, 1678 and 1685 in Volume 10, as to Parcel 1551 in Volume 9, as to Parcel 2049 in Volume 12, as to Parcel 963 in Volume 5 and as to Parcel 347 in Volume 2, be and the same is hereby vested in the said Jack Koza, subject to any and all encumbrances registered against the said parcels.

is for the interest of Sandra Gold Mines Limited in the lands and mining rights in the aforementioned Parcels and in particular, as it pertains to this application, for the one-half interest of said Sandra Gold Mines Limited in Parcel 1551 being Mining Claim SSM. 2401 (19 acres), Mining Claim SSM 2402 (19 6/10ths acres) and Mining Claim SSM 2403 (40 acres), all being situate in Township 29, Range 23, in the District of Algoma.

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2. IT IS ORDERED that the tribunal's Order of the 14th day of May, 1996, as amended by Orders dated the 20th day of November, 1996 and the 14th day of April, 1997, in File No. MA 002-96, being the application of Citadel Gold Mines Inc. for a vesting of the interest of The Estate of Mary S. Gibson in Her Personal Capacity as Executrix of the Estate of Angus Gibson, be and is hereby rescinded and replaced with the following *nunc pro tunc*:

> **1. IT IS ORDERED** that the interest of the Estate of Mary S. Gibson in her personal capacity and as Executrix of the Estate of Angus Gibson in the lands and mining rights in Mining Lands Patents "A" 3746, 3747 and 3748, dated the 9th day of February, 1926, registered as Parcel 1551, West Section, in Township twenty-nine, Range twenty-three, situate in the District of Algoma, be and are hereby vested in Citadel Gold Mines Inc.

3. IT IS FURTHER DECLARED that the Certification of Forfeiture of the surface rights of Sandra Gold Mines Limited in the undivided one-half interest in Parcel 1551 being Mining Claim SSM. 2401 (19 acres), Mining Claim SSM 2402 (19 6/10ths acres) and Mining Claim SSM 2403 (40 acres), all being situate in Township 29, Range 23, in the District of Algoma, being land registered in the name of Sandra Gold Mines Limited, said Certification of Forfeiture having been effected under the **Business Corporations Act** upon the dissolution of the corporation on February 14, 1973 and registered on title on July 4, 1997 is of no force and effect for the purposes of any and all matters under the **Mining Act**.

IT IS FURTHER DIRECTED that upon the payment of the required fees, this Order be filed in the Land Registry Office, in Sault Ste. Marie, Ontario and in the Mining Lands Dispositions Office of the Ministry of Northern Development and Mines in Sudbury, Ontario.

DATED this 30th day of November, 2005.

Original signed by

L. Kamerman
MINING AND LANDS COMMISSIONER

File Nos. MA 020-04
MA 002-96

L. Kamerman)
Mining and Lands Commissioner)

Wednesday the 30th day
of November, 2005.

MINING ACT

IN THE MATTER OF
Parcels 347, 963, 1678, 1685, 1805 and 2049, West Section, in Township twenty-nine, Range twenty-three, situate in the District of Algoma;

AND IN THE MATTER OF
Mining Lands Patents "A" 3746, 3747 and 3748 dated the 9th day of February, 1926, registered as Parcel 1551, West Section, in Township twenty-nine, Range twenty-three, situate in the District of Algoma;

AND IN THE MATTER OF
The Vesting Order of the Mining Commissioner, dated the 3rd day of January, 1969;

AND IN THE MATTER OF
The Vesting Order of this tribunal dated the 14th day of May, 1996, and amended on the 20th day of November, 1996 and on the 14th day of April, 1997;

AND IN THE MATTER OF
Section 670 of the **Mining Act**, R.S.O. 1960, as amended, sections 105, 121 and 196 of the **Mining Act**, R.S.O. 1990, c.M.14, as amended;

AND IN THE MATTER OF
CITADEL GOLD MINES INC.
Applicant

REASONS

This application was made to the tribunal pursuant to sections 105 and 121 of the **Mining Act** ostensibly for the correction of the Vesting Order of the Mining Commissioner dated the 3rd day of January, 1969. That Vesting Order stated that the interest of Sandra Gold Mines Limited ("Sandra Gold Mines") in the "Mines, Ores, Minerals and Mining Rights in, upon and under" Parcels 347, 963, 1551, 1678, 1685, 1805 and 2049 be vested in Jack Koza, who was

a shareholder of Sandra Gold Mines. At the time the Vesting Order was registered on the abstracts for the various parcels, the Land Registrar transferred the entire estate of Sandra Gold Mines in what were patented as mining lands patents in the applicant, Jack Koza. In 1996, the Land Registrar became concerned about whether this Vesting Order properly vested the interest of Sandra Gold Mines in the surface rights.

The history of Parcel 1551 is unique in that up to the time of the 1969 vesting, ownership had been held by Sandra Gold Mines and Mary S. Gibson in her Capacity as Executrix of the Estate of Angus Gibson, each as to an undivided half interest. The resulting 1969 Vesting Order vested in Mr. Koza the interest of Sandra Gold Mines. Through a series of subsequent transfers, the undivided one-half interest came to be held by Citadel Gold Mines Inc. ("Citadel") the applicant in this matter. In 1996, Citadel made application to the tribunal for a vesting of the undivided one-half interest of the Estate of Mary S. Gibson.

In 1996 and 1997, the tribunal, issued a Vesting Order respecting Parcel 1551, which was subsequently amended on two occasions. The original Vesting Order gave rise to concerns in the Land Registrar and a caution was placed on the abstract as a direct result. The 1996 Vesting Order was initially for the interest of the Estate of Mary Gibson. On August 2, 1996, the Land Registrar placed a caution on the abstract of Parcel 1551 pending resolution of two matters, the particulars of which best disclose the nature of the concern:

> **WHEREAS** by Instrument 20427 Mary S. Gibson was entered as owner as Executrix of the Estate of Angus Gibson; AND WHEREAS in her capacity as Executrix she conveyed away a one-half interest in the parcel, retaining a one-half interest for the Estate of Angus Gibson, AND WHEREAS several "re-statements" on the parcel refer to half of the parcel being owned by Mary S. Gibson, without adding "as Executrix of the Estate of Angus Gibson";
>
> **AND WHEREAS** Instrument 66556 has been recorded on the parcel to indicate that surface rights and mining rights of the other one-half interest vested in Jack Koza; AND WHEREAS this Order may only deal with the mineral rights and surface rights may still be vested in Sandra Gold Mines Limited; AND WHEREAS Jack Koza purported to Transfer a one-half interest in surface and mineral rights to Dunraine Mines Limited, which subsequently conveyed to Citadel Gold Mines Inc.;

The tribunal amended its 1996 Vesting Order to clarify that the interest which vested was that of Mary S. Gibson as Executrix of the Estate of Angus Gibson. In 1997, the tribunal issued a second amendment to its vesting order, setting out in the recitals that it regarded its jurisdiction in lands within municipal organization as being limited to the mining rights, referring to clause 189(1)(c) of the **Mining Act**. The vesting order was amended to reflect that the interest which vested was "all mining rights in, upon or under" certain mining lands.

On the 18th day of February, 1997, the Minister of Northern Development and Mines, through his delegate, Mr. Ronald C. Gashinski, Senior Manager, Mining Lands Section, executed a Document General registered on Parcel 1551 wherein he certified that forfeiture of land registered in the name of Sandra Gold Mines Limited was effected under the Business

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Corporations Act upon the dissolution of the corporation on February 14, 1973. This was registered on title on July 4, 1997 and led to the second caution placed on the abstract by the Land Registrar. This second caution notes that the party whose interest in the land forfeit was not on title as holder of the interest in question. The 1997 caution states:

> **WHEREAS** by Instrument 212837 Notice of Forfeiture of an undivided one-half interest in the surface rights of Parcel 1551 Algoma East Section was registered;
> **AND WHEREAS** the party whose interest in the land was said to have been forfeited was not the party shown as the paper title holder in the said Parcel;
>
> **NOW THEREFORE I** Penny A. Hanson, Land Registrar for the Land Titles Division of Algoma (No. 1) hereby enter a Caution pursuant to Section 158(1) of The Land Titles Act, R.S.O. 1990, Chapter L.5, as amended upon Parcel 1551 Algoma West Section:
>
> (1) To prevent any dealings with the one-half interest in the surface rights of Parcel 1551 Algoma West Section which is the subject of Notice of Forfeiture 212837

Application to the Tribunal

On October 27, 2004, Mr. Larry Peterson, counsel for Citadel Gold Mines, wrote to the tribunal advising that his client had purchased certain lands from Dunraine Mines Limited. Upon conducting a title search, title problems were uncovered.

The specific relief requested by Mr. Peterson was for a vesting order pursuant to section 105 of the **Mining Act** to have particular lands, namely Parcels 2049, 1805, 963, 347, 1678, 1685 and 1551, all Algoma West Section into the name of Citadel Gold Mines Inc.

The Registrar of the tribunal, Mr. Daniel Pascoe, had been previously contacted concerning this matter by Mr. Tony Scarr, Senior Technician, Mining Lands Section with the Ministry of Northern Development and Mines. Resulting from this was correspondence between the two, wherein Mr. Scarr stated, in part:

> … The nature of the issue is as follows.
>
> On January 3, 1969, J. McFarland, Mining Commissioner, pursuant to section 670 of the Mining Act R.S.O. 1960, issued a Vesting Order assigning the interest held by the Sandra Gold Mines Limited in certain parcels of land including Parcel 1551 AWS to Mr. Jack Koza. The letters patent and parcel registers in the Land Titles office indicate the interest held by Sandra Gold Mines Limited at the time of the vesting as being the surface and mining rights.
>
> It would appear that the purpose and intent, of the Vesting Order of 1969, consistent with section 670, was to vest the interest held by Sandra Gold Mines Limited (being a 1/2 undivided interest in the surface and mining rights) to Mr. Jack Koza. However, the vesting order is worded:

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"IN THE MATTER..OF …
Parcel 1551 being the Mines, Ores, Minerals, and Mining Rights in, upon, and under Mining Claim SSM 2401 (19 acres), Mining Claim SSM 2402 (19 6/10 acres) and Mining Claim 2403 (40 acres)."
…
I Order…
…and an undivided one-half interest of the said Sandra Gold Mines Limited in Parcel 1551, being the Mines, Ores, Minerals, and Mining Rights in, upon, and under Mining Claim SSM 2401 (19 acres), Mining Claim SSM 2402 (19 6/10 acres) and Mining Claim 2403 (40 acres) … be and the same is hereby vested in the said Jack Koza…"

In reading the order, it could be purported to convey, in the first instance, the "undivided one-half interest" or, to convey on that that interest as described, "being the Mines, Orders, Mineral and Mining Rights". The vesting order was brought to the Land Registrar's attention in 1996, resulting in a caution being placed on title until the matter of the surface rights is determined. Due to the ambiguity of the vesting order, there is now a cloud on title questing (*sic*) the ownership of the surface rights.

Sandra Gold Mines Limited was dissolved under the business Corporations Act in 1973, and any residual interest the company held in mining lands would have forfeited to the Crown. The Ministry has registered a notice of forfeiture of Sandra Gold Mines Limited regarding any residual surface held at the time of dissolution.

Citadel Gold Mines has subsequently acquired the interests conveyed to Mr. Koza in 1969 and has applied to this Ministry to clarify and consolidate its title through the purchase of the residual surface rights forfeited to the Crown, pursuant to section 184(4) of the Mining Act.

As per our discussion, this Ministry would support a position consistent with Section 670 of the Mining Act, R.S.O. 1960 that the vesting order of 1969 would have the effect to conveyed the whole of the interest held by Sandra Gold Mines Limited, with no residual surface rights forfeited. With your concurrence, this Ministry will direct Citadel Gold Mines to submit the question of title and remedy to your office. Subsequent to your determination, it would be convenient if a Commissioner's order provided for nullifying or annulling the notice of forfeiture as well. Otherwise, subsequent to a new order, this Ministry would act to remove the notice of forfeiture.

The tribunal indicated that it was willing to issue the requested order pursuant to section 105 *nunc pro tunc*, effectively correcting the 1969 Vesting Order. Upon detailed examination of the file and upon receipt of the complete filings, the tribunal came to the conclusion that this matter would not be as straight forward as initially anticipated.

To be clear, what Citadel is apparently seeking is clear title to not only Parcel 1551 but also the other parcels involved in the 1969 vesting order. Although this was not articu-

lated on Citadel's behalf, it would appear that it is also seeking the correction of the 1996 vesting order to clarify that what is captured is the entire estate that was alienated from the Crown. The **Mining Act** refers to lands and mining rights, which is taken to mean the estate which was alienated from the Crown. In relations to lands alienated pursuant to mining related legislation, this is generally the mining lands patent.

Background History

A background history of the facts in this case is set out.

At the time of the 1969 vesting, all of the lands involved were situate in Township 29, Range 23, in the district of Algoma, in the Municipality of the Township of Michipicoten, registered in the Register for the District of Algoma West Section. Since that time, the Township has been re-named and is now the Township of McMurray, District of Algoma, Algoma West Section.

There were seven parcels involved in the 1969 Vesting Order, being Mining Claims Y-461, Y-462 and Y-463 in Parcel **347**; SSM-886 in Parcel **963**; SSM-2401, SSM-2402 and SSM-2403 in Parcel **1551;** SSM-3129, SSM-3493 and SSM-3124 in Parcel **1678**; SSM-3109 in Parcel **1685**; SSM-3301, SSM-3470 and SSM-3471 in Parcel **1805**; and SSM-7389 in Parcel **2049**.

The Vesting Order issued by the tribunal on the 3rd day of January, 1969 by Mining Commissioner, James Forbes MacFarland, was made pursuant to what was then section 670 of the **Mining Act,** which is similar in wording to the current section 196. The Vesting Order listed as a description of the lands of Sandra Gold Mines Limited which were vested in Mr. Jack Koza as "the Mines, Ores, Minerals and Mining Rights in upon and under" the various mining claims which comprised the various parcels. (Mining Claims; Y-461, Y-462 and Y-463 in Parcel **347**; SSM-886 in Parcel **963**; SSM-2401, SSM-2402 and SSM-2403 in Parcel **1551;** SSM-3129, SSM-3493 and SSM-3124 in Parcel **1678**; SSM-3109 in Parcel **1685**; SSM-3301, SSM-3470 and SSM-3471 in Parcel **1805**; and SSM-7389 in Parcel **2049**, respectively).

Prior to the 1969 Vesting Order, Sandra Gold Mines Limited was the 100 per cent owner of Parcels 2049, 1805, 963, 347, 1678 and 1685 and the owner of an undivided one-half interest in Parcel 1551. The original Patents had been granted in fee simple with a qualified title in certain parcels of land as "Mining Lands", in other words being Mining Lands Patents. The interest of Mr. Koza arose through his actions as a shareholder of Sandra Gold Mines Limited when he paid the acreage tax for a period of four or more years, where by the requirements of then section 670 were similar to the current section 196, a shareholder is considered a co-owner for purposes of the section.

It is important to note that the treatment by the Land Registrar of the tribunal's Vesting Order on the various parcels was uniform in all cases, stating that "the above parcel vest in the name of JACK KOZA**."** At that point in time, it was the entire interest which was vested in Jack Koza and not just the mining rights. In the case of Parcel 1551 the entry was for an undivided one half interest of Parcel 1551 which was vested in Jack Koza, noting that the remaining undivided one half interest was owned by Mary S. Gibson. The 1969 Vesting Order

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was not treated by the Land Registrar on any of the abstracts as being applicable to only the mining rights, but rather, vested the whole interest in the Mining Lands Patents of each Parcel. Although the status of Mary Gibson became an issue in 1996, the matter was subsequently dealt with when the tribunal amended its Vesting Order to rename the registered owner as the Estate of Mary S. Gibson in her capacity as Executrix in the Estate of Angus Gibson.

In the 1980s, surface rights in all of the parcels were vested in the Corporation of the Township of Michopicoten for failure to pay municipal taxes pursuant to the **Municipal Affairs Act**, R.S.O. 1970, as amended. The process will be discussed in greater detail below in the **Findings** section. According to the parcel registers, a tax arrears certificate was registered on each of the parcels, vesting the surface rights in the municipality, subject to a right of redemption. Mr. Jack Koza redeemed the surface rights and the appropriate tax redemption certificate was registered on title and the surface rights were re-vested in Mr. Koza. Through the operation of the **Municipal Act,** the surface rights were treated as having been severed from that point forward from the mining rights. This assumption and the law which supports it will be examined in detail.

The tribunal has set out in Schedule 'A' to the Reasons the results of its title searches of each of the seven Parcels involved in this matter. These title searches are not complete but are intended to provide sufficient detail with respect to those transactions affecting title which are pertinent to this examination.

All of the Parcels were in the name of Sandra Gold Mines immediately prior to the 1969 Vesting Order, with the exception of Parcel 1551, where an undivided one-half interest remained in Mary Gibson, Executrix. In each case the Land Registrar treated the Vesting Order as having vested the entire interest in the Parcel in Sandra Gold Mines, with an undivided one half interest in Parcel 1551 having been vested. The 1980 vesting of the surface rights in the municipality was treated as having severed the mining rights from the surface rights, notwithstanding the redemption of Mr. Koza. From this point forward, the interest in the parcels is referred to as the mining rights and surface rights. Those which were transferred by Mr. Koza to Dunraine Mines Limited in 1986 were named as the mining rights and surface rights. The surface rights only of Parcel 347 and of Mining Claim SSM 3470 only of Parcel 1805 were transferred to Medlee Limited in 1981.

Issues

1. The Land Registrar has raised by her August 2, 1996 Caution the issue of what rights passed to Mr. Koza in the 1969 Vesting Order. She specifically stated that the Vesting Order may have dealt with the mining rights only and the surface rights may still be vested in Sandra Gold Mines Limited.

The copies of all the Parcel registers submitted disclose that a caution was placed on the title to Parcel 1551 only, notwithstanding that the outcome of this issue also concerns the remaining Parcels and the surface rights transferred to Medlee Limited in 1981, tracked on Parcel 10200.

At the urging of Mr. Scarr, the tribunal has been persuaded to inquire into what rights can it properly vest in a co-owner involving "land in a municipality" when the acreage (or mining) tax

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has not been paid by a delinquent co-owner for a period of four years. Stated differently, in 1969 pursuant to section 670, where land within a municipality is concerned, can the tribunal vest the entire interest held by the owner as mining lands or is it limited to vesting the mining rights only?

Should the answer to this question be that the tribunal is empowered to vest the entire estate and not just the mining rights only, in the applicant co-owner, it is anticipated that the Land Registrar would consider rectification of the record, pursuant to Part X of the **Land Titles Act.** Otherwise, counsel for Citadel may need to apply to the courts for an Order of Rectification.

2. In 1980, the surface rights of the various Parcels were vested in the Municipality of Michipicoten as a result of failure to pay taxes, pursuant to the **Municipal Affairs Act** and were subsequently redeemed. A tax arrears certificate was registered on title vesting the surface rights of the various parcels in the Corporation of the Township of Michipicoten, subject to a right of redemption. The municipality was to have registered a further notice on title within 90 days of registration of the certificate, but this is not shown. The properties were apparently redeemed by Jack Koza within that 90 day period, and well within the one year redemption period, resulting in a re-vesting of the surface rights in Mr. Koza in most cases. With respect to Parcel 1551, the re-vesting of the surface rights was in Mr. Koza and Mary Gibson, Executrix of the Estate of Angus Gibson, each as to an undivided half interest, with Mr. Koza having a lien on the Gibson interest.

From this point forward, the surface rights were treated by the Land Registrar, Mr. Koza and subsequent owners, as having been severed from the mining rights. Was this treatment correct?

What is the effect of the registration of the tax arrears certificate vesting the surface rights in the municipality, subject to the right of redemption on the status of the surface rights? It will be demonstrated that the surface rights do not vest in the municipality absolutely upon registration of the tax arrears certificate, but are to be regarded as an inchoate interest. Consequently, do the severance provisions of the **Municipal Act** apply at the time of the registration of the tax arrears certificate, according to the plain meaning of the words, or do they apply at the time that the registration has the effect of vesting title absolutely?

3. The Minister of Northern Development and Mines registered a Notice of Forfeiture pursuant to section 184 of the **Mining Act** in 1997, ostensibly to have the undivided one-half interest in the surface rights of Sandra Gold Mines in Parcel 1551 vest in the Crown. This issue flows from issue #1 above, namely whether there was any interest left in Sandra Gold Mines in Parcel 1551 to have forfeited to the Crown upon its dissolution pursuant to the **Corporations Act** or **Business Corporations Act**.

If the 1969 Vesting Order is found to have vested all of Sandra Gold Mines interest Parcel 1551 in Jack Koza, namely the undivided one-half interest, can the tribunal issue an Order to nullify the Notice or is this solely within the jurisdiction of the Minister?

4. If the Land Registrar does not accept the tribunal's conclusions and the effect of the tribunal's orders in this matter, what other recourse is open to the applicant?

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DISCUSSION

Position Advocated by MNDM

MNDM took the unusual step in this application of advocating a position in favour of Citadel. No Order to File was issued by the tribunal. Aside from the application itself, all submissions made and all correspondence was received informally. Unfortunately, it was not until after the tribunal was satisfied that it understood the Ministry's position in this matter, that the tribunal realized that comments were addressed in the context of the current legislation. In other words, legislation applicable in 1996, as opposed to the legislation as it was in 1969. Notwithstanding this fact, the tribunal regards the input, provided by Mr. Scarr, as invaluable and of general application when considering this issue of what is vested when mining lands within a municipality are involved.

The essence of the approach advocated by Mr. Scarr is that subsection 189(1) deals with the interests to which the mining acreage tax attaches while section 196(5) requires the vesting of the entire undivided interest in the estate or property. The drafting of clauses 189(1)(c) and (d) to encompass "mining rights in upon or under" is in deference to its accommodation of the municipal taxation scheme, not to cause a duplication or doubling of tax. In other words, the municipal tax is on account of the surface rights while the mining tax is on account of the mining rights in, upon or under the land. Mr. Scarr suggested that the phrase is not meant in any way to limit the scope of what is to be encompassed by the mining or acreage tax.

The phrasing of clauses 189(1)(c) and (d) serves to limit the scope of the mining land tax to the mining rights in, upon, or under the lands in a municipality, but the tax is levied in reference to the land. Further, the tax is assigned to the owner of the land or property who is obligated to pay the taxes.

Mr. Scarr stated that within Part XIII of the **Mining Act**, references to "land" or "mining rights" should be consistently interpreted as being the undivided interest referred to, namely the greatest estate held, unless an exception specifically states otherwise. "Land" means all estate, right, title, and interest in the land including any mining rights unless the mining rights have been severed or held apart. "Mining rights" means mining rights only patented by the Crown, or mining rights severed or held apart from the surface rights, unless expressed as mining rights in reference to land. "Mining rights in, upon or under lands" are in reference to the land and mean mining rights held as an integral interest in land.

According to Mr. Scarr, sections 190 and 191 of the **Mining Act** further demonstrate that it is the undivided interest in land that is the subject of taxation. Section 190 allows the Minister to exempt the land or mining rights from being subject to the Part XIII acreage tax provisions of the **Mining Act**. Clauses 190(1)(a), (b) and (c) provide for the exemption of land, where land has been subdivided by a registered plan of subdivision, reference plan into parts for a city, town, village or summer resort purposes or local municipality purposes; land used for a public park, educational, religious or cemetery purposes; land being used for farming or other agricultural purposes, in all cases where there is no severance of the surface and mining rights. The exemption applies to the undivided interest the land i.e. there is no acreage tax levied against the land and the land in whole is exempted.

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Application of clause 190(1)(d) expressly allows for an exemption of the mining rights in, upon or under any land where the lands are otherwise not severed and used solely for oil and gas production. Clause (d) exempts those lands used in oil and gas production in an area of Southern Ontario where all lands are under municipal authority and the oil and gas production is subject to municipal taxation. This provision operates to exempt mining rights in their entirety from mining land tax in those lands used for oil and gas production which would otherwise be liable.

The operation of section 191 recognizes and effectively separates the surface rights from lands in which there is no severance, where those surface rights "in respect of a mining claim or mining location" are used for purposes other than mining. Section 191 expressly exempts the surface rights from all provisions of the Part XIII mining land tax and operates to have that tax applicable only to the mining rights. It is the only section to expressly levy the mining tax on the mining rights only in property where there has not otherwise been a severance of the surface and mining rights. The provision is limited to a mining claim or mining location which is not in use for the purpose [i.e. mining] it was originally granted under the **Mining Act**. Mr. Scarr argued that this provision demonstrates the express intention to maintain the mining land tax upon the mining rights. Such lands should be maintained as mining lands or revert to the Crown under the **Mining Act**.

The exemptions in sections 190 and 191 are not concerned with whether the land or mining rights are within a municipality. Rather, they are concerned only with lands or mining rights.

