Date: 2012 06 27
Docket: S-1-CV 2011000115

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF the *Cities, Towns and Villages Act*,
S.N.W.T. 2003, c. 22, Sch. B;

AND IN THE MATTER OF By-Law 94-1317 of the Town of Inuvik

BETWEEN:

MUNICIPAL CORPORATION OF THE TOWN OF INUVIK
Applicant

- and -

TODD SHATTLER and DEANNA SHATTLER
Respondents

Application for declaration as to subsurface and surface rights with respect to lands subject to mineral claims.

Heard at Inuvik, NT, on March 7, 8 and 9, 2012.

Reasons filed: June 27, 2012.

REASONS FOR JUDGMENT OF THE
HONOURABLE JUSTICE L.A. CHARBONNEAU

Counsel for the Applicant: Paul N.K. Smith and Sandra Mackenzie
Counsel for the Respondent: Gerard K. Phillips

Town of Inuvik v. *Shattler* et al, 2012 NWTSC 52

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REASONS FOR JUDGMENT

I) INTRODUCTION

[1] This matter arises from a dispute between the Town of Inuvik and two of its residents, Todd and Deanna Shattler, who are engaged in prospecting activities. The heart of the dispute relates to the parties' respective rights to conduct activities at the Navy Road Quarry, a quarry located within the municipal boundaries of the Town.

[2] Over the last few years, Todd Shattler has attempted to assert and exercise what he says is his right to carry out representation work pursuant to mineral claims staked at the Quarry. Over the same period of time the Town has attempted to assert and exercise what it says is its right to regulate and control the activities that take place at the Quarry, as it had done for a number of years before the first mineral claim was staked at that location.

[3] The parties' conflicting views about their respective rights has given rise to a lot of conflict. There have been numerous communications between Mr. Shattler, the Town's officials, and representatives of both the federal and territorial governments, about the status of the lands at the Quarry and the parties' respective rights to carry out activities on those lands. The matter has escalated to the point of unfortunate incidents taking place, various allegations of wrongdoing being made, police intervention on the site, an action in damages by Mr. Shattler against the Town and one of its contractors, and, ultimately, these proceedings.

[4] The Court is now being asked to make declarations regarding the parties' respective rights over the lands in question. The answers to the issues raised by this matter are anything but straightforward, given the nature of the rights, the fact that several levels of jurisdiction are involved, and the sequence of events that transpired.

II) PROCEDURAL HISTORY AND BACKGROUND

1. Procedural history

[5] On August 19, 2011, the Town initiated these proceedings against Mr. Shattler. The Originating Notice that was filed sought the following areas of relief:

> (a) abridging the time for service of notice of this Originating Notice pursuant to Rule 713 of the Rules of Court;
>
> (b) declaring that the Respondent has breached sections 3.0 and 4.0 of the Town of Inuvik By-Law 94-1317;
>
> (c) declaring that the Respondent is guilty of an offence pursuant to subsection 151(2) of the *Cities, Towns and Villages Act*, S.N.W.T. 2003, c.22, Sch. B (the "CTVA");
>
> (d) declaring that the Respondent's mining activities in the Navy Road Quarry constitute an imminent and serious danger to public health or safety pursuant to subsection 148(1) of the CTVA;
>
> (e) granting an immediate interim injunction pursuant to subsection 143(1) of the CTVA restraining the Respondent or his representatives from entering onto lands owned by the Applicant, removing sand, gravel or other material, conducting mining activities, and constructing any barriers preventing access to the Lands, pending the resolution of this matter;
>
> (f) granting a permanent interim injunction pursuant to subsection 143(1) of the CTVA restraining the Respondent or his representatives from entering

onto lands owned by the Applicant, removing sand, gravel or other material, conducting mining activities, and constructing any barriers preventing access to the Lands, pending the resolution of this matter;

(g) granting a declaration as to the respective surface and subsurface rights of the Applicant and the Respondent with respect to certain lands owned by the Applicant;

(h) joining this action with action number T3CV201100013 now filed in the Territorial Court of the Northwest Territories and having the Claim, Defences and Counterclaim heard in this Honourable Court;

(i) awarding the Applicant the costs of this application; and
(ii) granting such further or other relief as may be requested and this Honourable Court may grant.

[6] The Town sought an early date for the hearing of its application for immediate and interim injunctive relief. The hearing proceeded on August 29, 2011. Mr. Shattler represented himself at that hearing. On September 6, 2011, the Application was granted and Mr. Shattler was ordered to refrain from carrying out any further activities at the Quarry until this matter was dealt with on its merits. *Inuvik* v. *Shattler*, 2011 NWTSC 43.

[7] Mr. Shattler then retained counsel. On September 23, 2011, he filed a motion asking the Court to set down a number of points of law to be decided in advance of the trial. That application was argued on September 23, 2011, and was dismissed on September 26, 2011. *Inuvik* v. *Shattler*, 2011 NWTSC 49.

[8] On October 31, 2011, the matter was referred to case management pursuant to the *Rules of Court*. Case management meetings were held during the late Fall 2011 and the issues were considerably streamlined. In December counsel for the Town advised that several areas of relief set out in the Originating Notice would not be pursued. Counsel advised that the areas of relief that the Town did wish to pursue were the request for a declaration about the parties' surface and subsurface rights, the consolidation of this action with the civil action filed by Mr. Shattler in Territorial Court, and costs. It was agreed that a hearing date should be set to deal with the surface and subsurface rights issue, and that the other areas of relief could be dealt with at a later time.

[9] The hearing into the issue of surface and subsurface rights proceeded on March 7, 8 and 9, 2012, in Inuvik.

[10] At the start of the hearing, the Town filed, by consent, an Amended Originating Notice naming both Todd Shattler and Deanna Shattler as Respondents. Counsel agreed that Ms. Shattler needed to be named as a Respondent for the hearing to address the full scope of the issues that were anticipated to arise, because she is the owner of one of the mineral claims at issue.

[11] A number of documents were filed as exhibits on consent of the parties. The Town called as witnesses Grant Hood, its Senior Administration Officer, and Richard Campbell, its Director of Public Services. Mr. Shattler testified on his own behalf and also called his brother Larry Shattler as a witness.

2. History of ownership and administrative powers over lands

[12] Documentary evidence was filed to show the history of ownership of the lands on which the Quarry is situated. These lands were transferred from the federal government to the Commissioner of the Northwest Territories a number of years ago.

[13] Paragraph 3(1)(a) of the *Commissioner's Land Act*, R.S.N.W.T. 1988, c. C-11 gives the Commissioner the power to sell, lease, or otherwise dispose of Commissioner's lands. The Commissioner is also entitled to delegate to a municipality, or to an individual, the responsibility for the administration of Commissioner's lands.

[14] There is evidence that the Commissioner exercised this power and delegated to the Town the responsibility to administer the lands, although that evidence is not as clear as it could have been. A Land Administration Agreement dated August 27, 2007, was filed at the hearing (Exhibit #1, Tab 6). That Agreement, in force for 5 years, delegates to the Town the responsibility for the planning and disposal to any public lands located within the municipal boundaries of the Town. This would apply to the Quarry, as it is situated within those municipal boundaries.

