

File No. MA 005-99

L. Kamerman)
Mining and Lands Commissioner)

Friday, the 24th day
of December, 1999.

THE MINING ACT

IN THE MATTER OF

Stakings of Mining Claims L-1227145, 1227146 and 1227149, situate in the Township of Gauthier, in the Larder Lake Mining Division, by James Gosselin, Guy Ambrose Schultz and James Richard Wardle, respectively, for recording in the names of Jacques Robert, Michael A. Tremblay, Woody Ouderkirk and Patrick Bernard Coyne, each as to a 25% interest, of which Mining Claim L-1227145 was allowed, hereinafter referred to as the "Gosselin Mining Claim L-1227145", Mining Claim L-1227146 was accepted and subsequently cancelled by the Provincial Mining Recorder on the 1st day of February, 1999, and Mining Claim L-1227149 was marked as "Filed Only" and subsequently refused, hereinafter referred to as the "Schultz Cancelled Mining 1227146" and the "Wardle Cancelled Mining Claim 1227149";

(Amended December 24, 1999)

AND IN THE MATTER OF

The stakings of Mining Claims L-1227143 by Alan Forbes and Mining Claims L-1227144 and L-1226813 by James Forbes, all situate in the Township of Gauthier, in the Larder Lake Mining Division, each to have been recorded in their own names, with L-1226813 having been refused and subsequently recorded, hereinafter referred to as the "J.Forbes Recorded Mining Claim"; and L-1227143 and 1227144 having been marked as "filed only" and subsequently refused by the Provincial Mining Recorder, hereinafter referred to as the "A. Forbes Filed Only Mining Claim 1227143" and the "J. Forbes Filed Only Mining Claim 1227144";

(Amended October 19, 1999)

AND IN THE MATTER OF

Subsection 44(2) and clause 43(2)(a) of the **Mining Act** and Ontario Regulation 7/96;

B E T W E E N:

ESTATE OF CARL P. FORBES, A. FORBES and J. FORBES
Disputants and Appellants of
the First Part

(Amended September 17, 1999)

- and -

MICHAEL A. TREMBLAY, JACQUES ROBERT,
WOODY OUDERKIRK and PATRICK BERNARD COYNE
Respondents and Appellants of
the Second Part

AND IN THE MATTER OF

An appeal by Carl Forbes pursuant to subsection 112(1) of the **Mining Act** from the decision of the Provincial Mining Recorder, dated the 1st day of February, 1999, for a declaration that the Gosselin Mining Claim L-1227145 be declared invalid and for the recording of the A. and J. Forbes' Filed Only Mining Claims 1227143 and 1227144;

AND IN THE MATTER OF

An appeal by Michael Tremblay pursuant to subsection 112(1) of the **Mining Act** from the decision of the Provincial Mining Recorder, dated the 1st day of February, 1999, for an order cancelling the J.Forbes Recorded Mining Claim L-1226813 and for a declaration that the Schultz and Wardle Cancelled Mining Claims 1227146 and 1227149 be recorded.

(Amended October 19, 1999)

O R D E R

1. THIS TRIBUNAL ORDERS that the dispute and appeal of the Estate of Carl P. Forbes, dated the 5th day of February, 1999, against the recording of Gosselin Mining Claim L-1227145, be and is hereby dismissed.

2. THIS TRIBUNAL FURTHER ORDERS that the appeal of Michael Tremblay, dated the 2nd day of March, 1999, from the decision of the Provincial Mining Recorder to not record the Schultz Mining Claim 1227146, be and is hereby dismissed.

3. THIS TRIBUNAL FURTHER ORDERS that the appeal of Michael Tremblay, dated the 2nd day of March, 1999, from the decision of the Provincial Mining Recorder to not record the Wardle Mining Claim 1227149, be and is hereby dismissed.

4. **THIS TRIBUNAL FURTHER ORDERS** that the notation of "Pending Proceedings", which is recorded on the abstract of Mining Claim L-1227145, to be effective from the 5th day of February, 1999, be removed from the abstract of Mining Claims L-1227145.

5. **THIS TRIBUNAL FURTHER ORDERS** that, notwithstanding that no notation of "pending proceedings" has been placed upon the abstract of Mining Claim L-1226813, the aforementioned Mining Claim 1226813 shall be deemed to have been subject to a notation of "pending proceedings" and in fact was subject to proceedings pending before the tribunal commencing March 2, 1999, within the meaning of subsection 67(2) of the **Mining Act**.

6. **THIS TRIBUNAL FURTHER ORDERS** that the time during which the issues concerning Mining Claim L-1227145 were pending before the tribunal, being the 5th day of February, 1999 to the 10th day of January, 2000, a total of 340 days, be excluded in computing time within which work upon Mining Claim L-1227145 is to be performed and filed.

7. **THIS TRIBUNAL FURTHER ORDERS** that the 7th day of January, 2002, 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-1227145, in the amount set out in Schedule "A" attached to this Order, pursuant to subsection 67(3) of the **Mining Act** and all subsequent anniversary dates are deemed to be January 7 pursuant to subsection 67(4) of the **Mining Act**.

