Court of Appeal File No: C59945

COURT OF APPEAL FOR ONTARIO

BETWEEN:

2274659 ONTARIO INC.

Respondent (Applicant)

- and -

CANADA CHROME CORPORATION

Appellant (Respondent)

- and -

MINISTER OF NORTHERN DEVELOPMENT AND MINES

Intervenor

FACTUM OF THE APPELLANT
CANADA CHROME CORPORATION

April 30, 2015

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FACTUM OF THE APPELLANT CANADA CHROME CORPORATION

PART I - OVERVIEW

1. Canada Chrome Corporation ("**CCC**") appeals from the judgment of the Divisional Court dated July 30, 2014. CCC respectfully submits that the Divisional Court erred in law in granting the appeal of the decision of the Mining and Lands Commissioner (the "**MLC**"). In particular, the Divisional Court erred in its interpretation of a number of sections of the *Mining Act*, judicially considered for the first time in this case, and in substituting its decision for that of the MLC, an expert tribunal.

2. If the Divisional Court's restrictive interpretation of the rights of mining claim holders is allowed to stand, this will have a severe impact on mining in Ontario, since the

decision unduly limits the ability of junior mining companies to explore and reap the benefits of their investment in their mining claims.

PART II - THE FACTS

3. KWG Resources Inc. ("**KWG**"), the parent company of CCC, and Cliffs Natural Resources Inc., the parent company of 2274659 Ontario Inc. (together, "**Cliffs**"), each hold interests in certain chromite deposits in the Ring of Fire. Both KWG and Cliffs are interested in building transportation infrastructure from those chromite deposits to a distribution point.

> ***2274659 Ontario Inc. v. Canada Chrome Corporation*, 2014 ONSC 4446 (Div. Ct.) [Divisional Court Reasons], at para. 4, Appeal Book and Compendium, Tab 2B, p. 12.**

4. In 2009, with Cliffs' encouragement, CCC staked over 200 mining claims to secure its prior right to use the surface of those mining claims for building a rail corridor and conducting exploration in support thereof (the "**CCC Claims**"). The CCC Claims were staked from the Big Daddy chromite deposit, in which KWG holds a 30% interest, to Exton, Ontario. The location of the CCC Claims was selected because it is the only high ground through an area that mainly consists of swamp.

> **Divisional Court Reasons, at paras. 6-7, Appeal Book and Compendium, Tab 2B, p. 12.**

5. KWG spent over $15 million conducting exploration work on the CCC Claims, $8 million of which was filed with and accepted by the Ministry of Northern Development and Mines ("**MNDM**") as assessment work. The purpose of the exploration work was two-fold: to bring the CCC Claims quickly to lease (to acquire surface rights), and to explore for minerals, including consolidated aggregate, diamonds, and other minerals.

> **Divisional Court Reasons, at paras. 11, 32, Appeal Book and Compendium, Tab 2B, pp. 13, 17.**

2274659 Ontario Inc. v. Canada Chrome Corporation, Unreported, MLC File No. MA 005-12, September 10, 2013 [MLC Reasons] at p. 11, Appeal Book and Compendium, Tab 3B, p. 44.

6. After an unsuccessful attempt to acquire KWG, Cliffs applied for a 100-metre wide easement under the *Public Lands Act* (the "**Easement**") over 108 of the CCC Claims (the "**Mining Claims**"). The purpose of the Easement is to build a road from a location near the Black Thor chromite deposit, which is wholly owned by Cliffs, to Cavell, Ontario (the "**Road**").

Public Lands Act, R.S.O. 1990, c. P.43.

Divisional Court Reasons, at paras. 1, 16, Appeal Book and Compendium, Tab 2B, pp. 11, 14.

7. Pursuant to s. 51 of the *Mining Act*, CCC has the prior right to use the surface of the Mining Claims for the purposes set out therein. CCC's consent was therefore required before Cliffs' Easement application could proceed. CCC did not consent to the Easement, and so the matter was referred to the MLC to determine whether CCC's consent should be dispensed with.

Mining Act, R.S.O. 1990, c. M.14.

Divisional Court Reasons, at para. 10, Appeal Book and Compendium, Tab 2B, p. 13.

8. On September 10, 2013, the MLC denied Cliffs' application. The MLC found that Cliffs' Road would interfere with CCC's prior right to develop and work the Mining Claims, and therefore declined to dispense with the need for CCC's consent to the Easement.

MLC Reasons, at pp. 42-43, Appeal Book and Compendium, Tab 3B, pp. 75-76.

9. Cliffs appealed the decision to the Divisional Court. On April 28, 2014, MNDM was granted leave to intervene in the appeal.

Notice of Appeal, October 8, 2013, Appeal Book and Compendium, Tab 1, p. 1.

Order of Justice Lederer, April 28, 2014, Appeal Book and Compendium, Tab 20, p. 402.

10. On July 30, 2014, the Divisional Court granted the appeal. Rather than sending the matter back to the MLC, the Divisional Court substituted its decision for that of the MLC and granted an order dispensing with CCC's consent to the Easement.

Divisional Court Reasons, at para. 112, Appeal Book and Compendium, Tab 2B, p. 30.

PART III - THE LAW

A. Issues in the Appeal

11. In granting the appeal, CCC respectfully submits that the Divisional Court erred in its interpretation of a number of sections of the *Mining Act*. In particular, the Divisional Court:

(a) erred in its interpretation of s. 50 of the *Mining Act*, which resulted in a mischaracterization of the MLC's findings at first instance;

(b) erred in its interpretation of s. 51 of the *Mining Act*, which resulted in an unduly restrictive interpretation of an unpatented mining claim holder's rights on Crown land; and

(c) erred in finding that the definition of a "mine" in s. 1 of the *Mining Act* does not include a railway.

12. CCC also submits that the Divisional Court erred in substituting its decision for that of the MLC, an expert tribunal.

B. Standard of Review

13. Whether the Divisional Court erred in its interpretation of the *Mining Act* is a question of law, which is subject to a standard of correctness.

***Housen v. Nikolaisen*, 2002 SCC 33 [*Housen*], at paras. 8-9, Appellant's Book of Authorities, Tab 1.**

14. With respect to the Divisional Court's substitution of its decision for that of the MLC, CCC submits that the Divisional Court made inextricable errors in principle in applying the proper legal test, which attracts a standard of correctness.

