

File No. MA 006-97

L. Kamerman)
Mining and Lands Commissioner)

Wednesday, the 14th day
of January, 1998.

THE MINING ACT

IN THE MATTER OF

Mining Claims S-1219180 and 1219182, staked by Lanny Wayne Anderson and Mining Claim S-1219184, staked by Teddy Allen Anderson, hereinafter referred to as the "Anderson Mining Claims" or "Anderson Mining Claim 1219180" "Anderson Mining Claim 1219182" and "Anderson Mining Claim 1219184", all recorded in the name of Steven Dean Anderson and situate in the Township of Afton, in the Sudbury Mining Division;

AND IN THE MATTER OF

An application to record Mining Claim S-1184528, situate in the Township of Afton, in the Sudbury Mining Division, staked by Ewen S. Downie, to have been recorded in the name of William Ferreira, marked "filed only", hereinafter referred to as the "Downie Filed Only Mining Claim";

AND IN THE MATTER OF

Clause 43(2)(b), subsections 44(2), 44(4) and 46(2) of the **Mining Act**, the "**Act**" and Ontario Regulation 7/96;

B E T W E E N:

EWAN S. DOWNIE

Appellant

- and -

STEVEN DEAN ANDERSON

Respondent

- and -

THE MINISTER OF NORTHERN DEVELOPMENT AND MINES

Party of the Third Part

AND IN THE MATTER OF

An appeal from the decision of the Mining Recorder for the Sudbury Mining Division, dated the 11th day of January, 1997, for the amending of the Application to Record the Downie Filed Only Mining Claim to record those lands covered by Anderson Mining Claim 1219180;

AND IN THE MATTER OF

A declaration pursuant to section 105 of the **Mining Act** to amend the Application to Record Anderson Mining Claim 1219180 to exclude those lands covered by the Downie Filed Only Mining Claim;

AND IN THE MATTER OF

A direction to the Mining Recorder for the Sudbury Mining Division for an Order pursuant to subsection 110(6) of the **Mining Act** for the movement of posts of Anderson Mining Claim 1219180 and the Downie Filed Only Mining Claim in accordance with the relief sought above;

AND IN THE MATTER OF

A declaration that Anderson Mining Claim 1219182, having not been staked in good faith by the licensee and not in compliance with the requirements of the **Mining Act** and regulation, within the meaning of clause 43(2)(b) of the **Mining Act**, be cancelled;

AND IN THE MATTER OF

A declaration that Anderson Mining Claim 1219184, being a mining claim not entitled to priority within the meaning of subsection 44(2) of the **Mining Act**, be cancelled.

ORDER

WHEREAS this tribunal issued its Interlocutory Order in this matter on the 6th day of October, 1997, setting out by declaration the circumstances under which the non-overlapping portion of an overlapping staking may be allowed, pursuant to subsection 44(4) of the **Mining Act**, R.S.O. 1990, c. M.14, as amended;

AND WHEREAS additional information as required was provided to this tribunal and the other parties on the 30th day of October, 1997 and the 17th day of December 1997, respectively, by Mr. Donald Wakefield, solicitor for the Appellant;

AND WHEREAS further submissions were received from the Respondent on the 24th day of November, 1997 and additional information concerning the boundaries of surrounding mining claims was received from the Party of the Third Part on the 28th day of November, 1997;

UPON hearing from the parties and reading the material filed both before and after the Interlocutory Order;

1. THIS TRIBUNAL ORDERS that the appeal from the decision of the Mining Recorder for the Sudbury Mining Division dated the 11th day of January, 1997, for the amending of the application to record the Downie Filed Only Mining Claim S-1184528 to record those lands not covered by the Anderson Mining Claims S-121980 and S-121982, is hereby allowed, that the Downie Mining Claim S-1184528 will be recorded effective January 11, 1997 and the matter is referred back to the Provincial Mining Recorder responsible for the Sudbury Mining Division for an Order pursuant to subsection 110(6) of the **Act** to change inscriptions and add witness posts as follows:

To be located 675 metres due south of the #1 post of Mining Claim 1184528:

- (i) a witness post of the #2 post witnessed 235 metres south to form a common post with the #1 of Mining Claim 1219182;
- (ii) a witness post of the #3 post witnessed 235 metres south and 1200 metres west along the boundary of Mining Claim 1219182 to form a common post with post #4 of said 1219182; and
- (iii) a witness line post of the change in direction to circumvent the lands not open for staking on the southwest boundary, being Mining Claim 1219180, witnessed 235 metres south, 1200 metres west along the boundary of Mining Claim 1219182 and north 410 metres to the #1 post of Mining Claim 1219180, denoting that the change in direction is from the north to the west;

And to be located at the witnessed location of the #4 post of Mining Claim 1184528:

- (iv) a witness line post of the change in direction to circumvent the lands not open for staking on the southwest boundary, being Mining Claim 1219180, witnessed 675 metres west and 500 metres south to the #4 post of Mining Claim 1219180, denoting that the change in direction is from the west to the north.

2. THIS TRIBUNAL FURTHER ORDERS that the application to record the Downie Mining Claim S-1184528 be amended by changing the distances shown for the boundaries of the said Mining Claim as follows: the distance from the shore, being a point 675 metres due south of the #1 post, to witness the #2 post be changed to 210 metres; the distance along the south boundary to witness the #3 post be changed to 1200 metres; a change in direction of the west boundary running north, to circumvent Mining Claim 1219180, be indicated through a witnessed line post running north a distance of 410 metres from the #3 post, as witnessed; and a witness post to be erected at the witnessed location of the #4 post showing a change in direction of the west boundary occurring 675 metres west and 500 metres south of the witnessed location, coinciding with the #4 post of Anderson Mining Claim 1219180, indicating a change in direction from west to north.

3. **THIS TRIBUNAL FURTHER ORDERS** that the notation "Pending Proceedings" which is recorded on the abstracts of Mining Claims S-1219180 and 1219182, to be effective from the 4th day of February, 1997, be removed from the abstracts of the Mining Claims.

4. **THIS TRIBUNAL FURTHER ORDERS** that Anderson Mining Claim 1219184 be cancelled.

5. **THIS TRIBUNAL FURTHER ORDERS** that the disputes against Anderson Mining Claims 1219180 and 1219182 be dismissed.

6. **THIS TRIBUNAL FURTHER ORDERS** that the time during which proceedings were pending before the tribunal concerning Anderson Mining Claims S-1219180 and 1219182, being the 4th day of February, 1997 to the 14th day of January, 1998, a total of 345 days, be excluded in computing time within which work upon Mining Claims S-1219180 and 1219182 is to be performed and filed.

7. **THIS TRIBUNAL FURTHER ORDERS** that the 3rd day of September, 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 S-1219180 pursuant to subsection 67(3) of the **Act** and all subsequent anniversary dates shall be deemed to be September 3 pursuant to subsection 67(4) of the **Act**.

8. **THIS TRIBUNAL FURTHER ORDERS** that the 31st day of October, 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 S-1219182 pursuant to subsection 67(3) of the **Act** and all subsequent anniversary dates shall be deemed to be October 31 pursuant to subsection 67(4) of the **Act**.

9. **THIS TRIBUNAL FURTHER ORDERS** that the time during which issues concerning Mining Claim S-1184528 were pending before the Mining Recorder and the tribunal, being the 11th day of January, 1997, to the 14th day of January, 1998, a total of 369 days, be excluded in computing time within which work upon Mining Claim S-1184528 is to be performed and filed.

10. **THIS TRIBUNAL FURTHER ORDERS** that the 15th day of January, 2000, be fixed as the date by which the first and second units of prescribed assessment work must be performed and filed on Mining Claim S-1184528 pursuant to subsection 67(3) of the **Act** and all subsequent anniversary dates shall be deemed to be January 15 pursuant to subsection 67(4) of the **Act**.