[15] But the evidence also shows that the Town acquired ownership of the lands on which the Quarry is situated in February 2007, as outlined below at Paragraph 21. The Land Use Agreement entered into in August 2007 is therefore of no particular

significance because at that point, the Town had become the owner of the Lots specifically at issue in this dispute.

[16] What is more relevant to this dispute is what type of land use agreement may have been in place before ownership of the lands was transferred to the Town. On that point, the only evidence is the testimony of Mr. Hood. He testified that another land administration agreement was in place before the 2007 agreement. The document was not produced in evidence but Mr. Hood testified that he was aware of its existence and had seen it in the Town's files. Mr. Hood did not provide any details about the terms of that earlier agreement.

[17] There is no evidence contradicting Mr. Hood's testimony that a land administration agreement was in place before 2007. I see no reason not to accept his testimony on this point. But there is no evidence at all about the terms of that agreement and I cannot speculate as to what those terms were. The most I can conclude, on the basis of Mr. Hood's evidence, is that before it became the owner of the lands, the Town had been delegated some administrative responsibility over them.

[18] The *Cities, Towns and Villages Act*, R.S.N.W.T. 1988, c. C-8 gives the Town authority to enact by-laws in various areas that come within the scope of its jurisdiction. The Town has enacted By-law #94-1317 (The *Quarry By-law*, Exhibit #3) to regulate the activities at the quarries located within its municipal boundaries. The validity of the *By-law* has not been challenged in these proceedings.

[19] The *Quarry By-law* prohibits anyone from removing any material from a quarry situated within the Town without having first obtained a permit. It makes that prohibition subject to section 32 of the *Commissioner's Land Regulations*, R.R.N.W.T. 1990, c. C-13, which allows any person to take, without a quarrying permit and without a fee, up to 40 cubic meters of sand, gravel or stone from Commissioner's land.

[20] The terms "quarry" and "granular material" are defined at section 1 of the *Commissioner's Lands Act:*

> "granular materials" include limestone, granite, slate, marble, gypsum, marl, gravel, loam, sand, clay, volcanic ash and stone, but do not include minerals;

> "quarry" means any work or undertaking in which granular materials are removed from the ground or the land by any method, and includes all ways, works, machinery, plant, buildings and premises belonging to or used in connection with the quarry.

[21] As I have already mentioned , the Town acquired fee simple title to the lands that the Quarry is located on. The Notification issued by the Commissioner of the Northwest Territories to the Registrar of Land Titles to issue a Certificate of Title for the lands in the name of the Town is dated February 15, 2007. The evidence shows that all the legal requirements to effect this transfer were complied with.

[22] However, earlier transfers of these lands by the federal Crown to the Commissioner of the Northwest Territories were made reserving to the federal Crown "all mines and minerals, whether solid, liquid or gaseous". Any subsequent transfer of ownership is subject to the same reservations. This is noted in the transfer documents. It is also something that is specifically legislated at Paragraph 15(a) of the *Territorial Lands Act*, R.S.C. 1985, c. T-7:

> 15. There shall be deemed to be reserved to the Crown out of every grant of territorial lands
>
> (a) all mines and minerals whether solid, liquid or gaseous that may be found to exist in, under or on those lands, together with the right to work the mines and minerals and for this purpose to enter on, use and occupy the lands or so much thereof and to such extent as may be necessary for the working and extraction of the minerals (...)

[23] In the result, and the Town does not dispute this, the ownership of the minerals and the jurisdiction to legislate mineral rights have always remained with the federal Crown.

3. Legislative framework that governs mineral claims

[24] The federal government has exercised its jurisdiction over minerals in the Northwest Territories by enacting the *Northwest Territories and Nunavut Mining Regulations*, C.R.C., c.1516 (the *Regulations*). The *Regulations*, enacted under the purview of the *Territorial Lands Act*, provide the legal framework for prospecting minerals in the Northwest Territories, and regulate various aspects of that activity.

[25] The administration of mining claims is under the overall responsibility of an appointed Supervising Mining Recorder. For each mining district, Mining Recorders and Deputy Recorders are appointed and maintain recorded claims and documents setting out representation work done in relation to those claims (ss. 4-6).

[26] Persons who want to engage in prospecting activities must apply for a licence to prospect (ss.7-8). The *Regulations* set out the parameters within which claims can be staked, located and identified (ss. 11-23). The process for recording claims with the Mining Recorder, and the consequences that flow from that, are also set out in some detail (ss. 24-28). Other sections set out the process for obtaining a prospecting permit with respect to an area of a claim (ss. 27-36).

[27] The *Regulations* provide that the holder of recorded claim is entitled to hold it for a period of 10 years after it is recorded, provided that a certain amount of representation work is done on the claim (s.38). The size of the claim area determines the amount of money that its holder is required to invest on representation work to keep the claim active. There are filing requirements with respect to the representation work that the holder of a claim has conducted (s.41). There is also a mechanism for obtaining an extension of the time to perform representation work (s.44).

[28] If the representation work is not done, and in the absence of an extension, the claim lapses. When that happens, the holder of that claim cannot have the same claim, or any part of the claim, recorded in his or her name for a period of one year after the claim lapsed (s.49).

[29] The *Regulations* also set out the procedure that claim holders must follow to apply for a lease on the claim (ss. 58-61.1), for the transfer of claims or leases (s.62), and for the payment of royalties once a mine commences production (ss. 64-69).

[30] Section 70 of the *Regulations* sets out a process for the location of claims on occupied lands:

> 70. (1) Where a locator wishes to enter, prospect for minerals, locate or have a claim located for him on land that has been granted or leased to a surface holder, the locator may file with the Mining Recorder a notice in Form 19 of Schedule III of his intention to locate, or have located for him, a claim on the land or part thereof described in the notice.

> (2) Where the surface holder of any land referred to in subsection (1) refuses entry thereon to a locator or a person acting on his behalf, or sets terms and conditions of entry that the locator considers unreasonable, the locator may file with the Mining Recorder a notice referred to in subsection (1).
>
> (3) Where a locator files a notice referred to in subsection (1), no claim may be located on the land described in the notice by any person other than the locator or a person acting on his behalf for a period of one year from the day of the filing of the notice or until such time as the notice is withdrawn by the locator or ordered removed by the Supervising Mining Recorder pursuant to subsection 71(4), whichever is the earlier.
>
> (4) Where a locator or person acting on his behalf locates a claim on land referred to in subsection (2) and
>
> > (a) wishes to enter on his claim or any part thereof in order to prospect for or develop a mine thereon, and
> >
> > (b) the surface holder refuses entry or sets terms and conditions of entry that the locator considers unreasonable, the locator may file with the Mining Recorder a notice in Form 19 of Schedule III of his intention to prospect for minerals or develop a mine on the land or part thereof that is described in the notice.

[31] Section 71 goes on to set out what happens when a notice has been filed with the Mining Recorder in accordance with section 70. The Mining Recorder is first to attempt to settle the dispute. If the dispute is not settled, the Mining Recorder must refer the matter to the Supervising Mining Record and the matter is referred to an arbitration process. Section 72 sets out the powers of the persons appointed to arbitrate such a dispute. Those powers include setting the terms and conditions of entry on the lands, compensation that is to be paid to the surface holder, and how the costs of the arbitration should be disposed of.