Mr. Scarr stated that sections 192, 193, and 197 of the **Mining Act** further deal with the matter of notice of liability for mining land tax and recovery in the case of default, these provisions assign the notice of mining land tax to the registered owner(s) of a property, notice of default is registered against the property and, that if in default of payment of the mining land tax, it is the property that may forfeit. Section 200 treats the mining land tax as a special lien against the property which may be recovered through the sale of any or all of the property.

According to Mr. Scarr, the drafting of clauses 189(1)(c) and (d) and the defining of the extent to which liability for mining tax purposes is assigned to a property should not detract from the fact that it is the land or property and owner's or co-owner's whole interest in the lands which are at issue in an application for vesting. Vesting of a defaulting co-owner's interest may be considered similar to sections 192, 193 and 197 of the **Mining Act**. The notice of default for mining tax is to the registered owner(s). The certificate or forfeiture is registered against the property. In case of continuing default, it is the property which will forfeit.

By comparison, clauses 189(1)(c) and (d) refer to the mining rights in, upon or under lands while subsection 196(5) refers to vesting interests of the co-owners in the lands or mining rights. Should subsection 196(5) have intended to deal with, vest and effectively sever only the mining rights in a property, the subsection would need to be drafted and expressed in a fashion to mirror the exacting drafting of clauses in subsection 189(1). In the absence of specifying a particular subset of the interest, namely the mining rights as being the subject matter of the vesting, it is the undivided interest of a co-owner in the entire estate or land which is vested.

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The wording "to which the payment relates" is a limiting factor to clarify that which may be vested, namely that it is only the interest in the property in which the default has occurred which will be affected; no other lands or mining rights (i.e. held apart from the subject lands) may be taken or vested as a penalty or means of recovery. This phrase also appears in subsection 181(5), involving the vesting of the interest of a co-owner of a lease. Mr. Scarr maintains that this phrase means that the vesting which can take place can only involve the subject property and no other properties. He suggests that the limitation may have been deemed necessary in respect of mining lands which are by their very nature speculative lands. In commercial dealings between partners, recovery of expenditures may extend to all properties held in the venture; the limiting words in subsections 196(5) and 181(5) merely limit recovery in the case of default in taxes or rents to the entire interest in the specific lands to which the payment relates.

Mr. Scarr maintained that municipally organized lands are clearly to be regarded in a special light with respect to taxation. First, the **Mining Act** provides the allowance for municipal taxation of mining lands by diminishing the extent to which the mining land tax is applied to properties in municipalities. Second, the **Municipal Act** proves the means for a municipality to collect upon accounts in default through the municipal tax sales process. However, as the municipal tax sale process does not provide the means to preserve the lands as mining lands; the municipal authority under the **Municipal Act** is limited to dealing only with the surface rights. This limitation does not preserve and secure the intended mining uses of the land as set out in the original grant of mining lands. While there is an accommodation for a municipality to collect outstanding accounts, the mining rights can only be dealt with under the **Mining Act** and can only default and forfeit to the Crown. Under the **Mining Act** there is no provision expressed to sever the estates in property and mining lands when the owner is in default of payment of the mining tax. The Crown can enact forfeiture of the property and upon forfeiture every interest becomes vested in the Crown.

The position taken is that mining lands which were alienated from the Crown to be used for mining purposes as a whole are to be preserved as a whole. Despite the allowances made for municipal taxation, the legislative scheme, when read in its entirety, does not support the practice adopted by the tribunal of causing the severance of the mining rights from the surface rights when vesting the interests of a defaulting co-owner, a position which is further evident from other, corresponding pieces of legislation, such as the **Escheats Act** or **Conveyancing and the Law of Property Act**.

Mr. Scarr concluded with a reference to and analysis of Thos. W. Gibson, **The Mining Laws of Ontario and the Department of Mines**, Toronto: Hebert H. Ball, 1933. Gibson stated at page 47:

> …Under the Mining Tax Act, land in arrears for two years may be forfeited to the Crown and brought back to the same position as if it had never been alienated. After the passage of an Order-in-Council so declaring, the lands become subject to staking out and acquirement under the Mining Act. It was felt that simply to permit a change of ownership, without obligation to work or develop the lands, was not so advantageous in the public interest as to subject them to the working

> conditions of the Mining Act. When required for settlement purposes the forfeited lands may be sold or located by the Department of Lands and Forests.

This reference also mentions that the tax was applicable only to lands in unorganized territory where there was no municipal self-government.

Mr. Scarr submitted that the practice of selling lands at public auction was not in the public interest and mining lands were to be restored for mining purposes. Mr. Gibson's commentary demonstrates the intent to restore the lands to their original state as if they had never been granted so that they might be reallocated for mining purposes. He highlighted the total absence of intent to sever or leave an adverse interest or estate in the lands that might encumber them in future, which would have been contrary to the intention to obligate ongoing mining-related activities in compliance with the **Mining Act**. The forfeiture of the entire interest would ensure future bona fide pursuit of the objectives of the **Mining Act** without encumbrances.

Gibson went on to state:

> *Findings of the Nickel Commission*. – The acreage tax is discussed from another point of view in the Report of the Royal Ontario Nickel Commission, 1917.[1] The Commission had been instructed, in addition to their main duty of investigating the nickel situation, to give their views as to a just and equitable system of mine taxation, having regard to the "best interest of Ontario, Canada, and the Empire." Their purview, therefore, included the acreage tax. As first enacted, the land tax on mining lands was fixed at 2 cents per acre. The Commissioners reported thereupon that this rate was too low, the amount of revenue produced being inconsiderable, and for secondary purposes not so effective as a higher rate would be. By "secondary purposes" was meant the pressure an acreage tax would exert on the owner of undeveloped mining lands to explore them and to work the minerals if any were found. Evidently the higher the tax the greater would be this pressure, consequently the natural reaction on the part of the owner would be either to explore his lands for their mineral value, or to surrender them and so relieve himself of the tax. The problem was to balance the claims of revenue as against the advantages of a reversion to the Crown, with the possible result of the land passing into the hands of someone else who would develop it. …

Mr. Scarr pointed out that Gibson also discussed exemptions to the mining acreage tax, which involved lands used for farming or of less than 10 acres. Lands which were granted under the **Mining Act** were exempt from taxes imposed by the **Provincial Land Tax Act**. Mr. Scarr concluded by stating that the intent and purpose of the mining land tax as cited by Mr. Gibson was clearly to pressure the lands to be employed for mining purposes and preserve mining lands and mining rights for mining purposes. As such, there was no provision in the forfeiture process that would facilitate alleviating or negating this pressure by allowing the continuation of other adverse interest lands when forfeited. There is clear intent to absolutely free the land from any adverse interest or claim and not encumber any lands subject to forfeiture through a severing of the interests in land and leaving a residual surface rights estate. The only

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[1] The subject of mine taxation is fully discussed in this report on pages 506 to 528.

means to be relieved of inherent mining tax pressure was through provision for exemptions and surrender. Apart from these options, there is no provision for the mining tax levy to be ignored, thereby enabling the surrender of only the mining rights through default with the objective of retaining the interest in the surface rights. Acceptance of surrender is within the discretion of the Minister, which is unlikely to be exercised in favour of an owner whose mining taxes are in default. Section 200 of the current **Mining Act** sets out that all taxes, penalties, and costs applicable to the mining land tax are a special lien against the property and may be realized through an action for the sale of any or all property.

The second reference is the **Mining Tax Titles Validity Act, 1924**[2], an Act which remains in force. Section 2 says that:

> ...where the Minister of Mines by his certificate given or purporting to be given under or in pursuance of the Mining Tax Act, has declared any mine, mining location, mining claim, mining land or other lands or mining rights forfeited to and vested in the Crown in the right of the Province, any such declaration of forfeiture has not heretofore been annulled, or revoked by order of the Lieutenant Governor In Council, such mine. mining location, mining claim, mining land, lands or mining rights shall be deemed to be and to have been forfeited to and vested in the Crown in the right of the Province, and every patent or lease or other title whereby such mine, mining location, mining claim, mining land, lands or mining rights was, or were, or shall have been granted, leased, or otherwise disposed of by the Crown shall be deemed to have been revoked and cancelled and the premises comprised therein vested in the Crown absolutely freed and discharged from any estate, right, title interest, claim or demand therein or thereto whether existing, arising, or accruing before or after such certificate was given.

According to Mr. Scarr, the **Mining Tax Title Validity Act** definitively establishes that any forfeiture which had taken place was absolute, and that no residual ownership in the mining lands continued. Therefore, the intent of the **Mining Tax Act** was to levy the mining tax on a mining property. Any action to recover property in default was to have been taken against the property and the title or ownership of the property.

The intent of subsection 189 is consistent with other legislation pertaining to taxation (**Provincial Land Tax** and **Assessment Act**) in setting out what aspects of the property are liable for taxation. All taxing legislation and regulations in the Province establish the scope of taxation of property and exclusions or exception to taxation. However in a consistent manner all taxes are levied against the property, regardless of the scope of the tax or exclusions. It is the interest of the owner of lands or mining rights that may be forfeited or vested where a default has arisen, and what may be dealt with is the lands or mining rights to which the (non)payment relates. The only legislated limit to seizing a defaulting owner's interest in lands is specified only in the **Municipal Act**, and when taking mining lands for municipal tax arrears which specifies the taking of a defaulting property severs the property and the municipality takes only the surface rights estate. This exception is founded upon the principle set out above by T. Gibson, being the

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[2] Gibson refers to this incorrectly as 1929, but research shows the year was 1924.

preservation of the mining intent of the lands and protecting that intent under the **Mining Act**. Based upon that intent, mining rights may only be forfeited under the **Mining Act**.

The tribunal has been persuaded by Mr. Scarr to re-examine the analysis and conclusions applied by this and previous Commissioners. In particular, it has been asked to analyze the interest which is to have vested in a co-owner who paid the taxes, namely whether it is the entire interest held by the delinquent co-owner or only the interest in the mining rights.

Assessment of Taxes in Ontario

All real property in Ontario is subject to assessment (the **Assessment Act**, R.S.O. 1990. c. A. 31) although a wide range of exemptions apply, not the least of which includes lands owned by the Crown. Lands in a municipality are subject to taxation pursuant to Parts VIII through X of the **Municipal Act,** S.O. 2001 and lands situate in territory without municipal organization, to which a similar list of exemptions applies, are subject to taxation under the **Provincial Lands Tax Act**, R.S.O. 1990, c. P. 32. Taxes are also levied on real property for education purposes under the **Education Act**, for assessments for levies of drainage works under the **Drainage Act,** for municipal loans for purpose of construction of drainage works under the **Tile Drainage Act,** for municipal loans for the building, raising, repair or relocation or construction of associated works the **Shoreline Property Assistance Act** and for mining lands under Part XIII of the **Mining Act**.

Both the **Assessment Act** and **Provincial Lands Tax Act** contemplate exemptions to the assessment of certain lands associated with mining. Those specific provisions are set out. Under the **Assessment Act,**

> **3.** (1**)** All real property in Ontario is liable to assessment and taxation, subject to the following exemptions from taxation:
>
> 20. The buildings, plant and machinery under mineral land and the machinery in or on the land only to the extent and in the proportion that the buildings, plant and machinery are used for obtaining minerals from the ground, and all minerals, other than diatomaceous earth, limestone, marl, peat, clay, building stone, stone for ornamental or decorative purposes, or non-auriferous sand or gravel, that are in, on or under land.

Section 20 also makes mention of mineral lands. However, subsection 20(1) was repealed in 1997.

> **20.** (1) Every person occupying mineral land for the purpose of any business other than mining is liable to business assessment as provided by section 7. (Repealed: 1997, c. 5, s. 14 (1))
>
> (2) Where in any deed or conveyance of lands heretofore or hereafter made, the petroleum mineral rights in the lands have been or are reserved to the grantor, the mineral rights shall be assessed at their current value.
>
> (3) Where any estate in mines, minerals or mining rights has heretofore or may hereafter become severed from the estate in the surface rights of the same lands, whether by means of the original patent or lease from the Crown, or by any act of

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> the patentee or lessee, or the heirs, executors, administrators, successors or assigns of the patentee or lessee, the estates after being so severed shall thereafter be and remain for all purposes of taxation and assessment separate estates despite the circumstances that the titles to the estates may thereafter be or become vested in one owner.

Under the **Provincial Land Tax Act**,

> **3.** (1) All land situate in territory without municipal organization is liable to assessment and taxation under this Act, subject to the following exemptions from taxation:
>
> > 11. Subject to subsection (2), land that is liable for the acreage tax under the *Mining Act*.
>
> (2) Paragraph 11 of subsection (1) does not apply where the land or any part of it,
>
> > (a) is used for a purpose other than mining, or, if used for mining purposes, is also used for any other purpose; or

The **Provincial Land Tax** provisions differ from those of the **Assessment Act** in that lands which are subject to the mining acreage tax are exempt from taxation, unless used for purposes other than or in addition to mining. Under the **Assessment Act**, the buildings and machinery used to win minerals and the minerals themselves are exempt from taxation.

Mining land tax under the **Mining Act** is levied by the Ministry of Northern Development and Mines "on any lands or mining rights to which this Part applies." [s. 187] When subsection 189(1) is examined, it is noted that not all mining rights in the Province are subject to the mining land tax; rather it is those lands and mining rights whose initial grants were for mining purposes or which are held or used for mining purposes at this time, whatever the nature of the initial patent might have taken. There are lands held in fee simple in the province which are not subject to mining tax because the lands were not initially alienated from the Crown as, have never nor are at this time held or used as, mining lands. Finally and this will be dealt with in greater detail below, there are exemptions set out in section 190.

Each legislative scheme has a procedure for dealing with arrears in taxes. Under Part XI of the **Municipal Act,** the land upon which assessed taxes are in arrears may be sold for taxes, failing which they may be vested in the municipality. Since 1954, mining rights have been excluded from municipal tax sales. Prior to that time, a municipal tax sale resulted in the vesting of the entire interest.

> 384. (1**)** Despite sections 373, 379 and 383, if mining rights in land are liable for taxes under the **Mining Act** and the land is sold for taxes or is vested in a municipality under this Act on or after April 1, 1954, the sale or vesting severs the surface rights from the mining rights and only the surface rights pass to the tax sale purchaser or vest in the municipality and the sale or registration does not affect the mining rights.

> (2) Despite this or any other Act but subject to any forfeiture to the Crown legally effected under the **Mining Tax Act**, if mining rights in land were liable for area tax under the **Mining Tax Act** and the land was sold for taxes under this Act or was vested in a municipality upon registration of a tax arrears certificate under the **Municipal Affairs Act** before April 1, 1954 and, before the sale or registration the surface rights were not severed from the mining rights and the sale or certificate purported to vest all rights in the land in the tax sale purchaser or in the municipality, that sale or certificate shall be deemed to have vested in the tax sale purchaser or in the municipality, without severance, both the surface and mining rights.

Not only does section 384 currently specifically exclude mining rights from the municipal tax sale, but it goes further and creates a severance of the mining rights from the surface rights. Whatever ambiguity might have existed prior to April 1, 1954, it is now certain that a municipal tax sale from that day forward would be comprised of only the surface rights. This provision also clarifies that mining rights which exist in lands may or may not be liable for mining tax under the **Mining Act,** but also the lands themselves can be subject to both municipal[3] and mining tax.

Under the **Provincial Land Tax Act**, the assessor may bring an action for the recovery of the taxes in default or such lands may become vested in the Crown through forfeiture. For those mining lands whose surface rights are subject to Provincial Land Tax are subject to forfeiture, subsection 33(5) provides that only the surface rights will be forfeited:

> **33.** (5) Where land, other than land held under a lease or licence of occupation, that is subject to forfeiture under this Act is also subject to the acreage tax under the **Mining Act**, such forfeiture shall be of the surface rights only.

The effect of this provision is to sever the mining from the surface rights where mining lands subject to the **Provincial Land Tax Act** are forfeited, but the effect is to cause a severance. This provision was introduced into the **Provincial Land Tax Act** by S.O. 1961-62, c. 111, s. 33. This will only occur in cases where there is a non-mining use of the surface and presumably has a corresponding exemption under Part XIII of the **Mining Act**. Lands without a non-mining use, including vacant lands, fall within the exemptions and are not subject to Provincial Land Tax.

As there is no tax sale, re-acquisition of the surface rights must be obtained through other means. Under the **Public Lands Act,** R.S.O. 1990, c. P. 43, section 43 provides for the issuance of letters patent granting the land to the owner of or other person appearing to have had an interest in the land which was subject to forfeiture under the **Provincial Land Tax Act**, so long as the land has not been otherwise disposed of.

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[3] In **Township of Bucke v. MacRae Mining Company Limited** [1927] S.C.O. 403, the Supreme Court considered the implications of a municipal tax sale of lands the surface rights and mining rights of which had been patented from the Crown separately. In considering whether the land included the minerals. At page 409, Mignault J. stated, "Minerals, as such, that is to say minerals considered as a subject of ownership distinct from the ownership of the land in which they are contained, are not assessable… Land containing minerals is however assessable as land, but it is not to be assessed at less than the value of other land in the neighbourhood used exclusively for agricultural purposes…."

There are marked differences between the three systems for an owner attempting to acquire the interest of a delinquent co-owner. As was noted above, only the **Mining Act** contains special provisions for vesting of the interest of delinquent co-owners in a paying co-owner. The **Municipal Act** does not distinguish between the various types of taxpayers and so long as taxes are paid, the land remains in good standing. All persons shown on the assessment role, which includes tenants, are considered taxpayers and receive notice of taxes owing. It is only when the taxes are in arrears for the specified time that can give rise to a municipal tax sale. Under the **Provincial Lands Tax Act**, the assessor is only required to provide notice to that person designated by the other part owners, and where no such person is chosen, the assessor may chose a designated part owner, so long as notice is provided to the other part owners. Of the three property tax systems at play, only the **Municipal Act** specifically states that a property tax sale will result in a severance of the mining and surface rights. Forfeiture under the **Provincial Lands Tax Act** will have the same effect.

History of Assessment of Taxes

The scheme for the assessment and collection of taxes attributable to an interest in land was levied under **The Assessment Act**, R.S.O. 1897 and its predecessors. **The Assessment Act**, 4 Edw. II, R.S.O. 1904, c. 23 provided for a comprehensive scheme for the assessment and levying of taxes on "real property". The process for sale of lands for arrears in taxes was complex and could occur after taxes had been outstanding for three years. Only that portion of the lands which would render sufficient funds to cover the outstanding taxes would be sold, but if not sold, a second sale could take place for less than the full amount for the entire land holding. However, if the defaulting taxpayer were to bid, he or she would have to pay the full amount owning.

Similar legislation was in place for some lands in unorganized territory. **An Act respecting the Taxation of Patented Lands in Algoma,** 31 V., c. 22, **An Act respecting the Taxation of Patented Lands in Algoma and Thunder Bay**, R.S.O. 1877, c. 22 and **An Act respecting the Taxation of Patented Lands in Algoma, Manitoulin, Thunder Bay and Rainy River,** R.S.O. 1897, c. 23 & 55 V. c. 7 each provided for the taxation of patented Crown lands in the territorial districts specified. All of the foregoing legislation had provisions for tax sales for arrears of taxes.

History - Mining Acreage Tax

The tribunal has done a survey of the mining tax provisions back to their inception in the **Supplementary Revenue Act, 1907**, 7 Edw. VII, c. 9 and has written an extensive summary of the history of the provisions as they related to what lands were subject to the acreage tax, when were municipal lands added and of the vesting of the interests of delinquent co-owners.

The historical significance of these provisions is limited with respect to the questions in this particular application. Therefore, the historical summary has been retained, for reference purposes only, and is attached as Schedule B to these Reasons.

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When the initial acreage (mining) tax provisions were enacted in 1907 in **The Supplementary Revenue Act**, **1907**, 7 Edw. VII, c. 9, only lands within unorganized territory were covered. None of the earliest provisions deal with acreage tax payable on lands within a municipality. The Order to Pay and vesting provisions in non-delinquent co-owners first appeared in 1911. In those early years, there was no distinction for purposes of the acreage tax payable between freehold or leasehold patents or mining licences of occupation. Only later were these latter two split off into separate sections of the **Mining Act** and **Mining Tax Act**, precursors to what appear today.

In **The Mining Tax Amendment Act, 1946**, S.O. c. 56, s. 3, 10 Geo. VI, the lands upon which the acreage tax was payable for the first time were expanded to include lands within a municipality and exemptions were set out:

> **14.** (1) Except as hereinafter provided,
>
> (a) every mining location and mining claim in unorganized territory held either mediately or immediately under patent, lease or license of occupation acquired under or pursuant to the provisions of any statute, regulation or law at any time in force authorizing the granting or leasing of Crown lands for mining purposes;
>
> (b) all land in unorganized territory being held or used for mining purposes howsoever patented or alienated from the Crown;
>
> (c) all mining rights in, upon or under every mining location and mining claim situated within the limits of a municipality and patented, leased or granted under license of occupation acquired under or pursuant to the provisions or any statute, regulation or law at any time in force authorizing the granting or leasing of Crown lands for mining purposes;
>
> (d) all mining rights in, upon or under land situated within the limits of a municipality and being held or used for mining purposes howsoever patented or alienated from the Crown and
>
> (e) all mining rights howsoever patented or acquired which are severed from or held apart or separate from the surface rights,
>
> shall be liable for, and the owner, holder, lessee and occupier thereof shall pay an acreage tax of 10 cents per acre in each year, provided that the minimum tax on any mining location, mining claim or mining rights shall not be less that $1 in each year.

The tribunal was unable to locate any explanation as to the reason why mining lands located within a municipality were added to the mining tax base.

In 1948, section 14 was amended to the following subsection, among one other: Section 1 of **The Mining Tax Amendment Act, 1948**, 12 Geo. VI, c. 57, stated:

> **1.** Section 14 of *The Mining Tax Act*, as re-enacted by section 3 of *The Mining Tax Amendment Act, 1946*, is amended by adding thereto the following subsections:
>
> …
>
> (7) Where the mine assessor is satisfied that the surface rights in respect of a mining claim or mining location are being used for purposes other than that of mining or the mineral industry, this Act shall apply only to the mining rights.

Subsection 14(7) mirrors what is now found in section 3 of the **Provincial Land Tax Act.** The terms "mining claim or mining location" are identical but reversed to the use those terms in both clauses 14(1)(a) and (c).

The question arises whether subsection 14(7) is to apply only to clause 14(1)(a), being a mining location and mining claim in unorganized territory, or whether subsection 14(7) is meant to have equal application to mining rights in a mining location or mining claim in a municipality, per clause 14(1)(c). If it is the former, then arguably, subsection 14(7) could be considered a pre-cursor to the qualified exclusion currently found in the **Provincial Land Tax Act,** which was not enacted until S.O. 1961-62**.** If it is the latter, then the phrase "mining rights in, upon or under land[s] in a municipality" appears to have a much broader meaning than "mining rights" when used in connection with lands within a municipality. Given that some fifteen years elapsed before the change to the **Provincial Land Tax Act** and principles of statutory interpretation, subsection 14(7) must be given meaning within the context of the legislation to which it applies. This being the case, the more reasonable interpretation is that the subsection 14(7) exclusion can apply equally to mining lands (i.e. patented as mining lands) in territory without municipal organization and within a municipality.

In 1955, **The Mining Amendment Act, 1955,** S.O. 1955, c. 45 imported the acreage tax provisions into the **Mining Act** leaving the **Mining Tax Act** with only those provisions more akin to related income tax schemes. Further relevant changes occurred to the vesting section with S.O. 1961-62, c. 84.

At the time of the 1969 vesting, the operative provisions stated:

> **661.** – (1) Except as provided in this Part,
>
> (a) all lands and mining rights in territory without municipal organization held either mediately or immediately under patent or lease acquired under or pursuant to any statute, regulation or law at any time in force authorizing the granting of Crown lands for mining purposes;
>
> (b) all land in territory without municipal organization being held or used for mining purposes howsoever patented or alienated from the Crown;
>
> (c) all mining rights in, upon or under lands in a municipality patented or leased under or pursuant to any statute, regulation or law at any time in force authorizing the granting or leasing of Crown lands for mining purposes;

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(d) all mining rights in, upon or under land in a municipality and being held or used for mining purposes howsoever patented or alienated from the Crown; and

(e) all mining rights howsoever patented or acquired which are severed from or held apart or separate from the surface rights,

are liable for, and the owner or lessee thereof shall pay the acreage tax.

670. (1) Where lands or mining rights liable for acreage tax are held by two or more co-owners and all such tax has been paid by one or more of them and the other or others has or have neglected or refused to pay his or their proportion of the tax for a period of four or more consecutive years, the Commissioner upon the application of any co-owner or co-owners who has or have paid the tax for a period of four or more consecutive years immediately prior to the date of the application and upon the receipt of such other information and particulars as he requires, may make an order requiring the delinquent co-owner or co-owners to pay, within three months of the date of the order or such further time as the Commissioner fixes, his or their fair proportion of the tax to the co-owner or co-owners who has or have paid all the tax, together with interest at the rate of 6 per cent per annum compounded yearly, and such costs of the application as are allowed by the Commissioner.