11. **THIS TRIBUNAL FURTHER ORDERS** that no costs shall be payable by any party to this appeal.

12. THIS TRIBUNAL FURTHER ORDERS that this Order be filed without fee in the Office of the Provincial Mining Recorder in Sudbury pursuant to subsection 129(4) of the **Act**.

DATED this 14th day of January, 1998.

Original signed by

L. Kamerman
MINING AND LANDS COMMISSIONER

File No. MA 006-97

L. Kamerman
Mining and Lands Commissioner

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THE MINING ACT

IN THE MATTER OF

Mining Claims S-1219180 and 1219182, staked by Lanny Wayne Anderson and Mining Claim S-1219184, staked by Teddy Allen Anderson, hereinafter referred to as the "Anderson Mining Claims" or "Anderson Mining Claim 1219180" "Anderson Mining Claim 1219182" and "Anderson Mining Claim 1219184", all recorded in the name of Steven Dean Anderson and situate in the Township of Afton, in the Sudbury Mining Division;

AND IN THE MATTER OF

An application to record Mining Claim S-1184528, situate in the Township of Afton, in the Sudbury Mining Division, staked by Ewen S. Downie, to have been recorded in the name of William Ferreira, marked "filed only", hereinafter referred to as the "Downie Filed Only Mining Claim";

AND IN THE MATTER OF

Clause 43(2)(b), subsections 44(2), 44(4) and 46(2) of the **Mining Act**, the "Act" and Ontario Regulation 7/96;

B E T W E E N:

EWAN S. DOWNIE

Appellant

- and -

STEVEN DEAN ANDERSON

Respondent

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THE MINISTER OF NORTHERN DEVELOPMENT AND MINES
Party of the Third Part

AND IN THE MATTER OF

An appeal from the decision of the Mining Recorder for the Sudbury Mining Division, dated the 11th day of January, 1997, for the amending of the Application to Record the Downie Filed Only Mining Claim to record those lands covered by Anderson Mining Claim 1219180;

AND IN THE MATTER OF

A declaration pursuant to section 105 of the **Mining Act** to amend the Application to Record Anderson Mining Claim 1219180 to exclude those lands covered by the Downie Filed Only Mining Claim;

AND IN THE MATTER OF

A direction to the Mining Recorder for the Sudbury Mining Division for an Order pursuant to subsection 110(6) of the **Mining Act** for the movement of posts of Anderson Mining Claim 1219180 and the Downie Filed Only Mining Claim in accordance with the relief sought above;

AND IN THE MATTER OF

A declaration that Anderson Mining Claim 1219182, having not been staked in good faith by the licensee and not in compliance with the requirements of the **Mining Act** and regulation, within the meaning of clause 43(2)(b) of the **Mining Act**, be cancelled;

AND IN THE MATTER OF

A declaration that Anderson Mining Claim 1219184, being a mining claim not entitled to priority within the meaning of subsection 44(2) of the **Mining Act**, be cancelled.

R E A S O N S**Introduction**

In its' Interlocutory Order dated October 6, 1997, the tribunal set out in a declaration the criteria under which the recording of the non-overlapping portion of an overlapping staking of a mining claim would be considered for recording.

The first criteria was to require the party wishing to have an overlapping mining claim return to obtain detailed information concerning the non-overlapping portion of the mining claim. The rationale behind this was that this information was not available at the time the original staking had occurred.

In a letter dated October 30, 1997, Mr. Donald Wakefield, solicitor for the appellant, provided additional information and a sketch which did not form part of the original application to record, although this did not reflect a subsequent field visit by Mr. Downie. In a letter dated November 24, 1997, the tribunal requested additional information and a response was received in the form of a letter dated December 17, 1997.