8. **THIS TRIBUNAL FURTHER ORDERS** that the time during which the issues concerning Mining Claim L-1226813 were pending before the tribunal, being the 2nd day of March, 1999 to the 10th day of January, 2000, a total of 315 days, be excluded in computing time within which work upon Mining Claim L-1227145 is to be performed and filed.

9. **THIS TRIBUNAL FURTHER ORDERS** that the 11th day of May 2001, 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-1226813, in the amount set out in Schedule "A" attached to this Order, pursuant to subsection 67(3) of the **Mining Act** and all subsequent anniversary dates are deemed to be May 11 pursuant to subsection 67(4) of the **Mining Act**.

10. **THIS TRIBUNAL FURTHER ORDERS** that no costs shall be payable by either party to this dispute and appeal.

11. **THIS TRIBUNAL FURTHER ORDERS** that this Order shall be effective on the 10th day of January, 2000, pursuant to subsection 129(2) of the **Mining Act**.

12. **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**.

DATED this 24th day of December, 1999.

Original signed by

L. Kamerman
MINING AND LANDS COMMISSIONER

SCHEDULE "A"

Mining Claim	# Units	Amount of Work in Dollars	Due Date
L-1227145	1	\$400.00	January 7, 2002
L-1226813	1	\$400.00	May 11, 2001

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AND IN THE MATTER OF

An appeal by Michael Tremblay pursuant to subsection 112(1) of the **Mining Act** from the decision of the Provincial Mining Recorder, dated the 1st day of February, 1999, for an order cancelling the J. Forbes Recorded Mining Claim L-1226813 and for a declaration that the Schultz and Wardle Cancelled Mining Claims 1227146 and 1227149 be recorded.

(Amended October 19, 1999)

REASONS

This matter was heard on October 19, 1999 in the Larry Brown Room (formerly the Blue Room) of the Royal Canadian Legion, Summerhays Avenue, Kirkland Lake, Ontario.

Appearances:

James Harold Forbes

On behalf of the Estate of Carl Forbes, and the disputant, Alan Forbes and on his on behalf as appellant

Michael Tremblay and
Jacques Robert

On their own behalf and on behalf of the Respondents

Overview and Preliminary Background Facts

This matter arises out of a series of competitive stakings which occurred in Gauthier Township on June 1, 1998. According to the Provincial Mining Recorder an "area sufficient for the staking of four minimum sized mining claim, more or less" came open for staking after certain mining claims forfeited to the Crown and were then reopened for staking.

Leave to Dispute Queenston Claim Granted December 7, 1998

In the materials filed by the deceased appellant, Carl P. Forbes, there are two decisions of the Provincial Mining Recorder dated February 1 and February 9, 1999, respectively, which address stakings on the lands having come open for staking on June 1, 1998. While not identified in the course of the hearing on the merits as such, the decision dated February 9, 1999 involves the recorded claim L-1227181 of Queenston Mining Inc., which had been disputed at first instance by both Carl P. Forbes and Michael Tremblay. This matter was in fact, the subject matter of an earlier file with the tribunal, MA-039-98, pursuant to paragraph 48(5)(c)(ii), of the **Mining Act**, in which Mr. Tremblay sought and received leave of the tribunal to file a dispute with the Provincial Mining Recorder, notwithstanding that the recorded claim had been on record for more than sixty days.

The existence of this other file is noteworthy, as will be seen, in that it was not tracked either by the tribunal as to its final disposition, nor was notice of the outcome given by the Provincial Mining Recorder, which is not strictly required, but would have been of assistance to the tribunal in its record keeping. Any appeal arising from the hearing of the dispute, for which leave had been given, would have become part of file MA-039-98, and it may be arguable that, insofar as the appeal of Carl P. Forbes involves the James Forbes Mining Claim 1227144, this earlier Queenston matter might have been regarded as revived.

Facts Related to this Appeal, MA-05-99

Taken from discussion in the decision of the Provincial Mining Recorder, dated February 1, 1999 (Ex. 1), there appear to have been a number of staking parties on the ground during the morning of June 1, 1998. However, the facts giving rise to the matter currently before the tribunal were handled in a manner as to involve only two groups of parties, and were taken at the time to involve approximately three quarters of the lands which had come open for staking.

Two hearings were held by the Provincial Mining Recorder, on January 12, 1999 and on January 13, 1999, resulting in two decisions dated February 9 and February 1, 1999, respectively. The former, involving those mining claims referred to in tribunal file MA-039-

98, involved the north east quarter of the lands open for staking, with groups of parties, Tremblay et. al. and Forbes, appearing as disputants and Queenston Mining Inc. defending the recording of its claim L-1227181. The resulting decision of the Provincial Mining Recorder saw the Queenston mining claim remain on record.