(2) An application under subsection 1 shall be accompanied by a fee of $25.

(3) The order shall be served in such manner as the Commissioner directs, and if at the expiration of the period fixed by the order it appears to the Commissioner that payment has not been made in accordance therewith, the Commissioner may make *an order vesting the interest of the delinquent co-owner or co-owners* in the co-owner or co-owners who have paid the taxes, and that order shall be registered in the proper registry or land titles office and a duplicate original thereof forwarded by the Commissioner to the Minister.

(4) Any order made against an incorporated company under this section shall be directed to the company only.

(5) For purposes of this section, two or more co-holders or co-lessees shall be deemed to be co-owners, and an incorporated company and a shareholder shall be deemed to be co-owners of the lands of the company.

The final changes relevant to the vesting provisions applicable in 1996 were made in **The Civil Rights Statute Law Amendment Act, 1971**, S.O. 1971, c. 50, s. 58(24), whereby the reference to the interest which vested was changed. At that point in time, the operative vesting section had become section 653:

(24) Subsection 3 of section 653 of *The Mining Act* is repealed and the following substituted therefor:

> (3) An order made under this section shall be served in such manner as the Commissioner directs.
>
> (3a) If a co-owner, upon whom an order made under subsection (1) has been served, disputes his liability to his co-owner or otherwise to make any payment under the order or the amount thereof, he may, within the time limited by the order for making the payment, apply to the Commissioner for a hearing and the Commissioner shall, after a hearing, determine the dispute and may affirm, amend or rescind the order or make such other order as he considers just, and if the Commissioner orders that a payment be made, he may fix the time for payment thereof.
>
> (3b) Where the time for payment fixed by an order made under subsection (1) has expired and no application for determination of a dispute has been made, or where the time fixed by an order made under subsection 3a has expired, and where such additional time, if any, has been granted by the Commissioner has expired, if it is proved to the satisfaction of the Commissioner that the payment has not been made, he may make an order vesting the *interest of the delinquent co-owner or co-owners in the lands or mining rights to which the payment relates* in the co-owner or co-owners who has or have paid the rents or made the expenditure.

Provisions Relevant at Times of Vesting Orders

Section 196 Vesting Orders are currently governed by Part XIII of the **Mining Act**, entitled "Mining Land Tax". At the time of the application of Jack Koza, the relevant provision was section 670 and of **The Mining Act,** R.S.O. 1960 as amended by section 46 of **The Mining Amendment Act, 1962-63**, S.O. 1962-63, c. 84. There is a difference in wording of subsection 670(3) from the current subsection 196(5), where the interest to which the payment relates has been interpreted as circumscribing the interest which is vested. Because of the nature of the inquiry conducted by the tribunal in this matter, all of both Parts XIV and XIII are attached as Schedules C and D to these Reasons.

FINDINGS

Issue 1 - Vesting

This case involves the vesting of the interest of a delinquent co-owner by the tribunal on two occasions, in 1969 and 1996. Further to the initial Caution by the Land Registrar that the 1969 vesting order may not have vested the surface rights in Parcel 1551, the tribunal initially sought to examine the various common provisions of Parts XIV and XIII to determine whether the surface rights were intended to vest in lands located within a municipality. However, a second issue arose in the intervening period, namely whether the municipal tax certificate registered on title caused an irrevocable severance of the mining and surface rights in 1980. The tribunal has determined that it will retain its analysis of the Part XIII Mining Tax provisions. Should it be determined that the 1980 municipal tax certificate should not have resulted in an irrevocable severance of the surface rights, it will be material as what will have vesting in Citadel in the subsequent Vesting Order of 1996.

Past Practice & Consequences

This Commissioner, in similar fashion to her immediate predecessors, has treated section 196 vesting order applications involving mining lands within in a municipality as being applicable only to the mining rights, according to what lands within a municipality were subject to the mining tax, namely "all mining rights in, upon or under land[s]".

The effect of the treatment by this Commissioner and her immediate predecessors on mining lands has been to cause a severance of the mining rights from the surface rights, notwithstanding that a severance is not specifically mentioned in section 196. The result is that it has been impossible for a co-owner of land which was originally alienated from the Crown as a mining lands patent to obtain title to the surface rights as mining lands (see discussion of definition below), from a delinquent co-owner whose whereabouts or whose descendants are unknown. Furthermore, however comparatively undesirable it might be, obtaining title to even the entire severed surface rights interest is virtually impossible.

This is understandably unsatisfactory to those in the mining community seeking to retain or obtain title to the entire estate as mining lands. Subsection 50(1) provides the owner of the mining rights with the right to have access to the surface as may be required for "prospecting and the efficient exploration, development and operation of the mines, minerals and mining rights." This right of access to the surface for purposes of winning the minerals is seldom, if ever, regarded as sufficient for purposes of mining exploration companies or those seeking to raise funds or interest in relation to a particular piece of promising property. This situation results in a vesting provision which, if applied in the limited manner for lands within a municipality, whose results may be at odds with the purpose and intent of the legislation, which is to encourage exploration and development. Lands without title to the surface rights are seen as problematic for those in the industry, due to potential for conflict, notwithstanding the generous rights of access afforded by legislation and the common law.

To date, there has been no satisfactory and effective mechanism for a non-delinquent co-owner to retain the entire estate as mining lands in a municipality as initially patented. A co-owner can readily apply to obtain the delinquent co-owner's interest in the mining rights under the **Mining Act,** a process which can be characterized as being relatively straight forward and somewhat modern, having evolved during the early part of the last century. This and other vesting provisions reflect the intent and purpose of the legislation that mining lands not be held in limbo indefinitely, but be available for actively working on mining purposes.

Acquisition of the surface rights is not so simple, reflecting the established common law and legislative reluctance to interfere with property rights. It may be possible to obtain title to the surface rights through the deliberate failure to pay municipal taxes thereby forcing a tax sale. Not only is this is risky for the non-delinquent co-owner, as it is not certain that he or she would be the successful tax purchaser, but under today's legislation, the tax sale itself triggers an irrevocable severance of the surface rights [see s. 384(1) of the **Municipal Act, 2001,** S.O. 2001, c. 25.] Even if the non-delinquent co-owner reacquires the surface rights, they can never again be "mining lands surface rights". It is unclear as to whether there may be an alternative recourse for a non-delinquent owner of unsevered mining and surface rights to apply

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to the Superior Court of Justice under section 100 of the **Courts of Justice Act,** R.S.O. 1990, c. C. 43. There is no published case law on point to offer some assistance or direction.

Parts XIV and XIII of the Mining Act

"lands and mining rights"

Parts XIV and XIII of the **Mining Act** represent a comprehensive scheme for acreage and mining lands tax. The broad category of rights in property referred to throughout the former Part XIV and the current Part XIII are "lands or mining rights" and "lands and mining rights". For example, the acreage or mining tax is paid on each acre or hectare of lands or mining rights to which the Part applies. Variations of these references, including, "any lands or mining rights", "all lands and mining rights", "any land or rights", "such lands and mining rights" and "the lands or mining rights and every interest therein" occur no fewer than 19 times in Part XIV and 21 times in Part XIII.

Principles of statutory interpretation generally require that the same meaning be given to the same words and that use of different words must mean something different. Applications of these principles to Parts XIV and XIII present certain challenges, given the number of references to "lands or mining rights" and variations of those references. (See Schedule 'E' attached)

The phrase "lands or mining rights" is used in sections 670 and 196, dealing with the vesting of the interests of a delinquent co-owner. It is a phrase used throughout the Parts. The tribunal has considered the application of two rules of statutory interpretation to the phrase, namely the "limited class rule" (*ejusdem generis)* and the "implied exclusion rule" (*expressio unius est exclusion alturius)* and finds them of no assistance.

The limited class rule has been described by La Forest J. in **National Bank of Greece (Canada) v. Katsikonouris** (1990), 74 D.L.R. (4th) 197, at 203 (S.C.C.): "…when one finds a clause that sets out a list of specific words followed by a general term, it will normally be appropriate to limit the general term to the genus of the narrow enumeration that precedes it." There is no list of specific words followed by a general word or class in either Part XIV or Part XIII, so that the limited class rule has no application.

The implied exclusion rule means that to express one thing is to exclude another. It would be absurd for "lands" to specifically exclude mining rights.

Many provisions in Parts XIV and XIII apply to either the lands or the mining rights. This is mining-centred legislation. The use of the word, "lands" is an alternative to the expression "mining lands", which is defined and whose meaning has been discussed in detail below. Lands or mining lands includes the mining rights. The implied exclusion rule would render the meaning of this phrase absurd.

Throughout the multiple references and variations of "lands and/or mining rights, there is a general reference, "lands", followed by a specific reference, "mining rights". The

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tribunal finds that general reference "lands" encompasses the broadest group of interests in the patented lands or estate, namely the fee simple[4]. The specific reference to "mining rights" is the lesser class of interests or estate in patented lands.

Returning to the meaning of "lands and mining rights", the tribunal finds that the most simple and logical interpretation which can be given is based upon grammar and ordinary usage. The terms impart the meaning that the largest estate applicable to the facts is captured. It is a phrase which moves from the general to the specific. Mining rights are capable of being a separate estate or tenement as other hereditaments (for purposes of this discussion, land).[5] This usage captures the largest estate held and will include all manners in which the lands came to be owned as mining lands, whether through staking out, location or subsequent use in mining after alienation from the Crown.

Other Terms Used in Connection with Interest in Land

In addition, there is other terminology which is clearly different from variations on "lands and mining rights". Reference to "mining rights severed or held apart from the surface rights" is made in Part XIV in relation to the exception to the exemption for lands which have been subdivided or used for certain specific purposes. In Part XIII, the phrasing has been inverted, so that the exemption will apply if "there has been no severance of the surface mining rights". Part XIV also refers to "mineral rights" in clause 661(2)(a). This use appears to have been an anomaly whose use was not maintained over the long term.

Both Parts have a single reference to "surface rights in respect of a mining claim or mining location", being sections 663 and 191, in relation to surface rights being used for purposes other than the mineral industry. The reference to mining claim or mining location relates back to the manner in which the property was alienated from the Crown as mining lands. "Location" is discussed at page 130 of B. Barton, **Canadian Law of Mining**, Calgary: Canadian Institute of Resources Law, 1993:

> Two different systems were used in Ontario for acquiring rights to Crown Minerals. The first and earlier of them, the location system, was essentially an outgrowth of the general system for the disposition of public lands….
>
> Under the location system, a mining location could be applied for and then purchased, at which point a Crown patent of the land would be issued. A location generally had to be surveyed before application, and at least part of the purchase price paid. Before 1845, as was explained above, there was no general legislation, and the terms were fixed case by case by order in council. From 1845 to 1869, general rules on the acquisition of locations were laid down in orders in council; following the enactment of the *General Mining Act* in 1869, the rules

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[4] It is noted that mining lands patents in fee simple excluded trees, based upon the current section 92 and its predecessors. In the original reference is found in section 12 of **The General Mining Act of 1869**, 32 Vic. c. 34, which was limited to reservation of pine trees.

[5] See *Algoma Ore Properties Ltd. v. Smith*, [1953] O.R. 634 (C.A.).

were laid down in mining legislation.[6] Policymakers frequently altered the terms and procedures to be followed. The size of locations, the price per acre, the time of payment of instalments, the purchase of a $100 miner's licence, the completion of exploration work and surveying before application, and the commencement of *bona fide* mining operations were all experimented with in order to find the optimum conditions for an active industry making a return to the government coffers. The general trend was for a reduction in the size of locations.

It was high early costs that most clearly differentiated the location system from the mining claim system. A location required a considerable investment in a property, in surveying it and paying the first instalment, even before any security of title could be obtained to justify exploring it thoroughly. The barrier to entry that this represented was all the higher when the minimum size of a location was relatively large. Between 1846 and 1853, for example, the minimum size was 5 miles by 2 miles.[7] The graver defect with the location system, however, was that the costs, while high for land of doubtful value, were a pittance for land of demonstrable potential. The location legislation permitted large amounts of mineral property to be rapidly alienated, with little return to the government and no way of preventing speculators from holding it without development.[8] This was precisely what happened with the major ore bodies at Sudbury under the provisions of the *General Mining Act* of 1869.[9]

In its last years in Ontario, the location system began to acquire some of the attributes of the mining claim system. … The size of locations, discovery requirements, and initial staking procedures were assimilated to the equivalents for mining claims.[10]

"Mining location" is distinct from "location", such as it appears in section 3 of the **Mining Act**. "Location" was found in the **Public Lands Act** up until the 29th day of March, 1961. In Part II of R.S.O. 1960, c. 324, at section 46, a "person to whom land is allotted or appropriated as a free grant shall be deemed to be located for the land within the meaning of this Act, and is hereinafter called the locatee." Various rules applied to entitlements of individuals to be located for land, whether they have children or not, with additional provisions for the purchase of additional lands upon meeting certain conditions. The lands in question had to be suitable for settlement and cultivation and there was specific reference that one is not acquiring the lands primarily for the value attributable to pine trees or mines and minerals. There were duties associated with the settlement of the lands, and if not performed, they may be forfeited. The foregoing summary mirrors that of the court in **Bingham Mines Ltd v. Stevenson**, [1938] O.J. No. 176 (Ont. S.C.C.A.) at paragraph 29.

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[6] S.O. 1869, 32 Vict., c. 34; and, as earlier examples, Orders in Council of 1864 and 1865 in *Report of the Commissioner of Crown Lands of Canada for the year ending 30th June 1865* (Ottawa: Hunter, Rose & Co., 1866) Appendices No. 25 and 25a at 50-51.

[7] Jestin, *supra* not 87 at 60.

[8] Between 1845 and 1888, 709,335 acres were patented for mining purposes, at a return for the treasury of $810,955: *Report of the Royal Commission*, *supra* not 91 at 256.

[9] See Jestin, *supra* note 87 at 119, and Nelles, supra note 87 at 256.

[10] *Ibid.*, *eg An Act to further improve the Mining Laws*, S.O, 1897, 60 Vict., c.8.

There are four references to "property" in each of sections 671 and 197 regarding forfeiture of the property for failure to pay the acreage or mining tax. The word "property" is used in relation to publication and notice of possibility of forfeiture. However, actual forfeiture uses the words, "lands or mining rights and every interest therein" forfeit to the Crown.

The phrase "mining rights in, upon or under [any] land[s]" is found exclusively within the **Mining Act** in clauses 661(1)(c) and (d), 661(2)(b) and (c), 189(1)(c) and (d) and 190(d). The phrase has been used to date to limit the interest which will vest in mining lands within a municipality, notwithstanding that sections 670 and 196 use the phrase "lands or mining rights."

"lands" & "land"

One last matter which may or may not be material is the use of "lands" and "land". In subsections 661(1) and 189(1), the singular, "land" is used for municipal and non-municipal land where its status as mining lands did not arise through mining-related legislation. It has been used in connections with land however patented or alienated from the Crown which has come to be held or used for mining purposes. The word "lands" is used when the interest involved was alienated from the Crown through some mining-related legislation or action as mining lands.

Applied to clauses 661(2)(a), (b), and (c), the following interpretation of the provisions would result. The exclusion of the "land" in subsection 661(2) would be to land which is held or used for mining purposes, as opposed to patented as mining lands. While each of the exclusions would be plausible if only land held or used for mining were involved, it would presuppose that mining lands could not eventually end up subdivided into lots, used for cemetery, religious, public park or other such purposes or used for natural gas and petroleum.

Subsection 662(1) provides Ministerial exemption for "lands" which are used for farming or agricultural purposes as long as no severance has taken place. There is potential for the surface rights of mining lands to be used for agricultural purposes, but equally true, the mining rights under agricultural land could come to be held or used for mining purposes. With the former, the exemption would allow the surface rights of mining lands to be exempt from acreage tax for agricultural use. If the latter is the case, the land could have had an agricultural use originally and subsequently, the mining rights could have come to be held or used for mining purposes.

Similar provisions are found in clauses 190(1)(a), (b), (c) and (d), but the terms used differ. Subdivision into lots, reference plan for city, town or summer resort purposes or reference plan for municipal purposes, public park, cemetery and religious purposes, farming and agricultural use and natural gas or petroleum all use the word "land".

The **Mining Act** is replete with exceptions to general provisions with respect to land, not only those discussed in Parts XIII and XIV, but with respect to lands open for staking. Land which is reserved by the Crown for a townsite or has been laid out into lots on a registered plan of subdivision by the owner is not open to staking without the consent of the Minister [s. 37, R.S.O. 1960; s. 29 R.S.O. 1990]. Land which has been set aside for summer resort purposes is

not open to staking, except where the Minister certifies in writing that discovery of a valuable mineral in place has been made [cl. 38(c) R.S.O. 1960; cl. 30(c) R.S.O. 1990]. Even such lands as those used for a church or cemetery, the mining rights of which have been reserved to the Crown, may be prospected or staked out, with the permission of the owner, or order of the recorder or tribunal [s. 40(1) R.S.O. 1960; s. 32(1) R.S.O. 1990]. The purpose of the exceptions appears to be for the purpose of providing flexibility with respect to all potential mining lands, allowing individual decisions to be made according to the circumstances of the case.

Despite its initial belief that references to "land" encompassed land which was not alienated from the Crown as mining lands and "lands" was a shortened reference to "mining lands", the tribunal's examination found that this did not hold to be true. It is impossible to interpret these terms consistently within Parts XIII and XIV, let alone the rest of the legislation. Attempting to reconcile use beyond these Parts becomes more arduous and untenable, with over 172 references in the current **Mining Act** to "land" and 300 references to "lands". Many of the references are within the headings or marginal notes. Others are within the context of legislation, such as the **Public Lands Act** and the **Land Titles Act.** Simple grammatical uses alone can account for differences elsewhere in the legislation. Also, one must assume that any of those provisions dealing with stakings and unpatented mining claims must necessary involve Crown lands the mineral rights of which are reserved to the Crown and, meeting other conditions, are open for staking.

In conclusion on this point, the tribunal is prepared to find that any distinction between "land" and "lands" within the Part dealing with mining land tax which may have once existed no longer does so. Attempting to interpret "land" as meaning land not alienated from the Crown for mining purposes but which come to be held or used as such, and "lands" as meaning being lands alienated is reasonable in attempting to understand the use of the two terms in Part XIV, but does not hold up in Part XIII, where the concepts for exclusion have not substantively changed. One is left to wonder whether the distinction has been lost by legislative draftspersons over time.

However, the conclusion must be that any potential reason for the different interpretation between "land" and "lands" disappears with analysis over time. While the reasons for the different uses in clauses 661(1)(c) and (d) and 189(1)(c) and (d) could have been in accordance with mining and non-mining origins of alienation, the tribunal is unable to find that such as distinction can be supported based on use of the words elsewhere in the parts. Furthermore, those clauses use sufficiently descriptive wording following "lands" or "lands" that the meaning can be clearly gleaned.

Exemptions and Exclusions

The exemptions in sections 661(2) and 662 and sections 190 and 191 are applicable to the unsevered mining rights in lands. Essentially, lands used for agriculture, petroleum production, public purposes and for townsites are included, although many details are omitted from this explanation. Part XIV was enacted under the **Mining Amendment Act, 1955**, and was in place until the **Mining Amendment Act, 1970 (No. 2)**.

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The phrase “mining rights in, upon or under”, in addition to being used in 189 and 661 are found in clauses 661(2)(a) and (b) and 190(1)(d), which refer to production of oil and gas. Petroleum exploration and production is unique in that the industry acquires leasehold interests in petroleum in the subsurface rights, this being true in southwestern Ontario as well as Crown lands in northern Ontario.

Clause 661(2)(a) deals with subdivisions, public parks, cemeteries or religious purposes, refer to “mining rights in, upon or under any land in a municipality or land and mineral rights in territory without municipal organization…”. Use of “mineral rights” is unique, limited to the period between 1955 and 1970. The definition for “minerals” included gold and silver, all rare and precious metals and coal, natural gas, oil and salt, while the definition of “mining rights” encompassed the ores, mines and minerals. The term captures a lesser interest than the mining rights, based upon the definition of “minerals”.

Interpreting the meaning of “mineral rights” is difficult, particularly when the concluding portion of the clause states, “but this clause does not exempt the mining rights….” One possible meaning is that parallel, lesser interests are referred to in relation to interests held or used for mining purposes. However, that lesser interest would be in reference to land in unorganized territory only, as there is no additional wording that would limit the interest referred to in subsection 661(1) and 189(1). The tribunal considers it a possibility that this was not what was intended. Although rare and generally discouraged from doing so, the courts generally do not hesitate to correct what they regard as a draftsman’s error[11]. Given that this reference would otherwise mean a lesser subset of the mining rights than is owned, correcting this error would be reasonable in the circumstances.

The tribunal finds that clause 661(2)(a) is a mirroring of the interests found in clause 661(1) which are subject to the acreage tax.

The interests captured under subsection 190(1) are “lands or mining rights”. The particular clauses, however, differentiate. Clause (a), involving reference/registered plans and the like, refers to “no severance of the surface and mining rights and the land....” . Clauses (b) and (c) refer to “land” for park, educational, religious, cemetery or farming purposes where there “is no severance of the surface and mining rights”. In section 191, the interest captured is the “surface and mining rights in respect of a mining claim or mining location”, which refers back to the manner in which the lands were acquired as mining lands under mining-related provisions.

Clause 661(2)(c) excludes land where the owner has executed a conveyance of “the mining rights in, upon or under the land” to the Crown. This provision has not been retained in the Part XIII provisions and was repealed in the **Mining Amendment Act, 1970**. There can be no doubt that this provision means that the owner is able to convey his or her interest in the mining rights to the Crown. It also stands to reason that, once executed, such a conveyance would serve as a severance of the mining rights from the surface rights. The provision stands as a clear indication that the phrase “all mining rights in, upon or under land” is limited to the mining rights.

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[11] See Driedger, E., **Construction of Statues**, 2nd ed., Toronto: Butterworths, 1983, pages 128 to 130.

Subsections 661(1) & 189 (1)

Clauses 661(1)(a) and 189(1)(a) capture lands and mining rights which were alienated from the Crown for mining purposes. The mention of both recognizes that mining lands patents can be for fee simple or for mining rights only. Clauses 661(1)(b) and 189(1)(b) mentions only "all land", which is consistent with land alienated from the Crown in fee simple for any purpose whatsoever, but which has come to be held or used for mining.

Clauses 661(1)(e) and 189(1)(e) are limited to "all mining rights" only because they apply to those cases where lands, however patented or acquired, are severed. Clearly, this can apply equally to lands within a municipality or without municipal organization. This usage is supportive of the proposition that the severed mining rights mentioned in the provision means something very different from the phrase used in clauses used in connection with lands within a municipality.

Clauses 661(1)(c) and (d) and 189(1)(c) and (d) specify that "all mining rights in, upon or under land[s] are liable for the acreage or mining tax. A similar phrase was considered in **Mastermet Cobalt Mines Ltd. v. Canadaka Mines Ltd.** (1978), 21 O.R (2d) 494 (C.A.), to which the Supreme Court of Canada stated that it agreed and dismissed the further appeal [1980] 2 S.C.R. 119. The case involved an original Crown grant in 1906 of lands in fee simple as mining lands. There was a conveyance of "mines, minerals and mining rights, in upon or under" the lands, creating a severance of the mining rights from the surface rights. The property had been mined extensively and the tailings had effectively created a new surface on the land. When it became economical to mine the tailings for residue silver, the issue of ownership arose.

The Court of Appeal referred to sections 16 and 17 of the **Conveyancing and Law of Property Act**, R.S.O. 1970, c. 85, which were in effect in 1936 when the surface rights were severed from the mining and mineral rights. The Court also referred to the **Land Titles Act**, R.S.O. c. 234, cl. 43(1)(b), wherein the Master of Titles had discretion to register the owner of "any mines or minerals where the ownership… has been severed…". The Court of Appeal referred to the definitions for the noun and verb, "mine", reaching the conclusion that, according to the definition, it included, to paraphrase the words of the definition, the dealing with a mineral bearing substance with the purpose of obtaining the mineral, whether it had been previously disturbed or not.

The Court stated at page 497:

> The words "mine", "mines" and "minerals" have been given different meanings in the various cases which deal with these words as used in particular statutes, or in leases and other conveyancing documents containing a reservation of mines and minerals, or as exceptions out of a grant of land. Most of these cases approach the problem whether a substance is a mineral as a question of fact to be determined by the use, character and value of the substance, in the light of the common understanding of mining engineers, commercial men and landowners at the time of the conveyance: Se *Stroud's Judicial Dictionary of Words and Phrases,* 4th ed. Vol. 3, p. 1671; *A.-G. for Isle of Man v. Moore,* [1938] 3 All E.R.