> ***Housen, ibid.*** **at paras. 31-37, Appellant's Book of Authorities, Tab 1.**

C. The Divisional Court Erred in Interpreting ss. 50, 51, and 1 of the *Mining Act*

(i) The Divisional Court's Standard of Review

15. The MLC's interpretation of the *Mining Act* was subject to a reasonableness standard before the Divisional Court. The proper interpretation of the *Mining Act* raises questions of law that are neither of central importance to the legal system as a whole, nor outside the MLC's specialized area of expertise.

> ***New Brunswick (Board of Management) v. Dunsmuir*****, 2008 SCC 9 [*****Dunsmir*****], at para. 60, Appellant's Book of Authorities, Tab 2.**

16. This Honourable Court has recognized that the MLC is an expert tribunal with respect to matters involving the *Mining Act*. In *Minister of Transport v. 1520658 Ontario Inc.*, this Court upheld the lower court's finding that the MLC has "expertise with respect to prospecting, mining claims and priorities under the Act", and "a contextual understanding of the interests and practices of competing constituencies under the Act, including a familiarity with the practices of those who stake claims." This Court further held that the MLC has "the broad expertise to consider the Act's land-use policy in a wider context", and has "exclusive jurisdiction to determine every claim, question and dispute arising under the Act."

> ***Minister of Transport v. 1520658 Ontario Inc.*****, 2011 ONCA 373, at paras. 18 and 27, Appellant's Book of Authorities, Tab 3.**

17. In *McLean v. British Columbia (Securities Commission)*, the Supreme Court of Canada affirmed that courts should defer to an expert tribunal's interpretation of a statute within its area of expertise, as "the choice between multiple reasonable interpretations will often involve policy considerations that we presume the legislature desired *the administrative decision maker* — not the courts — to make."

> ***McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, at para. 33, Appellant's Book of Authorities, Tab 4.**

18. CCC submits that the Divisional Court should not have interfered with the MLC's interpretation of ss. 50(2) and 51 of the *Mining Act*, since its interpretation falls within a range of possible, acceptable outcomes.

> ***Dunsmir, supra*, at para. 74, Appellant's Book of Authorities, Tab 2.**

(ii) The Divisional Court erred in finding that s. 50(2) applies to the Mining Claims

(a) Section 51(1) applies to unpatented mining claims on Crown land

19. The Mining Claims are unpatented mining claims. An unpatented mining claim is a mining claim for which no patent, lease, license of occupation or any other form of Crown grant is in effect.

> ***Mining Act, supra*, s. 1(1).**

20. A "patent" is a "grant from the Crown in fee simple or for a less estate made under the Great Seal, and includes leaseholds patents and freehold patents." Upon fulfilling the requirements set out in the *Mining Act*, including performing the required amount of assessment work, the holder of an unpatented mining claim is entitled to a lease of the claim.

> ***Mining Act, supra*, ss. 1(1), 81(1).**

21. When a mining claim is patented, surface rights are determined by the patent itself. When a mining claim is unpatented, surface rights are determined by the *Mining Act*. Sections 50(2) and 51(1) of the *Mining Act* provide:

> **Surface rights**
>
> 50. (2) The holder of a mining claim does not have any right, title or claim to the surface rights of the claim other than the right, subject to the requirements of this Act, to enter upon, use and occupy such **part or parts** thereof as are necessary for the purpose of prospecting and the efficient exploration, development and operation of the mines, minerals and mining rights **therein**. [Emphasis added].
>
> **Surface rights on unpatented mining claim**
>
> 51. (1) Except as in this Act is otherwise provided, the holder of an unpatented mining claim has the right prior to any subsequent right to the user of the surface rights, except the right to sand, peat and gravel, for prospecting and the efficient exploration, development and operation of the mines, minerals and mining rights.

***Mining Act, supra*, ss. 50(2), 51(1), 84(1).**

22. Contrary to the finding of the Divisional Court, CCC submits that the MLC was correct in finding that s. 50(2) applies to mining claims for which the surface is privately owned, and s. 51(1) applies to mining claims for which the surface is owned by the Crown. The Mining Claims at issue in this appeal are unpatented mining claims on Crown land. Therefore, the MLC was correct to find that it is s. 51(1), not s. 50(2), that governs CCC's surface rights.

23. At the Divisional Court, CCC agreed that the MLC's analysis was flawed in so far as it suggested that s. 50(2) does not apply to unpatented mining claims generally. An unpatented mining claim is indeed a "mining claim" within the meaning of that section. While the MLC was incorrect in drawing a distinction between patented and unpatented mining claims, CCC submits that the MLC was nevertheless correct in drawing a distinction between mining claims on Crown land, and mining claims for which the surface is privately owned. The MLC correctly held, "It is through the wording of the s. 51(1) that the legislature identified and addressed surface rights

accruing to a mining claim holder who stakes a claim **on Crown land where the surface is owned by the Crown at the time of staking**" (emphasis added).

Divisional Court Reasons, at para. 35, Appeal Book and Compendium, Tab 2B, p. 17.

MLC Reasons, p. 29, Appeal Book and Compendium, Tab 3B, p. 62.

24. The MLC's finding that s. 51(1), not s. 50(2), applies to the Mining Claims is consistent with the history of ss. 50(2) and 51(1) as set out in the *Report of the Public Investigations Committee, 1959* (the "**Report**"). In 1957, s. 100a of the *Mining Act* was amended to allow the Crown to reserve, in a patent or a lease, **all** surface rights necessary for any purpose other than the mineral industry, and which were not essential for the efficient exploration and development of mines, minerals, and mining rights. At the same time, s. 66(1a), the predecessor to what is now s. 50(2), was added to the *Mining Act*.

***Mining Amendment Act, 1957*, S.O. 1957, c. 71, ss. 5, 9.**

Divisional Court Reasons, at para. 56, Appeal Book and Compendium, Tab 2B, p. 21.

MLC Reasons, pp. 30-32, Appeal Book and Compendium, Tab 3B, pp. 63-65.

***Report of the Public Investigations Committee, 1959* [the Report], pp. 2, 4, 5, Appeal Book and Compendium, Tab 15, pp. 346, 348, 349.**

25. The mining industry expressed concern over these amendments. As set out in the Report:

> It was represented to be virtually impossible to decide **what portion of the surface rights** would be required for mining purposes, even six years after the claim had been staked and long before exploration and development had reached the stage where **any definite idea of the surface rights required** could be given. This applies particularly to deposits of iron ore and base metals, where estimates of the shape, size and grade are important factors in delineating the area, both **on surface** and at depth, that may be of commercial value at present or in the future. [Emphasis added].