The appeals currently before the tribunal were understood to involve the remaining three quarters of the lands open for staking, being the northwest, southwest and southeast areas, respectively. To set the stage for the descriptions set out below, it is helpful to know that Highway 566 appears to run at a southwesterly angle through almost through the centre of the lands available, as a north/south axis. Its actual location will be discussed in more detail below, but it is also undisputed that the width of the highway, along with the rights of way on either side, has allowed for a considerable cleared area. Although several of the groups of eastern stakings see their common boundary are off-set to the north when compared with the common boundary of the western stakings, it is not disputed that a clearing occurs near or at this location, being partially due to the location of a scrap yard or refuse area.

Details of Stakings

Michael Tremblay, along with the other respondents, Jacques Robert, Woody Ouderkirk and Patrick Coyne, caused, for purposes of this appeal, three mining claims to be staked initially without tags, to which the following tag numbers correspond: 1227146 by Guy Schultz, located within the south east portion available; 1227145 by James Gosselin, located within the north west portion available; and 1227149, staked by James Wardle, located within the south west portion available.

The Provincial Mining Recorder accepted the Gosselin staking of 1227145, which was ordered continued after that hearing; initially accepted that of Schultz, being 1227146, which was subsequently cancelled after the hearing; and refused at all times that of Wardle, being 1227149.

On the same date, and similarly without tags initially, Alan Forbes staked Mining Claim 1227143, located within the north west portion available, and coinciding to some extent with that of Gosselin, commencing at 9 a.m., despite what is found on the application to record; James Forbes staked Mining Claim 1227144, located within the east portion of the available lands, but appearing to straddle both north and south portions, coinciding with that of Schultz and with that of Queenston, the Forbes Claim being one unit in size. Later that day, James Forbes staked Mining Claim 1226813, located within the south west portion of the available land, and coinciding with that of Wardle, although indicating east and west boundaries of merely 280 metres.

The Gosselin Mining Claim 1227145 was completed at 9:05 a.m. on June 1, 1998. Mr. Gosselin had five helpers being, Henri Talon, Rodger Stewart, Derrick Peachey, Dan Laverdur and Pat Coyne. The Provincial Mining Recorder accepted this Mining Claim for recording at first instance. After the hearing of the dispute of this matter, filed by Carl P. Forbes, the Provincial Mining Recorder dismissed the dispute and held that Mining Claim L-1227145 should remain on record.

The Schultz Mining Claim 1227146 was completed at 9:09 a.m. on June 1, 1998. Mr. Schultz had two helpers, R. Williams and Vincent Chan. The Provincial Mining Recorder accepted this Claim for recording at first instance. After hearing the dispute filed by Carl P. Forbes, the Provincial Mining Recorder allowed the dispute and cancelled claim 1227146.

The Wardle Mining Claim 1227149 was completed at 9:10 a.m. on June 1, 1998. Mr. Wardle had two helpers, Chris Roy and Chad Harvey. The Provincial Mining Recorder marked this Claim as "filed only" as it partially overstaked Mining Claim 1225506, which was completed at 9:08 a.m. For reasons not clear from the record, Mining Claim 1225506 was cancelled pursuant to subsection 46(4), after a dispute filed by Carl P. Forbes was dismissed. Carl P. Forbes also filed a dispute against Mining Claim 1227149 and after a hearing the Provincial Mining Recorder allowed the dispute and cancelled the claim.

The J. Forbes Mining Claim 1226813 was completed at 11:51 a.m. on June, 1, 1998. James Forbes was assisted in this staking by Alan Forbes. The Provincial Mining Recorder marked this Claim as "filed only" as it overstaked Mining Claim 1227149, which had a completion time of 9:10 a.m. Mr. Tremblay et. al filed a dispute in this matter, which was dismissed and Claim 1226813 was accepted for recording.

The James Forbes Mining Claim 1227144 was completed at what is indicated to be 8:10 a.m. on June 1, 1998. It was later accepted that 9:10 a.m. was intended. J. Forbes was assisted in this staking by four helpers, Carl P. Forbes, Kevin Croxall, Mike Lauzon and Carl Forbes. The Provincial Mining Recorder marked this Claim as "filed only" at first instance, noting that its east portion overstakes 1227146, which was completed at 9:09 a.m.

The Alan Forbes Mining Claim 1227143 was completed at what was indicated to be 8:10 a.m., but later recognized to have been 9:10 a.m. on June 1, 1998. Carl P. Forbes, Rachael Forbes, Dave Roberge and Nick Cepesko Jr. assisted. The Provincial Mining Recorder marked this claim as "filed only" having noted that 50 % of it overstakes 1227145, which was completed at 9:05 a.m. and the southern 50 % overstakes 1227149, which was completed at 9:10.

Issues:

1. Can a mining claim be reasonably staked, while under competition and not involving any corners located within water, in ten minutes or less?
2. Can a staker ride in a truck while staking over portions of his or her claim, if helpers are blazing the lines? If the answer is yes, does it make a difference if the route taken by the vehicle does not follow exactly the boundaries of the mining claim under staking?
3. What findings of fact can be made concerning the conditions on the ground with respect to the various mining claims staked on behalf of Tremblay et. al?
4. Does the use of pre-inscribed metal plates, nailed to the mining claims posts constitute commencing inscriptions prior to the commencement of staking?