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> 263; *Lord Provost & Magistrates of Glasgow v. Farie* 1888), 13 App. Cas. 657; *Seymour Management Ltd. et al. v. Kendrick et al.; Princeton, Third Party,* [1978] 3 W.W.R. 202' *Midland R. Co. et al. v. Robinson* (1889) 15 App. Cas. 19.

The tribunal notes that the definition for "mining rights" in 1969 differs from that of 1996. In 1969:

> "mining rights" means the ores, mines and minerals on or under any land where they are or have been dealt with separately from the surface.

And in 1996:

> "mining rights" means the right to minerals on, in or under any land.

It remains a fact that in many cases in which either section 670 or 196 were applied to clauses 661(1)(c) or (d) or 189(1)(c) or (d) respectively, the owner or co-owner within the municipality owns the entire fee simple estate. The interest in the lands or mining rights liable for taxes remains undiminished by the levying of the acreage or mining tax and it remains undiminished up until the vesting takes place.

Vesting, Forfeiture and Lien Provisions

Both subsection 670(1) and 196(1) commence with the words, "Where lands or mining rights liable for [acreage] tax" as opposed to attempting to paraphrase the various descriptions found in subsections 661(1) and 189(1). Moreover, neither of sections 670 and 196 specifically state that a severance is to be created by virtue of the vesting in a co-owner of an interest which is less than the entire interest held. As has been stated above, the best explanation and interpretation for the phrase "lands or mining rights" is to encompass the largest estate possible in the interests involved. The newer subsection 196(5) uses the phrase as well, in relation to the vesting which is to take place. The reference in subsection 670(3), however, is merely to the "interest of the delinquent co-owner or co-owners…".

The fact that subsections 661(1) and 189(1) list different interests in the land according to whether it is within or without municipal organization provides credence to Mr. Scarr's assertion that the wording in clauses 189(1)(c) and (d) necessarily mean a manner to ensure that the mining tax attributable to land is not a double tax, duplicating the municipal taxes assessed under the **Assessment Act**.

Moreover and particularly persuasive is that clauses 661(1)(e) and 189(1)(e) use different terminology, namely "all mining rights, howsoever patented or acquired which are severed or held apart from the surface rights." This is a clear reference to mining rights without "in, upon or under land[s]". The reference to "all mining rights" which are severed, given the absence of the phrase "in, upon or under land[s]" must mean something different from the phrases used in clauses 661(1)(c) and (d) and 189(1)(c) and (d). This distinctive use whose meaning is unequivocal gives further credence to the position that the phrases in question, when used in connection with acreage or mining land means something more than just bald mining rights.

The forfeiture and special lien provisions dealt with in subsection 671(1) and section 676 of Part XIV and subsection 197(1) and section 200 of Part XIII are identical to those of subsections 670(1) and 196(1) in their reference to the interest in land captured, being "lands and mining rights". Yet, those subsections set out the procedures to be followed for defaulters in paying the tax and subsequent forfeiture, that notice is sent to such persons as may be determined to have an interest in the property, specifying that it is "the property" which will be forfeited and vested in the Crown. Similarly, subsections 671(2) and 197(2) involving publication in the **Ontario Gazette** mentions that "the property" will be forfeited to and vested in the Crown.

The reference to the declaration of forfeiture, however, in subsections 671(3) and 197(3) is to the "lands or mining rights, and every interest therein" which will become forfeited to and vested in the Crown. Subsections 671(4) and (7) and subsections 197(4) and (7) provide that the "lands and mining rights" forfeited to the Crown are not open for staking or otherwise until the time specified. In subsections 671(5) and 197(5), the certificate of forfeiture is conclusive evidence of the forfeiture of the "land or mining rights". The reference to the lands coming open for staking in subsections 671(7) and 197(7) is to the "lands or mining rights".

The special lien provisions in sections 676 and 200 attach to the "lands or mining rights against which the tax under this Part is levied".

The tribunal finds considerable support through these provisions that the interest which must vest in sections 670 and 196 is the entire estate in which the delinquent co-owner has an interest. This interpretation is in keeping with the reference in subsections 196(5) for the vesting of the interest in the lands or mining rights, a reference of general application to the entire body of rights or the entire estate, as they were at the time of alienation from the Crown.

The operative sections which give rise to the vesting commence with the references in subsections 670(1) and 196(1), which refer specifically to "lands or mining rights". The application of this provision by this and previous Commissioners has been to refer back to the particular clause in 189(1) to which the mining tax relates, and vest that particular interest in the non-delinquent co-owner. However, a narrower, but more purposeful reading of sections 670 and 196 would be to vest the entire undivided interest in the "lands or mining rights" held by the co-owners. That is the interest which was alienated from the Crown, unless a severance has intervened. The tribunal is strongly persuaded that to sever mining from surface rights in a vesting provision under the **Mining Act** should so state in clear and unequivocal language. That is not the case here.

Although the statements attributable to Thomas Gibson in **The Mining Laws of Ontario and the Department of Mines** were clearly made in relation to the law as it existed at that time, which precedes the inclusion of interests within a municipality, the sentiments expressed in relation to a legislative scheme designed to encourage mining exploration and objectives is equally true today. Section 2 of the **Mining Act** sets out its purpose:

> **2.** The purpose of this Act is to encourage prospecting, staking and exploration for the development of the mineral resources and to minimize the impact of those activities on public health and safety and the environment through rehabilitation of mining lands in Ontario

Section 10 of the **Interpretation Act**, R.S.O. 1990, c. I.11 states:

> **10.** Every Act shall be deemed to be remedial, whether its immediate purport is to direct the doing of any thing that the Legislature deems to be for the public good or to prevent or punish the doing of any thing that it deems to be contrary to the public good, and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit.

The tribunal finds that the interests which were to be vested in 1969 as well as 1996 for interests in land in a municipality mean the greatest set of undivided interests held in the lands or mining rights and not a subset of those rights. Any reference in subsections 661(1) or 189(1) serves merely to delineate the subset of that estate to which the acreage or mining tax relates. The operative sections for vesting are 670(5) and 196(5), both of which refer to the "lands or mining rights."

Subsections 181(5) and 195(5) – "vesting the interest to which the payment relates"

In the 1971 **Civil Rights Statute Amendment Act,** the vesting provisions of what are now subsections 181(5) and 196(5) were re-enacted. While the subsections were re-written, of importance to this inquiry is the change to what was vested. Previously, it was "the interest of the delinquent co-owner …" which was changed to "the interest of the delinquent co-owner or co-owners in the lands or mining rights to which the payment relates…"

The 1971 amendments were part of the larger civil rights exercise which accompanied the enactment of the **Statutory Powers Procedure Act**, whereby all legislation in the Province was amended to address concerns raised by and in keeping with recommendations of the **Royal Commission Inquiry into Civil Rights,** (the "**McRuer Report**") whose terms of reference, as set out at page 1, Volume 1, Report No. 1, in part state:

> (2) after due study and consideration to recommend such changes in the laws, procedures, and processes as in the opinion of the Commission are necessary and desirable to safeguard the fundamental and basic rights, liberties and freedoms of the individual from infringement by the State or any other body.
>
> A study of the laws of Ontario as they affect the personal freedoms, rights and liberties of the individual necessarily includes a study of the common law, the statute law, regulations made by the Lieutenant Governor in Council, and rules made under the authority of any Act of the Legislature, as well as the procedures and processes authorized by law. The study is for the purpose of determining how far there may be "unjustified encroachment on the personal freedoms, rights and liberties of the individual."

In Chapter 118, found at page 1898 of Part V, Report Number 3, of the **McRuer Report,** there is a discussion, based in part upon information provided by the then Mining Commissioner, Mr. J.F. McFarland. There are 18 recommendations made for legislative changes. A typewritten list has been inserted into the back of the tribunal's copy of this Report, entitled,

"Recommendations Contained in Volume 5 of The Royal Commission in Inquiry into Civil Rights Presided Over by the Honourable J.C. McRuer In their Relationship to Amendments to the Act as Agreed upon with Mr. D.W. Mundell, Q.C. Counsel to the Commission" appears to be the resulting decisions on the proposed legislative changes corresponding with the 18 recommendations. At the end is the following statement:

> There are, of course, many other Amendments agreed to with Mr. Mundell which are not the subject matter of the immediate recommendations of the Honourable Mr. McRuer.

There is no way for this document to be authenticated and its provenance is therefore uncertain. However, the amendment to what is section 196 is not included in the list of recommendations. The tribunal has relied upon chapter 14 of the **McRuer Report**, where at page 211 the Commission states that its "… survey of the statutes of Ontario shows that an extensive reappraisal and revision of statutes now conferring powers should be undertaken."

The changes to what became sections 181 and 196 in 1971 ensured that the vesting ordered by the tribunal could not take place without a hearing. A cursory survey of the **Civil Rights Statute Law Amendment Act, 1971** discloses that all manner of statutes were amended to provide the right to some sort of hearing procedure before a final decision affecting them or their property was issued. So extensive are the revisions that the Acts amended are not dealt with according to Ministry but rather appear alphabetically, commencing with **The Abandoned Orchards Act, 1966**. Particular amendments to the **Mining Act** ensured that numerous decisions were made by the Commissioner and/or the recorder only after a hearing or that decisions affecting rights would not be made without providing notice. Examples include determinations of wilful contravention of legislative provisions, surface rights compensation and vesting of the interests of a delinquent co-owner. The insertion in 1971 of the words "to which the payment relates" occurred in both what is now subsection 181(5) and 196(5).

Section 181 involves the vesting of "lands or mining rights" in a co-owner where another is delinquent in paying a proportion of rents or expenditures. With respect to leased lands, there is no issue of whether the rents involved would apply to the mining rights only for lands located within municipal organization. It is simply the greatest entire interest in the lands or mining rights which is vested.

To the tribunal's knowledge, sections 181 has not been used in an application for vesting for failure to pay a proportionate share of development costs on patented freehold interests. It is unknown as to why this might be the case. Nonetheless, sections 181 can be used in such cases and where it is so used, there is nothing to distinguish between the mining lands within a municipality and those located in territory without municipal organization. Therefore, section 181 would permit vesting of the entire freehold patented interest in mining lands located within a municipality. For this reason alone, the vesting under section 196 should be for like interest and should not be construed to have any other meaning.

According to principles of statutory interpretation, the same words should have the same meaning. For example, in E.A. Driedger, **Construction of Statutes** 2nd. ed. Toronto: Butterworths, 1983, at page 93:

> There is another draftsman's guide to good drafting and hence also a reader's guide, namely the same words should have the same meaning, and, conversely, different words should have different meanings.[12] But this too is only an initial guide and not a rule.

This is echoed by R. Sullivan, **Driedger on the Construction of Statutes** 3rd ed. Toronto: Butterworths, 1994, commencing at page 163:

> ***Governing principle***. It is presumed that the legislature uses language carefully and consistently so that within a statute or other legislative instrument the same words have the same meaning and different words have different meanings. Another way of understanding this presumption is to say that the legislature is presumed to avoid stylistic variation. Once a particular way of expressing a meaning has been adopted, it is used each time that meaning is intended. Given this practice, it then makes sense to infer that where a different form of expression is used, a different meaning is intended.
>
> ***Same words, same meaning.*** In *R. v. Zeolkowski* Sopinka J. wrote: "Giving the same words the same meaning is a basic principle of statutory interpretation."[13]

The tribunal finds that the words, "to which the payment relates" used in subsections 181(5) and 196(5) must have the same meaning, particularly as they were enacted at the same time. In subsection 181(5), it is the lands or mining rights which are subject to rents or expenditures which are captured, as set out in subsection 181(2). In subsection 196(5), it is the lands or mining rights liable for tax held by two or more co-owners, as set out in subsection 196(1) which is captured in the vesting in subsection 196(5).

This finding is in accord with Mr. Scarr's submission that the phrase is meant to circumscribe that the vesting may only take place with the entire interest, be it lands or mining rights, and not any adjoining or non-adjoining interests. This view is echoed under other legislative provisions, such as subsection 373(4) of the **Municipal Act, 2001**, which provides for current purposes that a tax arrears certificate shall not include more than one separately assessed parcel of land.

Mining Lands

Each of the patents which are the subject matter of this case were mining lands patents, issued pursuant to provisions of the then current **Mining Act.** The definitions found in the legislation have not changed substantially over time. That found in **The Mining Act of Ontario**, R.S.O. 1914 [8 Edw. VII, c. 21] states:

> "mining lands" shall include lands and mining rights patented or leased under or by authority of any statute, regulation or Order in Council, respecting mines, minerals or mining, and also lands or mining rights located, staked out, used or intended to be used for mining purposes. 34

[12] See Driedger, E., **Construction of Statues**, 2nd ed., Toronto: Butterworths, 1983, pages 128 to 130.
[13] (1989), 61 D.L.R. (4th) 725, at 732 (S.C.C.).

The later definitions:

> "mining lands" includes the lands and mining rights patented or leased under or by authority of a statute, regulation, or order in council, respecting mines, minerals or mining, and also lands or mining rights located, staked out, or used or intended to be used for mining purposes. R.S.O. 1960, c. 149.
>
> "mining lands" includes,
>
> (a) the lands and mining rights patented or leased under or by authority of a statute, regulation or order in council, respecting mines, minerals or mining,
>
> (b) lands or mining rights located, staked out, used or intended to be used for mining purposes, and
>
> (c) surface rights granted solely for mining purposes. R.S.O. 1990, c. E. 20.

The phrases "lands and mining rights" and "lands or mining rights", seen in all of the foregoing definitions, are echoed throughout Parts XIV and XIII, commencing with sections 659 and 187 which sets out that the tax is applicable to certain lands.

These definitions capture those lands and rights whose title was given for mining purposes and lands which have come to be used for mining, as demonstrated by the phrase, "used or intended to be used for mining purposes". Therefore, even lands which were alienated from the Crown through non-mining legislation or provisions (i.e. location for settlement or other purposes) but have come to be used for mining will be regarded as coming within the definition of "mining lands". Unpatented mining claims are also captured.

Surface rights forming part of a mining lands patent may be characterized as mining lands surface rights. This is in accord with the definition of "mining lands" and finds accord with the provisions of the **Provincial Land Tax Act** whereby mining lands surface rights are not subject to that **Act** unless there is a non-mining use of the surface. This gives rise to the general question which encompasses the second issue before the tribunal. Does a severance caused by a municipal tax sale or registration of a tax arrears certificate irrevocably change mining lands surface rights to non-mining lands or ordinary surface rights? The specific question involving the registration of the tax arrears certificate and subsequent redemption will be examined below.

"Mining lands" character of surface rights confirmed by Escheats Act

The operation of the **Escheats Act,** when mining lands are forfeited to the Crown, although not relevant to the issue before the tribunal, provides another indication of the overall legislative intent of the combined effect of the statutes involved. The relevant sections are section 3 in the R.S.O. 1960, c. 149 and section 2 in the 1990 R.S.O., c. E.20:

> **3.** Notwithstanding section 2, where mining lands as defined by *The Mining Act* have become forfeited to the Crown, such mining lands shall be dealt with and disposed of as Crown lands in the manner provided in *The Mining Act*. R.S.O. 1960, c. 149. 35

> **2.** Despite section 1, where mining lands as defined in the *Mining Act* have become forfeited to the Crown, such mining lands shall be dealt with and disposed of as Crown lands in the manner provided in the *Mining Act*. R.S.O. 1990, c. E. 20.

The **Escheats Act** refers to the "mining lands" which shall be dealt with under the **Mining Act.** It is noteworthy that "mining rights" as a lesser interest in "mining lands" are not singled out. The definition of "mining lands" requires that one look back to the time at which the interest is acquired to determine whether it involves "lands and mining rights" acquired as mining lands or "lands or mining rights" used or indeed to be used for mining purposes.

Surface rights may also be included in the definition of "mining lands" depending on the manner in which the lands came to be characterized as "mining lands." The tribunal will characterize such surface rights as "mining lands surface rights", which are included in what is contemplated by "mining lands" as it is used in the **Escheats Act.** There is no provision invoking the **Escheats Act** for the surface rights nor does the Public Guardian and Trustee become involved.

In **Re Irvine** (1928), 62 O.L.R. 319 (C.A.), certain lands were granted by the Crown as mining lands and subsequently, the mining rights were severed from the surface rights. Questions arose concerning the dower rights of the estranged spouse of the deceased owner of the surface rights. At page 326, the Court stated:

> It is argued that the land of which the deceased became the owner is not and was not "mineral lands" or "mining land", as he had only the surface and not the minerals. This, as it seems to me, is to ignore the wording of the [Dower] Act. The Act does not speak or purport to speak of "mining land,' but of what is "granted by the Crown as mining land," and, in my view, it makes no difference, for the purposes of this section, whether the land granted is mining land, or grazing land, or any other kind of land – in a word, it is not what kind of land it is but how the Crown in the grant describes it. It would never be argued that the section refers, for example, to land which is in fact "mining land" but not so described in the patent.
>
> The Crown describing what was granted as "mining land," that which ultimately came to the deceased was included –*omne majus continent in se minus* – either it was granted as "mining land" or it was not granted at all. And nothing that any one could do could possibly cause it to lose the quality of having been "granted as mining land."

The tribunal finds that the principle is applicable. Lands which have been patented as mining lands will remain mining lands until some step is taken to change their nature. Such would be the case where the surface rights have been severed and sold with the intent that they be used thereafter for non-mining purposes.

In **Trivett v. The Public Trustee,** (1956) 3 M.C.C. 166, Godson, J. considered the case of a surface rights patent. The surface rights came to be held and used as mining lands

which were forfeited to the Crown, pursuant to section 204 of the **Mining Act,** R.S.O. 1950, c. 236 [now section 184] and The **Corporations Act**, **1953**, S.O. 1953, c. 19, s. 329. The Public Trustee maintained that the lands acquired by the Crown as a result of the forfeiture, fell under the **Escheats Act**. Godson, J. found at page 168:

> I have no hesitation, therefore, in finding on all the evidence that the lands were and are mining lands, and as such, not subject to The Escheats Act, or under the jurisdiction of the Public Trustee.

Unless the mining rights have been severed from the surface rights with the intention that the surface rights no longer be held or used for mining purposes, those surface rights remain mining lands. The greater legislative framework, beyond just the confines of the **Mining Act** very strongly supports the position that mining lands should remain mining lands unless an irrevocable and intentional step is taken to sever the surface rights. That is hardly how a section 670 or 196 vesting order of the tribunal should be characterized.

The vesting of the interest of a delinquent co-owner in lands in a municipality is one legislative provision in the overall legislative scheme involving taxes, lands, escheats and mining whose terms are ambiguous. Given that there is no other means of vesting the surface rights as mining lands surface rights in the owner of the mining rights in cases where the delinquent co-owner cannot be located, the tribunal finds that this ambiguity must be construed in favour of the applicant non-delinquent co-owner of mining lands.

Contextual Analysis of Vesting Orders in the Mining Act

There are currently five vesting provisions in the **Mining Act**, found at: section 68, where a co-holder of an unpatented mining claim is delinquent in paying his or her proportionate share of assessment work, survey or first year's rental; section 69, where a third party who performs assessment work on an unpatented mining claim is not paid for that work; section 74, for interests in unpatented mining claims of a deceased holder to be vested in his or her representative or estate; section 181, where a co-owner of a leasehold patent has not paid his or her proportionate share of rent or where a co-owner of either a leasehold or freehold patent has not paid his or her proportionate share of development work; and section 196, being the section under consideration.

Within the context of the **Mining Act** taken as a whole, there is very little tolerance for mining lands being allowed to remain "fallow". This is illustrated through the forfeiture provisions of unpatented mining claims, where assessment work must be performed within two years of recording and each year thereafter. Failure to perform the required assessment work will result in forfeiture. Moreover, no extension of time will be allowed where the first unit of assessment work has not been performed, demonstrating that the **Mining Act** not only requires steps which receive statutory recognition are required to maintain an interest in a mining claim, but grants allowances only to those who have already demonstrated intent to carry out their statutory requirements by their past actions in relation to a particular mining claim.

The vesting provisions related to assessment work demonstrate the intolerance in the **Act** of those who do not contribute their share to the necessary assessment work and the

rights of third parties performing that work to obtain all or a share of the unpatented mining claim. These provisions serve a very concrete and practical purpose. Both sections 68 and 69 provide the person or persons who are willing to financially commit to the necessary assessment work with the opportunity to obtain a vesting order of the recorded holders who are not paying a proportionate share of the work. What is unusual about the vesting provisions of section 69, which is in addition to and beyond the lien provisions under the **Construction Lien Act**, R.S.O. c. C.30, is that the contractor, having performed the necessary work, is presupposed to have sufficient knowledge to carry out future statutory requirements for assessment work.

Section 74 protects unpatented mining claims of a deceased holder for a period of one year, so that even where the estate executor is not knowledgeable, the claims will be protected from forfeiture and re-staking. The only shortcoming not addressed in this provision is that of an insolvent, deceased, intestate co-holder of unpatented mining claims where no one is willing to take out administration of the estate. Admittedly, this is sufficiently esoteric that it is an exception which will seldom arise.

Sections 181 and 196 provide considerable protection to the delinquent co-owner, where the initial step in the proceedings, seeking an Order to Pay amounts owing, can be taken only after the amounts are outstanding for a period of four years. This higher standard for patented interests is in accord and reflects the type of protection afforded to property rights owners by the common law to owners of patented interests, where the law will be reluctant to divest that owner of his or her title. The time frame thus accords with current provisions for municipal tax sales under the **Municipal Act, 2001.** The current system varies from that described below applicable in 1980, which was pursuant to the **Municipal Affairs Act**, involving municipalities unable to meet their financial obligations. Currently, where municipal property taxes are owing on January 1 in the third year following that in which the real property taxes become owing, a tax arrears certificate may be registered on title. Owners are given one year from the date of the registration of the tax arrears certificate to pay the cancellation price. Otherwise the lands may be sold for taxes or vested in the municipality when the year expires. [ss. 373, 374, 375, 379]. There is no right of further redemption of ten years, as was found in earlier municipal tax sales provisions.

Therefore, section 181 and 196 vesting orders reflect a higher standard of compliance before patented leasehold or freehold mining lands will be irrevocably alienated from a delinquent co-owner. The objective of the vesting provisions is either payment of amounts due or a means to bring ownership into line with the intent to advance mining lands towards the ongoing accumulation of knowledge of geology and resource potential the ultimate objective of which is the successful discovery, development and production of a financially viable ore body.

In a functional and contextual sense, discretion to vest rights in lands has been given to only the tribunal and not to any other statutory functionary under the **Mining Act.** In exercising that discretion on the matter of alienation of property rights, it is to apply its court-like jurisdiction. However, and more importantly, the provision for vesting circumscribes a clear system for furtherance of the objectives in a process which is, in the words of Rand J., in **Dupont v. Inglis**[13a] at page541 one which is intended to be more expeditious and less formalistic than the regular courts:

. . . . 38

[13a] [1958] S.C.R. 535, 14 D.L.R. (2d) 417, 3 M.C.C. 237 (S.C.C.), rev'g [1957] O.R. 377, 3 M.C.C. 210 (C.A.)

> To introduce into the regular Courts with their more deliberate and formal procedures what has become summary routine in disputes of such detail would create not only an anomalous feature of their jurisdiction but one of inconvenience both to their normal proceedings and to the expeditious accomplishment of the statute's purpose.

Moreover, the irrevocability of the vesting of the patented mining lands allows the owner to proceed with the degree of certainty that the risky nature of resource development may allow. Ostensibly, from the point of vesting forward, all those needed to negotiate options, joint ventures and the like can readily be brought to negotiations. Otherwise, the property would be frozen through the inability to contact and obtain the concurrence of all the owners registered on title. As those in the mining industry well know, it is virtually impossible to obtain financing for or to option a property whose future ownership cannot readily be resolved. The risks and amounts which may be involved are too great to have such uncertainty regarding ownership.

The vesting provisions as a whole are included in the **Mining Act** with the purpose of furthering the objectives of the **Act** through propelling lands held forward through to successful development or through the return of the lands to the Crown to be opened for staking by others. It would be repugnant to this scheme to allow the erosion of ownership resulting in the mining lands being marginalized through loss of rights to the surface which occurs without the intent of the owner.