The Report, *ibid.*, pp. 4-5, Appeal Book and Compendium, Tab 15, pp. 348-349.

26. The Public Lands Investigation Committee (the "**Committee**") was struck to make recommendations specifically regarding the use of Crown land under the *Mining Act* and the *Public Lands Act*. The Committee found that the mining industry's criticism of the new policy was valid. In its Report, the Committee stated that:

> Such a policy would appear to constitute an additional handicap to the prospector endeavouring to develop his claims to the point where he can interest the necessary capital to finance them, as well as the capital for further development of the ground. The proving up of a valuable mineral deposit is at best a hazardous venture, and it is the opinion of the Committee that **some policy covering surface rights on potentially valuable mining lands should be established that would protect the public interest and at the same time protect the claim holder until he has had the full opportunity to explore his ground thoroughly**, and thereby avoid further hazards to his efforts in bringing in new mineral deposits. [Emphasis added].

The Report, *ibid.*, p. 5, Appeal Book and Compendium, Tab 15, p. 349.

27. On Crown land, the Committee recommended that there be a recognition of the "prior right of a mining claim holder or the lessee or owner of the mining rights to use the surface for mining purposes". Pursuant to that recommendation, s. 68a (what is now s. 51) of the *Mining Act* was enacted. Section 51(1) carves out different surface rights for unpatented mining claims on Crown land in order to address the mining industry's concerns set out above. Section 51(1) provides that an unpatented mining claim holder on Crown land has priority over the use of the surface of mining claims, without including the restriction that he only be able to use a certain portion, i.e. only "part or parts", of the surface of the mining claims for mining activities.

***Mining Amendment Act, 1962-63*, S.O. 1962-63, c. 84, s. 17.**

Divisional Court Reasons, at paras. 49 and 50, Appeal Book and Compendium, Tab 2B, p. 19.

The Report, *supra*, p. 7, Appeal Book and Compendium, Tab 15, p. 351.

28. In light of the foregoing, and contrary to the Divisional Court's finding, the MLC was correct to note that, pursuant to s. 51(1), CCC's surface rights with respect to the Mining Claims are broader than those set out in s. 50(2). Under s. 51(1), an unpatented mining claim holder on Crown land has the right to use **all** of the surface of the mining claims for prospecting and the efficient exploration, development and operation of the mines, minerals and mining rights; whereas, the holder of a mining claim for which the surface is privately owned under s. 50(2) only has the right to use "**part or parts**" of the surface of the mining claim for the same activities.

29. As noted by the MLC, it makes good sense that a mining claim holder would have broader surface rights where the Crown owns the surface, because there is no private owner of surface rights to contend with. The MLC noted that a number of sections of the *Mining Act* are designed specifically to address potential conflicts between a mining claim holder and the holder of surface rights where the surface rights are privately owned. Where the surface rights are not privately owned, such conflicts do not arise; therefore, it stands to reason that an unpatented mining claim holder's rights on Crown land would be less restrictive.

MLC Reasons, pp. 30, 32, 33, Appeal Book and Compendium, Tab 3B, pp. 63, 65, 66.

(b) The word "therein" in s. 50(2) refers to the "part or parts" of the surface of the claims, not "the claims themselves"

30. The Divisional Court compounded its error of finding that s. 50(2) applies to the Mining Claims by maintaining that:

> [T]he effect of the MLC's interpretation of ss. 50 and 51 is to grant surface rights to unpatented mining claim holders on Crown land that can be exercised **for any purpose** that can be tied to mines, minerals or mining rights **anywhere.**

> According to this interpretation, **the uses need not be restricted to the exploration or development of the particular claim in issue.** [Emphasis added].

Divisional Court Reasons, at para. 53, Appeal Book and Compendium, Tab 2B, p. 20.

31. This erroneous conclusion stems from the Divisional Court's misunderstanding of what the word "therein" refers to in s. 50(2). As set out above, s. 50(2) provides that the holder of a mining claim can enter upon, use and occupy such "part or parts" of the surface as are necessary to perform certain mining activities "therein." The Divisional Court incorrectly found that the word "therein" in s. 50(2) refers to "the claims themselves," when in fact the word "therein" refers to the "part or parts" of the surface of the mining claims.

Divisional Court Reasons, at para. 55, Appeal Book and Compendium, Tab 2B, p. 20.

32. The Divisional Court's misunderstanding led it to the mistaken conclusion that because the MLC found that s. 50(2) does not apply to the Mining Claims, the MLC did not find interference with mining activities on the claims themselves. In fact, the consequence of the MLC's finding that s. 50(2) does not apply to the Mining Claims is simply that CCC, as an unpatented mining claim holder on Crown land, is not restricted to the use of only "part or parts" of the surface. Instead, CCC had the prior right to use all of the surface of the Mining Claims.

33. The MLC's reasons make plain that it understood that the word "therein" refers to the "part or parts" of the surface, and not the mining claims themselves. The MLC held that "s. 50(2) contemplates those situations where 'the holder of a mining claim' has to assert a right to access materials in the ground and has to cross a privately owned surface to do so. It makes sense that in such a situation, **the right to surface use are limited to a certain 'part or parts' of the surface. The word 'therein' has a limiting effect**" (emphasis added). The MLC held that the

mining claim holder "entering upon, using and occupying the surface will be limited to doing to what is needed to get at the materials 'therein'."

MLC Reasons, p. 30-32, Appeal Book and Compendium, Tab 3B, pp. 63-65.

34. Consequently, just because the MLC found that s. 50(2) does not apply to the Mining Claims, does not mean, as asserted by the Divisional Court, that the MLC found that the use of the surface "need not be restricted to the exploration or development of the particular claim in issue." The following examples clearly demonstrate that the MLC did find interference with the exploration or development of the Mining Claims themselves:

(a) "the granting of an easement for the building of a road will have a negative impact on the **development of the mining claims**";

(b) "The tribunal is satisfied that it has heard ample evidence to conclude that CCC would encounter serious issues that would negatively affect the **development of its mining claims** were Cliffs to obtain its desired easement";

(c) "Placing an easement (and the resulting road) over that [borehole] line would interfere with the **development of the claims** under the *Mining Act* as it is clear to the tribunal that the line depicts the best place to locate either a road or a railroad. It follows that the line likely also depicts the best place to move exploration or other mining equipment to assist in the **development of the claims themselves**;

(d) "any attempts by CCC **to work its claims** along the higher ground or esker will undoubtedly be hampered or curtailed by the existence of road";

(e) "CCC's **ability to work its claims** will be negatively affected by the existence of the road and all that goes with it including the movement of numerous trucks every day. Given the linear nature of the mining claims and the fact that the proposed easement for the road touches each of the claims in some part, **CCC will find its work affected along the entire length of its claims**".