5. Is it necessary to obtain the permission of the surface rights owner prior to staking? If the answer is yes, does the failure to do so invalidate the claim?
6. How fast can a helper be expected to blaze a prepared line?
7. What are the obligations required by section 112 of the **Mining Act** when filing an appeal from a decision of the Provincial Mining Recorder?

Preliminary Matters

The tribunal is disturbed to report that the hearing of these appeals has taken place without the listing of Queenston Mining Inc. as a party, nor having listed the Queenston Mining Claim L-122781, involved in tribunal file MA-039-98, in the title of proceedings. This oversight only serves to add to an earlier error made in the course of the application for leave to file a dispute against the Queenston Mining Claim. In that case, a hearing was held on December 7, 1998, and subsequent decision to grant leave issued on the same date, at which only Michael Tremblay and Carl P. Forbes on behalf of Strike Minerals Inc. were in attendance at a telephone conference hearing of the matter. Mr. Tremblay and his partners and the Ministry of Northern Development and Mines and Strike Minerals Inc. were identified erroneously by the tribunal as parties to the proceeding.

Queenston was subsequently notified in writing of the tribunal's decision and attuned to the jurisdiction of the tribunal, notwithstanding that it had not been heard from on the merits of the application for leave. Its principal and president, C.E. Page, in a letter dated December 14, 1998, stated that it would not request that the matter be reopened.

The information in the various notices of appeal in this matter, filed in the office of the Provincial Mining Recorder by Mr. Tremblay and Carl P. Forbes and forwarded to the tribunal bears examination. The covering letter accompanying the appeal of Mr. Tremblay may have an error in the number, referring to L-1227146 and L-1227129. This latter number was likely meant to be L-1227249, which is the Wardle Mining Claim. In the Notice of Appeal, Mr. Tremblay states under the area which requires *specify the matter being appealed (identify the property)*: "In the matter cancelled claims L1227146 and L1227149 by a decision of the Mining Recorder dated Feb 1/99", and further below under the area which requires, *state briefly the reasons for the appeal*: "I disagree with Mr. Spooner's reasons for cancelling these claims and will prove that a claim line can be blazed to the 'letter of the law' within four (4) minutes."

Carl P. Forbes filed two Notices of Appeal, both from the decision of the Provincial Mining Recorder dated February 1, 1999. In the Notices, Mr. Forbes states, for the first appeal the following section which specifies: *specify the matter being appealed (identify the property) was filled out as follows*, "Claim L-1227145 stands recorded over Alan Forbes' claim 1227143, Gauthier Township", and further states in the area which requires the appellant to *state briefly the reasons for the appeal*: "Roy Spooner accepted L-1227145 to be recorded yet it was admitted that Mr. Gosselin did not go from his #2 post to this #3 post which is all in the bush - he was driven by truck". Similarly, in the second appeal, in the section requiring *specify*

the matter being appealed (identify the property): Mr. Forbes has stated, "The refusal of recording Jim Forbes' claim 127144 Gauthier Township", and in the area which requires the appellant to *briefly state the reasons for the appeal:* "Jim Forbes' claim 1227144 should be recorded. The time of his claim sets precedence (**sic**) over all other overlapping claims".

J. Forbes Mining Claim L-1227144 overlaps that of Schultz in the southeast and has the appearance of overlapping with that of Queenston in the northeast. This observation is set out in this manner, as will be seen below, the tribunal had been advised that there was no overlap with a mining claim staked by Michael Tremblay bearing number 1235349.

In an attempt to extract which threads of these various stakings are properly under appeal in the current matter, the tribunal notes that the decision of the Provincial Mining Recorder dated February 1, 1999 involves only those claims of Tremblay et al. and of Forbes et. al. Queenston was not a party to that proceeding.

This is highlighted for the reason that Queenston has not been made a party to this matter (MA 005-99) nor was it notified of these proceedings. The matter of the overlap of Forbes 1227144 with Queenston 1227181 is considered.

In his decision of February 9, 1999, that dispute with Queenston, Tremblay and Forbes, the Provincial Mining Recorder stated at page 3:

Also, in a telephone conference with the Mining and Lands Commissioner (file MA 039-98, Dec 7/98) the Commissioner was advised that there was no overlap between Jim Forbes and Michael Tremblay. On page 3 of an Order granting Mr. Tremblay leave to file his dispute the Commissioner states:

"... MR. FORBES INDICATED THAT TOM O'CONNOR CONDUCTED AN INSPECTION OF THE AREA WHICH ESTABLISHED THAT THERE WAS NO OVERLAP AS BETWEEN JAMES FORBES AND MICHAEL TREMBLAY."

The point of the information given the Commissioner is that Tremblay directly overlaps the Jones claim (Queenston). If Forbes does not overlap Tremblay then he does not overlap L 1227181.

