

File No. MA 037-00

L. Kamerman)
Mining and Lands Commissioner)

Wednesday, the 24th day
of July, 2002.

THE MINING ACT

IN THE MATTER OF

Mining Claim S-809104, recorded on the 20th day of August, 1984, in the name of Flag Resources (1985) Limited, having been recorded as being comprised in part of the SW 1/4, S 1/2 portion of Lot 8, Concession I, situate in the surveyed Township of Rathbun, but being alleged to also be located in part in the unsurveyed Township of Scadding, in the Sudbury Mining Division, hereinafter referred to as the "Flag Mining Claim";

AND IN THE MATTER OF

Mining Claim S-1230297, recorded on the 29th day of September, 1997, in the name of Terry Loney and transferred (100%) on the 21st day of September, 2000, to Solitaire Minerals Corp., situate in the unsurveyed Township of Scadding, in the Sudbury Mining Division, and purportedly covering that portion of the Flag Mining Claim which is located within the unsurveyed Township of Scadding, hereinafter referred to as the "Loney Mining Claim" (*amended, April, 2002*);

AND IN THE MATTER OF

An application to record Mining Claim 1244793, situate in the Township of Scadding, in the Sudbury Mining Division, staked by Raymond Levi Lashbrook, to have been recorded in the name of Flag Resources (1985) Limited, involving that part of the Flag Mining Claim located within the unsurveyed Township of Scadding, and marked "filed only", hereinafter referred to as the "Filed Only Mining Claim";

B E T W E E N:

FLAG RESOURCES (1985) LIMITED
Applicant

- and -

TERRY LONEY.
Respondent

- and -

MINISTER OF NORTHERN DEVELOPMENT AND MINES
Party of the Third Part

AND IN THE MATTER OF

An application pursuant to section 105 of the **Mining Act** for a declaration that the portion of the Flag Mining Claim located within the Township of Scadding has been staked in accordance with the **Act** and regulations, or in accordance with the **Mining Act** R.S.O. 1980, c. 268;

AND IN THE MATTER OF

An application for an Order pursuant to section 105 of the **Mining Act** directing the Provincial Mining Recorder to issue an Order in accordance with subsection 110(6) for the erection of the #4 corner post and line posts and performance of blazing along the north boundary of the Solitaire Mining Claim to coincide with the location of the #2 and #3 posts of the Flag Mining Claim;

AND IN THE MATTER OF

In the alternative, an appeal pursuant to subsection 112(1) of the **Mining Act** from the decision of the Provincial Mining Recorder, dated the 11th day of October, 2000, for the recording of the Filed Only Mining Claim.

ORDER

WHEREAS Flag Resources (1985) Limited failed to respond to the terms set out in Paragraphs 4 and 5 of its Interlocutory Order issued on the 29th day of April, 2002 within the 45 days set out therein, and further failed to advise the tribunal in writing of its reasons for failing to do so;

AND WHEREAS by virtue of the failure of Flag Resources (1985) Limited to comply with requirements set out in Paragraphs 4 and 5 of its Interlocutory Order, or request an extension of time in writing, those aforementioned Paragraphs 4 and 5, as well as Paragraphs 6 and 7 are of no further effect in this matter;

1. THIS TRIBUNAL DIRECTS that the Provincial Mining Recorder issue an Order pursuant to subsection 110(6) of the **Mining Act** for the moving of posts, numbers one and four and all line posts along the northern boundary, in connection with Loney Mining Claim S-1230297, a distance of 70 metres south, more or less, to coincide with the location of the Rathburn Scadding Township boundaries.

2. THIS TRIBUNAL FURTHER DIRECTS that the Provincial Mining Recorder issue an Order pursuant to subsection 110(6) of the **Mining Act** for the moving of posts, numbers one, two, three and four, in connection with the Flag Mining Claim S-809104, north and west to their proper aliquot part locations, more or less, to coincide with the location of the Rathburn Scadding Township boundaries.

3. THIS TRIBUNAL FURTHER ORDERS that the notation "Pending Proceedings", which is recorded on the abstracts subject Mining Claims S-809104 and S-1230297, to be effective from the 16th day of October, 2000, be removed from the abstracts of Mining Claims S-809104 and S-1230297, respectively.

4. **THIS TRIBUNAL FURTHER ORDERS** that the time during which Mining Claims S-809104 and S-1230297 were under “pending proceedings”, being the 16th day of October, 2000, to the 24th day of July, 2002, a total of 647 days, be excluded in computing time upon which prescribed assessment work is to be performed and filed on Mining Claims S-809104 and S-1230297, respectively.

5. **THIS TRIBUNAL FURTHER ORDERS** that the 29th day of May, 2003, be fixed as the date by which the next unit of prescribed assessment work must be performed and filed on Mining Claim S-809104, as set out in Schedule ‘A’ attached to this Order, pursuant to subsection 67(3) of the **Mining Act** and all subsequent anniversary dates are deemed to be May 29 pursuant to subsection 67(4) of the **Mining Act**.