MLC Reasons, pp. 39, 40, 42, Appeal Book and Compendium, Tab 3B, pp. 72, 73, 75.

35. Moreover, contrary to the assertion of the Divisional Court, the MLC did not conclude that the surface of the Mining Claims could be used "for any purpose" simply because the word "therein" in s. 50(2) does not apply. The word "therein" in s. 50(2) does not refer to the

scope of the activities that can be performed on mining claims; rather, as noted by the MLC, the word "therein" means "in that place" or "in that respect." In other words, the word "therein" does not restrict **what** you can do with the surface of a mining claim, but rather **where** you can do it. Under both sections, a mining claim holder can use the surface of the mining claims for the following activities: prospecting and the efficient exploration, development and operation of the mines, minerals and mining rights.

MLC Reasons, p. 30, Appeal Book and Compendium, Tab 3B, p. 63.

36. Since the MLC made no error in principle, the Divisional Court should have deferred to the MLC's factual findings regarding the impact that the Road would have on CCC's use of the surface of the Mining Claims for development and exploration, which are detailed below.

(ii) The Divisional Court erred in interpreting s. 51 of the Mining Act

(a) The multiple use principle

37. The animating principle behind s. 51 is the "multiple use principle". The multiple use principle requires if, but only if, multiple use of the surface of the Mining Claims is possible, then CCC's consent to the Easement should be dispensed with (i.e. if Cliffs' Road would not interfere with CCC's prior right to use the surface of the Mining Claims).

MLC Reasons, p. 36, Appeal Book and Compendium, Tab 3B, p. 69.

38. The priority afforded to the use of Crown land for mining purposes, as opposed to other public purposes, is recognized in B.J. Barton's *Canadian Law of Mining*:

> The free entry system assumes that mining is to have priority over competing uses of land and resources. . . If people are interested in procuring mining claims in some area, then resource management and land use planning efforts must work around the claims.

B.J. Barton, *Canadian Law of Mining* (Calgary: Canadian Institute of Resource Law, 1993), p. 165, Appellant's Book of Authorities, Tab 5.

39. Similarly, in *Minister of Natural Resources v. Malouf*, the MLC held:

> The interests of those who stake mining claims is preserved by way of the *Mining Act*, and their **prior rights to use the surface to explore and develop mines is well documented**. Indeed, the actual "consent" form for the disposition of surface rights acknowledges this fact. [Emphasis added].

***Minister of Natural Resources v. Malouf* (2010), MLC File No. MAA 022-09, p. 3, Appellant's Book of Authorities, Tab 6.**

40. The MLC found that multiple use of the Mining Claims was not possible based on the following key findings of fact, which were well supported by the evidence:

(a) CCC staked the Mining Claims to secure its prior right to use the surface of the Mining Claims for a transportation route as well as develop the resources within the Mining Claims themselves;

(b) CCC spent over $8 million in assessment work and was determined to carry on with its exploration plans on the Mining Claims; and

(c) Cliffs plans to build the Road precisely where CCC has been exploring for minerals, and, given the topography in area, Cliffs has little choice about where to build the Road.

MLC Reasons, pp. 33, 38, 39, Appeal Book and Compendium, Tab 3B, pp. 66, 71, 72.

41. The Divisional Court did not defer to these factual findings, or give due regard to CCC's prior, statutory right to use the surface of the Mining Claims. Instead, the Divisional Court adopted an unduly restrictive interpretation of the rights held by an unpatented mining claim holder on Crown land under s. 51 of the *Mining Act*. In particular, the Divisional Court improperly focussed on the ends of CCC's exploration activities, rather than on the exploration activities themselves.

(b) Interference with CCC's exploration for consolidated aggregate

42. The Divisional Court erred in finding that CCC's prior right to explore for consolidated aggregate would not be interfered with because it found that CCC's plans to build a railway are "speculative." With respect, the ultimate purpose for which exploration is conducted is not relevant to the determination of whether CCC's rights under s. 51 of the *Mining Act* would be interfered with by Cliffs' Road.

Divisional Court Reasons, at paras. 86, 106, Appeal Book and Compendium, Tab 2B, pp. 26, 29.

43. Section 51 of the *Mining Act* provides that CCC has the prior right to use the surface of the Mining Claims for, among other things, the exploration of "minerals" on, in, or under the land. Minerals are defined in the *Mining Act* as including quarry and pit material, i.e. consolidated aggregate. Consequently, it is immaterial what CCC ultimately intends to do with the consolidated aggregate. Interference with CCC's exploration for consolidated aggregate is in and of itself is sufficient to demonstrate that multiple use of the Mining Claims is not possible.

***Mining Act, supra*, s. 1(1).**

44. In any event, the Divisional Court erred in finding that CCC's railway was "speculative". At the hearing, Frank Smeenk, KWG's CEO, provided evidence to the MLC that he had completed the required assessment work to bring the claims to lease, defined the route for the railway with a high degree of accuracy, approached the provincial government for funding, applied for registration as a short line railway operator, and submitted a draft project description for an Environmental Assessment, which has been circulated amongst interest groups, First Nations and environmental lobbyists.

Affidavit of Frank C. Smeenk, sworn May 30, 2012 ["Smeenk Affidavit"], Exhibit W, Appendix F, Exhibit Book, Volume 2, Tab 6W, p. 413-415, Appeal Book and Compendium, Tab 12W, pp. 258-260.

Examination of Frank Smeenk, February 6, 2013, Transcript, Volume 3, p. 164, l.10 - p. 165, Appeal Book and Compendium, Tab 10A, pp. 185, 186.

Examination of Frank Smeenk, February 7, 2013, Transcript, Volume 5, p. 34, l.3 - p. 35, l.14, Appeal Book and Compendium, Tab 10B, pp. 187, 188.