The Notice of Appeal Form

The Notice of Appeal form in use at the time these appeals were filed is substantively the same form as that found in O.Reg. 119/91, being Form 24, which was repealed in 1996 [O.Reg. 506/96, s. 1]. Section 1 of that regulation provides that "[a]ny form required to be prescribed under the Act shall be in the form approved by the Minister and provided by the Ministry," with certain exceptions listed, none of which apply to appeals to the tribunal. The tribunal must assume, since the Notice of Appeal form was filed with the Office of the Provincial Mining Recorder, that this is the form which has been approved and provided.

Based upon the manner in which the three Notices of Appeal were filed in this matter, the tribunal finds that it is troubled by the design of the form. Briefly put, it is too sparse in the information required section, or alternatively, it has not been completed in a manner which allows the tribunal or a party being served (more on this below) with sufficient information to discern all of the affected parties and/or lands. This is quite problematic, particularly in cases of competitive stakings and more so in areas of unsurveyed territory where overlapping stakings are very common and equally confusing to sort out.

As there is not a perfect overlap between any of the competing claims in these appeals, or with that of Queenston, it becomes very difficult to sort out which lands may be affected. In fact, for example, that Carl P. Forbes has filed two Notices of Appeal, each referring to the Provincial Mining Recorder's decision of February 1, 1999. The references to 1227145 and 1227143 in one of the Notices ensures certainty that the appeal relates to the recording of Gosselin's claim for Tremblay. The second Notice refers only to the refusal to record Jim Forbes 1227144 claim, making no mention of any one of the claims which this overlaps. Perhaps, put into context, this too could be regarded as complete, in that it overlaps with Schultz' claim for Tremblay, to a large extent, and with Wardle's claim for Tremblay to a lesser extent, neither of which were recorded following the decision of the Provincial Mining Recorder of February 1, 1999. It also overlaps with the Gosselin claim for Tremblay, which the order of February 1, 1999 continues. In addition, the 1227144 claim also overlaps with the Queenston recorded claim which is dealt with in the February 9, 1999 order.

Another fact which obscures this situation is the fact that Carl P. Forbes' Notices of Appeal are both dated February 3, 1999, which predates the second order of the Provincial Mining Recorder, dated February 9, 1999. Carl P. Forbes did not file additional or supplementary Notices of Appeal after that order was issued.

What makes this whole situation even more confusing is the fact that, although the Provincial Mining Recorder does forward along with the Notice[s] of Appeal all documentation he or she feels is relevant, there is no statutory requirement to do so and as a result, this process does not always capture all relevant material.

In the current matter, the tribunal frankly had no idea of the scope of these appeals until the parties had completed their filings, pursuant to the tribunal's Order to File dated the 5th day of March, 1999, which was completed on the 10th day of May, 1999. Carl P. Forbes kindly supplied both the February 1st and February 9th, 1999 decisions, although the reason why he did so is confusing since he did not on the surface appear to be intending to appeal the decision involving Queenston.

The tribunal raises the matter of the content of the Notice of Appeal for the simple reason that in future, it would prefer that the appellants provide more thorough information from which a Title of Proceedings can be drafted, being the opening descriptions at the start of an Order which accurately characterize the matter. This style of drafting is designed to assist the parties in knowing the case they have to meet in preparing their evidence. It is also hoped that if any errors are found, these will be pointed out to the tribunal for subsequent amendment.

Ideally, the tribunal would like to know the number(s) of any mining claim(s) which are recorded as a result of the decision of the Provincial Mining Recorder. It would also be useful to know if the mining claim(s) under appeal overlap(s) with a series of other mining claims, and if so, what are the other claim numbers, and perhaps most importantly, whether certain portions of the mining claim under appeal are not being pursued. It is pointed out that sketches accompanying the Applications to Record do not contain this information, and yet it is very important in assisting the tribunal to ensure that all those who should have notice of the proceedings are identified.

Requirements of Subsection 112(3) of the **Mining Act**

Subsection 112(3) of the **Mining Act** requires that the person or party appealing a decision of the Provincial Mining Recorder serve a copy of the Notice of Appeal "upon all parties interested". There is currently no process adopted by the tribunal which tracks this obligation to ensure that service has been effected. Not only is this an error on the part of the tribunal for jurisdictional purposes, but it is also a problem from the perspective of ensuring that all interested parties, meaning all those who could be affected by a successful appeal, have notice of the appeal and are made a part of the hearing process.

The tribunal has, in its *Procedural Guidelines For Proceedings under the Mining Act*, a sample Affidavit of Service which can be readily completed by the appealing party and be sworn by either a Provincial Mining Recorder or any other individual who is a Commissioner for Taking Affidavits.

In future, the tribunal will be seeking to have filed Affidavits for Service for all appeals from decisions of Provincial Mining Recorders. From this, the tribunal will be able to determine who the parties are, from a preliminary standpoint at least, in the mind of the appellant. The tribunal has advised the Provincial Mining Recorders of this fact and seeking their assistance in this regard.

