

File No. MA 006-05

M. Orr )  
Deputy Mining and Lands Commissioner )

Friday, the 2nd day  
of March, 2007.

### THE MINING ACT

#### IN THE MATTER OF

Mining Claim SO-4201574, situate in the former Township of Hinchinbrooke, now the Township of Central Frontenac, in the Southern Ontario Mining Division, staked by and recorded in the name of Mr. David Robert Hoover, as to a 100% interest, (hereinafter referred to as the Hoover Mining Claim);

#### AND IN THE MATTER OF

A referral by the Minister of Northern Development and Mines for a determination by the tribunal as to whether the Hoover Mining Claim was staked out and recorded for a purpose other than that of the mineral industry, pursuant to subsection 54(1) of the **Mining Act**;

#### AND IN THE MATTER OF

An application for the cancellation of the Hoover Mining Claim, pursuant to subsection 54(2) of the **Mining Act**.

#### B E T W E E N:

ALAN REID AND BRENDA REID  
Applicants

- and -

DAVID ROBERT HOOVER  
Respondent

### ORDER

**WHEREAS THIS APPLICATION** was received by this tribunal on the 7th day of September, 2006 and heard on the 15th day of January, 2007, in the courtroom of this tribunal;

**UPON** hearing from the parties and reading the documentation filed;

**1. IT IS ORDERED** that this application be and is hereby granted and that Mining Claim SO-4201574 be and is hereby cancelled.

2. **IT IS FURTHER ORDERED** that no costs shall be payable by either party to this application.

**THIS TRIBUNAL FURTHER ADVISES** that pursuant to subsection 129(4) of the **Mining Act**, R.S.O. 1990, c. M. 14, as amended, a copy of this Order shall be forwarded by this tribunal to the Provincial Mining Recorder **WHO IS HEREBY DIRECTED** to amend the records in the Provincial Recording Office as necessary and in accordance with the aforementioned subsection 129(4).

**DATED** this 2nd day of March, 2007.

Original signed by M. Orr

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DEPUTY MINING AND LANDS COMMISSIONER

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**REASONS**

**Appearances:**

Mr. Ronald Worboy on behalf of the Applicants.  
Mr. Hoover represented himself.

## Background

Mining Claim SO-4201574 (herein referred to as the “Claim”) was staked by the Respondent on January 17 and 18, 2005 and recorded on January 21, 2005. On February 5, 2005, the Provincial Mining Recorder ordered the Respondent to erect line posts along the perimeter of the Claim at the intersection of lots 9 and 10 on both the east and west sides of the Claim and to file written compliance with the Order no later than May 6, 2005. (Included in the Respondent’s materials was a faxed written confirmation to the Recording Office on May 5, 2005).

The Claim is located adjacent to Lake Chippego and covers both Crown (unpatented) lands and the Applicants’ land. Lake Chippego is really comprised of a smaller body of water to the north and a large body of water to the south; both being connected by a neck of water running in a north-west to south-east direction. Between the two bodies of water (and they lie almost parallel to each other with the smaller portion on the top) is what could be described as a peninsula. The Applicants’ lands are located in the peninsula area and on the west side of both portions of the Lake. One more lake of interest lies to the north again of the smaller portion of Lake Chippego. It is called Basshook Lake and is surrounded by Crown lands. In the past, anyone wanting to gain access to the smaller northern portion of Lake Chippego or Basshook Lake has used lakeside trails with the permission of whoever owned the lands crossed by the trails.

The Applicants first moved to the area in 2000 and severed and sold certain lots around the Lake. On February 18, 2005, the Applicants wrote to the Mining and Lands Commissioner raising a number of issues with respect to the staking of the Claim including substantial compliance, the size of the Claim and what should be included in it. They also questioned the actions of the licensee (the Respondent) and asked for the revocation of his licence. These issues were intended to be the subject of a hearing before the Mining and Lands Commissioner; however, on February 1, 2006, the Applicants asked that the matters be dismissed without prejudice to their bringing a future application. It is apparent in reading the Order of the Commissioner dated February 2, 2006, that the Applicants were also intending to seek an Order revoking the Claim pursuant to subsection 54(1); however, the matter had to be referred to the Commissioner by the Minister and this had not been done.