6. **THIS TRIBUNAL FURTHER ORDERS** that the 8th day of July, 2003, be fixed as the date by which the next unit of prescribed assessment work must be performed and filed on Mining Claim S-1230297, as set out in Schedule ‘A’ attached to this Order, pursuant to subsection 67(3) of the **Mining Act** and all subsequent anniversary dates are deemed to be July 8 pursuant to subsection 67(4) of the **Mining Act**.

7. **THIS TRIBUNAL FURTHER ORDERS** that no costs shall be payable by any of the parties to this application.

THIS TRIBUNAL FURTHER ADVISES that, pursuant to subsection 129(4) of the **Mining Act**, as amended, a copy of this Order shall be forwarded by this tribunal to the Provincial Mining Recorder **WHO IS HEREBY DIRECTED** to amend the record in the Provincial Recording Office as necessary and in accordance with the aforementioned subsection 129(4).

DATED this 24th day of July, 2002.

Original signed by L. Kamerman

L. Kamerman
MINING AND LANDS COMMISSIONER

SCHEDULE 'A'

MINING CLAIM NUMBER

NEW DUE DATE

S-809104

May 29, 2003

S-1230297

July 8, 2003

File No. MA 037-00

L. Kamerman)
Mining and Lands Commissioner)

Wednesday, the 24th day
of July, 2002.

THE MINING ACT

IN THE MATTER OF

Mining Claim S-809104, recorded on the 20th day of August, 1984, in the name of Flag Resources (1985) Limited, having been recorded as being comprised in part of the SW 1/4, S 1/2 portion of Lot 8, Concession I, situate in the surveyed Township of Rathbun, but being alleged to also be located in part in the unsurveyed Township of Scadding, in the Sudbury Mining Division, hereinafter referred to as the "Flag Mining Claim";

AND IN THE MATTER OF

Mining Claim S-1230297, recorded on the 29th day of September, 1997, in the name of Terry Loney and transferred (100%) on the 21st day of September, 2000, to Solitaire Minerals Corp., situate in the unsurveyed Township of Scadding, in the Sudbury Mining Division, and purportedly covering that portion of the Flag Mining Claim which is located within the unsurveyed Township of Scadding, hereinafter referred to as the "Loney Mining Claim" (*amended, April, 2002*);

AND IN THE MATTER OF

An application to record Mining Claim 1244793, situate in the Township of Scadding, in the Sudbury Mining Division, staked by Raymond Levi Lashbrook, to have been recorded in the name of Flag Resources (1985) Limited, involving that part of the Flag Mining Claim located within the unsurveyed Township of Scadding, and marked "filed only", hereinafter referred to as the "Filed Only Mining Claim";

B E T W E E N:

FLAG RESOURCES (1985) LIMITED

Applicant

- and -

TERRY LONEY.

Respondent

- and -

MINISTER OF NORTHERN DEVELOPMENT AND MINES

Party of the Third Part

AND IN THE MATTER OF

An application pursuant to section 105 of the **Mining Act** for a declaration that the portion of the Flag Mining Claim located within the Township of Scadding has been staked in accordance with the **Act** and regulations, or in accordance with the **Mining Act** R.S.O. 1980, c. 268;

AND IN THE MATTER OF

An application for an Order pursuant to section 105 of the **Mining Act** directing the Provincial Mining Recorder to issue an Order in accordance with subsection 110(6) for the erection of the #4 corner post and line posts and performance of blazing along the north boundary of the Solitaire Mining Claim to coincide with the location of the #2 and #3 posts of the Flag Mining Claim;

AND IN THE MATTER OF

In the alternative, an appeal pursuant to subsection 112(1) of the **Mining Act** from the decision of the Provincial Mining Recorder, dated the 11th day of October, 2000, for the recording of the Filed Only Mining Claim.

REASONS

On April 29th, 2002, the tribunal issued an Interlocutory Order whereby the original dispute against the Loney Mining Claim 1230927 was dismissed, and the Flag Mining Claim 809104 was declared to be located within the confines of the survey fabric of Rathbun Township as indicated on the Application to Record.

The case was an unusual one in that Flag persuaded the tribunal that it was entitled to prove an equitable interest in those lands on the ground which were encompassed by the actual staking of Flag Mining Claim 809104, notwithstanding that this land had been overstaked by part of Loney's Mining Claim 1230927. The basis for this determination was oral evidence that Flag had spent between \$80,000 and \$100,000 on the ground location.