For example, the surface rights of mining lands remain as mining lands for purposes of the **Escheats Act**. Nonetheless, in this case, the only other way in which the undivided half interest in the surface rights of mining lands could only be re-acquired as a mining lands, would be through forfeiture to the Crown pursuant to section 184 of the **Mining Act** and pursuant to either the **Corporations Act** or **Business Corporations Act**, and subsequent sale to the co-owner as a surface rights mining lands patent. Why would the scheme require that a co-owner of mining lands within a municipality go through such a circuitous and costly route, when a co-owner of lands in unorganized territory does not? A non-delinquent co-owner of freehold patented lands owned by an individual or corporation might arguably be entitled to make application for a vesting order pursuant to section 181 of the **Mining Act** upon performance of development work and failure of the delinquent co-owner to pay a proportionate share of that development work for a period of four years. Again, this would represent a circuitous and potentially unnecessarily costly route for vesting. Such machinations would be contrary to the context and objectives of vesting in general under the **Mining Act.** This is particularly so when such unnecessary steps would be required when the facts already exist for a vesting under section 196.

Conclusion – Vesting 1969

The tribunal finds that the 1969 vesting of the undivided one-half interest of Sandra Gold Mines in Jack Koza involved the lands and mining rights in Mining Lands Patents Patent A 2184, dated January 27, 1907, being Mining Claims Y461, 462 and 463, registered as Parcel 347; Mining Lands Patent A 3035, dated October 5, 1915, being Mining Claim SSM 886, registered as Parcel 963; Mining Lands Patents A 3746, 3747 and 3748, dated February 9, 1926,

being Mining Claims SSM 2401, 2401 and 2403, registered as Parcel 1551; Mining Lands Patents "A" 3863 and "A" 3864, December 9, 1927 and "A" 3865, dated December 10, 1927, being Mining Claims SSM 3129, 3493 and 3124, registered as Parcel 1678; Mining Lands Patent A 3871 1/2, dated December 27, 1927, being Mining Claim SSM 3109, registered as Parcel 1685; Mining Lands Patents "A" 4026, dated January 25, 1930, "A" 4021 and "A" 4022, dated February 20, 1930, being Mining Claims SSM 3301, 3470 and 3471, registered as Parcel 1805; and Mining Lands Patent "A" 4298, dated December 30, 1935, being Mining Claim SSM 7389, all being situate in West Section, in Township twenty-nine, Range twenty-three, registered in the Register for the District of Algoma.

1996 Vesting

Based upon the foregoing analysis, the tribunal would have had jurisdiction to vest the greatest estate in lands and mining rights of the undivided one-half interest of Mary S. Gibson, Executrix, in 1996. Whether the surface rights remained as part of the lands and mining rights in 1996 or were severed and held as surface rights only (in addition to mining rights only) will depend on the following analysis regarding registration of the tax arrears certificate. However, the tribunal will indicate at this time that, should the surface rights in fact be unsevered in 1996, it will rescind its earlier orders and restate its order for vesting *nunc pro tunc***.** The purpose of so stating at this point is due to the proximity of the above reasoning and its applicability to the facts in 1996.

Issue 2 - Tax Arrears Certificate

On March 26, 1980, a single tax arrears certificate dated September 6, 1979, was registered against all of the parcels in this matter, being Instrument Number 106558. A Redemption Certificate was issued to Sandra Gold Mines – J. Koza on May 23, 1980 and registered on the parcels on June 19, 1980 as Instrument Number 107851.

Relevant provisions of the **Municipal Affairs Act,** R.S.O. 1980, c. 303[14] are reproduced:

> **40-** (1) Where any part of the taxes on any vacant land within a municipality remains unpaid on the 31st day of December in the year next following that in which the taxes were levied, such vacant land vests in and becomes the property of the municipality upon registration by the treasurer of a tax arrears certificate, subject to the right of redemption hereinafter provided and to subsection (8).
>
> (3) The treasurer, with respect to vacant land upon which any part of the taxes remains unpaid after the time mentioned in subsection (1) and with respect to improved land upon which any part of the taxes remains unpaid after the time

. . . . 40

[14] The dates of registration of the tax arrears certificate and certificate of redemption are within the 1980 calendar year, which is also the year of the revision and consolidation of the Revised Statutes of Ontario. After the 1970 R.S.O.s, there were amendments to several of the quoted sections by S.O. 1972, c. 1, 4 and 46, S.O. 1974, c. 111 and specifically to section 42(3) by S.O. 1980, c. 66, s. 1, which was assented to December 12, 1980, after the transactions which concern the tribunal took place. Therefore, subsection 42(3) has been reproduced from the **Department of Municipal Affairs Act**, R.S.O. 1970.

mentioned in subsection (2), may register in the land registry office a certificate signed by him to be known as a tax arrears certificate in Form 1, setting forth therein a description of the vacant land or improved land, as the case may be, and the amount of all unpaid taxes, with the amount of all penalties, interest and costs added thereto, and thereupon the land described in the certificate vests in and becomes the property of the municipality, its successors and assigns, in fee simple, clear of and free from all other estate, right, title or interest, subject only to the right of redemption hereinafter provided and to subsections (8), (10) and (11).

42.- (1) The owner or assessed owner of or any person appearing by the records of the land registry office for the registry or land titles division or the sheriff's office to have an interest in any vacant land or improved land in respect of which a tax arrears certificate has been registered may redeem the land at any time within one year after the date of registration of the certificate by paying to the municipality the amount set forth in the certificate in respect of the land to be redeemed with interest thereon to the day of redemption, together with the amount of all expenses incurred by the municipality and the treasurer in registering the certificates and for searches and postage and $1 for each certificate and for each notice sent under subsection 40(4), and also by paying to the municipality all taxes including the local improvement rates and the penalties and interest on such taxes and rates that had accrued against the land and that would have accrued against the land if it had remained the property of the former owner and had been liable for ordinary taxation, and, if the value thereof is not shown upon the assessment roll, such taxes shall be computed at the rate fixed by by-law for each year for which such taxes are payable upon the value placed thereon upon the assessment roll for the last preceding year in which it was assessed, and the local improvement rates shall be computed at the rate fixed in the by-law by which they were rated or imposed and upon the frontage as shown upon the list of properties and the frontage thereof as settled by the court of revision for such local improvement, and a certificate of the treasurer as to the total amount payable in order to redeem the land is final and conclusive.

(2) Where land is redeemed under this section, the treasurer shall forthwith register in the land registry office a certificate signed by him, to be known as a redemption certificate in Form 3, setting forth therein a description of the land redeemed, and a redemption certificate, when registered, is a valid and effectual cancellation of the tax arrears certificate registered with respect to the land, and subject to subsection (3), the land thereupon vests in and becomes the property of the persons who would be entitled thereto if the tax arrears certificate had not been registered, according to their respective rights and interests.

(3) If land is redeemed by any person entitled to redeem the land other than the owner, such person has a lien upon the owners' interest therein for the amount paid to redeem the land. R.S.O. 1970, c. 118, s. 49(3).

Also applicable at the time was subsection 472(1) of the **Municipal Act,** R.S.O., 1980, as amended by S.O. 1972, c. 1, s. 104(6) and S.O.1978, c. 87, s. 40(21), which stated:

> **472**. – (1) Where land, the mining rights in which are liable for acreage tax under *The Mining Act*,
>
> (a) is sold for taxes under this Act; or
>
> (b) is vested in a municipality or school board upon registration of a tax arrears certificate under the *Municipal Affairs Act*,
>
> on or after the 1st day of April, 1954, such sale or vesting creates a severance of the surface rights from the mining rights and only the surface rights in the land pass to the tax sale purchaser or vest in the municipality or school board, as the case may be, and the sale or registration does not in any way affect the mining rights.

There appears to be a lack of clarity between the operation of the registration, redemption and the severance provisions. The **Municipal Affairs Act** provides that the property vests in the municipality upon registration of the tax arrears certificate, subject to the right of redemption. The **Municipal Act** provides that the vesting of the land in the municipality upon registration of the tax arrears certificate creates a severance of the mining and surface rights. To the extent that property becomes irrevocably vested in the municipality upon the expiration of the period for redemption, the intent of the **Municipal Act** is clear. What is less clear is whether the vesting described in clause 472(1)(b) of the **Municipal Act** is the conditional vesting (subject to the right of redemption) or the absolute vesting, at the expiration of the redemption period. Is the severance governed by the vesting which takes place upon registration of the tax arrears certificate or by the expiration of the redemption period resulting in a complete and unconditional vesting? Simply stated, at what point in the municipal tax sales process would the surface rights get severed?

Re: York (Township) Treasurer, [1938] O.W.N. 191 is a short case which deals with the procedure to be followed by the Master of Titles upon registration of a tax arrears certificate pursuant to section 42 of **The Department of Municipal Affairs Act,** R.S.O. 1937, ch. 174. It is a short, hand-written judgment of Middleton, J. He outlines that the purpose of the establishment of the Department of Municipal Affairs in 1935 is to handle the affairs of municipalities which are in default and under government supervision. A précis of the relevant provisions is then set out. At page 192, Middleton J. states:

> Mr. Deacon, the Master of the Land Titles Office in Toronto, has been impressed by some difficulties in the way of the registration of these [tax arrears] certificates under this Act. Ordinarily speaking, he does not register an ownership that is merely inchoate and subject to be defeated by redemption. In this he is right, and he should not enter the municipality as the "owner" of the lands so long as this right to redeem is outstanding.
>
> The course of procedure that Mr. Deacon has inaugurated and desires to apply is, immediately upon the registration of the certificate, to record, in the same manner that he does a caution, the registration of the certificate by making a red ink memorandum upon the register stating that by virtue of the Municipal Affairs Act

> a certificate has been issued by the Treasurer of the municipality certifying that certain taxes upon this parcel amounting to $..... remain unpaid for the period mentioned in the Act, and the parcel is vested in and has become the property of the said municipality, and that the period within which the right of redemption may be exercised is one year from the date of the registration of this certificate. Upon the redemption of the land and the issue of a certificate to that effect under the statute, Mr. Deacon proposes to cancel this entry by striking it out and recording the registration of a certificate of discharge. Upon the title of the municipality becoming absolute, and it being shown to him that taxes have not been paid and the necessary notice has been sent, he will record the municipality as being the absolute owner of the parcel.
>
> This practice appears to be in conformity with the statute, and to be satisfactory to all the parties interested.

In **Eastview (Town) v. Ottawa (City) Local Master of Titles**, [1941] O.W.N. 298, Urquhart deals with similar facts, but changed legislation and it was land titles, not registry. Urquhart states that the changes in legislation do not alter the case. He states:

> The learned Local Master in this case has followed the procedure outlined [in the **Department of Municipal Affairs Act**] up to the last step.
>
> Section 42 has been amended since the decision of Middleton J.A. viz. By 1941, 5 Geo. VI, ch. 18, sec. 4, but it does not alter the case.
>
> Despite the very brilliant and thorough argument of the Local Master, the decision of Middleton J.A. must be followed and the same course as was outlined by him must be followed in this matter.

Based upon the decision of Middleton, J.A., the initial registration of the tax arrears certificate is to be treated in the same manner as a caution. It is to be entered in red. It is an inchoate right. Inchoate and inchoate interest are defined in Black's Law Dictionary:

> **Inchoate.** Imperfect; partial, unfinished; begun, but not completed; as a contract not executed by all the parties.
>
> **Inchoate interest.** An interest in real estate which is not a present interest, but which may ripen into a vested interest, if not barred, extinguished, or divested

Registration of the tax arrears certificate by the municipality results in a vesting of the property, but the title acquired is incomplete. The Land Registrar registers the certificate but the title of the municipality does not ripen until two things happen. The first is that the taxes must remain unpaid up to December 31st in the year following that in which taxes were not paid. The second is that the period for redemption, being one year from the date of registration of the certificate, must elapse. It is only with the failure to redeem the property that the title of the municipality will become absolute.

The wording of subsection 42(2) is less than clear. When the redemption certificate is registered, it is "a valid and effectual cancellation of the tax arrears certificate registered with respect to the land". The registration of the redemption certificate results in a re-vesting of the land in those who would be entitled to it had the tax arrears certificate not been registered, according to their respective rights and interests. Taken together with subsection 42(3), Mr. Koza and Mary Gibson, in her capacity as Executrix of the Estate of Angus Gibson would be restored on title as registered owners, each as to an undivided half interest in the surface rights, with Mr. Koza having a lien upon Mary Gibson's portion of the property.

The respective interests of Jack Koza and Mary Gibson as Estate Executrix before registration of the tax arrears certificate must be characterized as that of owners of fee simple of the surface rights as mining lands. The wording of clause 472(1)(b) of the **Municipal Act** provides that where the land is vested in the municipality upon registration of the tax arrears certificate, the vesting creates a severance and that only the surface rights vest in the municipality. The vesting which takes place under the **Municipal Affairs Act** is subject to the right of redemption. Clause 472(1)(b) does not employ this phrase. Rather, it merely states the vesting which takes place upon registration of the tax arrears certificate. It does not state the vesting which takes place notwithstanding the right of redemption which is mentioned in subsections 40(1) and (3) in relation to the vesting which takes place upon registration. Stated another way, clause 472(1)(b) of the **Municipal Act** does not state with words to the effect that the vesting of an inchoate title creates a severance.

The tribunal finds that the meaning of clause 472(1)(b) is ambiguous in that it is unclear whether the vesting of the absolute or vesting of the inchoate title in the municipality creates the severance.

The severance created by the vesting of the surface rights in the municipality would constitute an irrevocable step, one of considerable significance to the owner of the mining lands seeking to redeem the tax arrears, who would throughout be seeking to have their rights restored. To the holder of mining lands, it would be only the restoration through the re-vesting of the surface rights as mining lands which could be characterized as restoration of rights and interests. This interpretation is in keeping with section 10 of the **Interpretation Act.** Giving a fair, large and liberal interpretation of clause 472(1)(b) requires that the purposes of the **Mining Act** be acknowledged and not defeated, namely that of development of mineral resources. This reflects the general principle stated by Lord Mansfield in **R. v. Loxdale**, (1758), 1 Burr. 445, at page 447:

> Where there are different statutes *in parti material* though made at different times, or even expired, and not referring to each other, they shall be taken and construed together, as one system, and as explanatory to each other.

To find otherwise would result in the mining lands characterization of those surface rights being lost forever, despite their having been redeemed by one of the owners shown on title at the time the tax arrears certificate is registered. Otherwise, the redemption contemplated by the **Municipal Affairs Act** cannot be considered an actual redemption. Redemption is defined in **Black's Law Dictionary** to include the "process of cancelling and

annulling a defeasible title to land, such as is created by a mortgage or tax-sale, by paying the debt or fulfilling the other conditions." The vesting of the surface rights in the municipality is defeasible through the registered owner's act of redemption, which in the words of the statute has the effect of cancelling "the tax arrears certificate registered with respect to the land". The registration itself is not cancelled, the vesting in the municipality of the inchoate title is not cancelled, but the tax arrears certificate itself is cancelled.

To further support this finding, the tribunal relies on Sullivan, R., **Driedger on the Construction of Statutes**, where in chapter 15, entitled "Strict and Liberal Construction, commencing at page 370, dealing with the general principle concerning legislation which interferes with rights and specifically dealing with property rights:

> ***General principle.*** It is presumed that the legislature does not intent to abolish, limit or otherwise interfere with the rights of subjects. Legislation that curtails rights is strictly construed. This presumption was explained by Estey J. in *Morguard Properties Ltd. v. City of Winnipeg*:
>
> … the courts require that, in order to adversely affect a citizen's right, whether as a taxpayer or otherwise, the Legislature must do so expressly… The resources at hand in the preparation and enactment of legislation are such that a court must be slow to presume oversight or inarticulate intentions when the rights of the citizen are involved.[15]
>
> The presumption against interfering with rights applies both to common law[16] and statutory rights.[17]
>
> …
>
> ***Property rights***. Historically, the presumption against limiting the rights of subjects has been applied most rigorously to protect private property rights. The judicial concern for property has several aspects, the most important being privacy and personal security. In a number of judgments the Supreme Court of Canada has emphasized the sacrosanct character of these values.[18] In *Colet v. R.*, for example, Ritchie J. wrote:
>
> It is true that the appellant's place of residence was nothing more than a shack or shelter which was considered inappropriate by the City of Prince Rupert, but what is involved here is the long-standing right of a citizen of this country to control and enjoyment of this own property, including the right to determine who shall and who shall not be permitted to invade it. The common law principle has been firmly engrafted in our law since

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[15] (1983), 3 D.L.R. (4th) 1, at 13 (S.C.C.).
[16] See *Bhatnager v. Canada (Minister of Employment & Immigration), supra note 59*, at 228-29; *Basarabus v. R.* (1982), 144 D.L.R. (3d) 115, at 123 (S.C.C.); *Laidlaw v. Municipality of Metropolitan Toronto* (1978), 87 D.L.R. (3d) 161, at 169 (S.C.C.).
[17] See, for example, *Re B.C. Teachers' Federation and A.G. for B.C.* (1985), 23 D.L.R. (4th) 161, at 174-75 (B.C.C.A.).
[18] See, for example, *Lyons v. R.* (1984), 14 D.L.R. (4th) 482, at 500-01 (S.C.C.); *Re Application for Authorization* (1984) 14 D.L.R. (4th) 546, at 555-56 (S.C.C.); *Eccles v. Bourque*, [1975] 2 S.C.R. 739, at 743.

> *Semayne's Case*[19] … where it was said …:"that the house of every one is to him as his castle and fortress, as well for his defence against injury and violence, as for his repose…".[20]

He concluded:

> As I have indicated, I am of opinion that any statutory provision authorizing police officers to invade the property of others without invitation or permission would be an encroachment on the common law rights of the property owner and in case of any ambiguity would be subject to strict construction in favour of the common law rights of the owner.[21]

> The principle of strict construction applies broadly to any provision authorizing the invasion of private space or personal property, include search and seizure, surveillance, and forfeiture provisions.[22]

The decision of **Spooner Oils Ltd. v. Turner Valley Gas Conservation Board**, [1933] S.C.R. 629 is referred to in **Re Application for an Authorization.** At page 638 of **Spooner Oils Ltd.** Duff J. stated:

> … The appropriate rule of construction has been formulated and applied many times. A legislative enactment is not to be read as prejudicially affecting accrued rights, or "an existing status" (*Main v. Stark*[23]), unless the language in which it is expressed requires such a construction. The rule is described by Coke as a "law of Parliament" (2 Inst. 292), meaning, no doubt, that it is a rule based on the practice of Parliament; the underlying assumption being that, when Parliament intends prejudicially to affect such right or such a status, it declares its intention expressly, unless, at all events, that intention is plainly manifested by unavoidable inference.

The tribunal therefore concludes that the redemption certificate registered on each of the parcel registers for Parcel 347, 963, 1678, 1685, 1805 and 2049 had the effect of cancelling the inchoate interest of the municipality in the surface rights and restoring to Jack Koza his pre-existing interest in the surface rights of those parcels as mining lands surface rights. The only severance which has taken place with respect to these parcels involves the transfers to Medlee Limited of the surface rights only in Parcel 347 and the surface rights only of Mining Claim SSM 3470 of Parcel 1805. This severance is clear from the intent of Mr. Koza and further supported by subsection 20(3) of the **Assessment Act**, constituting an act of the successor of the patentee severing the estate of the surface rights from the mining rights in those lands.

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[19] (1604), 5 Co. Rep. 91a, at 91b, 77 E.R. 194.
[20] (1981), 57 C.C.C. (2d) 105, at 110 (S.C.C.).
[21] *Ibid*., at 112.
[22] *Lyons v. R.*, [1984] 2 S.C.R. 633; *Re Application for an Authorization*, [1984] 2 S.C.R. 697.
[23] (1890) 15 App. Cas. 384, at 388.

With respect to Parcel 1551, the effect is different, given the undivided half interest which existed in Mary Gibson as Executrix of the Estate of Angus Gibson. While the redemption certificate registered on Parcel 1551 had the effect of cancelling the inchoate interest of the municipality in the surface rights, what was restored was an undivided one half interest in the mining lands surface rights in each of Mary Gibson, Executrix and Jack Koza, with Koza having a further lien on the interest of Gibson in that undivided half interest in the mining lands surface rights, pursuant to subsection 43(3).

Other Municipal Tax Sales Provisions

Clause 472(1)(b) of the **Municipal Act** applicable at the time of the inchoate vesting of the surface rights in the municipality is not altogether clear in its meaning. However, both earlier and subsequent legislative provisions are extremely clear in what was intended. In the **Municipal Board Act,** S.O. 1932, where the tax arrears certificate was issued, section 109(1) was similar to that under the **Municipal Affairs Act**, namely that the vacant land is vested in the municipality subject to the right of redemption. Subsection 110(2) discusses what took place upon redemption:

> **110.** (2) Upon redemption being made under this section, the treasurer shall forthwith register in the registry office a certificate to be known as a redemption certificate, form 3 to this Act, setting forth therein a description of the land redeemed, and a redemption certificate shall, subject to s-s. 3, when registered, **be as valid and effective in law as a conveyance of the land described therein** to the registered owner at the time of registration of the tax arrears certificate, his heirs or assigns, **of the original estate** of such registered owner and a valid and effectual cancellation of the tax arrears certificate registered with respect to such land. [emphasis added]

The restoration of the original estate upon redemption was unequivocal.

The **Municipal Tax Sales Act**, R.S.O. 1990, c. M. 60, which was effective between 1984 and 2001, contained similar provisions for registration of a tax arrears certificate, ostensibly after taxes remained unpaid for three years. The actual vesting which could take place, pursuant to subsections 9(3) and (4), is upon the preparation and registration by the municipal treasurer or a tax deed or notice of vesting, depending on whether there was a successful sale or a vesting in the municipality. The operation of this statute does not give rise to an inchoate interest in the municipality upon the registration of the tax arrears certificate.

Similar intent exists today for regular municipal tax sales or vesting in cases where the municipality is not subject to supervision. Pursuant to the **Muncipal Act, 2001,** the registration of a tax arrears certificate does not vest the land in the municipality, conditionally or otherwise [s. 373], but the certificate is merely registered on title. If the land is not redeemed within one year, it may be sold for taxes or vested in the municipality. If the cancellation price remains unpaid for one year, it may be sold for taxes or if it is no successful purchaser, the municipality may prepare and register a notice of vesting [s. 379]. Where the notice of vesting is not registered within one year of the unsuccessful public sale, the tax arrears certificate is deemed to be cancelled.

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While not strictly material, these provisions illustrate legislative intention during periods surrounding that in question and provide greater weight to the interpretation of clause 472(1)(b) that the vesting upon which the severance took place could only be if and when the absolute and not inchoate interest was vested.

Issue 3 - Status of Notice of Forfeiture Registered Pursuant to Section 184

The tribunal's foregoing findings in this application are an attempt to address the concerns raised by the Land Registrar's two cautions placed on the register for Parcel 1551. The Notice of Forfeiture of the Minister concerning any residual interest of Sandra Gold Mines in an undivided one half interest in the surface rights of Parcel 1551 was also an attempt to address the concerns raised by the Land Registrar's caution.

The tribunal has found that the 1969 Vesting Order vested the interest of Sandra Gold Mines in the lands and mining rights in Parcels 347, 963, 1678, 1685, 1805 and 2049 and the undivided one half interest of Sandra Gold Mines in the lands and mining rights in Parcel 1551 in Jack Koza. As a consequence, there was nothing left in Sandra Gold Mines to forfeit to the Crown upon its dissolution in 1973 pursuant to section 184 of the **Mining Act** and provisions of the **Corporations Act** or **Business Corporations Act**.

The tribunal is prepared to declare that the Notice of Forfeiture registered on Parcel 1551 is a meaningless and of no force and effect under the **Mining Act.** The jurisdiction of the tribunal is limited to questions which arise under the **Mining Act,** as set out in section 105 which states:

> **105.** 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.

The tribunal cannot make findings pursuant to section 159 of the **Land Titles Act**, but the Land Registrar is in a position to consider and apply the tribunal's findings in making his or her own determination of whether sufficient evidence exists to the Land Registrar's satisfaction to rectify the register.

In **Sheridan v. The Minister of Mines**, (1988) 7 M.C.C. 405, the tribunal was asked to make a declaratory order concerning the application of a general policy by the Minister regarding man days and the amount of assessment work performed. The tribunal recognized in that case, as is the case here, that it had no jurisdiction to hear appeals concerning ministerial actions. Nonetheless, the Minister attorned to the jurisdiction of the tribunal to make findings and issue a declaratory order of general application. The particulars of the tribunal's declaration are of some assistance and are reproduced:

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> 1. THIS TRIBUNAL DECLARES, in reference to reports of assessment work consisting of geochemical, geological and geophysical surveys prepared on the "man days" basis,
> (a)….; and
> (b) with reference to the unalterable policy ….
>
> (i) the holder of the mining claim is entitled to receive an order by way of judicial review striking down the Ministerial allotment on the basis of
>
> a policy that is contrary to the express provisions of the Act and fetters the discretionary administrative decision making function, and
>
> (ii) the proper body for dealing with such applications is the Divisional Court of the Supreme Court of Ontario.