45. With respect to the Divisional Court's assertion that "CCC does not have the funds for the railway construction, estimated at $1.6 billion or more", Mr. Smeenk testified at the MLC hearing that KWG can raise the requisite funds as it is a public company, and is qualified to issue flow-through shares. KWG had exploratory talks with foreign counterparts and Mr. Smeenk anticipated that $700 million of the cost of the railway will have attractive tax implications as renounceable exploration expenditures. Amortized over a hundred years, Mr. Smeenk testified that the railway is a much cheaper option.

Divisional Court Reasons, at para. 86, Appeal Book and Compendium, Tab 2B, p. 26.

Examination of Frank Smeenk, February 6, 2013, Transcript, Volume 3, p. 127, l.2-10; p. 144, l.22 - p. 145, l.23; p. 146, l.5 - p. 147, l.14, Appeal Book and Compendium, Tab 10A, pp. 180-184.

46. Therefore, while CCC's plans to build a railway may be speculative in the sense that its plans have not yet come to fruition, the evidence demonstrates that these plans are not speculative in the sense that they are disingenuous.

(c) Interference with CCC's exploration for diamonds and other minerals

47. Moreover, the Divisional Court erred in finding that Cliffs' Road would not interfere with CCC's exploration for diamonds, as the Mining Claims were "not yet known to contain a commercially proven deposit of minerals or diamonds." Whether CCC's exploration activities have so far been fruitful is similarly not part of the test under s. 51 of the *Mining Act*.

Divisional Court Reasons, at paras. 90, 107, Appeal Book and Compendium, Tab 2B, pp. 27, 29.

48. Diamonds have been discovered in the Ring of Fire area near the De Beers mine, the Victor mine, and Attawapiskat, and five diamond-bearing kimberlite pipes, the Kyle pipes, have also been discovered. The MLC accepted the evidence of Maurice Lavigne, KWG's Vice President of Exploration and Development, that soil samples taken along the length of the CCC Claims provide a unique opportunity to create a regional database of glacial dispersion of valuable minerals, such as kimberlite indicator minerals, that can be used to guide KWG's exploration in the James Bay lowlands for the next decade.

MLC Reasons, pp. 39, 42, Appeal Book and Compendium, Tab 3B, pp. 72, 75.

Affidavit of Maurice Lavigne, sworn May 30, 2012 ["Lavigne Affidavit"], paras. 62-63, Exhibit Book, Volume 3, Tab 7, p. 437-438, Appeal Book and Compendium, Tab 13, pp. 282-283.

49. Contrary to the Divisional Court's finding that "there was no basis in the evidence" for the MLC to conclude that there would be interference with mining exploration or development of the minerals on the claims themselves, Mr. Lavigne testified that there was a "fairly high" probability that CCC would undertake follow-up exploration work on the CCC Claims and do additional drilling, collect more soil samples, and conduct a heavy mineral analysis.

Divisional Court Reasons, at para. 90, Appeal Book and Compendium, Tab 2B, p. 27.

Examination of Maurice Lavigne, February 7, 2013, Transcript, Volume 5, p. 55, l.17 - p. 57 l.14, Appeal Book and Compendium, Tab 11, pp. 191, 193.

50. The Divisional Court's restrictive interpretation of an unpatented mining claim holder's rights under s. 51(1) flies in the face of the Report and the recommendation by the

Committee that unpatented mining claim holders on Crown land be given broad rights to use the surface of their claims for exploration and development.

51. Instead of adopting a very narrow interpretation of a mining claim holder's rights, and considering irrelevant factors which, in its view, made further exploration unproductive, the Divisional Court should have deferred to the MLC's findings of fact, which were subject to a standard of review of overriding and palpable error. Had it deferred to these findings, the Divisional Court ought to have reached the same conclusion as the MLC; namely, that Cliffs' Road would interfere with CCC's ability to develop and work the Mining Claims, and therefore multiple use of the surface was not possible.

(d) Leading evidence of the "public interest"

52. The Divisional Court further erred in finding that the MLC placed a burden on Cliffs to demonstrate that the Road was in the public interest. The MLC was responding to Cliffs' paradoxical position that, on the one hand, it is up to Ministry of Natural Resources, not the MLC to determine whether the Road is in the public interest under the *Public Lands Act*, and yet, on the other hand, that even if the MLC found that multiple use of the Mining Claims was not possible, the MLC still had residual discretion to grant the application if it found that the "public interest favours permitting the Respondent's use over that of the Applicant."

Examination of Maurice Lavigne, February 7, 2013, Transcript, Volume 5, p. 55, l.17 - p. 57 l.14, Appeal Book and Compendium, Tab 11, pp. 191, 193.

Final Argument of the Applicant at the MLC Hearing, para. 7, Exhibit Book, Volume 8, Tab 39, pp. 1729-1730, Appeal Book and Compendium, Tab 14, pp. 292-293.

Opening Submissions of Mr. Sanderson, Feb. 4, 2013, Transcript, Volume 1 at p. 72, l.9 - p. 73, l.15; p. 75, l.17 - p. 76, l.21, Appeal Book and Compendium, Tab 9, pp. 175-176, 178-179.

53. The MLC rejected Cliffs' submission, finding that it "did not see a public component to this hearing" as there had been "no evidence describing what segment of the public would be interested in or would benefit from such a road." The MLC correctly held that it could not make findings about what use of the Mining Claims was in the public interest in a vacuum. The MLC therefore rejected Cliffs' submission that there was a broader public interest that would be served by allowing Cliffs to build its Road instead of CCC being able to build its railway.

MLC Reasons, pp. 41-42, Appeal Book and Compendium, Tab 3B, pp. 74-75.

(iii) The Divisional Court erred in holding that a railway is not a "mine"

54. The Divisional Court further erred in finding that a railway is "not a use for which CCC can claim priority under s. 51(1) of the *Mining Act*."

Divisional Court Reasons, at para. 67, Appeal Book and Compendium, Tab 2B, p. 23.

55. A "mine" is defined in s. 1(1) of the *Mining Act*, in part, as follows:

> "mine", when used as a noun, includes,
>
> (a) any opening or excavation in, or working of, the ground for the purpose of winning any mineral or mineral bearing substance,
>
> (b) all ways, works, machinery, plant, buildings and premises below or above the ground relating to or used in connection with the activity referred to in clause (a),

56. Pursuant to s. 1(1)(b), a "way" or "work" is a mine, so long as it is used in connection with the activities in s. 1(1)(a). The proposed railway is a "way" or a "work" relating to or used in connection with the winning of a mineral at the Big Daddy chromite deposit. Therefore, CCC's railway is a "mine" within the meaning of the *Mining Act*.