To this end, Flag was directed to provide to the tribunal within 45 days of the Interlocutory Order [June 13th, 2002] photocopies of all invoices for assessment and exploration work, to breakdown those invoices to indicate which amounts had been used to keep Mining Claim 809104 in good standing, and a breakdown of those invoices not used in filed assessment work reports, including the total amount spent. It is noted that Flag Mining Claim 809104 has only the minimum necessary to keep it in good standing and nowhere near the amounts claimed expended on these lands. There is nothing wrong with this practice *per se*, but the tribunal sought documentary evidence in support of the oral evidence given, to substantiate the claims made.

Flag was also directed to carry out a survey of the ground location of its staking of Mining Claim 809104. This was to be carried out by an Ontario Land Surveyor, and in keeping with principles for surveying mining claims.

When completed with the foregoing requirements, the tribunal indicated that it was prepared to issue a Declaratory Order providing for a Special Equitable Lien to Flag over the property which is currently held by Mr. Loney situate within his Mining Claim 1230927. It was anticipated that

this Special Equitable Lien would serve as a means by which Flag could acquire an interest in that part of Loney's claim which Flag had originally staked and upon which it had performed the considerable assessment work alleged. Although a number of alternatives were outlined in the Interlocutory Order, paragraph 7, the tribunal was cognisant at all times that whatever equitable solution could not run afoul of the governing principles and parameters of the **Mining Act**.

At the date of this writing, some five weeks after the deadline given by the tribunal, Flag Resources has not complied with any of the requirements set out in the Interlocutory Order. On June 14th, 2002, Mr. Daniel Pascoe, Registrar of the tribunal was contacted by Mr. Richard Guy, counsel for Flag. The tribunal was advised that Mr. Loney and Mr. McLeod on behalf of Flag, had settled the matter. He further indicated that the tribunal would be advised in writing when the paperwork was completed. Mr. Pascoe followed up with Mr. Guy by telephone on June 24th, leaving a message that the tribunal was waiting to hear from him. This was further followed up with a letter dated July 3rd, 2002, requesting that Mr. Guy provide information in writing regarding his client's intentions.

On May 22nd, 2002, Mr. Roy Spooner, the Provincial Mining Recorder provided to the tribunal information from the Canada NewsWire Service. Portions of this Release are reproduced:

Subsequent to the discovery, and although the claim had been held by Flag for 16 years, a mining recorder ruled that as the claim extended from Rathbun Township, a surveyed township, into Scadding Township, an unsurveyed township, the Scadding portion was invalid.

The claim was also overstaked in 1997 by Terry Loney, of Sudbury, Ontario.

Flag has signed a preliminary agreement with Terry Loney, to purchase 5 mining claims, S1247296, 1247297, 1247705 and 1247706, held by him, in Rathbun Township for \$25,000.

Under the terms of the preliminary agreement, Flag retains ownership of the Scadding portion of Claim 809104, by undertaking a survey of the area, to precisely define its boundary. The ground would then be registered and recorded with the Ministry of Northern Development and Mines.

The tribunal also received correspondence from Mr. Loney addressed to Mr. McLeod of Flag and Mr. Guy, dated the 8th day of July, 2002. It is reproduced:

As per handwritten, signed agreement drafted by Murdo McLeod, Flag Resources had until midnight July 7/02 to make first payment of \$5000.00 or the contract is null and void. I Terry Loney will extend the deadline until July 9/02 at midnight. If payment is not made, or if a formal agreement is not drafted by Mr. Guy by this deadline time, the agreement will be null and void. The conditions set by the Mining Commissioners then will be put in force.

Findings

The tribunal finds that it has not been kept directly and sufficiently informed either of the intentions of Flag or of its actions. Rather, it is faced with having to piece together the picture which emerged above.

It would appear that Flag is not happy with the Interlocutory Order, notwithstanding that Flag was in a position to acquire an interest in the land by the means set out. The tribunal makes this assumption from the fact that Flag and Mr. Loney appear to have entered into an agreement (no copy provided) which is outside the terms of the tribunal's Interlocutory Order.

Whatever the reaction to the tribunal's interim step, the fact is that Flag has persistently failed to keep the tribunal informed of its intentions or progress. The tribunal cannot fault Mr. Guy in any of this, as his actions or lack thereof bear the mark of counsel who is unable to receive instructions from his client. Frankly, the tribunal is of the opinion that Flag is contemptuous of the tribunal, its Interlocutory Order and of its own obligations in this regard to see this matter through to completion.

Given the reluctance demonstrated by the lack of communication in writing to the tribunal by or on behalf of Flag, advising of its intentions, the tribunal finds that it is left with no choice but to regard the matter of the Equitable Statutory Lien to which Flag was entitled at an end for want of action on the part of Flag.

Conclusions

In its April 29th, 2002 Interlocutory Order, the tribunal has dismissed the application for a declaration that Flag Mining Claim 809104 was validly staked in Scadding Township, declared that the aforementioned Mining Claim was validly staked in Rathbun Township and dismissed the dispute against Loney Mining Claim 1230927. Paragraphs 4 through 7 are no longer of any effect and will be rescinded.