In addition to the foregoing precedent, which is but one example of declaratory orders issued by the tribunal, the courts have considered its unusual jurisdiction on several occasions. In **McLean Gold Mines Ltd. v. A.G. Ont.**, [1924] 1 D.L.R. 10 (Ont. S.C.A.D.), 3 M.C.C. 25, in his dissenting judgement, at page 33, Meredith J. stated:

> Although the Mining Commissioner is not in terms declared to be a court, the powers and jurisdiction which are conferred upon him constitute him a court.

This was admittedly not the decision of the majority, but over time, it has come to be the consistent view of the courts. Between the years 1924 and 1956, the Mining Court was created by the province and the Order-In-Council appointment was confirmed by fiat of the Governor General. When the legislation was once again changed back to that of the Office of the Mining Commissioner in 1956, a constitutional challenge of the Commissioner's jurisdiction was determined in **Dupont v. Inglis**, [1958] S.C.R. 535, 14 D.L.R. (2d) 417, 3 M.C.C. 237 (S.C.C.), rev'g [1957] O.R. 377, 3 M.C.C. 210 (C.A.). The issue in that case was whether the Commissioner had power to hear the appeal of a dispute determined by a mining recorder. The Supreme Court determined that he did. However, issues outside this were discussed in passing, at 245 and 246, 3 M.C.C.:

> Section 119 contemplates proceedings which involve private civil and property rights and provides that a party may apply for an order transferring the proceedings to the Supreme Court. I should say that once that situation appears an order should go unless the party applying is willing to accept the Commissioner as an arbitrator. By reason of its terms s. 119 is clearly a severable provision and would be so apart from the provision for transfer.
>
> Other sections, by general suggestion, were said to be similarly tainted, but nothing was specifically pointed out which, if encroaching on the judicial power of Superior Courts, was so bound up with valid jurisdiction as to drag the latter down with it. The precise issue raised in this proceeding, which alone is in question, is clearly within the provincial power and, contained in an administration statute with the scope of valid action clearly ascertainable, the separation of other encroachments, if any, would present no difficulty. 49

...

> Under the statute immediately before the amendments in 1956, R.S.O. 1950, c. 236, the Judge, before whom the appeal here was brought, had been appointed by the Lieutenant-Governor in Council of Ontario. This was confirmed by a commission issued under an order of the Governor-General in Council. The purpose of the latter was to provide against the contingency that the appointment by the Province should held to be *ultra vires*. The order of confirmation recites that in the view of His Excellency's government the responsibility for the appointment did not rest with that Government and that the commission was to be for the purpose of confirming the appointment only so far as it was competent to His Excellency to do so. In my opinion, the appointment by the Lieutenant-Governor was valid and the confirmatory action by the Governor-General in Council of no effect.

This reasoning was picked up again in **Minescape Exploration Inc. v. Bolen** (1998), 39 O.R. (3d) 205 (Ont. Ct. Gen. Div.), where Kurisko, J., who referred to the tribunal as the Mining Court, stated at page 213:

> - 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.
>
> - The Mining Court and the General Division have concurrent jurisdiction in a proceeding brought in the Mining Court involving private civil and property rights relating to or arising out of matters governed by the *Mining Act*.

In this case, both Citadel and the Minister have clearly agreed to attorn to the tribunal's jurisdiction in this matter. Given its finding that the 1969 Vesting Order vested the entire one-half interest in Parcel 1551 of Sandra Gold Mines in Jack Koza, there was nothing left at the time when Sandra Gold Mines was dissolved to forfeit to the Crown. Based upon the tribunal's reasoning, the Minister's forfeiture of the interest of Sandra Gold Mines in the surface rights in Parcel 1551 was an unnecessary step and of no force and effect. This being the case, the tribunal finds that it is prepared to issue a Declaratory Order stating that the Notice of Forfeiture issued by the Minister pursuant to section 184 of the **Mining Act** and registered is of no force and effect for purposes of the **Mining Act** and should be expunged from the register for Parcel 1551.

In the event that the Land Registrar accepts the tribunal's reasoning only in connections with the vesting orders issued, and not that of the Minister's Notice of Forfeiture, the tribunal recommends that the Minister issue the necessary documentation to have the Notice expunged from the Parcel register.

Issue 4 – If Reasons in this Matter Not Acceptable to Land Registrar

The cautions of the Land Registrar were placed on the Parcel register pursuant to subsection 158(1) of the **Land Titles Act,** R.S.O. 1990. c. L.5, to prevent dealing with lands if it

appears an error has been made. There is authority under subsection (2) for the correction of such error, if there is evidence that appears sufficient to the satisfaction of the Land Registrar. It is unknown whether the reasoning in this case with respect to the 1969 Vesting Order, the 1996 Vesting Order or the Notice of Forfeiture of the Minister will satisfy the Land Registrar's evidentiary burden.

Vesting Orders of the tribunal have been given effect by the Land Registrars throughout the province without exception. It is unknown how the Land Registrar will regard this Order of the tribunal, whose principal purpose it is to correct the error arising out of the 1969 Vesting Order.

Citadel and, through the actions of Mr. Scarr on behalf of the Ministry, the Minister of Northern Development and Mines, have both clearly attorned to the jurisdiction of the tribunal in this matter. This being the case, if the Land Registrar is satisfied that issues raised in her caution have been satisfactorily addressed, there is no reason that this matter should not be concluded. If, however, the Land Registrar is not inclined to accept and apply the findings of the tribunal in this matter, there is one other avenue open to Citadel. One is to make an application to the Superior Court of Justice for an Order pursuant to section 159 or 160 of the **Land Titles Act**.

> **159.** Subject to any estates or rights acquired by registration under this Act, where a court of competent jurisdiction has decided that a person is entitled to an estate, right or interest in or to registered land or a charge and as a consequence of the decision the court is of opinion that a rectification of the register is required, the court may make an order directing the register to be rectified in such manner as is considered just.
>
> **160.** Subject to any estates or rights acquired by registration under this Act, if a person is aggrieved by an entry made, or by the omission of an entry from the register, or if default is made or unnecessary delay takes place in making an entry in the register, the person aggrieved by the entry, omission, default or delay may apply to the court for an order that the register be rectified, and the court may either refuse the application with or without costs to be paid by the applicant or may, if satisfied of the justice of the case, make an order for the rectification of the register.

Suggested Legislative Solutions

Should the Land Registrar not accept the tribunal's reasoning, or if it becomes necessary, if a court does not accept the tribunal's reasoning in this matter, the situation would be as follows. The 1969 vesting would have been for the mining rights only, despite what was shown on each of the parcel registers. Those parcels for which the surface rights were transferred to Medlee Limited on January 1981, namely Parcel 347 and Mining Claim 3470 of Parcel 1805 would have been transferred in error and Medlee Limited would not be the owner of the surface rights. The forfeiture of the one half interest in the surface rights of Sandra Gold Mines would be valid and the Ministry would have to arrive at a means of allowing Citadel to acquire the one-half interest in the surface rights at a market value.

Even if the tribunal's reasoning should be accepted by the Land Registrar or a court, there remains the issue of past vesting orders for lands within municipalities, which have vested the mining rights only in the applicant, non-delinquent co-owner. It is uncertain the degree of success each of these past applicants might anticipate with the various Land Registrars involved or, if necessary, with the courts.

The tribunal recommends the following:

1. Amend section 196 so that it is unequivocally clear that the interest which vests in a non-delinquent co-owner is the entire estate held by the co-owners in mining lands within a municipality.

2. Pass legislation, along the lines of the 1924 **Mining Tax Title Validity Act** to give clarity and certainty for all vesting orders issued prior to any amendment to section 196. Consideration will need to be taken for those cases in which the surface rights did not pass with the vesting order and have since been transferred to a third party without notice.

3. Clarify in legislation that the severance provisions found in section 384 of the **Municipal Act, 2001** after 1954 operated only on the absolute sale or vesting of the surface rights in the purchaser or municipality and not based upon the vesting of an inchoate interest. The current sale and vesting provisions regarding municipal tax sales are not problematic, but earlier provisions create uncertainty.

The foregoing recommendations would clarify the vesting provisions found in the current Part XIII, while confirming the mining-related purpose of mining lands patents and lands which have come to be used for mining purposes. To do otherwise will be to the detriment of the industry the Minister is charged to support.

Finally, the tribunal wishes to thank and commend Mr. Tony Scarr for his able advocacy in this issue. It was only through his persuasive and impassioned submissions that the tribunal was moved to take another detailed look at provisions which had appeared very straight forward. This examination has proved that they were anything but. Mr. Scarr's analysis at all times kept clearly at the forefront the purpose behind the granting and keeping of mining lands as mining lands.

CONCLUSIONS

The 1969 Vesting Order, dated the 3rd day of January, 1969, was for the interest of Sandra Gold Mines Limited in the lands and mining rights, being the undivided one-half interest in Parcel 1551 being Mining Claim SSM. 2401, Mining Claim SSM. 2402 and Mining Claim 2403, all situate in Township 29, Range 23, in the District of Algoma. The tribunal will issue a declaration to that effect.

The 1980 redemption certificate had the effect of restoring to Mr. Jack Koza, and in the case of Parcel 1551, Mr. Koza and Mary Gibson, Estate Executrix, their interest in the surface rights of the Parcel as mining lands surface rights. The purported severance of the surface rights which was apparently recognized by the Land Registrar in 1980 as having taken

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place upon the registration of the tax arrears certificate was premature and did not have the effect of severing the surface rights from the mining rights. After the registration of the redemption certificate, the interest of Jack Koza, and Mary Gibson, Estate Executrix, should have been in the lands and mining rights, namely the same interest as was granted in the original mining lands patent.

Provisions of the 1996 and 1997 Vesting Orders involving tribunal file No. MA 002-96 shall be rescinded and amended *nunc pro tunc* to the effect that the interest of the Estate of Mary S. Gibson in her personal capacity and as Executrix of the Estate of Angus Gibson in the lands and mining rights in Mining Lands Patents "A" 3746, 3747 and 3748, dated the 9th day of February, 1926, registered as Parcel 1551, West Section, in Township twenty-nine, Range twenty-three, situate in the District of Algoma will be vested in the applicant, Citadel Gold Mines Inc.

The tribunal will further issue a declaration that the Certification of Forfeiture of the surface rights of Sandra Gold Mines Limited in the undivided one-half interest in Parcel 1551 being Mining Claims SSM 2401, 2402 and 2403, all being situate in Township 29, Range 23, in the District of Algoma, being land registered in the name of Sandra Gold Mines Limited, and effected under the **Business Corporations Act** upon dissolution of the corporation on February 14, 1973, and registered on title on July 4, 1997, is of no force and effect for the purposes of any and all matters under the **Mining Act**.

SCHEDULE 'A'

Parcel 347:

Mining Lands Patent, January 27, 1907,
Benjamin Boyer
Mining Claims Y461, 462 and 463.

↓

Boyer died on July 28, 1908
Albert Boyer, Estate Administrator
Various transactions in administration of Estate

↓

Transfer to Albert Boyer as Administrator of the Estate
of Benjamin Boyer
Dated December 1, 1931 and registered
December 23, 1931

↓

A series of mechanic's liens were registered
on title

↓

Order of the Judge of the Mining Court
Dated February 23, 1944 and April 24, 1944
Registered March 4, 1944 and April 27, 1944
respectively
Vesting parcel in Harry Korsan & Aaron Cohen, trading
under the name of
Northern Metal Company

↓

Transfer of Parcel to Sandra Gold Mines Limited
Dated May 11, 1944 and registered July 13, 1945

↓

Vesting Order of the Mining Commissioner
Parcel in Jack Koza
Dated January 3, 1969 and registered
January 29, 1969

↓

Tax Arrears Certificate
Registered March 26, 1980
Vesting the surface rights of Y461, 462 and 463
of the Parcel
In The Corporation of the
Township of Michipicoten
And may be redeemed in one year.

↓

The surface rights of Y461, 462 and 463 → Transfer of the surface rights of
Redeemed by Jack Koza Mining claims Y 461, 462 and 463
Registered June 19, 1980 to Medlee Limited
Registered January 21, 1981
[Now entered as Parcel 10200
and no longer is tracked on Parcel 347]

↓

Transfer of the mining rights only in Y 461, 462 and 463
to Dunraine Mines Limited
registered February 12, 1986
Name change in 1991 to International Dunraine Limited

↓

Transfer of the mining rights only in Y 461, 462 and 463
To Citadel Gold Mines Inc.
Registered March 13, 1990.

SCHEDULE 'A'

Parcel 963

Mining Lands Patent A 3035, October 5, 1915
Harry E. Wood
Mining Claim SSM 886

↓

Wood died on April 26, 1928
Transfer to Paul E. Von Kuster, Executor of the Estate of Harry E. Wood
Dated April 1, 1930 and registered
April 23, 1930

↓

Transferred to Hugh M. Roberts, dated July 25, 1930 and registered on March 28, 1935

↓

Transfer to Parkhill Gold Mines Limited
Dated March 20, 1935 and registered on
March 25, 1935

↓

Transfer to Parkhill Gold Mines (1937) Limited.
Dated January 1, 1937 and registered on
January 15, 1937

↓

A series of liens and a certificate of action were registered on title

↓

Order of the Judge of the Mining Court
Dated February 23, 1944 and registered on
March 4, 1944
Vesting parcel in Harry Korson and Aaron Cohen, trading under the name of
Northern Metal Company

↓

Transfer of Parcel to Sandra Gold Mines Limited
Dated May 11, 1944 and registered July 13, 1945

↓

Vesting Order of the Mining Commissioner
Parcel in Jack Koza
Dated January 3, 1969 and registered January 29, 1969

↓

Tax Arrears Certificate
Registered March 26, 1980
Vesting the surface rights of SSM 886 of the Parcel
In The Corporation of the Township of Michipicoten
And may be redeemed in one year.

↓

The surface rights of SSM 886 of the Parcel
Redeemed by Jack Koza
Registered June 19, 1980

↓

Transfer of the surface and mining rights in SSM 886
to Dunraine Mines Limited
registered February 12, 1986
Name change in 1991 to International Dunraine Limited

↓

Transfer of the surface and mining rights in SSM 886
To Citadel Gold Mines Inc.
Registered March 13, 1990.

SCHEDULE 'A'

Parcel 1551

Mining Lands Patents A 3746, 3747
and 3748 February 9, 1926
Angus Gibson
Mining Claims SSM 2401, 2401 and 2403
↓
Charles B. Oakes caution registered
April 26, 1927
↓
Angus Gibson died on March 16, 1929
Transfer to Mary Gibson,
Executrix of the Estate of Angus Gibson
Dated November 12, 1932 and registered
on April 28, 1934
↓
A number of cautions are noted on title,
one involving Parkhill Gold Mines Limited
and an agreement with Mary Gibson
and one involving E.B. Smith
and an agreement with Charles Oakes
↓
Transfer of an undivided half interest to
Charles B. Oakes
dated April 16, 1931 and registered
April 8, 1935
↓
Order of the Judge of the Mining Court
Dated February 23, 1944 and April 24, 1944
Registered March 4, 1944 and April 27, 1944 respectively
Undivided half interest of Charles B. Oakes
Vested in Harry Korsan & Aaron Cohen, trading under the name of
Northern Metal Company
↓
Transfer of undivided half interest of Korson and Cohen
to Sandra Gold Mines Limited
Dated May 11, 1944 and registered
July 13, 1945
↓
Vesting Order of the Mining Commissioner
Undivided one half interest in
Sandra Gold Mines Limited
in Jack Koza
Dated January 3, 1969 and registered January 29, 1969
↓
Tax Arrears Certificate
Registered March 26, 1980
Vesting the surface rights of SSM 2401, 2402
and 2403 of the Parcel
In The Corporation of the
Township of Michipicoten
And may be redeemed in one year.
↓

By Certificate of Redemption
The surface rights of SSM 2401, 2402 and 2403
of the Parcel
Redeemed by Jack Koza
Registered June 19, 1980

↓

Transfer of the undivided one half interest
of Jack Koza
in the surface and mining rights
in SSM 2401, 2402 and 2403
to Dunraine Mines Limited
registered February 12, 1986
Name change in 1991 to International Dunraine Limited

↓

Transfer of the undivided one half interest in the surface rights and mining rights
in SSM 2401, 2402 and 2403
To Citadel Gold Mines Inc.
Registered March 13, 1990.

↓

Vesting Order of the Mining and Lands Commissioner
Vesting the undivided one half interest
of Mary S. Gibson,
executrix of the Estate of Angus Gibson
in the mining rights
In Citadel Gold Mines Inc.
Dated May 14, 1996 and amended
November 20, 1996 and April 14, 1997

↓

Caution registered August 2, 1996
Concerning interest of Mary S. Gibson
(resolved through amended vesting order)
and concerning potential problems with vesting in 1969 of surface rights

↓

Notice of Forfeiture pursuant to the
Business Corporations Act and s. 184 of the Mining Act
By the Crown of the undivided half interest in the surface rights of
Sandra Gold Mines Limited
registered on July 4, 1997

↓

Caution registered on July 4, 1997
Concerning interest of Sandra Gold Mines
Not appearing on title

SCHEDULE 'A'

Parcel 1678

Mining Lands Patents "A" 3863 and "A" 3864, December 9, 1927
and "A" 3865, dated December 10, 1927
William Rossiter
Mining Claims SSM 3129, 3493 and 3124
↓
A caution, lien and conditional sale noted
↓
Transfer to Parkhill Gold Mines Limited
On September 24, 1934 and registered
on September 25, 1934
↓
Transfer to Parkhill Gold Mines
(1937) Limited
On January 1, 1937 and registered on
January 15, 1937
↓
A series of liens and a certificate of action
registered on title
↓
Order of the Judge of the Mining Court
Dated February 23, 1944 and registered
March 4, 1944
Vesting parcel in Harry Korson & Aaron Cohen, trading under the name of
Northern Metal Company
↓
Transfer of Parcel to Sandra Gold
Mines Limited
Dated May 11, 1944 and registered
July 13, 1945
↓
Vesting Order of the Mining Commissioner
Parcel in Jack Koza
Dated January 3, 1969 and registered
January 29, 1969
↓
Tax Arrears Certificate
Registered March 26, 1980
Vesting the surface rights of SSM 3129,
3493 and 3124
In The Corporation of the
Township of Michipicoten
And may be redeemed in one year.
↓
By Certificate of Redemption
The surface rights of SSM 3129,
3493 and 3124
Redeemed by Jack Koza
Registered June 19, 1980
↓

Transfer of the mining rights and surface rights in SSM 3129, 3493 and 3124
to Dunraine Mines Limited
registered February 12, 1986
Name change in 1991 to International Dunraine Limited
↓
Transfer of the surface and mining rights in SSM 3129, 3493 and 3124
To Citadel Gold Mines Inc.
Registered March 13, 1990.

SCHEDULE 'A'

Parcel 1685

Mining Lands Patent A 3871 1/2, December 27, 1927
William Rossiter
Mining Claim SSM 3109.
↓
A caution, lien and conditional sale noted
↓
Transfer to Parkhill Gold Mines Limited
On September 24, 1934 and registered on
September 25, 1934
↓
Transfer to Parkhill Gold Mines (1937) Limited
On January 1, 1937 and registered on
January 15, 1937
↓
A series of liens and a certificate of action
registered on title
↓
Order of the Judge of the Mining Court
Dated February 23, 1944 and registered
March 4, 1944
Vesting parcel in Harry Korson & Aaron Cohen, trading under the name of
Northern Metal Company
↓
Transfer of Parcel to Sandra Gold Mines Limited
Dated May 11, 1944 and registered
July 13, 1945
↓
Vesting Order of the Mining Commissioner
Parcel in Jack Koza
Dated January 3, 1969 and registered
January 29, 1969
↓
Tax Arrears Certificate
Registered March 26, 1980
Vesting the surface rights of SSM 3109
In The Corporation of the
Township of Michipicoten
And may be redeemed in one year.
↓
By Certificate of Redemption
The surface rights of SSM 3109
Redeemed by Jack Koza
Registered June 19, 1980
↓
Transfer of the surface and mining rights
in SSM 3109
to Dunraine Mines Limited
registered February 12, 1986
Name change in 1991 to International Dunraine Limited
↓
Transfer of the surface and mining rights
in SSM 3109
To Citadel Gold Mines Inc.
Registered March 13, 1990.

SCHEDULE 'A'

Parcel 1805

Mining Lands Patents "A" 4026,
January 25, 1930,
"A" 4021 and "A" 4022, February 20, 1930
Mary Helen Careful, Olaf Hagen, James Burden and
Walter J. Sheppard
Mining Claims SSM 3301, 3470 and 3471

↓

Transfer by Walter J. Sheppard an undivided 1/4 interest
to Olaf Hagen
April 8, 1931

↓

Transfer by Olaf Hagen an undivided /8 interest to Mary
Helen Careful
April 8, 1931

↓

Transfer to Parkhill Gold Mines (1937) Limited
March 11, 1933 and registered July 28, 1937

↓

A series of liens and a certificate of action were
registered on title.

↓

Order of the Judge of the Mining Court
Dated February 23, 1944 and
Registered March 4, 1944
Vesting parcel in Harry Korson & Aaron Cohen, trading
under the name of
Northern Metal Company

↓

Transfer of Parcel to Sandra Gold
Mines Limited
Dated May 11, 1944 and registered
July 13, 1945

↓

Vesting Order of the Mining Commissioner
Parcel in Jack Koza
Dated January 3, 1969 and registered
January 29, 1969

↓

Tax Arrears Certificate
Registered March 26, 1980
Vesting the surface rights of SSM 3301,
3470 and 3471
In The Corporation of the
Township of Michipicoten
And may be redeemed in one year.

↓

The surface rights of SSM 3301, → Transfer of the surface rights of
3470 and 3471 Mining Claim 3470
Redeemed by Jack Koza to Medlee Limited
Registered June 19, 1980 January 21, 1981
[Now being entered as Parcel 10200
Algoma West Section]

↓

Tax Arrears Certificate
Registered April 18, 1984
Vesting the surface rights of Mining Claims
3301 and 3471
In the Corporation of the
Township of Michipicoten
With one year redemption

↓

Written Notice sent by registered mail to the owners and
encumbrancers of
the surface rights of Mining Claims
3301 and 3471
May 30, 1984

↓

By Certificate of Redemption
The surface rights of Mining Claims
3301 and 3471
Redeemed by Dunraine Mines Limited
Registered June 25, 1984

↓

Transfer of the surface and mining rights in
SSM 3301 and 3471
And mining rights only in SSM 3470
to Dunraine Mines Limited
registered February 12, 1986
Name change in 1991 to International Dunraine Limited

↓

Transfer of the surface and mining rights in
SSM 3301and 3471
And mining rights only in SSM 3470
To Citadel Gold Mines Inc.
Registered March 13, 1990.

SCHEDULE 'A'

Parcel 2049

Mining Lands Patent "A" 4298,December 30, 1935
Richard Ethelred Barret
Mining Claim SSM 7389

↓

Transfer to Parkhill Gold Mines Limited.
February 14, 1936 and registered March 2, 1936

↓

Transfer to Parkhill Gold Mines (1937) Limited.
January 15, 1937 and registered January 29, 1937

↓

A series of liens and a certificate of action were registered on title

↓

Order of the Judge of the Mining Court
Dated February 23, 1944 and registered March 4, 1944
Vesting parcel in Harry Korson & Aaron Cohen, trading under the name of
Northern Metal Company

↓

Transfer of Parcel to Sandra Gold Mines Limited
Dated May 11, 1944 and registered July 13, 1945

↓

Vesting Order of the Mining Commissioner
Parcel in Jack Koza
Dated January 3, 1969 and registered January 29, 1969

↓

Tax Arrears Certificate
Registered March 26, 1980
Vesting the surface rights of SSM 7389
In The Corporation of the Township of Michipicoten
And may be redeemed in one year.

↓

Certificate of Redemption
The surface rights of SSM 7389
Redeemed by Jack Koza
Registered June 19, 1980

↓

Transfer of the surface and mining rights in SSM 7389
to Dunraine Mines Limited
registered February 12, 1986
Name change in 1991 to International Dunraine Limited

↓

Transfer of the surface and mining rights in SSM 7389
To Citadel Gold Mines Inc.
Registered March 13, 1990.

SCHEDULE 'B'

HISTORY OF MINING TAX LEGISLATION RELEVANT TO THE QUESTION OF TAXATION OF LANDS WITHIN A MUNICIPALITY

When the initial acreage (mining) tax provisions were enacted in 1907 in **The Supplementary Revenue Act**, **1907**, 7 Edw. VII, c. 9, only lands within unorganized territory were covered. Section 6 provided for a tax on mine workings and income derived from mining (these provisions now appear in the **Mining Tax Act,** R.S.O., M. 15). Section 15 operated to effectively reconcile the taxes levied on mines with income from mining to municipal property taxes. Section 16, which is the first of the relevant provisions for purposes of this inquiry, corresponds in its earlier form to what are now sections 196 and 181. At its inception, arrears in payment of mining acreage tax led to forfeiture of the property, pursuant to section 21. The vesting order provisions did not appear until later.