In addition, a written response was received from the respondent, Mr. Anderson on November 24, 1997 and additional factual information provided by MNDM, the Party of the Third Part, on November 28, 1997.

Background

The specific facts of this case require some introduction, as they were not referred to in the Interlocutory Order. Ewan Downie staked Mining Claim S-1184528 on September 17, 1997. The completion time listed on the application to record was 9:14:14 a.m. This claim was accepted as "filed only" by the Mining Recorder for the Sudbury Mining Division as it overlapped Mining Claim S-1219180, which was staked by Lanny Anderson on September 17, 1997 and recorded in the name of Steve Anderson. This claim, which was accepted by the Mining Recorder, had a completion time of 9:01 a.m.

In fact, although not listed on the photocopy of the application to record the Downie Mining Claim, there is a second claim which also has priority to that of Downie, namely Mining Claim S-1219182, also staked by Lanny Anderson, having a completion time of 9:12 a.m. on September 17, 1997.

The two Anderson Mining Claims are wholly located within land covered by water. The Downie Mining Claim extends out over land covered by water along its entire southern boundary. It is along this southern boundary, as well as a portion of the western boundary, where the overlap with the Anderson Mining Claims occurs.

Specifically, Mining Claim S-1219182 is found at the southern-most portion of Emerald Lake found on the Index to Land Disposition map (Ex. 8). It has dimensions of 800 metres along its eastern and western boundaries and 1,200 metres along its northern and southern boundaries. It is a perfect rectangle and it could be best described visually as being a rectangle wholly located on land covered by water, so that none of its boundaries touch the shore of Emerald Lake. Except along its northern and eastern boundaries, it comes very close to the shore in several places. The southern boundary is removed from the shore to some extent on the application to record, but is shown as abutting a shallow peninsula along the southern shore on the Index to Land Disposition Map.

Mining Claim S-1219180 is located to the west. It has a common partial boundary of 400 metres with S-1219182, with 400 additional metres of boundary extending north from the common boundary line, for a total north/south line of 800 metres. The exact measurement of the common boundary of Mining Claims S-1219180 and S-1219182 is uncertain as subsequent information puts the common boundary at between 425 and 515 metres. This will be discussed further below. Mining Claim S-1219180 is 400 metres from east to west. It also is wholly found in land covered by water, with the closest point of dry land being due west of the witnessed #3 post. Both of the Anderson Mining Claims were staked from the western shore of Emerald Lake.

The Downie Mining Claim partially covers dry land to the north of the Andersons' Mining Claims. From the shore, which is found 675 metres south of the #1 post along the eastern boundary, the #2 post is witnessed a distance of 525 metres into the lake. It is at a distance of 235 metres south of the shore that the Downie Mining Claim encounters the northern boundary of Anderson Mining Claim S-1219182.

The northern and southern boundaries of the Downie Mining Claim are shown on the application to record as being 1600 metres. Moving west along the boundary created by the overlap of the Anderson Mining Claim S-1219182 a distance of 1200 metres, the eastern boundary of the Anderson Mining Claim S-1219180 is encountered.

It is that portion remaining in the Downie Mining Claim, taking into account the overlap described along the south and southern portion of the western boundaries, which forms the basis of Mr. Downie's appeal pursuant to subsection 44(4) of the **Mining Act**. In addition, Mr. Downie has disputed the stakings of the Anderson Mining Claims S-1219180 and S-1219182. Furthermore, the Mining Recorder allowed the recording of a third Anderson Mining Claim, being S-1219184, which covers those non-overlapping portions of the same lands as the Downie Mining Claim which forms the basis of his section 44(4) appeal and which he is seeking to have cancelled, pursuant to this appeal.

Mr. Wakefield has advised the tribunal that, if successful on the subsection 44(4) appeal, his client will abandon the dispute of the Anderson Mining Claims S-1219180 and S-1219182.