In March of 2005, the Ministry of Northern Development and Mines (MNDM) wrote to the Respondent and advised him that the purpose of his staking was being questioned for various reasons. Later that same month, the MNDM outlined some options for the Respondent as to how he could go about obtaining a resolution of the differences between himself and the Applicants. The options posed included moving the southern posts north to remove the Applicants’ lands completely from the Claim and transferring a portion of the Claim to the Applicants thereby allowing them “direct input into future developments”. For whatever reason or reasons, the matters were not resolved and the Minister referred the matter of the reason for the staking to the Commissioner under subsection 54(1) of the **Mining Act** (the “**Act**”).

## Issues

Does the Claim comply with relevant staking regulations? Should the Claim be cancelled on the grounds that the land is being used for other than mining land or for a purpose other than that of the mineral industry?

## Evidence of the Applicants

The Applicants provided documentation showing the lands they owned in the area of the Claim, including the land covered by the Claim (Lot 9, Concession 11). Brenda Reid purchased this lot in 2003. The Applicants own a cottage on Part Lot 8, Concession 11, which they purchased in January, 2000. They also purchased other abutting lands and sold these to other parties shortly after purchasing them. One of the parcels, namely Part Lot 8, Concession 11, was purchased in 2004 and along with a point of land in the same parcel, gave the Applicants exposure to nearly all of the southern shore line of Lake Chippego. There is no public access to the Lake or to the unpatented (Crown) lands (comprised of Lot 10, Concession 11) lying to the north of Lot 9, Concession 11. There are approximately 75 cottages around the Lake as well as vacant lots.

The Applicants described how they became involved in the forest management on the lands purchased in 2004 (Part Lot 8). A forest management plan was approved and cutting took place on approximately 60 acres in the fall of 2004. It was described as “selective” cutting and in order to accommodate the activity, a logging trail or road was cut into the property. The Applicant, Alan Reid, indicated that he posted “no trespassing” signs and taped off the area so as to prevent anyone coming on the property and being injured while the logging activities were going on.

The Applicant also indicated that there had not been a road to where the forestry operation took place and that there had been only a walking trail along the water (meaning the southern shore line of the Lake). He also said that the road went only as far as the creek which is found in the south-west corner of Lot 10, Concession 11, just entering the lower corner of Lot 10 from the north-west, flowing down to the south-west boundary of the Lot. He stated that the road ended 1000 feet from the northern limit of Lot 9. The tribunal notes that this description of access into Lot 9 is at odds with that of the Respondent who, on his Claim Map, depicts a “logging trail” (labelled “ROW”) that reaches well past the boundary between Lots 9 and 10 towards a popular fishing site called Basshook Lake.

The Applicants described how the vendor for Lot 8 (Rines) had offered the lot to the Respondent first before approaching the Applicant. The Applicants purchased the lot in June 2004. There had been a business discussion with the Respondent prior to the purchase, but nothing developed from it.

The Applicants became aware of the Respondent’s Claim in January, 2005, when the Respondent told Mr. Reid that he had staked a claim on Lot 9 and that he had two years to be on the property (for assessment work) and to not be alarmed. The Applicant, Alan Reid, had not

been informed prior to January, 2005, about the Respondent's activity and followed up on the Respondent's information by filing an appeal with the Mining and Lands Commissioner of the Application to Record the Claim on February 18, 2005. The Applicant also said that one of the line markers for the Claim was found on his brother's roadway 150 feet from his brother's cottage and to the east of his own property (the Applicant having sold that land described as "the point" to his brother). The Applicants questioned the Respondent's staking in terms of its compliance with the regulations, but beyond providing some photographs and making the statement about the distance to his brother's lot, there was no reliable evidence that the tribunal could use to determine the quality of the staking.

The Applicant Alan Reid described how he had met with the Township in April or May of 2005 and submitted an application to create four lots on the lands now owned by him and his wife. These lots were for family members. The application was not approved as submitted and they ended up obtaining one lot addition and one severance. He also said that the Respondent had expressed an interest in trading mining rights for a right of way to land to the north of Lot 9. The Applicant said that he was not interested in such a deal.