[32] The *Regulations* also provide for reservations in a number of areas, none of which are relied on by the parties in this case.

[33] Finally, section 84 sets out a general right to ask the Minister of Indian Affairs and Northern Development (now the Minister of Aboriginal Affairs and Northern Development) to review an order or decision made, pursuant to the *Regulations*, by the Mining Recorder or other official.

[34] The term "mineral" is defined at section 1 of the *Regulations*:

> "mineral" means any naturally occurring inorganic substance found on or under any surface of land, but does not include native sulphur, construction stone, carving stone, limestone, soapstone, marble, gypsum, shale, clay, sand, gravel, volcanic ash, diatomaceous earth, ochre, granite, slate, marl, loam, earth, flint, sodium chloride or soil;

[35] There is no conflict between this definition and the definition of "granular material" found in the *Commissioner's Lands Act*, referred to above at Paragraph 20. The definition of "granular material" specifically excludes minerals. The definition of "minerals" specifically excludes all materials included in the definition of "granular material", as well as others. Those definitions account for the fact that different materials are subject to different legislative schemes that must coexist harmoniously. That, at least, is how it appears in theory. The circumstances that arose in this case show that in practice, the implementation of these principles can present some challenges.

III) OVERVIEW OF FACTS ESTABLISHED BY THE EVIDENCE

[36] The parties in this litigation have very divergent views as to what their respective rights are with respect to the lands in question. However, the evidence adduced at the hearing shows that the circumstances that have led to this dispute are not really in issue.

1. The staking of mineral claims at and near the Quarry

[37] Mr. Shattler runs a business in Inuvik as an industrial, commercial and residential painter. He also holds a prospecting licence and has been carrying out prospecting activities in the Inuvik area for a number of years with his brother Larry.

[38] On April 6, 2006, Mr. Shattler staked a mineral claim within the municipal boundaries of the Town, at the Navy Road Quarry. That claim was recorded as claim K445.

[39] At that time, the Quarry was on Commissioner's land. The Commissioner had delegated to the Town administrative responsibilities for the lands, although as I have already noted, there is no evidence as to the terms of that delegation. It is clear

however that the Town was exercising administrative control over the lands, and was operating the Quarry. Quarrying activities were, and still are, governed by the *Quarry By-law*.

[40] Mr. Hood explained that local contractors had permits, issued pursuant to the *Quarry By-law,* and were taking granular materials from the Quarry for various construction projects around the municipality.

[41] Mr. Campbell testified that he found out about Mr. Shattler's mineral claim when he found a mining stake at the Quarry. He advised town officials of what he had discovered. Mr. Campbell said this happened in the summer of 2006. He was quite certain that it was not as early as May 2006, but he is clearly mistaken about this. The documentary evidence establishes that the issue of this mineral claim was in fact discussed at Town Council meetings in May 2006. (Exhibit #1, Tabs 48-49). The minutes of the Town Council's meeting of May 31, 2006 read:

> A mineral claim has been submitted down Navy Road, but claim has not been actioned. The town will request a transfer of lands for the quarry site and surrounding area. Whitehorse has a by-law to deal with mineral claims.

[42] From that point on, there were numerous exchanges of correspondence between Mr. Shattler and various government officials. Several email messages and letters were entered into evidence. I refer to the contents of this correspondence in more details below, at Paragraphs 48 to 66.

[43] Claim K445 lapsed on July 17, 2008, because the representation work required to be carried out to keep it in good standing was not done. Mr. Shattler testified that he had no choice but let it lapse because he was being threatened with trespass charges if he went to the area. He acknowledged that he did not apply for an extension of that particular claim.

[44] Larry Shattler's testimony corroborates his brother's testimony about what happened after claim K445 was staked. Larry Shattler explained that the only work that they did was to take a "grab sample", shortly after the claim was staked. He explained that after that, they started receiving letters saying that they were trespassing, which prevented them from going on the claim area to carry out representation work. He also testified that during that same time other parties were going in the claim area and were removing material from there.

[45] On August 12, 2008, a few weeks after claim K445 lapsed, Deanna Shattler sought to record another claim within the municipal boundaries of the Town, claim K11021. That claim covered the area that had been covered by claim K445 but was about twice the size, extending further west and south of claim K445. The Mining Recorder initially refused to record the claim. The Shattlers requested that the matter be subjected to Ministerial Review pursuant to Section 84 of the *Regulations*. The review was undertaken and in November 2009, and ultimately the decision of the Mining Recorder was overturned and the claim was recorded effective August 12, 2008.

[46] Mr. Shattler has also staked another claim, claim K433, which covers a very wide area to the north and northeast of claim K11021. Most of that claim is within the municipal boundaries of the Town, but a portion of it is not. The application to record it was made on June 13, 2011 but the Mining Recorder refused to record it. Mr. Shattler has requested a Ministerial Review of that decision. At the time of the hearing, that review was still pending.

[47] Mr. Shattler staked a number of other claims within the Town's municipal boundaries. He has obtained extensions for some of them, and has allowed others to lapse. Mr. Shattler explained that it is not unusual for a prospector to stake a number of claims and let some of them lapse so as to focus time and resources on the representation work on other claims.

2. Exchange of correspondence between Mr. Shattler and various officials

[48] The exhibits filed include several items of correspondence between Mr. Shattler and various officials after he staked his claim K445 at the Quarry. The correspondence spans from 2006 to 2010.

[49] On June 4 2006, Mr. Shattler wrote to the Department of Municipal and Community Affairs of the Government of the Northwest Territories (MACA), inquiring about a quarrying permit and a quarrying lease application. He received a response the next day stating that a land use agreement was in place and that he had to apply to the Town for such a permit (Exhibit #1, Tab 34).

[50] On June 16, 2006, Mr. Shattler wrote to MACA to clarify what his intentions were with respect to the lands in question. In that email he explains that he is in the

exploration business, not the gravel business. He explains that his goal is to prevent other parties from taking minerals from his claim area (Exhibit #7).

[51] On June 23, 2006 Mr. Shattler wrote to the Department of Indian and Northern Affairs (INAC), asserting that local contractors were removing minerals from the area of his claim and seeking that Department's assistance (Exhibit #1, Tab 35).

[52] In October 2006, Mr. Shattler wrote to the officials at the federal Department of Natural Resources inquiring about how to get a land use permit for his claim area (Exhibit #1, Tabs 32 and 33). He appears to have eventually applied for a land use permit with MACA because on November 21, 2006, John Picek, Regional Superintendent at MACA, sent him an email acknowledging receipt of his application for a land use permit from the Commissioner (Exhibit #1, Tab 45).

[53] Things appear to have become more difficult early in the year 2007. Mr. Shattler must have communicated an intention to begin drilling on the site because on January 18, 2007, Mr. Picek wrote to advise that as he had not secured the permission from the Commissioner, the owner of the lands, or the Town, charges of trespass could be brought if he accessed the lands (Exhibit #2, Tab 1). Mr. Shattler responded that the *Regulations* gave him a right of access to his claim area and he did not think he needed a development permit until he was prepared to begin mining activities. He indicated that such a permit would be applied for at that time (Exhibit #2, Tab 2).

