



Innovation, Energy and Mines

MINING BOARD

Unit 360-1395 Ellice Avenue, Winnipeg, Manitoba, Canada R3G 3P2
T 204-945-6529 F 204-948-2578
www.manitoba.ca

IN THE MATTER OF:

THE MINES AND MINERALS ACT
S.M. 1991-92 c.9-Cap. M162

AND IN THE MATTER OF:

GLENKO ENTERPRISES (1994) LTD.
v. DOUGLAS BUCHKO

DECISION OF THE MINING BOARD

Participating Board Members:

Harvey J. Slobodzian, Presiding Member
Bill Brant, Deputy Presiding Member
Dr. Norm Halden, Member
Henry Linklater, Member

The within decision of the Mining Board of Manitoba relates to a hearing conducted in the Town of Teulon on April 19, 2013. The hearing had been scheduled to complete the application of Glenko Enterprises (1994) Ltd. for right of entry to NW ¼ 22-24-4 EPM, the surface rights owner of which is Mr. Douglas Buchko. By way of a decision of the Mining Board dated December 14, 2012, the Board granted Glenko Enterprises (1994) Ltd. immediate entry to the said lands for the purposes of extracting minerals in the form of stone and/or gravel pursuant to casual quarry permits CP-2012-1000680 and CP-2012-1000681, provided that the Applicant pay to the Board a cash deposit of \$25,000.00. Subsequent to the release of this decision, the Applicant Glenko Enterprises (1994) Ltd. did post a cash deposit in the amount of \$25,000.00.

Pursuant to Section 157(1)(c), a further hearing of the Mining Board was scheduled for April 19, 2013, in order to determine the amount of compensation payable by the Applicant to the person to whom the compensation is payable, namely the surface rights owner, Douglas Buchko.

Accordingly, the Mining Board heard testimony and the submissions of both parties on April 19, 2013, and subsequently deliberated on the decision rendered herein.

In determining the issue of compensation payable to the surface rights owner, the Board specifically directed itself to the factors set out in Section 157(2) of *The Act* which are reproduced in Appendix "A" hereto.

The Board noted that the surface rights owner purchased the land at NW ¼ 22-24-4E in or around the year 2011, at which time a quarry had existed on the lands for a number of years.

The quarry located on these lands consumes a large portion of this quarter section of land.

The Applicant extracted minerals from the land pursuant to its casual quarry permits referred to herein between January 3, 2013 and April 1, 2013 and the surface area of the land over which the extraction occurred involved a total of approximately .64 acres. The total amount of stone, aggregate and/or gravel extracted by the Applicant during this period of time amounted to approximately 25,000 tonnes.

Uncontradicted evidence was provided to the Board to establish that the surface rights owner paid a total of \$150,000.00 for this parcel of land, the acreage of which was less than the usual 160 acres for a quarter section of land, being only 106 acres in total.

Otherwise, no evidence was provided to the Board to establish a contrary fair market value for these lands.

The surface rights owner has essentially used the land since he acquired ownership of same for the purposes of quarrying operations for his own purpose and/or that of his company, and assumedly also for other third parties with

whom he has entered into agreements permitting access to the minerals located on these lands. The title to the minerals is held by Her Majesty The Queen in the Right of the Province of Manitoba (the Crown).

There was no evidence to indicate that the surface rights owner resided on the land, or that he has conducted any other form of activity on the land, such as farming or woodcutting.

The access to the extraction site used by the Applicant involved the use of a road running from the municipal road situated on the west side of NW ¼ 22-24-4E to the site of the quarry. This road has been in use for some time prior to the Applicant's extraction for the purposes of gaining access to the quarry site located on the lands. Therefore, there is no indication that the Applicant disrupted any of the vegetation or other natural features located on the land in accessing the quarry site for the extraction of minerals that it required pursuant to its casual quarry permits.