57. Under s. 51(1), CCC has the prior right to use the surface of the Mining Claims for, among other things, the development and operation of a mine, which definition includes a railway. Accordingly, the Divisional Court erred in finding that CCC did not have priority to "use the claims for a railway to a mineral deposit that is hundreds of kilometers from some of these claims." The combination of s. 1(1) and s. 51(1) expressly gives CCC this priority to build a railway once it has acquired the necessary surface rights.

Divisional Court Reasons, at para. 82, Appeal Book and Compendium, Tab 2B, p. 25.

D. The Divisional Court Erred in Substituting its Decision for that of an Expert Tribunal

(i) A Court Must Not Substitute Its Decision for that of an Administrative Tribunal Absent Exceptional Circumstances

58. CCC submits that the Divisional Court erred in finding that this was an "exceptional circumstance" in which the Divisional Court could substitute its decision for that of the MLC. The Divisional Court relies on this Honourable Court's decision in *Stetler v. Ontario Flue-Cured Tobacco Growers' Marketing Board* in support of its decision not to remit the matter back to the MLC for a rehearing. That case is readily distinguishable.

***Stetler v. Ontario (Flue-Cured Tobacco Growers' Marketing)*, 2009 ONCA 234 [*Stetler*], Appellant's Book of Authorities, Tab 7.**

59. In *Stetler*, the Agriculture, Food and Rural Affairs Tribunal (the "**Tribunal**") revoked the respondent's entire basic production quota for tobacco after finding that the respondent unlawfully sold a small fraction of tobacco outside of his quota. The Tribunal's decision was appealed to the Divisional Court, and then to the Court of Appeal. This Court restored the Tribunal's decision on liability, but sent the matter back to the Tribunal to reconsider the penalty.

***Stetler, ibid.*, at paras. 6-13, Appellant's Book of Authorities, Tab 7.**

60. In its reconsideration decision, the Tribunal gave the respondent the exact same penalty as had been previously imposed, notwithstanding this Court's direction. The Tribunal's decision was again appealed to the Divisional Court, and then to this Court.

***Stetler, ibid.*, at paras. 17, 20-21, Appellant's Book of Authorities, Tab 7.**

61. The matter was heard by this Court on March 12, 2009. By that time, the litigation had dragged on for the better part of a decade. The respondent led fresh evidence in the appeal demonstrating that unless the quota was returned to him in just over two weeks, by March 29, 2009, he would not be able to avail himself of a recently introduced federal buyout program for tobacco farmers who wished to sell their quota and exit the industry.

***Stetler, ibid.*, at paras. 22-23, Appellant's Book of Authorities, Tab 7.**

62. Justice Gillese on behalf of this Court found that the Tribunal made four errors in principle, and therefore its reconsideration decision was unreasonable.

***Stetler, ibid.*, at paras. 25-26, Appellant's Book of Authorities, Tab 7.**

63. With respect to the appropriate remedy, Gillese J.A. held that "[c]ourts owe deference to administrative tribunals. In all but exceptional circumstances, if a regulatory body is found to have erred in the imposition of a penalty, deference dictates that the matter should be remitted for reconsideration." Justice Gillese cited Deschamps J.'s decision in the Supreme Court case *Giguère c. Chambres des notaires du Québec* with approval, in which Deschamps J. (dissenting, but not on this point) held that "[a] court of law may not substitute its decision for that of any administrative decision-maker lightly or arbitrarily. It must have serious grounds for doing so". A court may render a decision on the merits in an exceptional case where remitting

the case would be "pointless", where the tribunal is no longer "fit to act", and where "any other interpretation or solution would be unreasonable."

> ***Stetler, ibid.*, at paras. 1, 42, 47, Appellant's Book of Authorities, Tab 7.**
>
> ***Giguère c. Chambres des notaires du Québec,* 2004 SCC 1, at para. 66, Appellant's Book of Authorities, Tab 8.**

64. In deciding to substitute its decision for that of the Tribunal, Justice Gillese relied specifically on the fresh evidence that the respondent would lose the ability to participate in the buyout program if the matter was remitted back to the Tribunal. This Court expressly held that it would not have substituted its decision for that of the Tribunal in the absence of the fresh evidence, noting the deference afforded to administrative bodies. No analogous factors pertain in this case that justify the Divisional Court rendering a decision in place of the MLC.

> ***Stetler, supra*, at para. 46, Appellant's Book of Authorities, Tab 7.**

(ii) No Exceptional Circumstances Pertain in this Case

65. CCC submits that the Divisional Court erred in finding that this was an exceptional case in which it should substitute its decision for that of the MLC.

66. The Divisional Court held that the only reasonable decision was to dispense with CCC's consent. However, this is a case that was heavily dependent on the facts. Notwithstanding the Divisional Court's assertion to the contrary, CCC did provide evidence of interference with its mining activities. This evidence was considered and ultimately accepted by the MLC. As described in detail above, the MLC made a number of factual findings, which were well-supported by the evidence, that necessarily led to the conclusion that multiple use of the Mining Claims was not possible. These factual findings ought to have been afforded deference.

67. As set out above, this Court has held that the MLC has broad expertise and a contextual understanding of matters under the *Mining Act*. The MLC has "exclusive jurisdiction to determine every claim, question and dispute under the Act." To the extent that the Divisional Court was of the view that the MLC should have better considered whether Cliffs' Road could be accommodated, this issue should be remitted back to the MLC for a rehearing with *viva voce* evidence and expert testimony, not decided by an appellate court on the basis of a written record.

68. The Divisional Court's decision not to remit the matter back to the MLC appears also to have been based on a finding that the MLC was not fit to act based on "the composition of the MLC and comments made by the tribunal in its decision". As noted by the Divisional Court, the MLC has three members, two of whom participated in the hearing. There is no reason why the matter could not be remitted to the third member of the MLC for a rehearing. In any event, CCC submits that it should not be denied an opportunity for a rehearing based on the composition of the MLC, over which it has no control.

Divisional Court Reasons, at para. 100, Appeal Book and Compendium, Tab 2B, p. 28.

69. With respect to the comments made by the MLC in its reasons, the Divisional Court found that the MLC "expressed frustration" towards Cliffs, and implies that the MLC is therefore biased against Cliffs.

