

File No. MA 010-98

L. Kamerman)
Mining and Lands Commissioner)

Tuesday, the 15th day
of December, 1998.

M. Orr)
Deputy Mining and Lands Commissioner)

THE MINING ACT

IN THE MATTER OF

Mining Claim L-1215324, situate in the Township of Van Hise, in the Larder Lake Mining Division, recorded in the names of Lawrence John Labelle, as to a 10% interest, Donny Laughlin McKinnon, as to a 20% interest, Christina Marie Coyne, as to a 20% interest, Randall W. Salo, as to a 20% interest, Kenneth William Pye, as to a 20% interest and Terry Labelle, as to a 10% interest, hereinafter referred to as the "Mining Claim";

AND IN THE MATTER OF

An application to record Mining Claims 1214487, 1214488, 1214490 and 1214491, situate in the Township of Van Hise, in the Larder Lake Mining Division, staked by Vern Pakkala, to have been recorded in the name of Vern Pakkala, marked "Filed Only", hereinafter referred to as the "Pakkala Filed Only Mining Claims";

AND IN THE MATTER OF

Ontario Regulation 7/96;

B E T W E E N:

VERN PAKKALA

Disputant

- and -

LAWRENCE JOHN LABELLE, DONNY LAUGHLIN MCKINNON,
CHRISTINA MARIE COYNE, RANDALL W. SALO,
KENNETH WILLIAM PYE AND TERRY LABELLE

Respondents

AND IN THE MATTER OF

An appeal by the Disputant pursuant to subsection 112(1) of the **Mining Act** from the decision of the Provincial Mining Recorder, dated the 23rd day of February, 1998, for a declaration that Mining Claim L-1215324 be declared invalid and for the recording of the Filed Only Mining Claims 1214487, 1214488, 1214490 and 1214491.

ORDER

UPON HEARING from the parties and reading the documentation filed;

1. **THIS TRIBUNAL ORDERS** that this appeal be and is hereby dismissed.
2. **THIS TRIBUNAL FURTHER ORDERS** that the notation "Pending Proceedings" which is recorded on the abstract of Mining Claim L-1215324, to be effective from the 2nd day of March, 1998, be removed from the abstract of the Mining Claim.
3. **THIS TRIBUNAL FURTHER ORDERS** that the time during which the issues concerning Mining Claim L-1215324 were pending before the tribunal, being the 2nd day of March, 1998, to the 15th day of December, 1998, a total of 289 days, be excluded in computing time within which work upon the Mining Claim is to be performed and filed.
4. **THIS TRIBUNAL FURTHER ORDERS** that the 9th day of July, 1999, be fixed as the date by which the first and second units of prescribed assessment work must be performed and filed on Mining Claim L-1215324 pursuant to subsection 67(3) of the **Mining Act** and all subsequent anniversary dates are deemed to be July 9 pursuant to subsection 67(4) of the **Mining Act**.
5. **THIS TRIBUNAL FURTHER ORDERS** that no costs shall be payable by either party to this appeal.
6. **THIS TRIBUNAL FURTHER ORDERS** that this order be filed without fee in the Office of the Provincial Mining Recorder in Sudbury, Ontario, pursuant to subsection 129(4) of the **Mining Act**.

Reasons for this Order are attached.

DATED this 15th day of December, 1998.

Original signed by
L. Kamerman
MINING AND LANDS COMMISSIONER

Original signed by
M. Orr
DEPUTY MINING AND LANDS COMMISSIONER

File No. MA 010-98

L. Kamerman)
Mining and Lands Commissioner)

Tuesday, the 15th day
of December, 1998.

M. Orr)
Deputy Mining and Lands Commissioner)

THE MINING ACT

IN THE MATTER OF

Mining Claim L-1215324, situate in the Township of Van Hise, in the Larder Lake Mining Division, recorded in the names of Lawrence John Labelle, as to a 10% interest, Donny Laughlin McKinnon, as to a 20% interest, Christina Marie Coyne, as to a 20% interest, Randall W. Salo, as to a 20% interest, Kenneth William Pye, as to a 20% interest and Terry Labelle, as to a 10% interest, hereinafter referred to as the "Mining Claim";

AND IN THE MATTER OF

An application to record Mining Claims 1214487, 1214488, 1214490 and 1214491, situate in the Township of Van Hise, in the Larder Lake Mining Division, staked by Vern Pakkala, to have been recorded in the name of Vern Pakkala, marked "Filed Only", hereinafter referred to as the "Pakkala Filed Only Mining Claims";

AND IN THE MATTER OF

Ontario Regulation 7/96;

B E T W E E N:

VERN PAKKALA

Disputant

- and -

LAWRENCE JOHN LABELLE, DONNY LAUGHLIN MCKINNON,
CHRISTINA MARIE COYNE, RANDALL W. SALO,
KENNETH WILLIAM PYE AND TERRY LABELLE

Respondents

AND IN THE MATTER OF

An appeal by the Disputant pursuant to subsection 112(1) of the **Mining Act** from the decision of the Provincial Mining Recorder, dated the 23rd day of February, 1998, for a declaration that Mining Claim L-1215324 be declared invalid and for the recording of the Filed Only Mining Claims 1214487, 1214488, 1214490 and 1214491.