[54] On the same date Mr. Shattler sent this response, he received an email from the Deputy Minister of MACA advising him that MACA had received his land use permit application. It would appear this related to the same application as the one Mr. Picek had acknowledged receiving in November 2006, as set out at Paragraph 52 (Exhibit #1, Tab 40).

[55] On February 23, 2007, Conrad Baetz, District Manager at INAC, wrote to Mr. Shattler and advised him that his department could not issue him a quarry permit for the lands in question. In that letter Mr. Baetz explains that the federal government has authority to deal with mineral claims, but that granular material and quarrying are subject to different legislation. Mr. Baetz states that a quarrying permit, and an associated land use authorization, must be obtained from the Town (Exhibit #1, Tab 36).

[56] On March 20, 2007, Tom Lie, who was at the time the Town's Senior Administrative Officer, sent Mr. Shattler a letter advising of the transfer of ownership of the lands from the Commissioner to the Town (Exhibit #1, Tab 37). Mr. Shattler responded quickly, to Mr. Lie and to Mr. Picek, calling into question the validity of that transfer (Exhibit #2, Tab 4). Mr. Picek sent a brief response the next day, stating that if Mr. Shattler chose to trespass on the surface, he would be "dealt with appropriately" (Exhibit #2, Tab 5).

[57] In July 2007, Mr. Shattler had an email exchange with Robert Clark, Director of Tax and Exploration Division, Natural Resources Canada. Whatever Mr. Shattler sent to Mr. Clark is not in evidence, but Mr. Clark's response is (Exhibit #2, Tab 6). Mr. Clark's email states:

> Dear Mr. Shattler,
>
> As I informed you in my email of June 15, 2006, matters relating to quarrying and mining rights in the Northwest Territories fall within the responsibility of the Department of Indian and Northern Affairs (INAC). I suggested in June that you contact Rick Meyers the Director of the Mineral Resources Directorate at INAC and I am not aware as to whether you have done so or not. Rick is away from the office today but I have forwarded the information that you provided to Dominique Quirion, Head, Mining Legislation at INAC. Her email address is above.

[58] In his response, Mr. Shattler stated that he had passed on this information to Mr. Baetz but was not getting results. He asked Mr. Clark to assist him in his dealings with Mr. Baetz.

[59] There is no evidence of what if anything Mr. Clark did about that request, but on July 27, 2007, Mr. Baetz wrote to Mr. Shattler again. He reiterated much of what he had stated in his February 23 2007 letter, and explained that INAC could not issue a quarrying permit for the lands in question (Exhibit #1, Tab 38).

[60] In August, Mr. Shattler wrote to the Deputy Minister, MACA complaining about the fact that his application for a land use permit had been stalled, while measures were being taken to transfer ownership of the lands to the Town. The Deputy Minister responded that the matter had been reviewed and that there was no basis for Mr. Shattler's complaint. Mr. Shattler wrote back calling into question the legitimacy of the actions of her department (Exhibit #2, Tabs 7 and 8).

[61] During the year 2008 there were further communications. In March, Sara Brown, who at that point was the Town's Senior Administration Officer, wrote to Mr. Shattler. The letter sets out the Town's position that in order to carry out any activities involving granular materials, Mr. Shattler needs a permit from the Town and that his taking materials from the Quarry without obtaining such permits would be considered by the Town to be trespass and theft. With respect to his mineral claim, the letter also states that he needs to obtain the permission of the Town, as the surface rights holder, before proceeding with any further activities, and the Town would consider his failure to do so as trespass (Exhibit #2, Tab 10).

[62] On October 20, 2010, Darnell McCurdy, A/Director, Operations at INAC, sent a lengthy letter to Mr. Shattler setting out INAC's views as to the extent of his rights arising out of the mineral claim. Among other things, the letter states that Mr. Shattler's mineral claim does not give him exclusive rights to the site or to its granular sources, and does not give him the right to prevent access to the site by others, provided that they are not mining minerals in his claim area. The letter explains the difference between minerals and granular material. Mr. McCurdy refers to the arbitration process set out in the *Regulations* when the holder of a mineral claim is refused access, or when the surface rights holder makes access subject to unreasonable conditions. Mr. McCurdy notes that the Town has not refused access to the site to Mr. Shattler, nor has it placed any unreasonable conditions upon him (Exhibit #1, Tab 43).

[63] As I have already mentioned, there are certain gaps in the chain of correspondence between Mr. Shattler and these officials because not all letters and emails have been filed. For example, Mr. McCurdy's letter states that it is in response to some recent emails he received from Mr. Shattler. Those emails are not in evidence. The same is true with respect to Mr. Shattler's exchanges with officials at Natural Resources, Canada. Not all the requests sent to Mr. Shattler and the responses received appear to have been filed.

[64] Notwithstanding these gaps, the correspondence filed shows the steps that Mr. Shattler took to obtain authorizations and permits from various officials from federal and territorial agencies. It also shows that he was advised at different times of the positions of various agencies about the rights that flowed and did not flow from his mineral claim.

[65] It is important to note that the evidentiary value of these communications is not the same for all the documents filed. Communications authored by Mr. Shattler or by Town officials are admissible for the truth of their contents as they are admissions by a party to the proceedings. However, communications authored by others are not admissible for the proof of their content. They are only admissible to show what information was conveyed to Mr. Shattler.

[66] In addition, to the extent that any of these communications refer to legal principles, or to what the parties' respective rights are, they are not admissible to establish those principles. Those are issues for this Court to determine.

3. Evidence about activities at the Quarry

[67] Mr. Campbell and Mr. Hood are the two individuals who have the authority to issue quarry permits pursuant to the *Quarry By-law*. They both testified that as part of their regular work routine they attend the Quarry. Mr. Hood testified that he does so about once a week. Mr. Campbell testified that during the summer months he goes there two or three times a week.

[68] The minutes of the Town Council's meeting of December 10, 2007 indicate that one of the councillors raised an issue about the Town running the Quarry on an "honour system" and suggesting that a camera system of scale be put in place. I accept that Mr. Hood and Mr. Campbell visit the site regularly, but this excerpt of the minutes suggests that at least as of 2007, there was no close monitoring of the activities taking place at the Quarry, for example, of how much material was being removed from the site by the contractors.

[69] As far as access to the site, Mr. Hood testified that there is a gate on the access road to the Quarry, that this gate can be locked, and that contractors who have a quarry permit from the Town are given a key to this lock so they can access the Quarry at their convenience. But Mr. Hood acknowledged on cross-examination that the gate is not always locked, which means that there are times when anyone can access the Quarry, whether they have a key or not.

[70] Mr. Campbell acknowledged that the Town officials did not take any steps, after the first mineral claim was staked in May 2006, to inform quarry permit holders of the existence of a mineral claim at the Quarry. He testified that as Mr. Shattler had made it very well known that he had staked a mineral claim at the Quarry, there

was no need for Town officials to take any steps to inform quarry permit holders of that fact.

