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

File No. MA 007-99

L. Kamerman)
Mining and Lands Commissioner)

Tuesday, the 1st day
of February, 2000.

THE MINING ACT

IN THE MATTER OF

Mining Lease Patent 107203, being all that land and land under water in the Township of Neelon, in the Town of Nickel Centre, Regional Municipality of Sudbury, Territorial District of Sudbury, containing by admeasurement 48.349 hectares, more or less, and being designated as Parts One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7) and Eight (8) as shown on a Plan of Survey of record in the Land Registry Office for the District of Sudbury, as Reference Plan 53R-16270, comprising Mining Claim S-1197700, ("Mining Lease Patent 107203");

AND IN THE MATTER OF

An application for a right of way for purposes of the construction of a railway spur pursuant to clause 175(1)(f) of the **Mining Act**, over Part of Lot 1, Concession IV, Township of Neelon, in the Town of Nickel Centre, Regional Municipality of Sudbury, Territorial District of Sudbury more particularly described as Part One (1) Plan 53R-16445, being part of Parcel 2821 S.E.S., containing by admeasurement 6.128 hectares, more or less; Part Two (2) Plan 53R-16445, being part of Parcel 2856 S.E.S., containing by admeasurement 2.468 hectares, more or less; and over Part of Lot 12, Concession IV, Township of Dryden, in the Town of Nickel Centre, Regional Municipality of Sudbury, Territorial District of Sudbury, more particularly described as Part Three (3) Plan 53R-16445, being part of Parcel 3012 S.E.S., containing by admeasurement 1.170 hectares, more or less (the "Railway Spur");

AND IN THE MATTER OF

An application for a right of way for purposes of the construction of an access road pursuant to clause 175(1)(f) of the **Mining Act**, over Part of Lot 2, Concession IV, Township of Neelon, in the Town of Nickel Centre, Regional Municipality of Sudbury, Territorial District of Sudbury more particularly described as Part One (1) Plan 53R-16323, being part of Parcel 6270 S.E.S., containing by admeasurement 1.42 hectares, more or less (the "Access Road");

AND IN THE MATTER OF

The Coniston Quarry situate on Mining Lease Patent 107203 and being located adjacent to or in close proximity to the proposed Railway Spur and Access Road;

B E T W E E N:

LEO ALARIE AND SONS LIMITED

Applicant

- and -

INCO LIMITED

Respondent

- and -

THE MINISTER OF NORTHERN DEVELOPMENT AND MINES

Party of the Third Part

O R D E R

WHEREAS this application was received by this tribunal on the 15th day of February, 1999;

AND WHEREAS a consent to grant the required rights of way was executed on the 25th day of March, 1999, by Mr. Carson Dixon, Superintendent, Leo Alarie and Sons, Ltd.;

AND WHEREAS a consent to grant the required right of way was executed on the 5th day of April, 1999, by Mr. John L. Lafleur, Property Manager, Inco Limited;

1. **THIS TRIBUNAL ORDERS** that a right of way for purposes of the construction of a railway spur pursuant to clause 175(1)(f) of the **Mining Act** over Part of Lot 1, Concession IV, Township of Neelon, in the Town of Nickel Centre, Regional Municipality of Sudbury, Territorial District of Sudbury more particularly described as Part One (1) Plan 53R-16445, being part of Parcel 2821 S.E.S., containing by admeasurement 6.128 hectares, more or less, and Part Two (2) Plan 53R-16445, being part of Parcel 2856 S.E.S., containing by admeasurement 2.468 hectares, more or less and over Part of Lot 12, Concession IV, Township of Dryden, in the Town of Nickel Centre, Regional Municipality of Sudbury, Territorial District of Sudbury, more particularly described as Part Three (3) Plan 53R-16445, being part of Parcel 3012 S.E.S., containing by admeasurement 1.170 hectares, more or less, be and is hereby granted to the Applicant, Leo Alarie And Sons Limited.