Submissions

In his October 30, 1997 submission, Mr. Wakefield sets out the basis of his client's case as being paragraph nine of the Interlocutory Order, which states:

9. If the situation should result, based upon the application of the foregoing criteria, that a non-overlapping portion of a mining claim which is less than one unit is completely surrounded by lands which are not open for staking, the resulting mining claim will be allowed and a direction to the mining recorder to order the moving of posts and boundaries will be issued. This will apply to cases involving rectangles, parallelograms, rhombuses and "C" and "L" configurations.

Upon reading all of the relevant legislative and regulatory provisions concerning the powers of the mining recorders, the tribunal concludes that there is no power in the mining recorder to return to the previously disallowed mining claim. The tribunal

will base its determination such that a claim be recorded pursuant to its powers found in section 121 of the **Mining Act**, that its decisions will be on the real merits and substantial justice of the case. Having regard to the circumstances described, the tribunal notes that the lands which would result in land open for staking under these circumstances would be the same lands that the holder would have been entitled to pursuant to subsection 44(4). This being the case, it would be a substantial injustice to require the holder to compete in another staking rush for the same lands and the tribunal will exercise its further jurisdiction to allow the recording.

Mr. Wakefield enclosed sketches and proposed wording for the requested order amending Mr. Downie's application to record and the mining recorder's order. In the sketch outlining what would appear on the requested amended application to record, the following pertinent information is disclosed. The distance witnessed out into the lake from the southernmost portion of the eastern boundary is shown as 340 metres. The distance along the eastern boundary of the Anderson Mining Claim S-1219180 to be in common with the non-overlapping portion of the Downie Claim is shown as 515 metres. The leg of the proposed new boundary which is common with the northern boundary of the Anderson Mining Claim S-1219180 is 400 metres and the distance of the western boundary running north to the witnessed #4 post is 500 metres.

The tribunal was concerned about activity on the eastern boundary of the Downie Mining Claim and wrote to Mr. Wakefield expressing its' concerns on November 24, 1997, with copies of the letter sent to the other parties. Essentially, there is an access road which runs northwest to southeast, which appears to coincide on the Index to Land Disposition with the drawing of the eastern boundary of the Anderson Mining Claim S-1219184. However, on both Anderson's and Downie's applications to record, the eastern boundary is shown as north/south. In addition, there are three mining claims located to the east of this boundary, being S-1184527, S-1184526 and S-1219527, respectively. It is not clear from the Index to Land Disposition whether the boundaries of these claims coincide with the northwest to southeast direction of the road, or whether they run true north/south and therefore must cross the road in some way.

In addition, the tribunal required additional information concerning the point at which the eastern boundary of Downie's Mining Claim intersects with Emerald Lake. The concern was that, if the line actually did run northwest to southeast, rather than a distance of due south 675 metres, the intersection point with the lake would be uncertain, particularly as the shoreline runs more or less northwest to southeast itself along this stretch.

In his letter dated December 17, 1997, Mr. Wakefield, after consulting with Mr. Downie, advised that the eastern line was run due south commencing along the west side of the road (although Mr. Downie's attached sketch shows the east side) and crossing some 400 metres due south. The line continued south for an additional 275 metres until it came to the shore, located between two cabins. This location is approximately 125 metres due south of the #4 post of Mining Claim S-1219527, the sketch of which shows that it is tied onto Downie's eastern boundary. At the north end of Downie's eastern boundary, Mining Claims S-1184526 and S-1184527, staked by Robert Ducharme, also tie onto the Downie Mining Claim and not the road.

Steve Anderson addressed the tribunal in writing on November 24, 1997. The basis of his argument is that Mr. Downie should be bound by the 15% rule established by the Mining Recorder prior to the opening of the ground on September 17, 1996. His letter states in part:

In a letter from Downie to Roy Denomme dated January 14, 1997, Downie states that he had discussed the 15% overlap rule with Roy prior to opening day and was aware that any claims overlapped by more than 15% would not be accepted.