[71] Mr. Shattler testified that some of the contractors carrying out activities at the Quarry have interfered with his wife's claim K11021 and the representation work he has been doing on that claim on her behalf. He testified that they moved his equipment; that they took away some materials which he had stockpiled; that in hauling materials out of the quarry they hauled out minerals; and that they generally deliberately conducted their quarrying activities in a manner that was detrimental to the work being done on the mineral claim.

[72] Larry Shattler gave evidence to this effect as well. He testified that after claim K11021 was staked in August 2008, contractors continued to attend the area and to haul dirt away. He testified that there were other areas in the Quarry that material could have been taken from but the contractors would systematically go to the claim area and interfere with the claim.

[73] The evidence from Todd and Larry Shattler about interference with the claim on the part of some of the contractors who carried out activities at the Quarry was not shaken on Cross-Examination, nor was it contradicted by any other evidence.

[74] There is also no evidence that the Town ever took any steps to give directions to quarry permit holders to focus their activities at the Quarry away from the mineral claims K445, and later from claim K11021.

[75] Mr. Hood testified that at one point Mr. Shattler erected his own gate on the access road to the Quarry. He put this gate very close to the Town's gate. He did not give the Town a key to the lock that was placed on that gate. The gate effectively prevented contractors from having any access to the Quarry. Neither Todd nor Larry Shattler were asked any questions about this. But I note that Mr. Shattler's civil suit against the Town and a contractor is, according to his Statement of Claim, based in part on damage done to his gate and lock. So he seems to acknowledge that he did in fact install a gate to block access to the Quarry.

[76] Despite the issues encountered at the site, representation work was eventually carried out on claim K11021. In November 2011 Deanna Shattler filed a Statement of Representation Work in accordance with the *Regulations*. It states that drilling and sampling was done on the site, on September 10-14, 2010 and March 20-24,

2011, and that the value of the work performed was $15,298.78. The Mining Recorder approved this Statement on November 22, 2011 and issued a Certificate of Work pertaining to the claim. The Certificate shows excess credit, for representation work, in the amount of $13,247.86.00.

4. Evidence about the meeting with Floyd Roland in February 2010

[77] Larry Shattler explained that he and his brother did not do a lot of representation work on the mineral claim during the year 2009 because they were continuing to be told they would be charged with trespassing. He said that they were trying to sort out the situation. One of the things they did was have meetings with Floyd Roland who was, at the time, the Premier of the Northwest Territories. He testified in particular about a meeting that took place with Mr. Roland in February 2010.

[78] Counsel for the Town objected to the admissibility of evidence about what was said at the meeting with Mr. Roland on the grounds that it is hearsay. I heard the evidence as part of a *voir dire* and indicated I would give my ruling on admissibility as part of these Reasons for Judgment.

[79] The *voir dire* evidence was very brief. Larry Shattler was asked the following questions, and gave the following answers:

> Q All right, Mr. Shattler, so you had a meeting with the Premier Floyd Roland February 2010. Can you tell us what was said in that meeting?
>
> A What he stated was that we did have a licence and we did have the right to enter and complete our assessment work.
>
> Q And - -
>
> A So at that time is when we felt that it was okay and we went in to do our assessment work.
>
> Q So you, at that point you weren't concerned about trespass charges being brought against you or Todd any longer?
>
> A No, no.
>
> Q You felt free, you felt free to go in?

A We felt free to go in. And when we did go in we didn't have any resistance.

Q How did this meeting with the Premier come about?

A We had several meetings with Mr. Floyd Roland, our Premier, to see if he could help us in this, this matter.

[80] There was no cross-examination on the *voir-dire*.

[81] Under our rules of evidence, hearsay is presumptively inadmissible. Whenever the admissibility of evidence is objected to on the grounds that it is hearsay, the first step is to determine whether the proposed evidence actually is hearsay.

[82] Hearsay has been defined and described in any number of ways in the case law, but a concise definition was offered by the Supreme Court in *R.* v. *Khelawon:*

> The essential defining features of hearsay are the following: (1) the fact that the statement is adduced to prove the truth of its contents and (2) the absence of a contemporaneous opportunity to cross-examine the declarant.
>
> *R.* v. *Khelawon*, [2006] S.C.J. 57, at para. 35.

[83] The Court went on to explain the difference between when evidence is offered to prove the truth of its contents, and when it is adduced for other reasons, and why the exclusionary rule is engaged in one situation but not the other:

> The purpose for which the out-of-court statement is tendered matters in defining what constitutes hearsay because it is only when the evidence is tendered to prove the truth of its contents that the need to test its reliability arises. Consider the following example. At an accused's trial on a charge for impaired driving, a police officer testifies that he stopped the accused's car because he received information from an unidentified caller that the car was driven by a person who had just left a local tavern in a "very drunk" condition. If the statement about the inebriated condition of the driver is introduced for the sole purpose of establishing the police officer's grounds for stopping the vehicle, it does not matter whether the unidentified caller's statement was accurate, exaggerated, or even false. Even if the statement is totally unfounded, that fact does not take away from the officer's explanation of his actions. If, on the other hand, the statement is tendered as proof that the accused was in fact impaired, the trier of fact's inability to test the reliability

> of the statement raises real concerns. Hence, only in the latter circumstance is the evidence about the caller's statement defined as hearsay and subject to the general exclusionary rule.
>
> *R.* v. *Khelawon*, *supra*, at para. 36.

[84] In light of those principles, I conclude that the evidence about what transpired at the meeting with Mr. Roland, and what Mr. Roland said, is admissible. This evidence was not adduced to establish the truth or accuracy of what Mr. Roland said - that the Shattlers were entitled to conduct representation work in the area. Rather, it was adduced to establish their state of mind and why, after that meeting, they felt that they could enter the claim area to conduct representation work.

IV) ANALYSIS

[85] The position advanced by the Town at the conclusion of the hearing was that the only mineral claim that is relevant for the purposes of these proceedings is K11021, because K445 lapsed several years ago and can no longer have any legal effect on the parties' rights, and claim K433 has no legal effect at this time because the Ministerial Review process is still pending.

[86] The Town relies on s. 70 of the *Regulations* and argues that as it was the owner of the lands as of February 2007, anyone wanting to locate a claim on those lands had to obtain its permission to access the lands. The Town also argues that its permission must be obtained before any representation work is done. The Town argues that if permission is not obtained, Deanna Shattler's recourse is to seek to have conditions of access set through the arbitration process set out at s. 70 of the *Regulations*.

[87] By contrast, the Shattlers' position is that claim K11021 should be treated as a continuation of claim K445, which was recorded before the Town became the owner of the lands.

[88] The Shattlers also argue that, at the very least, the Town has acquiesced to their presence on claim K11021, and that this consent cannot be withheld at this point, where significant sums have been invested in representation work on that claim. The Shattlers also argue that the legal effect of claim K11021 is that other individuals or companies should not be permitted to do anything on the claim site

that interferes with their mineral claim, including hauling any granular materials that may contain minerals.