16. (1) Except as hereinafter provided,

> (a) Every mining location and mining claim in unorganized territory in the Province, held either mediately or immediately under patent granted or lease issued by the Crown under or pursuant to the provisions of any statute, regulation or law at any time in force authorizing the granting or leasing of Crown lands for mining purposes; and
>
> (b) All mining rights, whether of all kinds or only one or more kinds of mines or minerals howsoever granted or acquired, owned or held under lease, agreement, or option, in any lands in any unorganized territory in the Province, by any person not owning the surface rights in the said lands;

shall be liable for, and the owner, holder, lessee and occupier thereof shall pay an acreage tax of two cents per acre in each year.

(2) But no such tax shall be payable in respect of such acreage as was during the preceding year actually and *bona fide* used for farming purposes, or occupied by buildings, or reasonably required or used in connection with such farming or buildings; but this paragraph shall not operate to exempt from taxation mining rights held apart from the surface rights as in paragraph (b) above described.

Provided that there shall be no right to exemption under this subsection unless a claim for such exemption shall have been made….

17. – (1) The trustees of every school section in unorganized territory in the Province shall prepare a list of all mining locations, mining claims, mining rights and other lands within their school section liable to said acreage tax, which shall e signed and certified by their Secretary or Secretary-Treasurer, and shall forward the same to the Bureau of Mines on or before the 30th day of April in each year.

. . . . 2

(2) There shall be paid by the Treasurer of the Province to the said trustees for school purposes each year one-half of the amount certified by the Deputy Minister of Mines to have been actually received by the Province for such acreage tax within the said school section during the year, and it shall be the duty of the said Deputy Minister each year to certify such sum.

21. – (1) The Deputy Minister of Mines shall prepare annually a list of all mines, mining locations, mining claims, mining lands and other lands and minerals in respect of which any tax by this Act imposed is two years of more in default, and with the approval of the Minister, he shall cause a list of the mines, mining locations, mining claims, mining land or lands or mineral rights in respect of which taxes are in arrear to be advertised in four successive issues of *The Ontario Gazette* and in one newspaper, if any, published in the district or county in which the property is situate, stating that unless the amount due with costs and expenses shall have been paid on or before a date to be in said advertisement specified, which day shall be either the 30th of June or the 31st of December, not less than six months nor more than a year after the first publication of said advertisement, said property shall upon the next day following the day so fixed become forfeited to and revested in the Crown.

(2) If after publication of such advertisement payment of the tax due in respect of any mine, mining location, mining claim, mining land, or other land or mining rights in said advertisement mentioned or described, together with all additions, penalties and costs and the costs of advertising, is not made on or before the day fixed in said advertisement as the last day for payment, then on the next succeeding day after the day so fixed, or at any time thereafter the Minister may by a certificate under his hand and seal of office declare that such mine, mining location, mining claim, mining land or other land or mining rights, shall notwithstanding anything in this Act or any other Act, law or regulation contained, be forfeited to and vested in the Crown in right of the Province, and that the patent or lease whereby the said mine, mining location, mining claim, mining lands or other lands or mineral rights was or were granted or leased by the Crown or other title under which they are held is revoked and cancelled, and thereupon the premises comprised therein shall vest in the Crown absolutely freed and discharged from every estate, right, title, interest, claim or demand therein or thereto, whether existing, arising or accruing before or after such forfeiture shall be so declared.

(3) Provided that no lands or mining rights forfeited and vested in the Crown under this section shall be open to location, staking or recording as a mining claim unless and until declared so open by Order in Council.

In 1908 in 8 Edw. VII, c. 15, section 16 was amended with the following proviso:

Provided that no tax shall be payable under this section upon any separate tract or parcel of land, not separated for the purpose of avoiding the tax, which comprises less than 10 acres. The decision of the Mine Assessor as to right of exemption under this proviso shall be final and conclusive. 3

The 1909, 9 Edw. VII, c. 14 amendments were not relevant for purposes of this discussion.

None of these earliest provisions deal with acreage taxes payable in lands with municipal organization, nor does the legislation provide any information as to why such lands would be excluded. Throughout, section 15 dealt with reconciliation between municipally levied taxes and what can essentially be described as a tax on mining income. These provisions were echoed with corresponding provisions for **The Assessment Amendment Act**, **1908**, 8 Edw. VII, c. 50, s. 7, where the assessed municipal taxes were one half of what would otherwise be calculated under the provisions of section 36 of **The Assessment Act** for the Town of Cobalt and one third of what would otherwise be assessed for all other municipalities.

When lands were subject to mining income tax (payable to the Minister of Lands, Forests and Mines, later becoming the Minister of Mines) there was an abatement of municipal taxes. This held true until S.O. 1987, c. 11, s. 14, at which time the references to payment of municipal taxes and reconciliation disappeared. At that time, the **Mining Tax Act** provisions changed and were revamped. Payment of the taxes moved from the Minister of Natural Resources to the Minister of Revenue. The assessment scheme for income derived from mining became significantly more complex, more in keeping with corporate tax law and the federal income tax provisions.

The "order to pay" and vesting provisions involving co-owners first appeared in **The Statute Law Amendment Act**, **1911,** 1 Geo. V. c. 17 added the following sections through sections 3 and 4:

> 20a. (1) Where lands liable to acreage tax under section 16 are held by two or more co-owners and the whole of the taxes have been paid by one or more of such co-owners, and the other co-owner or co-owners have neglected or refused to pay his or their proportion of such taxes for a period of six years, the co-owner or co-owners who have paid such taxes may apply to a Judge of the High Court for a summons directed to the delinquent co-owner or co-owners calling upon him or them to make payment of the proper proportion of such taxes, to the co-owner or co-owners who have paid the same, within three months from the date of such summons.
>
> (2) The summons shall be served in such manner as the said Judge shall direct, and if upon the return thereof it shall appear that payment has not been made in accordance therewith, the Judge may make an order vesting the interest of the delinquent co-owner or co-owners in the co-owner or co-owners who have paid the taxes, and such order shall be registered in the proper registry or land titles office.
>
> (3) In this section "co-owner or co-owners" shall include "co-lessee or co-lessees."
>
> 21. (1a) If the taxes due, with costs and expenses, or any part thereof, remain unpaid until within four months of the day so fixed, the Deputy Minister shall, not later than two months prior to such day, mail or cause to be mailed by registered

. . . . 4

> post to the person appearing from search or inquiry at the Registry or Land Titles Office to be the owner or to the last known owner of each property so in default, at what appears to the Deputy Minister to be the address or last known address of such person so far as he can reasonably ascertain it, notice specifying the total amount of taxes, costs, expenses and penalties due or payable under this Act in respect of such property and stating that unless the same is paid on or before the day so fixed the property will be forfeited; …

In these early years, there was no distinction for purposes of the mining acreage tax payable between leased, patented lands or mining licences of occupation. Only later were these split off into separate sections of the **Mining Act**, precursors to what appear today.

In 1914, legislation was enacted respecting taxation natural gas, at which time it became **The Mining Tax Act,** which became a permanent fixture of the property tax structure within the Province. Through **The Statute Law Amendment Act, 1914**, 4 Geo. V. ch. 21, subsection 20(3) was amended to include the following:

> "incorporated company, and shareholder or shareholders therein, and in the case of a company the summons shall be directly to the company.

In **The Mining Tax Act, 1917**, 7 Geo. V. ch. 7, what had been section 16, but became section 15 was amended:

> **8.** – (1) The clause lettered *b* in subsection 1 of section 15 of *The Mining Tax Act* is amended by striking out the words "in any unorganized territory" in the fourth and fifth lines of the clause.
>
> (2) Subsection 1 of section 15 of *The Mining Tax Act* is amended by striking out the words "an acreage tax of two cents per acre" in the last line but one, and inserting in lieu thereof the words "an acreage tax of five cents per acre."
>
> **15a.** – The Treasurer of Ontario shall annually, on or before the 31st day of December, pay out of the Consolidated Revenue Fund to the treasurer of the corporation of any local municipality in which lands subject to the mining rights mentioned in clause b of subsection 1 of section 15 are situate, a sum equal to one-half of the amount certified by the Deputy Minister of Mines to have been actually received by Ontario, for the acreage tax imposed in the municipality during the year, under subsection 1 of section 15, and it shall be the duty of the Deputy Minister in each year to certify such sum.

Clause 15(1)(b), replacing clause 16(b) set out above, now reads

> **15.** (b) All mining rights whether of all kinds or only or ore more kinds of mines or minerals howsoever granted or acquired, owned, or held under lease, agreement or option in Ontario, by any person not owning the surface rights in the said lands;

. . . . 5

To summarize, as of 1917, mining rights located within municipal organization held separately from the surface rights were liable for acreage mining tax. The purpose of payment of one half of the total for the acreage tax to the municipality is not known. The exemption in subsection 15(2) regarding farming or buildings remains.

In **The Mining Tax Amendment Act, 1921**, 11 Geo. V., section 15a was repealed. It further provided:

> **7.** Notwithstanding anything contained in *The Mining Tax Act*, lands or mining rights forfeited to and vested in the Crown thereunder since the 29th day of June, 1920, which are not included in a valid subsisting claim under *The Mining Act of Ontario*, or which have not otherwise been disposed of by the Crown, may be re-granted to the owner or lessee at the time of forfeiture, or his heirs, executors, administrators or assigns, upon payment to the Minister on or before the first day of January, 1922, of the amount of taxes, costs, expenses and penalties, if any, which have accrued or have been incurred, or which would have accrued or have been incurred except for such forfeiture, and the sum of ten dollars for each and every parcel of land, but every such grant shall be subject to any lien or encumbrance existing at the time of the forfeiture and shall be so expressed.
>
> **8.** Where lands heretofore forfeited to and vested in the Crown under *The Mining Tax Act* have been prior to such forfeiture assessed for school taxes and sold for the non payment of such taxes, the Minister may cause an examination of such lands to be made, and where it is found upon such examination and report of an officer of the department thereon that such lands are in use and occupation for agricultural purposes, or are suitable for the same, and are not valuable for minerals, the Minister of Lands and Forests, upon report of the Minister of Mines, may deal with such lands and dispose of them under *The Public Lands Act* to the purchaser thereof, if any, under such tax sale, or his representatives or assigns, freed and discharged from all claims for taxes imposed under this Act, but every patent issued for such lands shall be subject to any undischarged lien or encumbrance created by the tax purchaser, his representatives or assigns, and the mines and minerals in such land shall be reserved, and the patent shall be so expressed.

As of 1921, the legislation recognized that lands could be sold for school taxes which subsequently were subject to forfeiture under **The Mining Tax Act**. There is no explanation as to how prior sale for school taxes was to work in concert with forfeiture of mining rights. Section 8 above does anticipate an examination of the entire estate to ascertain the existence of a workable mining rights interest. This clear willingness to effectively release a mining lands patent from such status and transform it into a surface rights patent under **The Public Lands Act** with mining rights reserved demonstrates a fluid and flexible system with regard to mining rights and other lands. This provision was in effect until 1955, when the acreage mining tax provisions were moved into the **Mining Act** (1955, c. 45 & 46) and the specific provision was repealed (s. 3, the **Mining Tax Amendment Act, 1955**, c. 46).

. . . . 6

The Mining Tax Amendment Act, 1922, 12-13 Geo. V., section 2 stated:

> **2.** Section 20 of the *Mining Tax Act* and section 8 of Chapter 21 of the statutes of 1914 are repealed, and the following is enacted as section 20 of *The Mining Tax Act,*
>
> 20. – (1) Where lands liable to acreage tax under section 15 are held by two or more co-owners, and the whole of the taxes have been paid by one or more of such co-owners, and the other co-owner or co-owners has or have neglected or refused to pay his or their proportion of such taxes for a period of four years, the Mining Commissioner, upon the application of the co-owner or co-owners who have paid such taxes, may make an order requiring the delinquent co-owner or co-owners to pay, within three months from the date of such order or such further time as the Commissioner may fix their proper proportion of such taxes to the co-owner or co-owners who have paid them.
>
> (2) The order shall be served in such manner as the Mining Commissioner shall direct, and if at the expiration of the period fixed by the order it appears to the said Commissioner that the payment has not been made in accordance therewith, the said Commissioner may make an order vesting the interest of the delinquent co-owner or co-owners in the co-owner or co-owners who have paid such taxes, and such order shall be registered in the proper Registry or Land Titles Office, and a duplicate original thereof forwarded by the said Commissioner to the Minister of Mines.
>
> (3) In this section "co-owner" or "co-owners" shall include "co-lessee" or "co-lessees" and "incorporated company and shareholder or shareholders therein", and in the case of a company, the order shall be directed to the company.

The Mining Tax Titles Validity Act, 1924, 14 Geo. V., c. 22 appears today in the Table of Unconsolidated and Unrepealed Public Statutes, which can be found in the Links of the Ontario E-Laws website. Essentially, it verifies that any certificate of declaration of forfeiture which has not been revoked or annulled shall be deemed to have been forfeited to and vested in the Crown and all subsequent dealings with those lands are to be regarded as having validity. It also provides that there can be no action to set aside or annul any patent or lease granted subsequent to the declaration of forfeiture. This legislation arose out of the **McLean Gold Mines Ltd. v. A.G. Ont.** [1924] 1 D.L.R. 10 (Ont. S.C.A.D.) case in which lands were forfeited for non-payment of acreage tax. McLean brought an action before the Mining Commissioner to have the forfeiture set aside and it was determined that the forfeiture was validly effected and the new owner had good title. On appeal to the Appellate Division, it was determined that the subject matter of the determination was beyond the competence of the Mining Commissioner. The matter was reheard by the Supreme Court of Ontario, which determined that the notification requirements under the **Act** had not been properly carried out, as the company had moved and did not receive notice. The resulting legislation, **The Mining Tax Titles Validity Act,1 1924 s**et out that where the Minister had certified that any mining lands were forfeited, they were so deemed and no action could be brought due to an irregularity in the proceeding.

. . . . 7

In the **Mining Tax Act**, R.S.O. 1927, c. 28, section 14 again sets out those interests to which the "acreage tax" which applied. The changes are not considered substantive and are not reproduced.

In **The Mining Tax Act, 1931**, 21 Geo. V. c. 8 (1931), section19 was further amended to allow for interest to be ordered as party of the Order to Pay provision. It was further amended to permit the Judge of the Mining Court to appoint the Public Trustee to represent the estate of a deceased co-owner where letters of probate or administration were not issued and further provided that the section governs notwithstanding **The Devolution of Estates Act** or other such statutes. This latter provision was repealed by **The Mining Tax Act, 1932** 22 Geo. V., c. 7.

During the period between 1927 and 1946, the liability to pay the acreage tax was based upon ownership of a mining location or patented/leased mining claim in lands in unorganized territory or in the mining rights in land which was both severed from the surface rights and not owned by that surface rights owner, the latter being applicable to lands within a municipality as well as unorganized territory. As far as the resulting vesting order was concerned, it was "the interest of the delinquent co-owner or co-owners" which was vested in the co-owner(s) making the acreage tax payments for four or more years (s. 19(3)).

Under **The Statute Law Amendment Act, 1939**, 3 Geo. IV, c. 47, subsection 19 was amended to clarify that co-lessees and co-occupiers are deemed co-owners, that a shareholder is deemed a co-owner of an incorporated company and that service against an incorporated company may be directed to the company only. These latter two provisions continue to the present day.

In **The Mining Tax Amendment Act, 1941**, 5 Geol. VI, c. 33, the section was amended to provide that a property of less than ten acres would be liable for a tax of fifty cents. The previous provision which exempted properties of less than ten acres was repealed.

In **The Mining Tax Amendment Act, 1945,** 9 Geo. V. c. 5, subsection 20(2) is amended by deleting the words "parcel of property" in the last line and replacing them with "mining location, mining claim or parcel of mining rights". It also repealed subsection 20(1) and replaced it with the following:

> **20.** – (1) The Deputy Minister of Mines shall cause to be prepared annually a list of all mines, mining locations, mining claims, mining rights and other lands in respect of which any tax imposed under this Act is two years or more in arrear and each year shall cause such list to be published… stating that unless the amount due with penalties, costs and expenses is paid on or before a day specified therein, which shall be not less than six months nor more than one year after the first of such publications, such mines, mining location, mining claims, mining rights and other lands shall upon the day following the day so specified become forfeit to and revested in the Crown.

In **The Mining Tax Amendment Act, 1946**, S.O. 10 Geo. VI, c. 56, s.3, the lands upon which the acreage tax was payable for the first time were expanded to include lands within a municipality and exemptions were set out:

. . . . 8

14. (1) Except as hereinafter provided,

(a) every mining location and mining claim in unorganized territory held either mediately or immediately under patent, lease or license of occupation acquired under or pursuant to the provisions of any statute, regulation or law at any time in force authorizing the granting or leasing of Crown lands for mining purposes;

(b) all land in unorganized territory being held or used for mining purposes howsoever patented or alienated from the Crown;

© all mining rights in, upon or under every mining location and mining claim situated within the limits of a municipality and patented, leased or granted under license of occupation acquired under or pursuant to the provisions or any statute, regulation or law at any time in force authorizing the granting or leasing of Crown lands for mining purposes;

(d) all mining rights in, upon or under land situated within the limits of a municipality and being held or used for mining purposes howsoever patented or alienated from the Crown and

(e) all mining rights howsoever patented or acquired which are severed from or held apart or separate from the surface rights,

shall be liable for, and the owner, holder, lessee and occupier thereof shall pay an acreage tax of 10 cents per acre in each year, provided that the minimum tax on any mining location, mining claim or mining rights shall not be less that $1 in each year. 1946 S.O., c. 56, s. 3.

(2) No such tax shall be payable in respect of the mining rights in ,upon or under any land in a municipality where the land has been laid out as a townsite or subdivided into lots or parcels for city, town, village, park or summer resort purposes, but this subsection shall not exempt the mining rights from taxation on parcels of more than two acres in area where the mining rights are severed or held apart or separate from the surface rights.

The reference to farming or occupied by buildings is retained in subsection (3). The reference in subsection (2) is new, and has been further expanded and elaborated on in ensuing years. No tax is payable for lands within certain areas of the province which are used to produce natural gas or petroleum.

The legislation has recognized from its inception the use and non-use of lands for mining purposes. Section 1 of **The Mining Tax Amendment Act, 1948**, 12 Geo. VI, c. 57, stated:

> **1.** Section 14 of *The Mining Tax Act*, as re-enacted by section 3 of *The Mining Tax Amendment Act, 1946*, is amended by adding thereto the following subsections:

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(6) No such tax shall be payable in respect of a mining claim or mining location where the owner has executed and filed with the Deputy Minister of Mines a conveyance to the Crown of the mining rights in, upon and under the same.

(7) Where the mine assessor is satisfied that the surface rights in respect of a mining claim or mining location are being used for purposes other than that of mining or the mineral industry, this Act shall apply only to the mining rights.

Subsection 14(7) mirrors what is now found in section 3 of the **Provincial Land Tax Act.** The terms "mining claim or mining location" are identical but reversed to the use those terms in both clauses 14(1)(a) and (c).

The question arises whether subsection 14(7) is to apply only to clause 14(1)(a), being a mining location and mining claim in unorganized territory, or whether subsection 14(7) is meant to have equal application to mining rights in a mining location or mining claim in a municipality. If it is the former, then arguably, subsection 14(7) could be considered a pre-cursor to the qualified exclusion currently found in the **Provincial Land Tax Act,** which was not enacted until S.O. 1961-62**.** If it is the latter, then the phrase "mining rights in, upon or under land[s] in a municipality" appears to have a much broader meaning than "mining rights" when used in connections with lands within a municipality. Given that some fifteen years elapsed before the change to the **Provincial Land Tax Act** and principles of statutory interpretation, subsection 14(7) must be given meaning within the context of the legislation to which it applies. This being the case, the latter interpretation is more reasonable in the circumstances.

In 1955, the mining acreage tax provisions were brought in as Part XIII to **The Mining Act** by S.0. 1955, c. 45, being **The Mining Amendment Act, 1955**, section 24. The reference in what was formerly clause 14(1)(c) to municipal lands has been changed.

209. – (1) Except as provided in this Part,

(a) all lands and mining rights in territory without municipal organization held either mediately or immediately under patent *or lease* acquired under or pursuant to any statute, regulation or law at any time in force authorizing the granting of Crown lands for mining purposes;

(b) all land in territory without municipal organization being held or used for mining purposes howsoever patented or alienated from the Crown;

(c) all mining rights in, upon or under lands in a municipality patented *or leased* under or pursuant to any statute, regulation or law at any time in force authorizing the granting or leasing of Crown lands for mining purposes;

(d) all mining rights in, upon or under land in a municipality and being held or used for mining purposes howsoever patented or alienated from the Crown; and

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(e) all mining rights howsoever patented or acquired which are severed from or held apart or separate from the surface rights,

are liable for, and the owner or lessee thereof shall pay the acreage tax.

211. Where the Minister is satisfied that the surface rights in respect of a mining claim or mining location are being used for purposes other than that of the mining or mineral industry, this Part applies to only the mining rights.

218. - (1) Where lands or mining rights liable to acreage tax are held by two or more co-owners and the whole of the taxes have been paid by one or more of the co-owners and the other co-owner or co-owners has or have neglected or refused to pay his or their proportion of the taxes for a period of four years, the Mining Court, upon the application of the co-owner or co-owners who have paid the taxes, may make an order requiring the delinquent co-owner or co-owners to pay, within three months from the date of the order or such further time as the Court fixes, their proper proportion of the taxes to the co-owner or co-owners their proper proportion of the taxes to the co-owner or co-owners who have paid them, together with interest at the rate of 6 per cent per annum compounded yearly, and such costs of the application as may be allowed by the Court.

(2) The order shall be served in such manner as the court directs, and if at the expiration of the period fixed by the order it appears to the Court that payment has not been made in accordance therewith, the Court may make an order vesting the interest of the delinquent co-owner or co-owners in the co-owner or co-owners who have paid the taxes, and that order shall be registered in the proper registry or land titles office and an duplicate original thereof forwarded by the Court to the Minister.

The use of the words “lands” in clause 209(1)(a) and (c) and “land” in clauses 209(1)(b) and (d) continues to this day. The reason for the use of the plural and singular is not immediately apparent and will be examined in detail below.

Section 26 of the 1955 Amendment Act provided transition between the two pieces of legislation so that up to the end of 1954, taxes accrued under **The Mining Tax Act** and after January 1, 1955, they accrued under **The Mining Act**.

In S.O. 1962-62, c. 84, subsection 46 (1) above [by then it had become subsection 670(1)] was changed as follows:

670 - (1) Where lands or mining rights liable for acreage tax are held by two or more co-owners and all such tax has been paid by one or more of them and the other or others has or have neglected or refused to pay his or their proportion of the tax for a period of four or more consecutive years, the Commissioner, upon the application of any co-owner or co-owners who has or have paid the tax for the

> period of four or more consecutive years immediately prior to the date of the application and upon the receipt of such other information and particulars as he requires, may make an order requiring the delinquent co-owner or co-owners to pay, within three months of the date of the order or such further time as the Commissioner fixes, his or their fair proportion of the tax to the co-owner or co-owners who has or have paid all the tax, together with interest at the rate of 6 per cent per annum compounded yearly, and such costs of the application as are allowed by the Commissioner.

In 1968, the amount of acreage tax was changed from 10 to 50 cents per acre in section 11 of **The Mining Amendment Act, 1968,** S.O. 1968, c. 71.

In S.O. 1970, c. 26, subsections 13(2), (3) clauses 661(1)(a) and (c) where changed and subsection 661(2) was added as follows (with the full phrasing of subsection 661(1) included for reference:

> **661. –** (1) Except as provided in this Part,
>
> (a) all lands and mining rights in territory without municipal organization patented under or pursuant to any statute, regulation or law at any time in force authorizing the granting of Crown lands for mining purposes;
> …
> (c) all mining rights in, upon or under lands in a municipality patented under or pursuant to any statute, regulation or law at any time in force authorizing the granting of Crown lands for municipal purposes;
> …
> are liable for, and the owner or lessee thereof shall pay the acreage tax.
>
> (2) No acreage tax is payable in respect of mining lands or mining rights granted by the Crown by lease or renewal of lease.

Reference to leases was removed from clauses 661(1)(a) and (c) in 1970, but the corresponding mention of "lessees" was not removed from the final phrase of subsection 661(1), whose meaning becomes less clear. Given the addition of subsection 661(2), its use in subsection 661(1) becomes virtually limited to a lessee who has leased from the owner. However, it would be difficult to understand why such a divergent change in meaning from the original drafting could result from the 1970 amendments to clauses 661(a), (c) and 661(2).