Divisional Court Reasons, at para. 100, Appeal Book and Compendium, Tab 2B, p. 28.

70. The test for a reasonable apprehension of bias is: "What would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly?" The threshold for finding a real or

perceived bias is high, and the onus lies with the party alleging bias to establish its existence. There is a strong presumption in favour of the impartiality of an adjudicative decision maker.

***R v. S. (R.D.)*, 1997 CarswellNS 301 (S.C.C.) at paras. 31-32, Appellant's Book of Authorities, Tab 9.**

71. There is absolutely no evidence to support the assertion that the MLC is biased against Cliffs. It is noteworthy that Cliffs did not allege that the MLC was biased against it at the hearing, or in the appeal at the Divisional Court. It was entirely appropriate for the MLC to note that Cliffs only complained of CCC staking the Mining Claims to build a railway after Cliffs had encouraged CCC to do so. It was also appropriate for the MLC to comment on the impact that this had on CCC. CCC submits that these comments fall far short of overcoming the strong presumption in favour of the MLC's impartiality, and in satisfying the high threshold of demonstrating a reasonable apprehension of bias.

PART V - ORDER REQUESTED BY THE RESPONDENT

72. The respondent requests that

(a) its appeal be granted with costs;

(b) the decision of the MLC be restored;

(c) in the alternative, that the matter be sent back to the MLC for a rehearing.

All of which is respectfully submitted, this 30th day of April, 2015.

per Neal Smitheman

Kimberly Potter

Counsel for the Appellant (Respondent)

Tab A

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Housen v. Nikolaisen*, 2002 SCC 33.
2. *New Brunswick (Board of Management) v. Dunsmuir*, 2008 SCC 9.
3. *Minister of Transport v. 1520658 Ontario Inc.*, 2011 ONCA 373.
4. *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67.
5. B.J. Barton, *Canadian Law of Mining* (Calgary: Canadian Institute of Resource Law, 1993).
6. *Minister of Natural Resources v. Malouf (2010)*, MLC File No. MAA 022-09.
7. *Stetler v. Ontario (Flue-Cured Tobacco Growers' Marketing)*, 2009 ONCA 234.
8. *Giguère c. Chambres des notaires du Québec*, 2004 SCC 1.
9. *R v. S. (R.D.)*, 1997 CarswellNS 301 (SCC).

Tab B

SCHEDULE "B"
STATUTORY PROVISIONS

Courts of Justice Act, R.S.O. 1990, c. C.43

Court of Appeal jurisdiction

6.(1)An appeal lies to the Court of Appeal from,

(a) an order of the Divisional Court, on a question that is not a question of fact alone, with leave of the Court of Appeal as provided in the rules of court;

(b) a final order of a judge of the Superior Court of Justice, except an order referred to in clause 19 (1) (a) or an order from which an appeal lies to the Divisional Court under another Act;

(c) a certificate of assessment of costs issued in a proceeding in the Court of Appeal, on an issue in respect of which an objection was served under the rules of court.

Public Lands Act, R.S.O. 1990, c. P.43.

Easements

21. The Minister may grant easements in or over public lands for any purpose.

Mining Act, R.S.O. 1990, C. M.14

Interpretation

1. (1)In this Act,

"mine", when used as a noun, includes,

(a) any opening or excavation in, or working of, the ground for the purpose of winning any mineral or mineral bearing substance,

(b) all ways, works, machinery, plant, buildings and premises below or above the ground relating to or used in connection with the activity referred to in clause (a),

(c) any roasting or smelting furnace, concentrator, mill, work or place used for or in connection with washing, crushing, grinding, sifting, reducing, leaching, roasting, smelting, refining or treating any mineral or mineral bearing substance, or conducting research on them,

(d) tailings, wasterock, stockpiles of ore or other material, or any other prescribed substances, or the lands related to any of them, and

(e) mines that have been temporarily suspended, rendered inactive, closed out or abandoned,

but does not include any prescribed classes of plant, premises or works; ("mine")

"mine", when used as a verb, means the performance of any work in or about a mine, as defined in its noun sense, except preliminary exploration; ("exploiter")

"minerals" means all naturally occurring metallic and non-metallic minerals, including coal, salt, quarry and pit material, gold, silver and all rare and precious minerals and metals, but does not include sand, gravel, peat, gas or oil; ("minéraux")

"patent" means a grant from the Crown in fee simple or for a less estate made under the Great Seal, and includes leasehold patents and freehold patents, but in sections 4, 27, 84, 87 to 95, 176, 179, 182 and 189 the meaning is limited to freehold patents; ("lettres patentes")

"unpatented", when referring to land or mining rights, means land or mining rights for which a patent, lease, licence of occupation or any other form of Crown grant is not in effect; ("non concédé par lettres patentes")

Rights in claim

50. (1)The staking or the filing of an application for or the recording of a mining claim, or the acquisition of any right or interest in a mining claim by any person or all or any of such acts, does not confer upon that person,

(a) any right, title, interest or claim in or to the mining claim other than the right to proceed as is in this Act provided to perform the prescribed assessment work or to obtain a lease from the Crown and, prior to the performance, filing and approval of the first prescribed unit of assessment work, the person is merely a licensee of the Crown and after that period and until he or she obtains a lease the person is a tenant at will of the Crown in respect of the mining claim; or

(b) any right to take, remove or otherwise dispose of any minerals found in, upon or under the mining claim.

Surface rights

(2) The holder of a mining claim does not have any right, title or claim to the surface rights of the claim other than the right, subject to the requirements of this Act, to enter upon, use and occupy such part or parts thereof as are necessary for the purpose of prospecting and the efficient exploration, development and operation of the mines, minerals and mining rights therein.

Exploration work

(2.1) Despite subsection (2), the holder of a mining claim shall not enter upon, use or occupy any part of a mining claim for any exploration work on the claim unless the requirements in sections 78.2 and 78.3 and in the regulations have been met.

Taxation

(3) The holder of an unpatented mining claim is not liable to assessment or taxation for municipal or school purposes in respect of such unpatented mining claim.

Same

(4) The holder of a licence of occupation issued under this Act or any predecessor Act is not liable to assessment or taxation for municipal or school purposes in respect to the licence

except with respect to improvements for which the holder would be liable to assessment or taxation if the lands were held under a patent.

Surface rights on unpatented mining claim

51. (1) Except as in this Act is otherwise provided, the holder of an unpatented mining claim has the right prior to any subsequent right to the user of the surface rights, except the right to sand, peat and gravel, for prospecting and the efficient exploration, development and operation of the mines, minerals and mining rights.