1. Whether claim K11021 can be considered as a continuation of claim K445

[89] As is the case for any system designed to register rights or legal interests in property, the registering system set up to keep track of mineral claims sets out very precise requirements for the recording of claims, how long they are valid for, what is required to keep them active, and how they can be extended. The *Regulations* also specify that a claim holder who has allowed a claim to lapse cannot record a new one in the same area until a specific period of time has passed.

[90] These provisions are not consistent with the position advanced by the Shattlers, that claim K11021 should for all intents and purposes be treated as a continuation of claim K445. The various aspects of the registration system for mineral claims are provided for in some detail in the *Regulations*. There is no provision that provides for the merging of a new claim with a lapsed one. In fact, the *Regulations* contemplate the opposite, by preventing people from allowing claims to lapse and immediately stake a new one that pertains to the same area. In my view, the *Regulations* do not support the Shattlers' position that claim K11021 can, legally speaking, be treated as a mere extension or continuation of claim K445.

[91] The Shattlers appear to rely in part on the suggestion that claim K445 lapsed as a result of the actions of Town officials and government officials. They suggest that this being so, it would be unfair for the lapsing of that claim to have the effect of reducing or compromising their rights to work claim K11021.

[92] I accept the evidence of Mr. Shattler and of his brother Larry that their concerns about being charged with trespassing were the reason that the representation work was not done on claim K445. But that is not the only reason the claim lapsed. It would have been open to Mr. Shattler to seek an extension of that claim, pursuant to the *Regulations*. He did so, successfully, for a number of other claims he had staked in the area. There is no evidence about why he did not seek an extension for claim K445.

[93] Even though I accept the reasons Mr. Shattler gave for not having conducted representation work on claim K445, I conclude that the reason he decided to let K445 lapse, rather than seek an extension, was that the approach that he and his

group decided to take was to have his wife stake a new claim in the area, much larger, but including the area that had been covered by K445. Had K445 remained active, K11021 could not have included the area of the Quarry that their group wished to work on.

2. Whether the Town acquiesced to the Shattlers' presence at the Quarry and to the representation work that was done on claim K11021

[94] In arguing that it never agreed to have the Shattlers enter its lands to locate claim K11021, the Town points to the letter its Senior Administration Officer sent to Mr. Shattler on March 26, 2008. In that letter, she stated that if Mr. Shattler intended to do anything with respect to his mineral claim, the Town expected him to comply with the *Regulations* as far as permissions required to enter the lands. At that point, claim K11021 had not been staked (it was recorded effective August 2008). The Town argues that there can be no suggestion of consent or acquiescence on its part to the activities that the Shattlers conducted subsequently with respect to claim K11021.

[95] The whole of the evidence and circumstances, and not just that one letter, must be taken into account to determine if this position has merit. Those circumstances include the considerable confusion there appears to have been around the relationship and interaction between quarrying activities, work on mineral claims, and ownership of the lands.

[96] It is not difficult to understand why a person in Mr. Shattler's position, having recorded mineral claims with the federal agency responsible for these matters, being granted extensions for some of the claims, and being permitted to record representation work done on one of those claims on lands owned by the Town, would have been operating on the understanding that the activities on claim K11021 were being conducted lawfully. Section 24 of the *Regulations* deals with the recording of claims. Paragraph (3) provides:

> (3) Where a Mining Recorder is satisfied that all the requirements of these Regulations have been complied with, he shall record the claim.

[97] There is no evidence as to what, if anything, a Mining Recorder would do generally, or did in this specific case, to ensure that any requirements regarding permissions to be obtained from surface rights holders have been complied with

before recording a claim. But leaving that aside, from the perspective of the person seeking to record the claim, the fact that it is recorded would be an indication that they are in compliance with the *Regulations*.

[98] In addition, Mr. Shattler and his associates conducted representation work of some significance on claim K11021. This work was not done in secret, and there is no evidence suggesting that the Town objected to it at the time. According to the documents filed, the representation work was done in September 2010 and in March 2011. These proceedings, which sought among other things to prevent Mr. Shattler from being on the site and doing any further work, were only commenced on August 19, 2011.

[99] INAC seems to also have been operating under the assumption that Mr. Shattler and his group had permission from the Town to access the claim area. In his letter sent to Mr. Shattler in October 2010 (which, incidentally, was copied to the Town's mayor), Mr. McCurdy referred to the arbitration process set out in the *Regulations* - the process to be used where someone who has located a claim cannot come to an agreement with the surface rights holder about access - and wrote:

> This section is for the purposes of gaining access to locate a claim or gaining access to locate a claim or gaining access for the purpose of conducting representation work. You have staked and recorded claims in this area and this has not been contested. Furthermore the Town of Inuvik has not refused you access to your claim to conduct representation work either, and have only asked that they be advised when you will be entering their quarry.

[100] This letter, not authored by a party in the proceedings, cannot be used to prove the truth of its contents. But it was copied to the Town and there is no evidence that the Town ever protested the accuracy of the above statement. Moreover, Mr. Hood was referred to this letter in his evidence, and was asked to read an excerpt, including the passage referred to above. Mr. Hood did not express any disagreement with what was said in this excerpt about the Town not refusing access to the site to Mr. Shattler. One would think that if the position of the Town, as summarized in that letter, was not accurate, Mr. Hood would have taken the opportunity to say so.

[101] Finally, and most importantly, Mr. Hood acknowledged in his evidence that he gave a radio interview on July 6, 2011 about the Town's dispute with Mr.

Shattler. The Canadian Broadcasting Corporation had asked Mr. Hood to explain the Town's view of the situation. Mr. Hood did not remember all the details of the interview but he was able to speak in general terms about what he said. He testified as follows:

> A. Basically I believe I just was mentioning about the access to the quarry and that we recognized that he had a mineral claim.
> Q. And that he could go on the quarry?
> A. Yes

[102] The Town consistently took issue with Mr. Shattler extracting granular material from the Quarry unless he first obtained a quarrying permit. The Town also consistently took issue with Mr. Shattler preventing others from accessing the Quarry. But as far as Mr. Shattler's presence on the lands to locate and conduct representation work on claim K11021, I conclude that the Town acquiesced to Mr. Shattler doing so throughout. Any other conclusion would be at odds with the fact that the Town took no steps to attempt to challenge the recording of claim K11021, or to stop the group from doing the representation work that was done in 2010 and 2011; it would be at odds with INAC's understanding of the matter, as set out in the October 2010 letter; and, significantly, it would be at odds with what Mr. Hood said publicly about the Town's position in the interview of July 2011.

3. The Shattlers' complaints about breaches of their rights arising from the mineral claims

[103] Mr. Shattler has taken the position that his and his wife's rights under the mineral claims that were staked at the Quarry have not been respected. His complaints boil down to two things: he alleges that other users of the Quarry have unlawfully removed minerals in the process of carrying out their quarrying activities, and he alleges that some of those users have deliberately interfered with the representation work being carried out on the claim.