The Applicant also described the Respondent's behaviour towards himself and provided evidence of phone calls and email wherein the Respondent used words that made the Applicant feel threatened. The evidence (and this is not contradicted), was that the Respondent phoned the Applicant in March of 2005, saying (amongst other things) that the Applicant was angering people in the area, that he could "bury" the Applicant, and that his maintaining his (the Respondent's) mining rights would "screw up" any development. He also threatened the Applicants with being "tied up in red tape" (presumably by the Respondent's actions). He also indicated that he did not need the Applicants' permission to cross their land. He wanted access through Lot 9 to Basshook Lake where "generations of families [had] been going for years". The copies of emails sent by the Respondent to the Applicants contained many references to the loss of access to lands and the Lake formerly used for hunting and fishing.

In his final submissions, the Applicants' solicitor argued that there was sufficient evidence upon which the claim should be cancelled. The Applicants' severance activities, along with their logging activities and the posting of "no trespassing" signs, were noticed by the Respondent who then staked Lots 9 and 10, Concession 11. The Respondent was not very cordial towards the Applicants and had attempted to use his Claim as a bargaining tool with them in order to secure access to fishing and hunting lands. He was threatening in his manner and his attempts at negotiation did not focus on mining. He said that there was no evidence to support the Respondent's contention that the Applicants were interested in building roads. The Respondent was using the **Mining Act** to protect his property rights. He had staked his previous claim in 1996 on Lot 8 to preserve his interest in creating "back-lot" subdivisions to the west of Lot 9 and the Lake. These subdivisions would not have water frontage.

### **Evidence of Solon L. Hummel**

Mr. Hummel appeared as an interested participant and was permitted to give evidence but was not permitted to question the parties as he had not sought party status. He had recently heard about the hearing and wanted to give evidence. Mr. Hummel owns lands in Lots

9 and 10, Concession 11. He had heard from a neighbour that access to the lands owned by Brenda Reid (Lot 9, Concession 10) might be sought by way of Bernard Lane which runs roughly parallel with the north-east shoreline of Chippego Lake and comes to a stop just where his property comes down to the Lake in the south-west corner of his part of Lot 9. Pushing Bernard Lane beyond its current end point would require his permission and in his words he just wanted to be “left alone”. His lands are covered by a 999 year lease with the Nature Conservancy of Canada and a managed forests plan with the Ontario Forestry Association. He produced an MNDM claim map showing both his lands and the Claim lands. The tribunal has noted that part of the lands marked on that map shown as belonging to Mr. Hummel are coloured a light green (similar to the Claim that is the subject of this hearing) and may in fact be the subject of a claim as well. This is perhaps what Mr. Hummel was referring to when he said he owned “sub-surface rights”.

### **Evidence of the Respondent**

The Respondent gave oral testimony and produced a set of documents that dealt with his interests as well as those of the Applicants. The Respondent began his testimony by referring to matters that in his words were the basis for mining speculation in the area. Much of the documentation produced by the Respondent consisted of copies of maps and reports that related to the Applicants’ past attempt to create additional lots. The Respondent owns approximately 1200 acres roughly around the lands owned by the Applicants. He does not have access to Chippego Lake through any of his lands, but relies on rights of way along Chippego Lake and permission to access the Crown lands which surround Basshook Lake where he and his family like to fish and hunt. He said that he had taken issue with the Applicants’ posting of “no trespassing” signs on their property and admitted to tampering with the tape that had been used to cordon off the area. He appeared apologetic said that had been done in anger.

The Respondent said his staking is based on speculation that development of lands around the Lake will increase and this in turn will lead to a growing need for suitable roads. The surrounding lands are, in his view, rich in granite which could be used in road building. In addition, the lands contain zinc which is becoming increasingly valuable on world markets. He claimed that Inco had mines adjacent to the area and that company had been making inquiries.

He said he had held a prospector’s licence since 1996 and had staked a claim over Lot 8, Concession 11 in 1996. He said that the 1996 claim had expired due to the fact that he had not carried out assessment work. This was in turn due to financial problems he experienced arising, in part, out of a house fire. The tribunal noted in the Respondent’s own materials that in fact he had applied for a prospector’s licence on December 23, 2004. There was no evidence of a previous licence aside from a licence number noted on the first page of an “Application to Record” dated 1996 for Lot 8, Concession 12, Hinchinbrooke Township. The licence number on that page is not the same licence number as found on the subject Claim documentation which dates from 2005.