On opening morning Downie made a business decision and elected to take a known risk and stake a block claim rather than (sic) single unit claims. This decision was made despite his knowledge of the overlap rule and knowing he would be involved in a highly competitive situation.

When the decision was made by Roy Denomme to cancel Downie's claim, the ground remained opened for several days before it was staked by Ted Anderson. Downie could have re-staked the ground during this time and avoided the current situation all together.

These are some of the key factors we feel you should be aware of. Again, claims 1219180, 1219182 and 1219184 were staked in good faith and should be recorded. ...

The tribunal has examined Teddy Anderson's application to record Mining Claim S-1219184 (Ex. 4). It is interesting to note that in the non-competitive situation, this mining claim took three and three quarter hours to stake. The distances shown on the sketch accompanying the application to record are highly detailed; however, the witnessed distance to the #2 post is missing.

Findings

The tribunal has applied its criteria to the situation of the Downie staking and finds that the sixth criteria has been met. The Downie staking was a twelve unit claim, prior to taking into account the overlap with the two Anderson Mining Claims. With the overlap, the resulting non-overlapping portion is a multiple unit claim, having a configuration of a squat "L" shape. The dimensions of this "L" shaped configuration will be discussed in detail below, but there is general agreement in the figures submitted by Downie and the subsequent staking by Lanny Anderson of Mining Claim S-1219184 that the northernmost portion of the west boundary, before the direction change, is in the neighbourhood of 500 to 550 metres. This is well in excess of the stated minimum of 340 metres in width.

The tribunal has considered the submissions made by Steve Anderson. While compelling, in seeking to have the tribunal agree with the approach taken by the mining recorder at first instance, the tribunal has set out in considerable detail the circumstances under which a non-overlapping portion of a staking will be allowed pursuant to subsection 44(4). The fact is that the staking of Mining Claim S-1219184 done by Lanny Anderson in December, 1996 is for substantially the same, if not the identical ground as the non-overlapping portion of the Downie claim. Given that the legislation provides for recognition of non-overlapping portions in certain circumstances, that in the absence of a regulation or portion thereof dedicated to the rules which could govern the recording of non-overlapping portions, the tribunal has listed a number of criteria to be considered in cases of a subsection 44(4) non-overlap, it would prove vastly unfair to disallow the non-overlapping portion of a staking in favour of a staking of essentially the same lands at some later date. This later staking is able to conform with the pre-existing boundaries on the ground because with the benefit of hindsight, such boundaries are now known to the staker. However, the legislation contemplates that a staker in the competitive situation can have the non-overlapping portions of the staking recorded.

For this reason, the tribunal finds that the Anderson staking of Mining Claim S-1219184 shall be cancelled, and the recording of the Downie Mining Claim S-1184528 will be allowed, effective January 11, 1997.

Despite the best efforts of Mr. Wakefield's client in attempting to give accurate distances on the ground to the boundaries of the Anderson Mining Claims having priority, the tribunal has determined that it will rely on its own determination of what these figures should be. In part, the inquiry into distances is hampered by the fact that the two Anderson stakings which have been given priority by the Mining Recorder involve land wholly under water witnessed from the far shore. The exact point on shore at which the two claims are witnessed and it is indeed one point each for both claims, is somewhat uncertain. Coupled with this, the initial sketch accompanying the two Anderson Mining Claims S-1219180 and S-1219182 does not reach as far south with respect to the latter claim, as it does on the Index to Land Disposition and the sketch accompanying Lanny Anderson's application to record Mining Claim S-1219184.

The upshot of these stakings from land involving land covered by water is that trying to discern the extent of the mining claims having priority and their boundaries may prove to be inexact. Even having a measurement of the distance along the shoreline of Emerald Lake for the two posts used to witness Anderson Mining Claims 1219180 and 1219182 would provide some assistance in this regard, but the figure has not been provided, nor is there any requirement under the legislation that it be provided.