REASONS

This matter was heard on September 16, 1998 in the Larry Brown Room (formerly the Blue Room) of the Royal Canadian Legion, Kirkland Lake, Ontario.

Appearances:

Vern Pakkala	Disputant
Lawrence J. Labelle	On behalf of the Respondents

Background:

This matter arose from a series of stakings, commencing on September 17, 1996, in Van Hise Township. On September 17, 1996, the Appellant, Vern Pakkala, staked a six unit mining claim, commencing at 8:00 a.m. Realizing his error, Mr. Pakkala restaked the same ground on September 29, 1996. In the intervening period, on September 19, 1996, Mr. Lawrence Labelle, the respondent, staked a sixteen unit mining claim, which wholly encompassed the lands staked by Mr. Pakkala, so that only a portion of the west boundary was in common. The basis of Mr. Pakkala's appeal is that the Labelle staking did not take place on the ground on September 19, 1996, that there were deficiencies in the staking and that certain staking activities were in contravention of the staking regulation (O. Reg. 7/96).

The appellant advised the tribunal that he thought that this would be a review of the Recorder's decision. He was advised by the tribunal that this was a new hearing and that he should therefore be prepared to present his case anew.

Both sides had prepared and submitted written material and documentation for this hearing. All of the material and documentation was given an exhibit number and listed in an Exhibit List which was provided to the Parties. The appellant and the respondent both referred to some of these exhibits. Neither party brought witnesses to the hearing. The tribunal took into account the oral testimony of both Parties and all of the Exhibits.

The pivotal date for the purposes of this hearing is September 19, 1996, being the date given by the respondent for staking on his "Application to Record". The appellant claims that the respondent did not carry out his staking on that date. The appellant says that the respondent drew a sketch, submitted his Application to Record and then at some later time, went out and did his staking. He contends that the near-perfect quality of the sketch in the

Application to Record does not reflect what was ultimately done on the ground, maintaining that Labelle is a surveyor, capable of depicting in a sketch accurately what occurred on the ground.

While the appellant was in the area staking his claims on a number of occasions during September and October, 1996 and again in the spring of 1997, he did not pinpoint any particular time when he thought that the respondent might have actually done his staking. He maintained that it would have occurred after September 19, 1996, indeed sometime well into the fall, as there were no leaves on the removed branches of the trees used as posts, which would not have been the case, had the branches been cut on that date.

The respondent, testified that he carried out his staking on the September 19, 1996.

The appellant also claimed that the respondent's sketch did not reflect the features on the ground, such as the location of the intersection points between the road and the south boundary, and that the #3 post which Mr. Pakkala saw on one visit had been shortened and refaced to proper regulated proportions in the spring, evidence that it had been tampered with by unknown persons. He speculated that the tampering was done by the respondent or his assistants.

Due to the lack of witnesses, it was necessary for the tribunal to take documentary and written evidence (as identified on the Exhibit List) into account. Evidence should ideally be "tested" through live testimony and cross-examination. Evidence that cannot be tested is given a lesser weight than direct evidence. The oral testimony given by the Parties did not add any new insight to the information contained in the exhibits.

Issues:

Has the appellant succeeded in proving that the respondent's staking did not occur on September 19, 1996? If not, has the appellant succeeded in attacking the validity of the respondent's staking to the point where the respondent's claim should not be recorded? In each instance, the appellant bears the burden of proof.

Evidence:

Mr. Pakkala says that he was in the area on September 17, 1996 and began staking at 8:00 a.m. (Mining Claim 1214489). He returned on September 22, 1996, to cover ground adjacent to the lands he had staked on the September 17, 1996 (Mining Claim 1214490). On both occasions, he was accompanied by his witness, Ms. Dickson. On September 17, 1996, they encountered someone (possibly Mr. Recoski, using the evidence of Pakkala/Dickson and Labelle) on the western boundary of unrecorded Mining Claim 1214490, who told them that no one was staking to the east. Apparently Mr. Pakkala and Ms. Dickson did not meet anyone on September 22, 1996.