Findings

In light of the foregoing discussion and analysis, and particularly in light of the date of Carl P. Forbes Notices of Appeal pre-dating the Provincial Mining Recorder's Order of February 9, 1999, the tribunal is satisfied that this appeal does not involve Queenston Mining Inc. The tribunal further finds that the matter has proceeded properly with respect to determination of the issues raised by the various Notices of Appeal, and those discussed at the hearing on the merits.

As to the matter of service, pursuant to subsection 112(3) of the Notice of Appeal, the tribunal finds that while there is no evidence of compliance with this requirement, in substance, through its Appointment for Hearing documentation, actual notice has been received. The tribunal also derives additional comfort from the provisions of section 136 of the **Mining Act**, which involves the powers of a Court reviewing a decision of the tribunal. This section states:

136. Where the validity of a proceeding before the commissioner or a recorder is called into question in any court on the ground of any defect of form or substance or failure to comply with this Act or the regulations, although the defect or failure is established, the court shall not, if no substantial wrong or injustice has been thereby done or occasioned, invalidate the proceeding by reason thereof, but shall confirm the proceeding and upon such confirmation, the proceeding shall be and be deemed to have been valid and effective from the time when it would otherwise have been effective but for such defect or failure.

New Hearing

The hearing on the merits proceeded on the morning of October 19th, 1999 with what could be described as a summary of what took place in the hearing before the Provincial Mining Recorder. There were no in-person witnesses present, other than Messrs. Tremblay, Robert and James Forbes and even those witnesses who did give evidence at the earlier hearing did not appear. The tribunal was referred to the audio taped hearing before Mr. Spooner, which was filed as an exhibit.

Prior to the commencement of the hearing, it had been pre-arranged to have the evidence of Messrs. Schultz and Wardle via telephone conference, as both men were working in London, Ontario and were not otherwise available. The time set up for this evidence had been pre-arranged to 3 p.m. on October 19th, 1999.

While the hearing before the tribunal is, by virtue of section 113 of the **Mining Act**, a new hearing, meaning that parties are to proceed as if there had not been a hearing before the Provincial Mining Recorder. While there are certain strategic or legal advantages to having a new hearing, such as where the burden of proof lies, or legislative protections of the applicability of the **Statutory Powers Procedure Act**, which does not apply to hearings of the Provincial Mining Recorders, nonetheless, the parties are entitled to present their cases as they see fit and the information presented, be it evidence, submissions or summary of prior evidence, will be dealt with as best as circumstances allow.

View of the Property

The time left during the day of the hearing before the telephone conference call was used, at the invitation of Mr. Tremblay and with the agreement of Mr. Jim Forbes, to view the area of the subject mining claims pursuant to section 119 of the **Mining Act**. Of particular interest was to demonstrate by Mr. Tremblay that it was possible to drive around part of the perimeter of Mr. Gosselin's 1227145, with Highway 566 being along part of the south line and a bush road being it the vicinity of the western and northern lines, to allow access to the fourth and first posts only some small distance away.

Also seen was the orientation of Highway 566 to the boundary line(s) of several of the claims, where pickets were employed along the cleared areas. The site of the junk yard, although located behind a fence and gate, was also seen.

The following observations were made in regard to what was seen. Highway 566 was in the orientation of an arc, as it passed through the approximate centre lines between the Tremblay claims, running west to east. This arc moved north and then south, so that the expanse of the highway and cleared area which coincided with the lines of the various mining claims was actually considerable.

Various corner posts and pickets were located; pre-cut lines through the bush, albeit overgrown by this time, were pointed out. There was an inconsistency found between Mr. O'Connor's sketch and the location of one of the posts on the ground.

Evidence, Submissions and Tribunal's Findings

Forbes Mining Claims 1227143 and 1227144 - Use of Pre-Inscribed Tags

James Forbes stated that prior to June 1, 1999, he and the Forbes team basically prepared all of the claims staked. Mr. Forbes stated that they attempted to contact the surface rights owner with respect to the junk yard and were unable to do so. This resulted in his team bringing in their own posts, so as not to remove any trees. All lines were brushed and flagged prior to opening. No pre-blazing was done, however. Mr. Forbes stated that he prepared only one claim himself and had common boundaries with the east line of the James Forbes claim and with the east line of the Alan Forbes claim. Alan Forbes also prepared his claim in advance of staking.

Mining Claim 1227144 was commenced by James Forbes at 9 a.m., with the four helpers listed, using tags pre-made from aluminium pie plates, with the name of the staker, the Township name, post number and date pre-inscribed. The time was written only on in the course of the staking itself. Mr. Forbes stated that he had to cross highway 566 moving from his number 2 to number 3 post as well as from the 3 to the 4. Aside from that, the claim was mostly in the bush. During the staking, his helpers blazed and with the crossing of the highway being at 90 degrees, perhaps only one picket was necessary. It was completed in ten minutes.

Mining Claim 1227143 was staked by James Forbes' son, Alan Forbes. Again, there were four helpers, who had been in ahead of time clearing the brush. Mr. Forbes was not certain whether or not posts were also brought in for this claim, since surface rights were alienated from the Crown. Mr. Carl P. Forbes had given evidence at the hearing before Mr. Spooner, as he had been blazing the common line. It was completed in ten minutes as well.