[104] It is apparent from his testimony and some of his correspondence that Mr. Shattler is of the view that the removal from any material from the mineral claim area at the Quarry is unlawful because whatever granular or surface material is being removed contains minerals, and the holder of a mineral claim is the only one allowed to remove minerals from a claim area. He has asserted this in his correspondence to various government and Town officials, and although he did not specifically testify

to this, I infer that this is the reason why he eventually decided to erect a gate to block off access to the Quarry altogether.

[105] Having listened to Mr. Shattler's testimony and read the correspondence he sent to various officials about this topic which was filed as exhibits, I understand that he is firmly convinced of the merits of his position on this issue. But convinced as he might be, I find, as a matter of law, that he is mistaken.

[106] These lands are governed by different legislative schemes for different purposes. This, admittedly, makes for a rather complex mix of rules. But one thing that is very clear is that the definitions set out in the legislation for the terms "minerals" and "granular material", referred to above at Paragraphs 20 and 34, are mutually exclusive. In short, these definitions do not contemplate that granular material extracted from a quarry includes minerals. On the contrary, minerals are specifically excluded from how granular material is defined. The definition of granular material is very detailed and includes virtually any material that one could conceivably extract from a quarry. They are surface material, as opposed to minerals, which are subsurface material.

[107] Therefore, there is no merit to the assertion that when removing granular material, the users of the Quarry are also removing minerals. There is no evidence that anyone, apart from Mr. Shattler's group, has attempted to carry out anything but quarrying activities at the Quarry. The evidence, which was not very detailed on that point, is that contractors extract fill from the site for various purposes related to construction projects in the community. There is no evidence of any of those contractors engaging in mining activities, such as locating mineral claims or doing the type of representation work that the Shattlers have been doing.

[108] For those reasons, I conclude that the first aspect of Mr. Shattler's complaint about breaches of his and his wife's rights pursuant to their mineral claims is ill founded. There is no basis for him to assert that the mineral claims that they staked give them an exclusive right of access to the site, the right to control access to the site, or the right to prevent anyone else from removing granular material from the site.

[109] I find, however, that the evidence does support his second area of complaint. He and his brother described ways in which some of the contractors using the Quarry have interfered with their ability to work the mineral claim. They described instances where their equipment was moved. Mr. Shattler explained how some of the stockpiles resulting from their work were taken by the contractors. And both he and his brother testified that some of the contractors made a point of carrying out their quarrying activities where they were trying to work, as opposed to other areas of the Quarry.

[110] It would have been open to the Town to call some of the contractors as witnesses to rebut these allegations, or provide an explanation as to why they needed to carry out their activities at this particular area of the Quarry. In the absence of such evidence, I am left with uncontradicted and unshaken evidence that some of the contractors using the Quarry carried out their activities in a way that interfered with the Shattlers' representation work.

[111] The evidence also shows that the Town's monitoring of the activities taking place at the Quarry was minimal and not consistent. The fact the Quarry was operating on an "honours system" was raised at the Town Council meeting in December 2007. And more to the point as far as this litigation is concerned, the Town has done nothing to monitor the activities at the Quarry to avoid interference with the mineral claims that were staked there.

[112] Mr. Campbell acknowledged that after the first mineral claim was staked, the Town took no steps to advise the quarry permit holders of this fact. The reason that he gave was that the Town's administration felt that there was no need to do so, as Mr. Shattler had taken it upon itself to let everyone know that he had a mineral claim at the Quarry.

[113] I find, with respect, that was not an adequate way for the Town to deal with this situation. Under the Land Use Agreement at first, and later as the owner of the lands, the Town was the body who had the authority to grant access to the site for quarrying activities. In my view, with that authority came a responsibility to ensure that those using the Quarry were aware of the existence of the mineral claim on the site, and of the requirement that those carrying out quarrying activities not interfere with that claim.

[114] The Town appears to have opted to let Mr. Shattler and the Quarry users sort things out between themselves. More is required from the surface rights holder

who grants access to lands where a mineral claim has been located. And more should be expected from a municipal government in dealing with its residents.

[115] The maps filed as exhibits show that a sizeable portion of the Quarry is outside the area of claim K11021. Presumably, quarrying activities could take place in the area of the Quarry that is not subject to the mineral claim. That may not be the only way to reduce the potential for difficulties, but it is the most obvious one. When issuing permits pursuant to the *Quarry By-law*, the Town allocates an area of the Quarry to be used by the permit holder (*Quarry By-law*, Schedule "A"). Yet it does not appear that the Town has considered using this authority to reduce the potential for conflict on the site.

[116] It is obvious from the evidence adduced that the conflict between the Town and Mr. Shattler has been going on for many years. It is also clear, with all due respect to Mr. Shattler, that he has been very obstinate in his assertion that the rights stemming from his mineral claim encompassed the right to prevent anyone from taking granular materials from the Quarry, even though various government officials have attempted to explain to him that this is not the case. He has also, at times, been confrontational and has taken the law into his own hands when he blocked the access to the Quarry. I do not doubt that it must have been frustrating for Town officials to deal with him. But that does not relieve the Town from its obligation to ensure that the rights and interests arising from these mineral claims are respected.

[117] Moreover, while Mr. Shattler was obstinate, the evidence shows he had reasons to become frustrated as well, although I do not suggest that this excuses his behaviour in blocking access to the site. In 2006 and early 2007, he was attempting to obtain various permits, licences and authorizations from the agencies he believed were the ones he should be dealing with. He attempted to get permits from MACA, initially, when the lands in question were Commissioner's lands. It is not overly surprising, given his strained relationship with the Town, that the timing of the transfer of ownership of these lands in the midst of all of this in 2007 caused him some consternation and made him increasingly distrustful.

[118] Misguided as some of his legal positions were, fundamentally, I am satisfied that Mr. Shattler's intentions were not to break the law. He was trying to comply with the law but became, as he put it himself, "extremely confused" about the various levels of jurisdiction involved. While he talked a "tough talk" in some of his correspondence and emails, I accept that he was genuinely concerned about

being found to be a trespasser on the lands. This is corroborated by the fact that virtually no representation work was done on claim K445, and none was done on claim K11021 until after he and his brother had their meeting with Premier Roland in February 2010.

[119] It is unfortunate that matters escalated to the point that they did. It is not in anyone's interest to have lawful activities at the Quarry, whether they be with respect to quarrying or with respect to representation work on the mineral claim, impeded by this ongoing dispute. Hopefully, with some clarifications from this Court as to everyone's respective rights, the types of incidents that have arisen over the last few years will not happen again. Ultimately, these parties will need to work out their issues and cooperate because the fact of the matter is, in the unusual circumstances of this case, they each have rights with respect to the lands in question. They are entitled to assert and exercise those rights, and they also have an obligation to respect the rights of others.

4. The Town's and Mr. Shattler's respective rights

[120] This brings me to the heart of what the Town is seeking in this matter, something which the Shattlers also seek: clarifications as to what their respective rights are.

[121] In his submissions at the conclusion of the hearing, Mr. Shattler argued that there is a legislative gap in this area because unlike what is the case in some jurisdictions, this type of situation is not provided for in the legislation.

[122] In fact, the *Regulations* do set out a process that is to be used to resolve conflicts between surface rights holders and mineral claim holders. As a starting point, the consent of the surface rights holder must be obtained. If parties are not able to come to an agreement, an arbitration process takes place.