The tribunal has determined, through the use of a scale ruler and the Index to Land Disposition, that the southern and eastern-most portion of open water of Emerald Lake, from the peninsula into the lake on the south shore which is the most northerly is just over 800 metres in width. This dimension is best shown on the Index to Land Disposition with the drawing of the boundaries of Mining Claim S-1219182. It is shown with its northern boundary being less than 40 metres below the most southerly outcrop of the northern shore of the large bay found at the south east extreme end of the lake.

Given this dimension, the distance available into the lake for witnessing the location of the #2 post of Downie's Mining Claim, which corresponds to the #1 post of Anderson Mining Claim S-1219182 is calculated by the tribunal to be 235 metres. From this figure, the distances of the lines of the non-overlapping portions of the Downie Mining Claim will be as follows. From the #2 post, the line will run west a distance of 1,200 metres until it comes to the east boundary of Anderson Mining Claim S-1219180 and to the #4 post of Anderson Mining Claim S-1219182 at which the #3 post of Downie's Mining claim will be witnessed. The boundary direction will change to the north at this point, running a distance of 410 metres to the point where it coincides with the #1 post of Anderson Mining Claim 1219180. The witness post for the #4 post of Downie's Mining Claim will be located on the southernmost tip of an outcrop of land which is located 925 metres due west of the #1 post of the Downie Mining Claim. The witnessed distance from this location will be 675 metres west of the specified point on this outcrop of land. A further witness post to denote the change in direction of the west boundary to be located on the same outcrop of land will witness the change in direction 675 metres west and 500 metres south and show a change in direction of the line to the east. This change in direction will correspond to the location of the #4 post of Anderson Mining Claim S-1219180.

The tribunal will order that the Downie application to record Mining Claim 1184528 will be amended in accordance with the above-noted figures.

The Provincial Mining Recorder responsible for the Sudbury Mining Division will be directed to issue an Order pursuant to subsection 110(6) to erect and inscribe witness posts in accordance with the above-noted dimensions.

The tribunal extends its appreciation to the parties and their representatives for their considerable efforts in working cooperatively towards having this complex and challenging matter resolved expeditiously.

Exclusion of Time

Pursuant to subsection 67(2) of the **Mining Act**, the time during which Mining Claims S-1219180 and 1219182 were pending before the tribunal, being the 4th day of February, 1997 to the 14th day of January, 1998, a total of 345 days, will be excluded in computing time within which work upon the Mining Claims is to be performed and filed.

Similarly, the time during which Mining Claim S-1184528 was pending before the Mining Recorder and the tribunal, being the 11th day of January, 1997 to the 14th day of January, 1998, a total of 369 days, will be excluded in computing time within which work upon Mining Claim S-1184528 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, September 3, 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 S-1219180. October 31, 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 S-1219182 and January 15, 2000 is deemed to be the date for the performance and filing of the first and second units of prescribed assessment work on Mining Claim S-1184528. Pursuant to subsection 67(4) of the **Mining Act**, all subsequent anniversary dates for Mining Claim S-1219180 are deemed to be September 3; for Mining Claim S-1219182 all subsequent anniversary dates are deemed to be October 31 and for Mining Claim S-1184528 all subsequent anniversary dates are deemed to be January 15.

Conclusions

The appeal is allowed. The application to record the Downie Mining Claim S-1184528 with location of witness posts and distances to reflect the information set out in detail in the body of these Reasons. The application will be recorded. The Provincial Mining Recorder responsible for the Sudbury Mining Division will be directed to issue an Order pursuant to subsection 110(6) of the **Act** for the erection of witness posts with distances and direction changes noted.

The tribunal will order that the Anderson Mining Claim S-1219184 will be cancelled. The tribunal will order that the disputes against Anderson Mining Claims S-1219180 and S-1219182 will be dismissed.

There are no costs to any party to this appeal.