The tribunal has not extensively examined the nature of the leasehold interest which would have been involved and has not compared it potentially overlapping provisions for the payment of rents. Rents dating back to 1908 8 Edw. VII, ch. 21, s. 190 (Mines Act) were initially intended for lease of a mining location leased under the authority of the Mines Act, 1897. In the current subsection 181(2), the reference has become to "lands or mining rights" which are subject to expenditures or rents, rather than the former "mining location".

For purposes of this inquiry, it is noted that the vesting clause in subsection 181(5), which deals with the process for an application for a vesting order of the interest of a

delinquent co-lessee, the wording used for the vesting is virtually identical, namely that the interest referred to which vests is "the interest to which the payment relates". The tribunal will examine whether this use of similar wording between the two vesting provisions is material to this inquiry.

The final changes relevant to the vesting provisions applicable in 1996 were made in **The Civil Rights Statute Law Amendment Act, 1971**, S.O. 1971, c. 50, s. 58(24), whereby the reference to the interest which vested was changed:

> (24) Subsection 3 of section 653 of *The Mining Act* is repealed and the following substituted therefor:
>
> > (3) An order made under this section shall be served in such manner as the Commissioner directs.
> >
> > (3a) If a co-owner, upon whom an order made under subsection (1) has been served, disputes his liability to his co-owner or otherwise to make any payment under the order or the amount thereof, he may, within the time limited by the order for making the payment, apply to the Commissioner for a hearing and the Commissioner shall, after a hearing, determine the dispute and may affirm, amend or rescind the order or make such other order as he considers just, and if the Commissioner orders that a payment be made, he may fix the time for payment thereof.
> >
> > (3b) Where the time for payment fixed by an order made under subsection (1) has expired and no application for determination of a dispute has been made, or where the time fixed by an order made under subsection 3a has expired, and where such additional time, if any, has been granted by the Commissioner has expired, if it is proved to the satisfaction of the Commissioner that the payment has not been made, he may make an order vesting the *interest of the delinquent co-owner or co-owners in the lands or mining rights to which the payment relates* in the co-owner or co-owners who has or have paid the rents or made the expenditure.

SCHEDULE 'C'

Part XIV ACREAGE TAX

658. In this Part, 'municipality' means a city, town, village, township or improvement district.

659. – (1) There shall be paid to the Crown in right of Ontario in each year an acreage tax of 50 cents an acre on any lands or mining rights to which this Part applies.

(2) The minimum acreage tax is $1 a year in a municipality and $4 a year in territory without municipal organization.

660. The acreage tax shall be imposed for each calendar year and is payable on or before the 1st day of October in the year for which it is imposed.

661. – (1) Except as provided in this Part,

(a) all lands and mining rights in territory without municipal organization held either mediately or immediately under patent or lease acquired under or pursuant to any statute, regulation or law at any time in force authorizing the granting of Crown lands for mining purposes;

(b) all land in territory without municipal organization being held or used for mining purposes howsoever patented or alienated from the Crown;

(c) all mining rights in, upon or under lands in a municipality patented or leased under or pursuant to any statute, regulation or law at any time in force authorizing the granting or leasing of Crown lands for mining purposes;

(d) all mining rights in, upon or under land in a municipality and being held or used for mining purposes howsoever patented or alienated from the Crown; and

(e) all mining rights howsoever patented or acquired which are severed from or held apart or separate from the surface rights,

are liable for, and the owner or lessee thereof shall pay the acreage tax.

(2) No acreage tax is payable,

(a) in respect of mining rights in, upon or under any land in a municipality, or any land and mineral rights in territory without municipal organization, where the land,

(i) has been subdivided into lots or parcels for city, town, village or summer resort purposes, or

(ii) is being actually used for public park, educational, religious or cemetery purposes,

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but this clause does not exempt the mining rights from taxation on lots or parcels of more than two acres in area where the mining rights are severed or held apart or separate from the surface rights;

(b) in respect of mining rights in, upon or under land being held, used or developed solely for the production of natural gas or petroleum situated south of the French River, Lake Nipissing and the Mattawa River including the Territorial District of Manitoulin;

(c) in respect of any land where the owner has executed and filed with the Minister a conveyance to the Crown of the mining rights in, upon or under the land; and

(d) in respect of mining lands or mining rights granted by the Crown under lease or renewal lease issued on or after the 1st day of June, 1953.

662. – (1) The Minister may exempt such lands as are in *bona fide* use for farming or agricultural purposes from the tax under this Part, but the exemption does not apply to the mining rights that are severed or held apart or separate from the surface rights.

(2) The decision of the Minister as to the right of exemption under subsection 1 is final and conclusive.

663. Where the Minister is satisfied that the surface rights in respect of a mining claim or mining location are being used for purposes other than that of mining or the mineral industry, this Part applies only to the mining rights.

664. The Deputy Minister shall cause to be prepared each year a tax roll of the lands and mining rights and persons liable to the acreage tax.

667. The Deputy Minister may register in the proper registry or land titles office a notice of liability to taxation and forfeiture in the prescribed form, in respect or any lands or mining rights subject to the acreage tax.

668. Notwithstanding sections 664 and 667, every person and property liable to the acreage tax is liable whether entered into the tax roll or not, and the tax is, without any notice or demand, payable at the time and in the manner provided in this Part.

669. Where any question or dispute arises as to the name of a person having been wrongfully inserted in or omitted from a tax roll or as having been undercharged or overcharged under this Part, the Minister may in writing refer the question or dispute to the Commissioner for hearing and adjudication.

670. (1) Where lands or mining rights liable for acreage tax are held by two or more co-owners and all such tax has been paid by one or more of them and the other or others has or have neglected or refused to pay his or their proportion of

the tax for a period of four or more consecutive years, the Commissioner upon the application of any co-owner or co-owners who has or have paid the tax for a period of four or more consecutive years immediately prior to the date of the application and upon the receipt of such other information and particulars as he requires, may make an order requiring the delinquent co-owner or co-owners to pay, within three months of the date of the order or such further time as the Commissioner fixes, his or their fair proportion of the tax to the co-owner or co-owners who has or have paid all the tax, together with interest at the rate of 6 per cent per annum compounded yearly, and such costs of the application as are allowed by the Commissioner.

(2) An application under subsection 1 shall be accompanied by a fee of $25.

(3) The order shall be served in such manner as the Commissioner directs, and if at the expiration of the period fixed by the order it appears to the Commissioner that payment has not been made in accordance therewith, the Commissioner may make *an order vesting the interest of the delinquent co-owner or co-owners* in the co-owner or co-owners who have paid the taxes, and that order shall be registered in the proper registry or land titles office and a duplicate original thereof forwarded by the Commissioner to the Minister.

(4) Any order made against an incorporated company under this section shall be directed to the company only.

(5) For purposes of this section, two or more co-holders or co-lessees shall be deemed to be co-owners, and an incorporated company and a shareholder shall be deemed to be co-owners of the lands of the company.

671. – (1) The Deputy Minister shall cause to be prepared between the 1st day of October and the 31st day of December in each year a list of all lands and mining rights in respect of which any acreage tax is two years or more in arrear, and not later than the 30th day of June next following shall cause to be sent by registered mail a notice to the person appearing from search or inquiry at the registry or land titles office to be the owner or lessee of the property in default and to every person appearing from that search or inquiry to have an interest therein, stating that, unless the total amount of tax and penalties due and payable under this Part are paid on or before the 31st day of December next following, the property will be forfeited to and vested in the Crown on the 1st day of January next following; and to the amount so due and payable there shall in every case be added and paid as costs the sum of $5 for each property.

(2) Not later than the 15th day of July in each year, the Deputy Minister shall cause the list prepared under subsection 1 to be published in one issue of *The Ontario Gazette* and in one issue of a newspaper published in the district or county in which the property is situate, giving notice that, unless the total amount of acreage tax, penalties and costs shown therein are paid on or before the 31st day of December next following the property will be forfeited to and vested in the Crown on the 1st day of January next following.

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(3) Where the total amount of acreage tax, penalties and costs remain unpaid after the 31st day of December of the year of publication of the notice mentioned in subsection 2, the Minister by certificate, in the prescribed form, may, on or after the 1st day of January next following, declare the lands or mining rights, and every interest therein, forfeited to and vested in the Crown, and thereupon the lands or mining rights and every interest therein, vest in the Crown absolutely freed and discharged from every estate, right, title, interest claim or demand therein or thereto whether existing, arising or accruing before or after such forfeiture is declared.

(4) Except as provided in subsection 7, lands and mining rights so forfeited are not open for prospecting, staking out, sale or lease under this Act.

(5) The registrar of the registry division in which any land or right mentioned in a certificate of forfeiture made under subsection 3 is situate, or the local master of titles, as the case may be, shall, upon receipt of the certificate, duly register it and it is absolute and conclusive evidence of the forfeiture to the Crown of the land or mining rights so certified to be forfeited and is not open to attack in any court by reason of the omission of any act or thing leading up to the forfeiture.

(6) Upon registration of the certificate of forfeiture in the registry or land titles office, *The Registry Act* or *The Land Titles Act*, as the case may be, cases to apply to the land forfeited, and the registrar or local master of titles shall note that fact in his register in red ink.

(7) The lands and mining rights forfeited to and vested in the Crown under this Part that are mentioned in a notice published in one issue of *The Ontario Gazette* during May of any year are open for prospecting, staking out, sale or lease under this Act at and after 7 o'clock standard time in the forenoon of the 1st day of June next following.

672. Any person duly authorized by the Minister in writing may, for the purpose of ascertaining the names and addresses of owners or lessees of land or mining rights liable to taxation under this Part, search and inspect registry books, indexes and documents in registry and land titles offices, and no charge is to be made by and no fee is payable to a registrar or master of titles for any such search or inspection.

674. – (1) The Lieutenant Governor in Council may by order revoke, cancel or annul the forfeiture of any lands or mining rights under this Part, and the Deputy Minister shall cause the order to be registered in the proper land titles office or registry office and thereupon the lands or mining rights revest in the owner or lessee of the lands or mining rights at the time of forfeiture, his heirs, successors or assigns, subject to any lien, mortgage or charge entered or registered prior to the forfeiture and still outstanding.

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(2) Where application is made for an order under subsection 1, the Minister may direct the lands or mining rights described in the application to be withdrawn from prospecting, staking out, sale or lease until the disposition of the application.

(3) The Minister may direct an application for an order under subsection 1 to be accompanied by a fee of $25.

675. – (1) Where the acreage tax is not paid within the time prescribed, a penalty of 6 per cent compounded yearly shall be added thereto forthwith and in each year thereafter that the tax remains unpaid, and for all purposes the increased amounts become and are the tax due and payable under this Part.

(2) The Deputy Minister, or such other person as is directed by the Minister, shall keep a record of all arrears of acreage taxes with the increased amounts from time to time entered thereon.

676. All taxes, penalties and costs payable under this Part constitute a special lien on the lands or mining rights against which the tax under this Part is levied in priority to every claim, privilege, lien or encumbrance of any person, whether the right or title of that person has accrued before or accrues after, the attaching of the special lien, and its priority is not lost or impaired by any neglect, omission or error of any official, officer or person, or by want of registration, and the special lien may be realized by action for sale of any or all property subject to it.

677. If an owner or lessee of lands or mining rights fails to pay the acreage tax on his lands or mining rights when due, the Minister may bring action in any court of competent jurisdiction for the recovery of the tax together with penalties and costs.

678. – (1) Where a doubt arises as to the liability of a person to pay a tax or any part of a tax imposed under this Part, the Minister may, subject to the approval of the Lieutenant Governor in Council, compromise the matter by the acceptance of such amount as he deems proper and, where the tax imposed has been paid under protest, he may refund the tax or any part thereof to the person making the payment under protest.

(2) Where land that was not subject to tax under this part becomes subject to tax because the surface rights thereof have been severed from the mining rights for a public road, highway or public utility, the Minister may exempt the mining rights so severed from the tax during such term as he is satisfied that the mining rights are not being used or held for mining purposes.

679. Where under this Part or section 106, 655 or 656 a dominant tenement reverts to and becomes vested in the Crown, any easement appurtenant thereto passes to the Crown and, where a servient tenement reverts to and becomes vested in the Crown, any easement to which the servient tenement is subject is not affected.

SCHEDULE 'D'

Part XIII MINING TAX

186. In this Part,

"tax means a tax under this Part.

187. There shall be paid to the Crown in each year a tax in the prescribed amount for each hectare on any lands or mining rights to which this Part applies.

188. The tax imposed for each year is payable no later than 60 days from the date of the notice of the tax payable.

189. (1) Except as provided in this Part,

(a) all lands and mining rights in territory without municipal organization patented under or pursuant to any statute, regulation or law at any time in force authorizing the granting of Crown lands for mining purposes;

(b) all land in territory without municipal organization being held or used for mining purposes howsoever patented or alienated from the Crown;

(c) all mining rights in, upon or under lands in a municipality patented under or pursuant to any statute, regulation or law at any time in force authorizing the granting of Crown lands for mining purposes;

(d) all mining rights in, upon or under land in a municipality and being held or used for mining purposes howsoever patented or alienated from the Crown; and

(e) all mining rights howsoever patented or acquired which are severed from or held apart or separate from the surface rights,

are liable for, and the owner or lessee thereof shall pay, the tax.

(2) No tax is payable in respect of mining lands or mining rights granted by the Crown by lease or renewal of lease.

190. - (1) The Minister may exempt lands or mining rights from the tax under this Part where,

(a) there is no severance of the surface and mining rights and the land has been subdivided,

(i) by a registered plan of subdivision,

(ii) by a reference plan into parts for city, town, village or summer resort purposes, or

(iii) by a reference plan into parts for local municipality purposes;

(b) land is being actually used for public park, educational, religious or cemetery purposes and there is no severance of the surface and mining rights;

(c) land is being used in good faith for farming or other agricultural purposes and there is no severance of the surface and mining rights; or

(d) the mining rights in, upon or under any land situated south of the French River, Lake Nipissing and the Mattawa River, including the Territorial District of Manitoulin, are being held, used or developed solely for the production of natural gas or petroleum.

(2) The decision of the Minister as to the right of exemption under subsection (1) is final and conclusive.

191. Where the Minister is satisfied that the surface rights in respect of a mining claim or mining location are being used for purposes other than that of mining or the mineral industry, this Part applies only to the mining rights.

192. The Deputy Minister shall cause to be prepared each year a roll of the lands and mining rights and persons liable to the tax.

193. The Deputy Minister may register in the proper land registry office a notice of liability to taxation and forfeiture, in the prescribed form, in respect of any lands or mining rights subject to the tax.

194. Despite sections 192 and 193, every person and property liable to the tax is liable whether entered in the tax roll or not, and the tax is, without any notice or demand, payable at the time and in the manner provided in this Part.

195. – (1) Any person claiming an interest in any lands or mining rights entered on the tax roll or whose name has been entered on the tax roll, as being liable to the tax or who disputes the amount of the tax levied on any lands or mining rights in which that person has an interest may apply to the Commissioner to determine whether such lands and mining rights are or whether that person is liable to the tax and to be entered on the tax roll or the amount of the tax payable, and the Commissioner shall hear and determine such matter.

(2) The Minister is a party to any proceedings before the Commissioner under this section.

(3) The Minister may refer to the Commissioner for hearing and adjudication any question or dispute as to whether any mining rights or lands have or any person has been wrongfully omitted from the tax roll.

196(1) Where lands or mining rights liable for tax are held by two or more co-owners and all such tax has been paid by one or more of them and the other or others has or have neglected or refused to pay that other's or those others' proportion of the tax for a period of four or more consecutive years, the Commissioner, upon the application of any co-owner or co-owners who has or have paid the tax for the period of four or more consecutive years immediately prior to the date of the application and upon the receipt of such other information and particulars as he or she requires, may make an order requiring the delinquent co-owner or co-owners to pay, within three months of the date of the order or such further time as the Commissioner may fix, the delinquent co-owner's or co-owners' fair proportion of the tax to the co-owner or co-owners who has or have paid all the tax, together with interest at the prescribed rate, compounded annually, and such costs of the application as are allowed by the Commissioner.

(2) An application under subsection (1) shall be accompanied by the required fee.

(3) An order made under this section shall be served in such manner as the Commissioner may direct. R.S.O.

(4) If a co-owner, upon whom an order made under subsection (1) has been served, disputes his, her or its liability to another co-owner or otherwise to make any payment under the order or the amount thereof, the co-owner may, within the time limited by the order for making the payment, apply to the Commissioner for a hearing and the Commissioner shall hear and determine the dispute and may affirm, amend or rescind the order or make such other order as he or she considers just, and, if the Commissioner orders that a payment be made, he or she may fix the time for payment thereof.

(5) Where the time for payment fixed by an order made under subsection (1) has expired and no application for determination of a dispute has been made, or where the time fixed by an order made under subsection (4) has expired, and where such additional time, if any, as has been granted by the Commissioner has expired, if it is proved to the satisfaction of the Commissioner that the payment has not been made, he or she may make an order vesting the interest of the delinquent co-owner or co-owners in the lands or mining rights to which the payment relates in the co-owner or co-owners who has or have paid the taxes.

(6) Any order made against an incorporated company under this section shall be directed to the company only.

(7) For the purpose of this section, two or more co-holders or co-lessees shall be deemed to be co-owners, and an incorporated company and a shareholder therein shall be deemed to be co-owners of the lands of the company.

197. – (1) The Deputy Minister shall cause to be prepared between the 1st day of January and the 31st day of March in each year a list of all lands and mining

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rights in respect of which any tax is two years or more in arrears, and, not later than the 30th day of June next following, shall cause to be sent by mail or delivered by courier service a notice to the person appearing from search or inquiry at the land registry office to be the owner of the property in default and to every person appearing from that search or inquiry to have an interest therein, at the address or last known address of such person so far as he or she can reasonably ascertain it, stating that, unless the total amount of tax and penalties due and payable under this Part are paid on or before the 31st day of December next following, the property will be forfeited to and vested in the Crown on the 1st day of January next following, and to the amount so due and payable there shall in every case be added and paid as costs the sum of $10 for each property.

(2) Not later than the 15th day of July in each year, the Deputy Minister shall cause the list prepared under subsection (1) to be published in one issue of *The Ontario Gazette* and in one issue of a newspaper published in the district, upper-tier municipality or local municipality in which the property is situate, giving notice that, unless the total amount of tax, penalties and costs shown therein are paid on or before the 31st day of December next following, the property will be forfeited to and vested in the Crown on the 1st day of January next following.

(3) Where the total amount of tax, penalties and costs remain unpaid after the 31st day of December of the year of publication of the notice mentioned in subsection (2), the Minister by certificate, in the prescribed form, may, on or after the 1st day of January next following, declare the lands or mining rights, and every interest therein, forfeited to and vested in the Crown, and thereupon the lands or mining rights, and every interest therein, vest in the Crown absolutely freed and discharged from every estate, right, title, interest, claim or demand therein or thereto whether existing, arising or accruing before or after such forfeiture is declared.

(4) Except as provided in subsection (7), lands and mining rights so forfeited are not open for prospecting, staking out, sale or lease under this Act.

(5) The land registrar of the land titles or registry division in which any land or right mentioned in a certificate of forfeiture made under subsection (3) is situate shall, upon receipt of the certificate, duly register it and it is absolute and conclusive evidence of the forfeiture to the Crown of the land or mining rights so certified to be forfeited and is not open to attack in any court by reason of the omission of any act or thing leading up to the forfeiture.

(6) Upon registration of the certificate of forfeiture in the land registry office, the *Registry Act* or the *Land Titles Act*, as the case may be, ceases to apply to the land forfeited, and the land registrar shall note that fact in the register.

(7) The lands and mining rights forfeited to and vested in the Crown under this Part that are mentioned in a notice published in one issue of *The Ontario Gazette*

during May of any year are open for prospecting, staking out, sale or lease under this Act at and after 8 a.m. standard time on the 1st day of June next following.

198. Any person duly authorized by the Minister in writing may, for the purpose of ascertaining the names and addresses of owners or lessees of land or mining rights liable to taxation under this Part, search and inspect registry books, indexes and documents in land registry offices, and no charge is to be made by and no fee is payable to a land registrar for any such search or inspection.

199. (1) Where the tax is not paid within the time required under section 188, interest at the prescribed rate, compounded annually, shall be added to the tax forthwith and in each subsequent year that the tax remains unpaid, and the increased amounts are the tax due and payable under this Part.

(2) The Deputy Minister, or such other person as is directed by the Minister, shall keep a record of all arrears of taxes with the increased amounts from time to time entered thereon.

(3) The Minister may reduce or waive the amount of any interest added to taxes under subsection (1).

200. All taxes, penalties and costs payable under this Part constitute a special lien on the lands or mining rights against which the tax under this Part is levied in priority to every claim, privilege, lien or encumbrance of any person, whether the right or title of that person has accrued before, or accrues after, the attaching of the special lien, and its priority is not lost or impaired by any neglect, omission or error of any official, officer or person, or by want of registration, and the special lien may be realized by action for sale of any or all property subject to it.

201. If an owner or lessee of lands or mining rights fails to pay the tax on the lands or mining rights when due, the Minister may bring action in any court of competent jurisdiction for the recovery of the tax together with penalties and costs.

202. (1) Where a doubt arises as to the liability of a person to pay a tax or any part of a tax, the Minister may,

(a) compromise the matter by the acceptance of an amount that the Minister considers proper; and

(b) if the tax imposed has been paid under protest, refund the tax or any part of it or give a tax credit to the person making the payment under protest.

(2) Where land that was not subject to tax under this Part becomes subject to tax because the surface rights thereof have been severed from the mining rights for a public road, highway or public utility, the Minister may exempt the mining rights so severed from the tax during such term as he or she is satisfied that the mining rights are not being used or held for mining purposes.

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(3) Where the total amount of tax, penalties and costs remain unpaid after the 31st day of December of the year of publication of the notice mentioned in subsection (2), the Minister by certificate, in the prescribed form, may, on or after the 1st day of January next following, declare the lands or mining rights, and every interest therein, forfeited to and vested in the Crown, and thereupon the lands or mining rights, and every interest therein, vest in the Crown absolutely freed and discharged from every estate, right, title, interest, claim or demand therein or thereto whether existing, arising or accruing before or after such forfeiture is declared.

203. Where under this Part or section 91, 183 or 184 a dominant tenement reverts to and becomes vested in the Crown, any easement appurtenant thereto passes to the Crown and, where a servient tenement reverts to and becomes vested in the Crown, any easement to which the servient tenement is subject is not affected.

SCHEDULE ‘E’

Part XIV

659(1)	any lands or mining rights
661(1)(a)	all lands and mining rights
661(1)(b)	all land
661(1)(c)	all mining rights in, upon or under lands
661(1)(d)	all mining rights in , upon or under land
661(1)(e)	all mining rights
	severed from or held apart or separate from the surface rights
661(2)(a)	mining rights in, upon or under any land … or
	any land and mineral rights in territory…
	mining rights…
	land…
	mining rights are severed or held apart or separate from the surface rights
661(2)(b)	mining rights in, upon or under land
661(2)(c)	any land
	mining rights in, upon or under the land
661(2)(d)	mining lands or mining rights
662(1)	such lands
	mining rights that are severed or held apart or separate from the surface rights
663	surface rights in respect of a mining claim or mining location
	mining rights
664	lands and mining rights
670(1)	lands or mining rights
670(3)	the interest of the delinquent co-owner
671(1)	lands and mining rights
	property
	property
671(2)	property
	property
671(3)	the lands or mining rights and every interest therein
	the lands or mining rights and every interest therein
671(4)	lands and mining rights
671(5)	any land or right
	land or mining rights
671(7)	lands and mining rights
672	lands or mining rights
674(1)	lands or mining rights
	lands or mining rights
674 (2)	lands or mining rights
676	lands or mining rights
677	lands or mining rights
	lands or mining rights
678(2)	land
	surface rights thereof have been severed from the mining rights
	mining rights so severed
	mining rights

Part XIII

187	lands or mining rights
189(1)(a)	all lands and mining rights
189(1)(b)	all land
189(1)(c)	all mining rights in, upon or under lands
189(1)(d)	all mining rights in, upon or under land
189(2)	mining lands or mining rights
190(1)(a)	lands or mining rights
	land
190(b)	land
	no severance of the surface and mining rights
190(c)	land
	no severance of the surface and mining rights
190(d)	mining rights in, upon or under any land
191	surface rights
	mining claim or mining location
	mining rights
192	lands and mining rights
195(1)	any lands or mining rights
	any lands or mining rights
	such lands and mining rights
195(3)	any mining rights or lands
196(1)	lands or mining rights
196(5)	the interest of the delinquent co-owner or co-owners in the lands or mining rights
	to which the payment relates
197(1)	all lands and mining rights
	property
	property
197(2)	property
	property
197(3)	lands or mining rights and every interest therein
	lands or mining rights and every interest therein
197(4)	lands and mining rights
197(5)	land or mining rights
197(7)	lands and mining rights
198	land or mining rights
200	lands or mining rights
201	lands or mining rights
	lands or mining rights