[123] For the reasons set out at Paragraphs 94 to 102, I reject the Town's position that Mr. Shattler, on his own behalf and as the representative of his wife with respect to claim K11021, acted in breach of that provision by locating claims and entering the lands to do representation work without the Town's consent. I have concluded that the Town acquiesced to Mr. Shattler's presence on the lands for purposes related to these mineral claims.

[124] But that conclusion is of limited assistance, because by initiating these proceedings, seeking among other things that Mr. Shattler be forbidden from entering the lands, the Town has unequivocally revoked that acquiescence.

[125] There is no specific or direct evidence as to why the Town commenced these proceedings when it did; the Town's officials who were called as witnesses were not asked. But I note that Mr. Shattler's civil action against the Town and one of its contractors was commenced August 4, 2011, one week before the Originating Notice was filed. This suggests that it may have been what prompted the Town to take legal action and, among other things, seek clarification as to the various rights at stake.

[126] Section 70 of the *Regulations* states that failing agreement by the surface rights holder, the matter of access is settled through an arbitration process. But long before these proceedings were initiated, representation work had already been done, at considerable expense, on claim K11021. As a matter of fairness, this work cannot be put to a sudden halt as a result of the Town's decision to withdraw its consent to the Shattlers accessing the lands. And since Mr. Shattler has been one of Deanna Shattler's main agents in carrying out this work, it is not reasonable for him to continue to be prohibited from accessing the site.

[127] It is implicit in section 70 of the *Regulations* that ultimately, access cannot be denied to a mineral claim holder. The provision is designed to ensure that terms of access are set. Those terms can either be agreed to between the mineral claim holder and the surface rights holder, or, failing such agreement, set by an arbitrator. But the point is that access, one way or another, is granted.

[128] As things now stand, should the Town and Ms. Shattler (or her representative) not be able to reach agreement on terms of access to the claim, her recourse will be to invoke section 70 and ask that reasonable conditions can be set for access to the claim. The decision of the arbitrator could be subject to Ministerial Review. And the Minister's decision, conceivably, could in turn be subject to judicial review.

[129] Hopefully, such a protracted process can be avoided and the parties will be able to move forward and come to an agreement as to reasonable conditions for access to claim K11021. If they cannot, the process provided for in section 70 of the *Regulations* will have to be invoked and take its course.

[130] However, in the meantime, it would be unfair to prevent Deanna Shattler and her agents from conducting representation work on this claim, considering the resources they have already expended on it, the period of time for which Mr. Shattler has been prevented from accessing the site already, and the fact that we are now in the season best suited for some of this work to be done.

[131] For those reasons I will set some conditions allowing the representation work on this claim to resume until the parties are able to reach agreement and set their own terms for access, or until such time as access terms are decided through the arbitration process set out at section 70. My intent is not to bind the parties or the arbitrator, but simply to put some terms in place in the interim.

[132] I would add that another factor that could have a bearing on the relationship between the parties with respect to these lands is the outcome of the Ministerial Review on claim K433. According to the maps filed as exhibits, if claim K433 is ultimately recorded, between that one and claim K11021, virtually all of the Navy Road Quarry will be subject to mineral claims. In that event the parties will need to come to an agreement, or use the arbitration process referred to above, to determine how activities related to that claim and quarrying activities at the Quarry can be reconciled. But that is not an issue that this Court can address at this time.

IV) CONCLUSION

[133] For these reasons, I make the following Declarations:

1. The Town of Inuvik, as owner of Lots 14 and 15, Block 99, Plan 4102, Inuvik, has the right to operate the Navy Road Quarry in accordance with its By-laws, to issue quarry permits allowing the removal of granular material from the Quarry, and to regulate access to the site.

2. In overseeing the operation of the Quarry the Town must ensure that Quarry users and permit holders are aware of the existence and location of mineral claim K11021.

3. The Town must require Quarry users and permit holders to carry out their activities in a manner that does not interfere with representation

work being done on mineral claim K11021. Specifically, the Town should advise permit holders that:

a) they are not to remove stockpiles made by Deanna Shattler or her agents;
b) they are not to move any equipment of Deanna Shattler's or her agents;
c) they are not to conduct their activities in a manner that impedes or interferes with the representation work on claim K11021.

4. Deanna Shattler and her agents have the right to continue conducting representation work on claim K11021, in compliance with the *Northwest Territories and Nunavut Mining Regulations*.

5. Deanna Shattler and her agents do not have the right to prevent anyone from accessing the Navy Road Quarry and removing granular material from the Navy Road Quarry, or to interfer with quarrying activities taking place at the Navy Road Quarry.

I also order the following:

1. The Order made by this Court on August 29, 2011, is vacated, effective immediately.

2. Until such time as the Town of Inuvik and Deanna Shattler come to an agreement as to the terms of access to claim K11021, or, failing agreement, until terms of access have been set pursuant to section 72 of the *Northwest Territories and Nunavut Mining Regulations*, the terms of access will be as follows:

a) Deanna Shattler and her agents will notify the Town 24 hours in advance before entering the lands to conduct representation work;

b) Unless they obtain a quarry permit from the Town pursuant to the *Quarry By-law*, Deanna Shattler and her agents will not engage in quarrying activities at

the Quarry and will not remove any granular from the Quarry except for sampling and assay purposes.

c) If Deanna Shattler and her agents remove any material from the Quarry for sampling and assay purposes, they will notify the Town's Senior Administration Officer in writing or by email 48 hours before doing so.

3. Paragraph (h) of the Amended Originating Notice remains adjourned *sine die*, to be brought before the Court by either party on 10 days notice to the other party.

[134] At the conclusion of the hearing, I advised counsel that I would give them an opportunity to make submissions on the issue of costs after filing my Reasons for Judgment on this matter. To this end,

1. Within 14 days of the filing of these Reasons counsel will advise the registry as to whether they wish to make submissions as to costs, and if so, whether they want to do so orally or in writing;

2. If they wish to make submissions orally, counsel will provide to the Registry, within the same timeframe, their availabilities so that a hearing date can be set;

3. If counsel wish to present their submissions in writing, they will indicate their position as to what the filing deadlines for their written submissions should be. I will consider those positions and issue directions for the filing of the materials.

L.A. Charbonneau
J.S.C.

Dated at Yellowknife, NT, this
27th day of June, 2012

Counsel for the Applicant: Paul N.K. Smith and Sandra MacKenzie
Counsel for the Respondent: Gerard K. Phillips

S-1-CV-2011000115

IN THE SUPREME COURT OF THE
NORTHWEST TERRITORIES

IN THE MATTER OF the *Cities, Towns and Villages Act*, S.N.W.T. 2003, c. 22, Sch. B;

AND IN THE MATTER OF By-Law 94-1317 of the Town of Inuvik

BETWEEN:

MUNICIPAL CORPORATION OF THE TOWN OF INUVIK

Applicant

- and -

TODD SHATTLER and DEANNA SHATTLER

Respondents

REASONS FOR JUDGMENT OF THE
HONOURABLE JUSTICE L.A. CHARBONNEAU