Surface rights required under *Public Lands Act* or for public benefit

(2) Despite subsection (1), where an application has been made under the *Public Lands Act* for the use of surface rights or for their disposition in whole or in part, or where the surface rights or portions of them are required for developing and operating a public highway, a renewable energy project, a power transmission line or a pipeline for oil, gas or water, or for another use that would benefit the public, the recorder may, if the claim holder does not consent to the proposed use or disposition,

(a) refer the matter to the Commissioner; or

(b) upon giving all interested persons at least 90 days' notice of a hearing and after hearing any interested persons that appear, make an order on such terms and conditions as the recorder considers appropriate with respect to the surface rights.

Where application referred to Commissioner

(3) Where a matter is referred to the Commissioner under clause (2) (a), the Commissioner shall, upon giving all interested persons at least 90 days' notice of a hearing and after hearing any interested persons that appear, make an order on such terms and conditions as the Commissioner considers appropriate with respect to the surface rights.

Minister's order to restrict part of surface rights

(4) Despite subsection (1), the Minister may by order impose restrictions on a mining claim holder's right to the use of portions of the surface rights of a mining claim if,

(a) the portions of the surface rights are on lands that meet the prescribed criteria as sites of Aboriginal cultural significance; or

(b) any of the prescribed circumstances apply.

Same

(5) Before making an order under subsection (4), the Minister shall,

(a) give the claim holder written notice of the Minister's intention to make an order under subsection (4), setting out the proposed restrictions and the reasons for making the order; and

(b) give the claim holder an opportunity to make representations to the Minister, within 30 days of the date of the notice given under clause (a).

Minister's order

(6) A Minister's order under subsection (5) is not appealable and is not a regulation within the meaning of Part III (Regulations) of the *Legislation Act, 2006*.

Related changes

(7) A recorder shall make any changes to the applicable mining claim abstracts that are necessary to reflect any order made under this section, or any agreement made with the claim holder with respect to the use of surface rights for the purposes of this section.

Survey of surface rights

(8) Where an order is made under this section, or any agreement is made with the claim holder with respect to the use of surface rights for the purposes of this section, the Minister may require a survey of the surface rights or of the portion of them that is affected by the order or agreement, and the survey shall be provided at the expense of the person who has acquired the surface rights or the use of them.

Right to Lease of Claim

81. (1) Upon compliance with this Act and the regulations and upon payment of the rent for the first year, the holder of a mining claim is entitled to a lease of the claim.

Lease of surface rights

84. (1) Upon application by a lessee or owner of mining rights or a holder of a mining licence of occupation, the Minister may lease any available surface rights inside or outside the lands covered by the lease, patent or licence of occupation required by the applicant for any purpose essential to mining or mining exploration, including for constructing a shaft or buildings or disposing of tailings or other waste material.

***Mining Amendment Act*, 1957, S.O. 1957, c. 71**

5. Section 66 of *The Mining Act*, as amended by section 4 of *The Mining Amendment Act, 1954*, is further amended by adding thereto the following subsection:

(1a) The holder of a mining claim shall not have any right, title, or claim to the surface rights of the claim other than the right to enter upon, use and occupy such part or parts thereof as are necessary for the purpose of prospecting and the efficient exploration, development and operation of the mines, minerals and mining rights therein.

9. (1) *The Mining Act* is amended by adding thereto the following section:

100a - (1) In a patent or lease of a mining claim, the Minister,

(a) Shall reserve all surface rights excluded by or withdrawn under this Act or the regulations, or which have otherwise been alienated by the Crown; and

(b) Shall reserve all such other surface rights he considers necessary for any purposes other than the mineral industry and not essential for the efficient exploration and development of the mines, minerals and mining rights.

(2) Any surface rights reserved under this section may be dealt with under Part VIA or under *The Public Lands Act* or the regulations made thereunder.

(2) Section 100a of *The Mining Act*, as enacted by subsection 1, applies whether or not the claim was staked before the section came into force, but, in the case of a claim staked before the section came into force, the surface rights shall be included in the patent or lease,

(a) if application for patent or lease is made and purchase price or rental is paid before the 1st day of September, 1957; or

(b) if the holder of the claim has been prevented from making application for patent or lease or from paying the purchase price or rental on or before the 1st day of September 1957, because the plans of survey filed with the Surveyor-General have not been approved by that date.

Mining Amendment Act, 1962-63, S.O. 1962-63, c. 84

17. *The Mining Act* is amended by adding thereto the following section:

68a- (1) Except as in this Act otherwise provided, the holder of an unpatented mining claim has the right prior to any subsequent right to the user of the surface rights for prospecting and the efficient exploration, development and operation of the mines, mineral and mining rights.

(2) Where the holder of an unpatented mining claim consents to the disposition of surface rights under The Public Lands Act, the recorder shall make an entry on the record of the claim respecting the consent, and thereupon the surface rights may be dealt with as provided in The Public Lands Act.

(3) Where the holder of an unpatented mining claim consents to the disposition of surface rights under subsection 2, the Minister may require a survey of such surface rights, and the survey shall be provided at the expense of the person who has acquired the surface rights.

(4) Where an application is made for disposition under The Public Lands Act of surface rights on an unpatented mining claim and the holder of the unpatented mining claim does not consent to the disposition and provision for the reservation is not otherwise provided for in this Act or any other Act, the Minister may refer the application to the Commissioner.

(5) Where an application under subsection 4 is referred to the Commissioner, he shall, upon giving all interested persons at least ninety days notice and after hearing such interested persons as appear, make an order based on the merits of the application.

Court of Appeal File No: C59945

COURT OF APPEAL FOR ONTARIO

BETWEEN:

2274659 ONTARIO INC.

Respondent (Applicant)

- and -

CANADA CHROME CORPORATION

Appellant (Respondent)

- and -

MINISTER OF NORTHERN DEVELOPMENT AND MINES

Intervenor

CERTIFICATE

I estimate that 1 day will be necessary for my oral argument in the appeal. An order under 61.09(2) (original record and exhibits) is not required.

DATED AT Toronto, Ontario this 30th day of April, 2015.

per Neal Smitheman

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2274659 ONTARIO INC.

Respondent (Applicant)

-and-

CANADA CHROME CORPORATION

Appellant (Respondent)

Court of Appeal File No. C59945

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

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