The appellant's staking efforts of September 17, 1996, were for nothing, however, as he had begun staking at 8:00 a.m. local time. The lands had become open for staking at 9:00 a.m. local time. The appellant never denied this mistake. However, this was the reason he returned to the area on September 29, 1996 to restake the claim he had staked on September 17, 1996, believing that the lands had not been staked by another in the intervening time period.

The appellant was alone when he returned on September 29, 1996. In a letter dated April 4, 1998, addressed to the Registrar of the tribunal and entered as Exhibit #17 to this hearing, Mr. Pakkala states that on September 29, 1996, he found and followed a "south line" before proceeding to stake. He says that he found line tags, with "no additional information", which is taken by the tribunal to mean that there were no accompanying inscriptions. He did not indicate what information he did find, if any. He noted that the line ended "abruptly with no. #3 corner post erected".

It is obvious then that the Appellant saw something on September 29, 1996, but for whatever reason, he did not engage in reconnaissance of the area to determine the meaning of what he saw.

Mr. Pakkala hired Mr. Scott Spence, a Resource Technician working for Boreal Resources Inc. to inspect the respondent's claim, which resulted in production of a document listed as Exhibit #7, and entitled "Claim Inspection Report Van Hise Township" (the "Claim Inspection Report"). The inspection was conducted on April 5, 1997 and in fact only encompasses the south line of the Labelle Mining Claim. It is interesting to note that the southern line for the respondent's claim (as shown on the sketch produced by Mr. Spence) runs one hundred (100) meters south of its actual location on the ground. Mr. Spence notes that the #3 Labelle (the respondent) post is found 43 metres south of the "bush road". Mr. Pakkala asked how anyone who was a surveyor could incorrectly locate a claim post on a sketch. Mr. Spence listed and described the line tags in his Inspection Report, none of which was contradicted by the appellant. The appellant made reference to this investigation and the comment in paragraph 7 of the Claim Inspection Report and concluded or admitted that "this line turned out to be what later became the south line of L-1215324 of Mr. Labelle's claim".

Mr. Pakkala stated that Mr. Spence described one of the posts as "abandoned". The tribunal found no such reference on the part of Mr. Spence, but recognized this as a reference to a partial staking having been commenced on the 18th of September and not completed. The post was re-used in the Labelle staking, a fact which was admitted by Mr. Labelle as it was his position that there was no actual mining claim, according to the legislation, and therefore, the post was available for use.

There was nothing in Mr. Spence's investigation report that questioned the timing of the respondent's staking. The matter of the absence of leaves on the tree tops which were cut off of the posts used for the Labelle posts were, in Pakkala's opinion, indicative of their having been cut some time after September, 19, 1996 when the leaves would have been off the trees.

The respondent says that on September 18, 1996, he talked to Mr. Recoski, that Patrick Coyne had talked to Mr. Recoski on September 17, 1996. From these conversations Mr. Labelle stated that he knew where Mr. Recoski's lines and posts would be. In fact, the respondent said that he and Mr. Coyne got a plan from Mr. Recoski so they would know exactly where he meant. It was determined that Recoski would go for the lands to the west and Mr. Labelle for those to the east.

Mr. Labelle stated that on September 18, 1996, he commenced staking with Patrick Coyne, commencing at what would have been their #3 post along the line shared with Recoski. Mr. Labelle headed north and Mr. Coyne headed east. When Mr. Labelle encountered the appellant's #3 post, he radioed Mr. Coyne and they ceased staking to perform a reconnaissance of the Pakkala September 17th staking. Once they had completed and determined that the appellants staking had been commenced prior to the opening of the lands, it was too late to properly stake. This being the case, the respondent felt free to return and begin staking anew on September 19, 1996. With respect to his efforts on September 18th, Mr. Labelle said that, as the staking had not been completed, he did not consider it to have been a mining claim, within the parameters of the legislation and that he considered his staking efforts on September 19, 1996 to be in compliance.

The respondent was conducting his staking work with the assistance of four other individuals, all of whom provided statements which were included in the Exhibit list. Commencing at the #3 post, Mr. Labelle and another headed north to the #4 post, while another licensee and helper proceeded east. They then met at the #1 post, completing the staking. Mr. Pakkala suggested that it was impossible to meet accurately in the bush to the extent that was apparently shown on the sketch, which again, he alleges points to the staking and sketch having been undertaken independently and unrelated. Mr. Labelle suggested that the extent of accuracy was through the use of hip chains, although there was a 60 metre distance when he tried to meet up with his team. As to the virtually perfect dimensions of the sketch, Ken Pye had used a photocopy of the map of the area, so that surrounding features did not have to be drawn in by hand. The transposition of the staking to the photocopy was admittedly not entirely accurate, but nonetheless, a staker had to work with what was found on the ground.