The Respondent also said that he had re-staked the old expired claim on December 18, 2006, but that he had not yet had it recorded. The number for this re-staking effort was 4201587.

The Respondent said that he was unable to carry out assessment work on the subject Claim because of the fact that a “Pending Proceedings” notice had been given. He indicated that quarrying for rock would be part of the assessment work carried out. He said he was not just after trail access (presumably to Basshook Lake) since his photos showed that he was carrying out more tedious work in the form of trail blazing. He expressed an interest in accessing rock to build roads that he expected the Township would need to accommodate development in the area. He described the area as being the next “Muskoka”. He described the Applicant Alan Reid as a developer and the Respondent wanted to get involved in the action. He took issue with the fact that the Applicants had written to the Minister of Northern Development and Mines complaining of his activities and inviting the Minister to view the site for himself.

When cross-examined by the Applicants’ solicitor about a lack of assessment work (on either the previously held claim or the subject Claim), the Respondent was quick to point out that he had run into financial difficulties for the first claim and that the current “pending proceedings” status stood in the way of his carrying out assessment work on the subject Claim. He indicated that quarrying rock would be considered assessment work. He also said that he would not be the one doing the quarrying, that it would be the Applicants. He was a speculator and had made a lot of money speculating. He was anticipating that the Applicants would be interested in his venture and would want to participate. Also under cross-examination, he indicated that he had either staked or would be re-staking the lands he owned, namely Lots 6, 7 and 8 in Concession 12 and Lots 9 and 10 in Concessions 13 and 14. He was not able to access Basshook Lake from his lands lying to the west of the Lake because of the way the watershed flowed which was in a diagonal direction to the south and east. He had not spent any money on assessment work during the time period he had held mining claims which was from 1996. He did not require a licence under the **Aggregate Resources Act** as he would be taking granite for roads and Central Frontenac only required a licence for quarries. He indicated that he owns all the roads “leading up to here”, meaning the subject lands. He was also questioned about the fact that he had not actually produced any evidence that indicated he was actually going to be building roads.

The Respondent argued that his staking of the Claim was proper; that he had a right as a prospector to access private land in order to stake; that he had a right to prospect; that the Crown encourages development of the resource; that the **Mining Act** anticipates multiple use of the land and that an increase in residential development in this area would trigger the need for more and better roads. He intended to supply the rock that would go to building the roads. That was the reason for his staking the Claim.

## Findings

The purpose of the **Mining Act** is set out in section 2. The **Act** is intended to “encourage prospecting, staking and exploration for the development of mineral resources” all the while also intending to minimize the impact of “these activities on public health and safety and the environment...” It is true that a prospector may enter private lands in order to stake a claim. It is also true that the **Act** controls the activities that follow staking a claim so that surface rights owners’ interests are recognized and suitably accounted for. The legislators were obviously aware of the possibility that staking might occur for reasons that have nothing to do with the purpose and intent of the **Mining Act**. Section 54 is in the **Act** for this reason.

Under subsection 54(2) of the **Act**, if land is staked out and is used “other than as mining land or for a purpose other than that of the mineral industry”, it is not being used in accordance with the **Act**. The tribunal has to determine whether the land covered by Mining Claim SO-4201574 was being used in a way contrary to the foregoing provision. If so, then it stands to be cancelled since the **Act** will not tolerate staked land being put to uses other than those related to mining or the mineral industry. The tribunal finds that the land is being used for a purpose other than that of the mineral industry and is being used for something other than as mining land. Having made this finding, there is no need to determine whether the staking efforts contravene the regulation. If there is a need to determine the quality of the staking, it is the tribunal’s view that the evidence provided by the Applicants was inconclusive on this point. Also, the Respondent submitted cases relating to section 32 of the **Act**. The issues associated with section 32 arise with valid claims.