2. **THIS TRIBUNAL FURTHER ORDERS** that a right of way for purposes of the construction of an access road pursuant to clause 175(1)(f) of the **Mining Act** over Part of Lot 2, Concession IV, Township of Neelon, in the Town of Nickel Centre, Regional Municipality of Sudbury, Territorial District of Sudbury more particularly described as Part One (1) Plan 53R-16323, being part of Parcel 6270 S.E.S., containing by admeasurement 1.42 hectares, more or less, be and is hereby granted to the Applicant, Leo Alarie And Sons Limited.

IT IS FURTHER DIRECTED that upon the payment of the required fees, that this Order be filed in the Land Titles Office, Sudbury, Ontario.

DATED this 1st day of February, 2000.

ORIGINAL SIGNED BY
L. KAMERMAN

L. Kamerman
MINING AND LANDS COMMISSIONER



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

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THE MINISTER OF NORTHERN DEVELOPMENT AND MINES

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REASONS

The application for this matter was received on February 15, 1999. Additional documentation was required, with copies of the Survey Reference Plans and the Easement Agreement, between Leo Alarie and Sons Limited and Inco Limited, signed on the 3rd day of January, 2000 by Mr. Ron Aecllick, President, Ontario Division, Inco Limited and W.J. Cook, Legal Officer, Ontario Division, Inco Limited and signed on December 16, 1999 by Mr. Denis Alarie, LAS, President and Mr. Paul Komulainen, LAS, Vice-President, being received on April January 12, 2000.

As the granting of this easement was on consent, the tribunal determined that a hearing in this matter would not be required, pursuant to section 4.1 of the **Statutory Powers Procedure Act**, R.S.O. 1990, c. S.22, as amended by S.O. 1993, c.27 and S.O. 1994, c.27, s.56. A duly signed consent to the Order, dated March 25, 1999, was executed by Mr. Carson Dixon, Agent on behalf of Leo Alarie and Sons Limited. A duly signed consent to the Order, dated April 5, 1999, was executed by Mr. John L. Lafleur, Agent on behalf of Inco Limited.

The jurisdiction to make the requested Order is found in section 175 of the **Mining Act**, R.S.O. 1990, c. M.14. Leo Alarie and Sons Limited was requested, in addition to its consent, to provide information to enable the tribunal to make findings in accordance with subsection 175(1) as to why the easement is required in connection with the proper working of a mine, mill for treating ore or quarry. A letter of explanation, dated February 12, 1999, was received by facsimile from Mr. Carson Dixon, Superintendent of Leo Alarie and Sons Limited and contained the following information:

This rail line and loading area would be used for importing supplies and exporting products from the Coniston quarry in the Sudbury area.

Inco Limited was requested to provide information pursuant to subsection 175(2) with regard to the issue of adequate compensation provided for in its aforementioned easement agreement with Leo Alarie and Sons Limited. On January 7, 2000, Mr. Carson Dixon, Superintendent, Leo Alarie and sons Limited provided correspondence signed by both himself and Mr. John Lafleur, Property Manager, Inco Limited, dated April 9, 1999, to the effect that:

"This letter is to confirm that the compensation offered to Inco Limited has been accepted with regard to potential injury or damage likely to be caused during the construction and operation of the roads, rail line and loading areas by Leo Alarie and Sons Ltd. to lands owned by Inco Limited for the purposes of section 175(2) of the **Mining Act**."

In addition, the tribunal is required to provide Notice of its hearing in this matter to the delegate of the Minister of Northern Development and Mines, in this case, Mr. Ronald Gashinski, Senior Manager, Mining Lands Management Branch, Sudbury, Ontario. Mr. Gashinski was advised in writing of the impending order and asked to comment prior to the proposed issuance date of the tribunal's Order, being February 1, 2000. On January 27, 2000, Mr. Gashinski advised the tribunal in writing that the Ministry had no concerns in this matter.

Therefore, the tribunal finds that the requested easement is necessary for the proper working of the Coniston Quarry facility. The tribunal also finds that adequate compensation has been agreed to by the parties and will not interfere with their agreement.

The requested Order will be granted.