IN THE MATTER OF
THE SECURITIES ACT, 1988, S.S. 1988, c.S-42.2

AND

IN THE MATTER OF
SHANE RESOURCES LTD
AND
ROBERT CECIL McLELLAN
AND
WAYNE SANDERSON
AND
EDWARD WESLEY CORMAN
AND
JAZ INVESTMENTS LTD.
AND
SASKATCHEWAN LOCAL POLICY STATEMENT 4.3

DECISION

This was an application for a hearing and review pursuant to Section 10(2) of The Securities Act, 1988 (the "Act") of a decision by the Deputy Director, Corporate Finance, Ian McIntosh of the Commission, not to grant release of an additional 30% of the originally escrowed shares of Shane Resources Ltd. (Shane). Shane had previously received a release of 20% under Saskatchewan Local Policy Statement 4.3 "Escrow Guidelines" (L.P. 4.3) and a release of 50% had been approved by the Vancouver Stock Exchange (V.S.E.).

There was no dispute as to the facts set out in the Notice of Hearing and the exhibits filed by the Commission staff and the respondents. The Commission must decide whether the request comes within the guidelines of L.P. 4.3. The relevant portion of L.P. 4.3 provides for a release from escrow by the applicant establishing that circumstances exist to meet the provisions of Part II, paragraph 8 (Junior Mining Company) or Part VI, paragraph 4 (Discretionary Release). Simply put, Shane, under the Junior Mining company provisions would be entitled to, 30% of the originally escrowed shares by virtue of three years having passed the date of prospectus issue and having expended the funds raised in accordance with the prospectus. It has neither a production agreement nor entered into commercial production so as to be entitled to any further release as specified in Part II, 8(d)(e). Therefore, the only other avenue to release is the "exceptional" or "unusual" circumstance warranting a discretionary release under Part VI, paragraph 4.

It was noted in the evidence of Ian McIntosh that L.P. 4.3 came into effect after the escrow agreement of November 7, 1986 and the prospectus receipt (February 12, 1987). The prospectus provisions concerning escrow read as follows:

1. **"The escrow provisions provide that these shares may not be traded, dealt with in any manner whatsoever, or released, nor may the Company, its Transfer Agent or escrow holders make any transfer or record any trading of these shares without the written consent of the Chairman of the Saskatchewan Securities Commission prior to listing, or the Chairman of the Saskatchewan Securities Commission and a Canadian stock exchange following listing.**

2. **The escrow agreement also provides that a portion of the consideration for the issuance of the shares is to encourage the holders thereof to act in the best interests of the Company, and that if the Company becomes successful due in part to the efforts of the holders of these shares, they will be entitled to maintain their ownership of these shares, and to obtain periodic releases from escrow in accordance with the general policies of the Saskatchewan Securities Commission or a Canadian stock exchange. Any shares not so released within 10 years of the effective date of this prospectus shall be cancelled."**

A question was raised as to the applicability of L.P. 4.3 after the fact. A debate then occurred on the issue of whether the company was "successful" and if so, whether the provision for a 50% release should be made because it has been authorized by the V.S.E. No debate arose over whether the V.S.E. constituted a Canadian stock exchange. The Commission does not find it necessary to decide whether Shane has become successful and whether the provision "or a Canadian stock exchange" applies on its own as per paragraph 2 above. It feels, rather, that the proviso in paragraph 1 that the release of the escrow shares clearly requires the written consent of the Chairman of the Saskatchewan Securities Commission as well as the exchange and the Chairman has not consented. Any confusion with paragraph 2 must be resolved by referring to paragraph 1 because paragraph 2 in the use of the word "also" in its first line does not contemplate a function contrary to paragraph 1. Furthermore, in matters of interpretation of what constitutes an escrow agreement, as the Act clearly provides that any prospectus receipt is subject to escrow provisions acceptable to the Commission, the question of whether such provisions had been met would be a matter for determination by the Commission.

The Commission further considers that if the prospectus is not clear, the interpretation that maintains its authority is the one that is in the public interest and applies by virtue of section

70(1) of the Act. The Director and the Commission have the authority to review the prospectus in light of the public interest and make that determination of conformity to that interest. Even though paragraph 3 of the actual escrow agreement allows for release with consent of the Commission or exchange, the respondents cannot rely on that when their prospectus can be interpreted to the contrary. They must live with their representations even if not quite correct.