In an effort to understand the appellant's accusations, it was necessary for the tribunal to attempt to trace his steps and those of his witness, as the evidence (both written and oral) permitted.

The start to the appellant's staking for both 1214489 and 1214490 began north of Highway 560. He and his witness came off the highway and followed a logging road north with their car and then began staking. This is north of the respondent's southern line. 1214490 was staked on September 22, 1996. None of the appellant's evidence indicated that he and his witness were looking for anyone else's staking work on September 17, 1996 or September 22, 1996. The appellant's witness says that they were told on September 17, 1996, that no one was staking to the east. It can be concluded that they were not looking for anyone on those two dates. No evidence was produced that would change this conclusion. As to the witness Ms. Dickson's report (Exhibit #8) mentioning that they did not see any of Mr. Labelle's work on September 22, 1996, this report was written after the fact.

The tribunal does not intend to repeat what was said in the documentary material submitted by the appellant. Suffice to say that the tribunal found the contents to be conflicting, vague and speculative. For example, Ms. Dickson's account of events on October 14, 1996, conflict with the appellant's account. Ms. Dickson describes a post and line cut, with no indication of what was inscribed on the post, nor any indication that Mr. Pakkala performed any reconnaissance to determine what had taken place in the area. Rather, it was from this location that Mr. Pakkala began to stake. Mr. Pakkala, in his Exhibit #17, paragraph 9 indicates that there was a line which was not blazed when they were at this location on September 22, 1996, but was blazed upon their return. Yet Mr. Pakkala refers to this line in his Exhibit #17 as an "abandoned" line.

The tribunal found Ms. Dickson's accounts to be detailed when describing natural surroundings, but vague when describing staking evidence such as posts, particularly with respect to inscriptions. Also, it would appear that she was left on her own at several critical locations, when Mr. Pakkala was in the vicinity of where the Labelle posts were located. Her evidence is not convincing and must be given very little weight in terms of proving that the respondent's staking did not take place on September 19, 1996, or that the respondent's posts were not in existence on that date.

Ms. Dickson's report for September 22, 1996 (mining claim 1214490) indicated that they staked mining claim 1214490. Posts 1 and 2 of this claim are well within L-1215324. The land within posts 2 and 3 is within L-1215324. At post #3, Ms. Dickson noted that there was "a post from the person on the west". She noted that this was at the #3 post for the claim done by Mr. Pakkala on September 17, 1996. This should be the #4 post for that claim. She did not indicate what kind of post that was found, nor how they knew who it belonged to. She does mention that this is the day that a claim post of Mr. Labelle's was found, between a small and larger body of water. There was no indication of what steps were taken to establish the extent of the mining claim purporting to belong to this post, only that there was no other evidence of Labelle's staking.

There was much speculation on the part of the appellant as to what he should have been able to see in the field. In Exhibit #18, page 3, he mentions for example, that line and claim posts would have been "impossible" to miss. Perhaps this was so; however, the tribunal is hard pressed to accept his conclusion that the respondent's posts were not found, given the appellant's failure to describe what he actually saw and the facts that led him to conclude that what he saw did not belong to the respondent.

Ms. Dickson again accompanied the appellant on October 14, 1996, and at this time they found the respondent's #4 claim post. Ms. Dickson's account conflicts with the appellant's account (found in his Exhibit #17 paragraph 9) with regard to what the appellant described as a "newly blazed line" he decided was "abandoned" and which he attributes to Mr. Labelle. Ms. Dickson made no reference to this line. Again, this is typical of the nature of the evidence produced by the appellant and it must be treated accordingly.

The tribunal found that the appellant and Ms. Dickson took the same approach when saying that on October 14, 1996, he did not find any of the respondent's posts along the northern line. Posts were apparently seen. However, no description was given and no facts were produced to show how the appellant and his witness came to the conclusion that the respondent's posts were not present on the northern line. The tribunal is left with doubts as to the accuracy of the appellant's evidence. The benefit of the tribunal's doubt has to lie with the respondent's claim. The tribunal notes that the same approach was used for evidence regarding the western boundary.

The Labelle "Application to Record" was received on September 23, 1996, in the afternoon and marked "Filed Only" on September 26, 1996. This status was changed to "Accepted" on December 12, 1996 by the Mining Recorder.