The staking language used in O.Reg. 7/96 and its predecessor, 115/91, contains both the active voice as in "the perimeter of the mining claim must be clearly marked *during staking* by plainly blazing the trees on two sides only in the direction of travel and by cutting

the underbrush along the boundaries of the claim"[ss. 8(4)] as well as the passive voice, as in "14(1) Every claim post *used for staking* a mining claim must, (a) stand 1.2 metres above the ground [when erected¹]; (b) be squared or faced on four sides for 30 centimetres from the top; and (c) be squared or faced for 10 centimetres across each side", the latter particularly so when read with, "14(3) Commercial timber may be used for claim posts in areas where it is impracticable or undesirable to cut down trees."

Without going into the question of whether the clearing of the underbrush is required as an activity which must be performed during staking, which is one grammatical way of reading the relevant section, the tribunal will look to the provisions for inscriptions, to determine whether they are drafted in a passive or active voice. Subsection 15(3) states:

15. (3) A licensee staking a claim without using metal tags must inscribe on each corner post the number of the post, his or her name and license number and the date and time of erecting the post.

This is contrasted with the provisions for using tags:

15. (1) A licensee staking a claim using metal tags must affix to each corner post the appropriately numbered tag and inscribe on each such post his or her name and license number and the date and time of erecting the post.

Moving back to the rules regarding staking lands open for 24 hours or more or less than 24 hours:

10. (1) The following rules apply to the staking of a mining claim in areas that have been open for staking for 24 hours or more:

...

2. Only the recording licensee or another licensee may erect, inscribe or affix a tag to a corner post, line post or witness post.

And:

10. (2) The following rules apply to the staking of a mining claim in areas that have been open for staking for less than 24 hours:

...

.... 13

¹ These words are not included as denoting the passive voice. The act of erecting the post is active, required to occur during staking.

2. Only the recording licensee may erect, inscribe or affix a tag to a corner post, line post or witness post.

Just to ensure that the word "tag" cannot have two meanings, namely the tags with mining claim numbers which are available from the Provincial Mining Recorder and tags which can be made ahead of time from sheet metal or aluminium pie plates, the tribunal again considers the wording of subsection 15(1) reproduced above. It is concluded that the metal tags do not remove the need to also inscribe the posts with the information required, being the name, license number and date and time.

While the use of pre-inscribed tags must be regarded as clever and innovative, the tribunal concludes that the intention of the staking regulation is clear. The inscription of required information on the corner posts is not passive but active. It cannot be done in advance, but is an essential element of staking. The tribunal finds that the inscription of corner posts is an essential, active element of staking and must be done during the course of staking. Use of tags which are pre-inscribed does not meet this intent.

A comment regarding this finding. While there certainly has been an evolution in the course of amendments to the staking requirements towards attempting to do everything possible prior to the commencement of staking, there has been, in the Office of the Provincial Mining Recorder and the tribunal, an ongoing recognition that staking a mining claim is not just a running pass in the bush. Whether competitive or non-competitive, the marking of a claim must leave behind some visible sign. It is recognized that such markings will fade over time, that the underbrush will regenerate, that blazes will heal, and most unfortunately, that posts will fall over.

Tremblay et. al. Mining Claims

Mr. Tremblay stated that all lines for the claims staked by his group had been cut with a chain saw, with the deadfall being cut out to facilitate the running of the claim. The corner posts were cut and laid out at their appropriate locations. Four individuals worked for two days in preparing six claims, with clearing and pre-blazing having been done.

Mining Claim 1227145

Evidence regarding the Gosselin Mining Claim 1227145 was given by Patrick Coyne at the hearing before Mr. Spooner, which Mr. Tremblay summarized. Mr. Coyne apparently was an actual witness to part of the staking, having driven his vehicle and the staker Gosselin from west of the number 2 post, leaving him off to run to the 3, picking him up on a bush road which runs to the west of the west boundary and driving him to the 4 and back to the number 1 post. According to Provincial Mining Recorder Spooner's calculations, this time of five minutes and some seconds (the latter of which were not noted) was not unreasonable. He further found that, with four helpers, the erecting of pickets and making of blazes was entirely possible within the time described.

Mr. Tremblay stated that the east line was blazed, with post #2 being in a junkyard. Of the south line, the first 50 metres is in the yard clearing, the next 50 metres is in the bush and the remainder of the line continues along the right of way of highway 566. At this 100 metre mark, Gosselin was picked up and rode in the back of the truck. During the first leg of his truck ride, Mr. Gosselin attempted to mark his post while riding in the back of the truck, but found he couldn't do it. After erecting his number 3 post, he ran for 25 metres through the bush, where he was again picked up by the truck and he continued in this manner up the logging road. Gosselin got out to inscribe and erect his number 4, and returned to the number 1 by truck.