One must return then to L.P. 4.3 and the discretionary release provisions. The policy does not talk of success but of appropriateness. Among the factors to be considered in paragraph 2 of section 4 is the nature of escrow and the interests of the applicant, the company and shareholders present and future.

Mr. McIntosh felt that paragraph 1 of section 4 required exceptional circumstances for a discretionary release and that the security holders had to advise the Director of "unusual circumstances" that would lead to belief that a release is "appropriate". He determined that a junior mining company that had completed its expenditures of funds raised by prospectus and was not in production and not in possession of a production agreement was a company in **usual** circumstances.

The Commission determined upon the evidence of Messrs. Walker and Sanderson that the possibility exists that they may be able to establish unusual circumstances, but they have not done so. The Commission feels if facts are established to show the **shareholders** have benefited from the management of the company by significant expenditures **over and above** the amount raised by prospectus that management performance should be encouraged by an additional release. This would be achieving more to the benefit of shareholders than merely completing the prospectus mandate as suggested by the applicant's counsel. As stated by the Ontario Securities Commission Northlodge Copper Mines Limited Decision, July 21, 1966:

> **"a further item which the Commission considers is the manner in which the affairs of the company, if under the direction of the applicant have been managed. In the present case it appears that the applicant who has effective control of the company has attempted to advance the affairs of the company. This effort deserves recognition by the release of some escrowed shares, but we feel not in the amount requested by the applicant."**

The Ontario Securities Commission proceeded to authorize release of 50% of the original shares but clearly state that the promoters should retain a substantial interest in the company, its affairs being "very much in the speculative stage."

COMMISSION DECISION

The Commission therefore upholds the Deputy Director's decision, upon review. The Commission points out to the applicant that if it wishes the additional 10% release it is entitled to apply for it at this time. The opportunity still exists for it to reapply for a discretionary release but it must provide information, not assertions, that establish the additional shareholder benefit warranting an incentive for good management.

We suggest in that case that verified statements of the actual additional amount expended by Placer Dome Inc., in both Saskatchewan and Ontario be filed and that its own financial statements of assets be clarified, detailing the type of "receivable" held by Midland Doherty Limited. Documentation of the agreement with Placer to establish its continuing obligations as to work to be undertaken should be available and records of any payments to the company under such agreement.

The Commission feels that ownership of shares by directors held outside escrow, length of tenure of directors, and their financial stability as well as their connection with the province all are factors worth considering in assessing the application, if established. While not guarantees of future conduct they are guides to divining the future. Most important would be the actual reports of what was done rather than just amounts expended, because that would tend to establish the likelihood of whether or not further development work was warranted. The applicants should consider making their application after receipt of such reports. As indicated in the Ontario Securities Commission Kimberly Copper Mines Decision of August 15, 1968 escrowed shares representing:

> **.... "the consideration paid for a mining prospect, should not be released except under extraordinary circumstances, until the prospect has been developed to an extent which would indicate that it has commercial value ..... "**

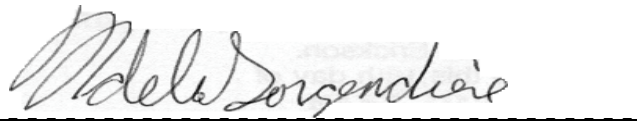
Commercial value is not determined in a completely objective fashion only but reports of existing physical conditions are a basis on which reasonable judgement can be exercised.

The suggestion was made that the Commission should change L.P. 4.3 to provide an automatic release mechanism more on Alberta's terms in order to enhance development in this province. Commission staff comparisons show that the net difference in this case compared to other provinces other than Alberta was marginal. The Commission's assessment of the public interest in this situation conforms to the majority and it is not aware of the reasons advocated by the Alberta Commission for its variation, but the Commission takes heart in the fact that both of the applicant's witnesses agreed there was a place for discretion on the part of the Commission.

The Commission takes that suggestion then as one which might be worked on, not in the framework of a specific case, but within that of general discussion with industry and investor representatives.

The Commission welcomes discussion and review of any of its policies and if interest is shown will establish a suitable forum for such discussion.

DATED at the City of Regina, in the Province of Saskatchewan, this 29th day of May, 1990.



MARCEL de la GORGENDIERE, Q.C.
CHAIRMAN
SASKATCHEWAN SECURITIES COMMISSION