The tribunal finds that the evidence indicates the Respondent is more interested in gaining an upper hand over the Applicants (newcomers to the area). The evidence points to a belief on his part that the Applicants’ activities will hinder (or prevent) his being able to access Crown lands where fishing and hunting have been an important pastime for him and his family. The Respondent spoke at length about the potential for residential development and the complementary need for certain standardized roads in the area. This is speculation and the tribunal finds that this speculative need is really a ploy on the part of the Respondent to validate the staking he carried out. Relying on the Applicants’ severance activity as the basis for speculation on his part that road-building is the next major planning issue is something the tribunal is not prepared to do given the facts. The tribunal is more apt to believe (based on the evidence) that the Respondent is more interested in maintaining his access to public lands by way of the lands covered by the Claim.

The tribunal is unable to accept that the Respondent has staked a claim with the intention of using it as mining land or for the mineral industry. The Respondent’s evidence simply does not add up to that conclusion. There is in fact no evidence to show that the Respondent is using the land for mining purposes. Indeed, when questioned about the fact that he had not done any assessment work, he indicated that he could not while the matter was before the Commissioner. This is wrong as there is nothing in the **Act** to prevent the Respondent from carrying out the necessary assessment work while pending proceedings are in effect. There is only a risk to him that the assessment work might be lost if the Claim is lost. Pending proceedings status does not stand in the way of carrying out the work. The Respondent’s evidence regarding assessment work was conflicting and not reliable. On the one hand he indicated that the Applicants would be interested in carrying out the work – which was strongly denied by them. On the other hand, the Respondent indicated that simply clearing the lines would be sufficient assessment work to keep the Claim alive. The tribunal is not satisfied that the Respondent is serious about carrying out assessment work on the Claim, given a pattern which is described below – the value of such work for the 8 units here amounting to \$3,200.00. Work could be spaced out so that the claimholder could perform work costing approximately \$130 per month.

The Respondent has on two occasions not seen fit to carry out assessment work. For a previously held claim he alleged that he was under financial hardship. Whether financial hardship actually prevented him from carrying out the work was not proven to the tribunal's satisfaction. The Respondent did say that claims that had expired could be re-staked. The tribunal has the impression that this is a pattern for the Respondent – a pattern that gives him easy access to otherwise closed private lands and allows him to maintain that access over two-year intervals. The tribunal got the impression that the **Act** in general, and the Claim in particular, are being used for a purpose other than for mining and that the Respondent's Claim activity grew out of a need to access old fishing and hunting areas. The Respondent has lived in the area for some time and has enjoyed certain outdoor activities in and around Basshook Lake. Getting to that lake required him to cross the land of others. The evidence supports the tribunal's view that when the land ownership started to change he became fearful of losing the access he had enjoyed in the past. Staking a mining claim with its requirement to carry out assessment work would allow him to access the Crown lands and the environs of Basshook Lake.

It was clear from his evidence that carrying out assessment work could require minimal effort. Indeed, if one failed to carry out the necessary assessment work, one could easily re-stake the land and have another two years to go before again being required to perform the work. This may in fact be the Respondent's modus operandi as he has re-staked the lands on December 18, 2006 and not yet had that claim recorded. The tribunal described this above as a pattern involving staking, waiting out the two years and then staking again. The tribunal does not accept the Respondent's argument that a previously staked claim is evidence of his intentions. That claim too was cancelled after the Respondent failed to carry out assessment work. The Respondent tried to connect his personal financial difficulties to a lack of assessment work on the old claim on Lot 8 (1076803), which was recorded on March 22, 1996. He blamed a house fire for the lack of funds to carry out assessment work; however, the fire was in December 1998, and one would think that a serious staker would work to preserve his claim's standing during the two-year period.

The Respondent's contentions that Inco was in the area are unfounded. There is no mining activity in the immediate area. The Respondent included a letter from the MNDM dated March 11, 2005, which said that quite plainly and there is nothing before the tribunal to say otherwise. The Respondent admits that he is speculating. This is his case at its best. The tribunal is of the view that talk about speculation is a convenient means to an end in this case and that it really serves to hide the real purpose behind staking the Claim.

The tribunal is of the view that the Respondent is not acting with *bona fide* intentions as far as the Claim is concerned and that he is interested in performing only the bare minimum required to stay within the confines of the **Act** and regulations, even to the point where the Claim can lapse freeing him up to re-stake it and begin the whole process again, securing his access to public lands all the while. The Claim should therefore be cancelled.

## **Conclusions**

For all of the above reasons, Mining Claim SO-4201574 will be cancelled.

No costs shall be payable by either party to this application.