The Pakkala "Application to Record" pertaining to 1214489 (of September 17, 1996) and 1214490 (of September 22, 1996) was received by the Larder Lake Mining Recorder's Office also on September 23, 1996, but in the morning, and marked "Filed Only" on December 12, 1996. It notes that 1214489 was refused as it was staked before the land became open for staking at 9:00 a.m. Mr. Pakkala says that he was notified by the Office shortly after September 23, 1996, (see Exhibit #17, point 14) that the claim of September 17, 1996 was refused. The Pakkala "Application to Record" for 1214488 (staking done on September 29, 1996) was received by the Recorder's office on October 10, 1996. It was marked "Filed Only".

Findings

The appellant has not convinced the tribunal that the respondent's staking did not take place on September 19, 1996. This failure was due to the nature of the evidence produced by the appellant. The tribunal found the appellant's evidence to be conflicting, vague and speculative. The tribunal is not convinced that the necessary reconnaissance to determine the significance of what was found in the field was carried out by the appellant. Furthermore, much of what the appellant's witness had to say was based on hindsight.

The tribunal could find no basis for concluding that the respondent had tampered with posts already in existence. Much of the evidence relied on by the appellant was evidence accumulated after the appellant had filed a dispute with the Mining Recorder (Exhibit #17 paragraph 2) on February 6, 1997. As noted above, the Spence investigation of April 5, 1997, dealt with only the respondent's southern line. No mention was made of posts having been altered. A line tag was described in paragraph 1 of the report as missing a portion of the tag. However, no evidence was produced to lead the tribunal to the conclusion that this was evidence of tampering.

The tribunal concurs with the position of the respondent that the line tag used on September 18, 1996 does not properly form part of a mining claim as defined by the **Act** and regulation, and as such, was available to be reused on September 19, 1996 when Labelle and his team undertook a complete staking of the claim.

The tribunal has considered the deficiencies in the staking alleged by the appellant with respect to the south boundary and the manner in which it is staked, and is in agreement with the comments made by the Mining Recorder on this matter. While the staking of this boundary may not be in strict compliance with the regulations, the tribunal finds that it is in substantial compliance as nearly as circumstances will reasonably permit. Moreover, the tribunal finds, in keeping with the two-pronged test in section 43(2) of the **Mining Act**, that any failure to comply is not likely to mislead a licensee wishing to stake in the vicinity, as any staker coming along the bush road would have encountered the line no fewer than three times and would have been forced to follow it and determine what it meant. Also, the tribunal is satisfied that there has been an apparent attempt in good faith by Mr. Labelle to comply with the legislation. As such, whatever deficiencies exist on this south line, they are deemed to be part of a staking which is in substantial compliance. Indeed, it is telling that none of the complaints heard about this south line are sufficiently serious to warrant the issuance of a Mining Recorder's Order to redraw or re-blaze the line, pursuant to subsection 112(6) of the **Mining Act**.

Exclusion of Time

Pursuant to subsection 67(2) of the **Mining Act**, the time during which Mining Claim L-1215324 was pending before the tribunal, being the 2nd day of March, 1998, to the 15th day of December 1998, a total of 289 days, will be excluded in computing time within which work upon Mining Claim L-1215324 is to be performed and filed.

Pursuant to subsection 67(3) of the **Mining Act**, as amended by S.O. 1996, c.1. Sched. O, S.18, July 9, 1999, is deemed to be the date for the performance and filing of the first and second units of prescribed assessment work on Mining Claim L-1215324. Pursuant to subsection 67(4) of the **Mining Act**, all subsequent anniversary dates are deemed to be July 9.

Conclusions:

The appeal is dismissed. The tribunal found no evidence that the staking did not occur on the date shown on the Application to Record, nor that they were unconnected and independent acts. Rather, the tribunal is satisfied that much of the appellant's staking activities were wholly contained within the lands staked by the respondent, excepting the common portion of the west boundary, so that the opportunity to observe the respondent's staking at first instance was reserved to this stretch of the west boundary. Mr. Pakkala simply failed to see what was on the ground.

Furthermore, the tribunal is satisfied that nothing in the respondent's staking was such as to remove it from being captured by the tests of substantial compliance or deemed substantial compliance, found in section 43 of the **Mining Act**.

The tribunal was extremely hampered in the hearing of this matter by the fact that little direct evidence was presented and it was forced to rely heavily on written accounts of what was observed, which unnecessarily delayed the final decision in this matter. An appeal of a dispute heard by the Mining Recorder is a new hearing, to be heard as if for the first time.