The Board is of the view, however, that the surface rights owner has suffered a certain degree of nuisance, inconvenience and noise resultant from the mining operation conducted by the Applicant from January 3, 2013 to April 1, 2013. This nuisance and inconvenience, however, is militated to a great degree by the fact that the surface rights owner does not reside on this land, nor does he carry thereon any other form of commercial activity, save and except for quarrying operations. Nevertheless, the Board heard evidence that the extraction of these minerals by the Applicant required the use of heavy machinery and blasting. In addition, the Board accepts that the surface rights owner had to replace locks on its gates as a result of the Applicant accessing the lands at a cost of \$136.00 plus GST and PST for a total of \$152.32. The surface rights owner also makes a claim for 20 tons of ¾ inch clean stone which it had stockpiled on the land and which the Applicant removed. The Board is of the view that its granting to the Applicant of immediate access to the lands in December 2012 for the purposes of exercising its entitlement pursuant its casual quarrying permits did not authorize or permit the Applicant to remove the locks or to take any of the minerals which had been produced and stockpiled through the efforts of the surface rights owner. Included in the quantum of compensation provided herein, the Board has made an allowance in the surface rights owner's favour regarding the nuisance caused by the removal of the locks. Issues relating to the removal of

any stockpiled material would need to be addressed by the Crown, the issuer of the permit.

The Board hereby orders that the Applicant pay total compensation to the surface rights owner, Douglas Buchko, in the amount of \$7,000.00.

The sum of \$7,000.00 shall be paid to Douglas Buchko from the deposit in the amount of \$25,000.00 held by the Mines Branch previously posted by the Applicant with the balance of the funds to be remitted back to the Applicant.

DATED this 15th day of May, 2013.



Harvey J. Slobodzian
Presiding Member, on behalf of Board

APPENDIX "A"

Factors in determining compensation

157(2) In determining the amount of compensation payable under clause (1)(c), the board may consider

- (a) the value of the parcels of land, in respect of which mineral access rights are granted to the applicant, for the purpose for which it is used by the owner, irrespective of the existence of minerals on, in or under the land;
- (b) the amount of the parcels of land, in respect of which mineral access rights are granted to the applicant, that might be permanently damaged by the mining operations of the applicant;
- (c) the adverse effect on the remaining portion of the parcels of land, in respect of which mineral access rights are granted to the applicant, of granting mineral access rights to the applicant;
- (d) the costs to the owners of the parcels of land, in respect of which mineral access rights are granted to the applicant, that might result from the grant;
- (e) the compensation to be paid by the applicant to the owners of the parcels of land, in respect of which mineral access rights are granted to the applicant, for the nuisance, inconvenience or noise that might be caused by, or arise from or in connection with, the mining operations of the applicant; and
- (f) such other factors as the board considers proper, relevant or applicable.

Facteurs déterminant l'indemnité

157(2) Aux fins de la détermination de l'indemnité payable aux termes de l'alinéa (1)c), la Commission peut prendre en considération :

- a) la valeur des parcelles visées par une cession des droits de surface au demandeur ou une concession des droits d'accès aux minéraux à la même personne par rapport à l'usage que le propriétaire fait, sans tenir compte de l'existence des minéraux du bien-fonds;
- b) le nombre de parcelles dont les droits de surface ont été cédés ou les droits d'accès aux minéraux ont été concédés au demandeur et sur lesquelles l'exploitation minière du demandeur a laissé des dommages permanents;
- c) les conséquences négatives sur le reste du bien-fonds résultant de la cession des droits de surface au demandeur ou de la concession des droits d'accès aux minéraux à cette même personne;
- d) les dépenses que les propriétaires des parcelles devront probablement engager si les droits de surface des parcelles font l'objet d'une cession au profit du demandeur ou si celui-ci se voit concéder les droits d'accès aux minéraux;
- e) l'indemnité que le demandeur doit payer aux propriétaires des parcelles visées par une cession des droits de surface au demandeur ou une concession des droits d'accès aux minéraux à cette même personne pour cause de nuisance, d'inconvénient ou de bruit qui découle directement ou indirectement de l'exploitation minière du demandeur;
- f) les autres facteurs qu'elle considère indiqués ou pertinents.