



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

File No. MA-005-01

L. Kamerman)
Mining and Lands Commissioner)
M. Orr)
Deputy Mining and Lands Commissioner)

Thursday, the 2nd day
of August, 2001.

THE MINING ACT

IN THE MATTER OF

An appeal by 2001352 Ontario Inc. pursuant to subsection 112(1) of the **Mining Act** from the decision of the Provincial Mining Recorder, dated the 14th day of February, 2001, to not record its Filed Only Mining Claims 1246177, being for the land under the waters of Kelly Lake, being part of projected Lot 1, Con. VI and part of projected Lot 1, Con. V, in Waters Township and 1246178, being for the land under the waters of Kelly Lake, being part of projected Lot 12, Con. VI, Broder Township, in the Sudbury Mining Division, hereinafter referred to as the "2001352 Filed Only Mining Claims";

AND IN THE MATTER OF

Section 30(a) and Section 41 of the **Mining Act**;

BETWEEN:

2001352 Ontario Inc.

Appellant

- and -

THE MINISTER OF NORTHERN DEVELOPMENT AND MINES

Respondent

-and -

INCO LIMITED

(formerly known as International Nickel Company of Canada Limited)

Party of the Third Part

AND IN THE MATTER OF

Mining License of Occupation No. 10,872 dated the 6th day of May, 1947 for lands under the waters of Kelly Lake, comprised of unpatented Mining Claims S. 37335 through S. 37343, both inclusive, and S. 37429 through S. 37531, both inclusive; and evidence that the monthly payments due on Mining License of Occupation No. 10, 872 were in default for one month or more between the date of issue and the 27th day of March, 1958;

AND IN THE MATTER OF

An application pursuant to S.105 of the **Mining Act** for an Order by the Mining and Lands Commissioner that the Minister of Northern Development and Mines shall be prohibited from amending MLO No. 10,872 or allowing that the lands and lands covered by water in respect of which it was issued to be otherwise granted until the appeal of 2001352 Ontario Inc., as being heard and determined or withdrawn or abandoned in writing;

AND IN THE MATTER OF

An application pursuant to S.105 of the **Mining Act** for an Order by the Mining and Lands Commissioner that the Recorder shall be prohibited from recording any claim in respect of the lands and lands covered by water in respect of which MLO No. 10,872 was issued, until the appeal of 2001352 Ontario Inc. has been heard and determined or withdrawn or abandoned in writing.

**ORDER OF RESCISSION
AND NOTICE**

WHEREAS an Order requiring production and disclosure of documents, the filing of certain documents and examinations for discovery was issued by the tribunal on the 12th day of July, 2001, ordering, among other things, the production by the Respondent and the Party of the Third Part to the Appellant of certain documents by no later than the 19th day of July, 2001, which requirement the tribunal is led to believe has been complied with;

AND WHEREAS the Appellant, wishing to terminate its appeal has filed a Notice of Discontinuance of its appeal on the 23rd day of July, 2001 and also indicated in writing that it would not be filing documentation on or before the 23rd day of July, 2001, in compliance with the tribunal's Order of July 12th, 2001;

AND WHEREAS the Respondent and Party of the Third Part were required to file and disclose documents relating to their position on or before the 26th and 30th days of July, 2001, respectively, such dates having passed and no actions taken;

AND WHEREAS, pursuant to the provisions of subsection 116(1) of the **Mining Act** and section 25.0.1 of the **Statutory Powers Procedure Act**, and not the *Rules of Civil Procedure*, the tribunal has the power to determine its own procedures and practices by way of Order or rules;

TAKE FURTHER NOTICE that the tribunal will require a written request to terminate proceedings setting out reasons therefore, indication of whether or not it has the consent of all other parties and the position of the parties with respect to the matter of costs;

AND TAKE FURTHER NOTICE that there remains outstanding the matter of the treatment of documents ordered produced and disclosed, pursuant to paragraphs 2 and 3 of its Order dated the 12th day of July, 2001, as set out in Paragraph 4 of the aforementioned Order;

AND TAKE FURTHER NOTICE that the tribunal shall seek to complete its record in this matter through ordering the filing by the Respondent of a document referred to in its letter to the Appellant of the 19th day of July, 2001, being a letter of the Deputy Minister of Mines dated the 15th day of February, 1944, purportedly of a general nature and purportedly which operates to amend and/or alter prospectively billing arrangements concerning Mining Licences of Occupation generally for the convenience of public administration. **AND TAKE FURTHER NOTICE** that any such order will not be made prior to hearing from the parties in writing and considering their various positions on this matter.

AND WHEREAS this appeal raises issues of general concern to the mining industry in the Province of Ontario concerning the validity on their face of Mining Licenses of Occupation and whether lands covered by Mining Licenses of Occupation are or are not closed to staking, pursuant to clause 30(1)(a) of the **Mining Act**;

TAKE FURTHER NOTICE that the tribunal remains concerned about the underlying general issues in this appeal, namely the status of Mining Licenses of Occupation issued prior to June 1st, 1953, the jurisdiction of the tribunal to determine that status, if any and whether the existence of a Mining Licence of Occupation should be accepted on its face or whether clause 30(1)(a) of the **Mining Act** permits such lands to be staked and challenged; **AND FURTHER** the tribunal seeks written submissions on the potential or ongoing likelihood of this matter arising with respect to any other properties held under Mining Licenses of Occupation by the Party of the Third Part through the actions of the Appellant, or any of its related companies;

AND WHEREAS the tribunal deems it necessary to rescind certain portions of its Order dated the 12th day of July, 2001, in order so that the matters raised above might be resolved;

1. **THIS TRIBUNAL ORDERS** that Paragraphs 1, 5, 6, 7, 8, 9, 10, 11, 12 and 14 of its Order dated the 12th day of July, 2001, be and are hereby rescinded.

DATED this 2nd day of August, 2001.

Original signed by
L. Kamerman

L. Kamerman
MINING AND LANDS COMMISSIONER

Original signed by
M. Orr

M. Orr
DEPUTY MINING AND LANDS COMMISSIONER