Mr. Forbes stated that Mr. O'Connor did the inspection after the hearing before the Provincial Mining Recorder. There is no report and Mr. O'Connor had only his field notes. Mr. Forbes stated that what he hoped to show from the inspection map (Ex. 8, Tab G) was that, while Mr. Coyne drove Mr. Gosselin around part of the claim, the map shows that 3/4 of the claim is actually in the bush or in clear cut, which requires that the staker should physically traverse it. How can a claim in the bush be staked riding in a vehicle.

Mr. Forbes submitted that it is using an unfair advantage to use a vehicle in staking, when the actual line is in the bush. Mr. Spooner's decision allowed 1.25 minutes to traverse a line, for a total of 5 minutes.

Mr. Forbes further submitted that permission of the surface rights owner had not been obtained which would have permitted the use of the trees on the land, and this should invalidate this and the other claims with corner posts in the junk yard.

Mr. Spooner calculated that it was possible, on the balance of probabilities, that the staking of this Mining Claim could be completed in the time and manner submitted. Included in his analysis were elapsed time estimates for inscription of posts (15 seconds); erection of posts (10 seconds); and travel by truck from near the #2 post to the #3 post, picking up again north of the #3 post travelling to the #4 post and returning to the #1 post (1 minute, 15 seconds). Nothing in James Forbes' submissions challenged these calculations, nor suggested that this feat was not possible. It remains, as far as elapsed time is concerned, to determine whether the tribunal is persuaded by these calculations.

Findings

It is becoming increasingly clear that those engaged in competitive staking, while required to meet the various tests set out in section 43 of the **Mining Act**, are increasingly using every available means by which to shave seconds off of the time for staking. Clearing the lines of deadfall, shrubs and young trees, often pre-blazing or flagging and pre-preparation of posts to be used are becoming common in competitive staking situations.

James Forbes has asked the tribunal to find that riding in a vehicle from post to post where the road is not located on the boundary, does not meet the staking requirements. Mr. Spooner did not deal with this submission in his findings and it is impossible to know whether it was made an issue before him. The tribunal has reviewed the requirements of the

staking regulation (O.Reg 7/96) and cannot locate either explicit wording prohibiting the use of a vehicle, nor can such an interpretation be implied. The recording licensee must be present on the ground [ss. 9(1)], but there is nothing which can be implied from the wording that the recording licensee must proceed on foot at all times during the staking.

As to whether travel within the vehicle must be exactly around the perimeter boundary of the mining claim under staking, there is nothing in the staking regulation to indicate that this must be so. When compared to staking of claims where a substantial portion of the lands are under water, there is no requirement for the boat to follow what would be the boundaries of the claim in order for the staking to be valid. All that is necessary is for the recording licensee to present him or herself at the proper location for the erection of the witness posts.

As to the matter of permission of the surface rights owner to use trees on the property, the tribunal refers to subsection 8(5) of the staking regulation, which in turn refers back to subsection 32(1) of the **Mining Act**. Essentially, these provisions provide that flagging tape may be used in areas described in subsection 32(1), such as orchards, vineyards, nurseries. It is noted that the wording of the subsection refers to crop damage, which is not an issue in a junkyard.

The tribunal dealt with a related issue in **Harper v. Bancroft and District Chamber of Commerce**, (unreported) January 15, 1996, where flagging tape was used to demarcate a boundary in deference to the surface rights owner. The tribunal found that there was no proper basis within the legislation for doing so and the recorder's section 110(6) order to blaze the boundaries remained in full force and effect.

The tribunal finds that the use of the vehicle for travel around the mining claim and lack of surface rights consent to enter does not invalidate the staking. The tribunal finds that Mining Claim 1227145 will remain on record and the appeal of Mr. Forbes with respect to this claim will be dismissed.

Mining Claim 1227146

No evidence was given at the hearing before Mr. Spooner with respect to this claim and, according to Mr. Tremblay, no one witnessed the actual staking. Mr. Tremblay stated that he was there before the staking and is familiar with the ground and layout. The perimeter of this claim is worn, as it coincides with the survey boundary fabric. The east boundary of this claim runs with the old survey boundary. Its number 2 post is at the survey pin. The line between 2 and 3 runs along the survey line until it hits another survey pin, then turns a 270 degree angle, and continues to the number 3 post.

Moving away from the survey fabric, the line between 3 and 4 runs north across the highway right of way for a distance of 75 metres. Then, it runs through the bush for a distance of 25 to 50 metres, then through the junkyard for another 25 to 50 metres, and finally through the bush to the number 4. The northern boundary runs through the bush to the number 1. Mining Claim 1227146 took nine minutes to stake, using two helpers, Chan and Williams.

It appears that Verraine was present on the ground between the 4 and 1 posts, but does not appear on the application to record. Mr. Tremblay admitted that the staking could have taken nine minutes and up to 55 or so seconds, which were not noted.

Guy Ambrose Schultz gave evidence by telephone and was affirmed as a witness. His first helper started blazing with him from his number one post. He actually fell down before he got to his number two post. The number one post was right before the highway and he wrote down everything, stood up the post and left. To get to the number two post, he had to cross the highway. Once across, there was a steep hill and a lot of trees, which made the going difficult. He inscribed his second post and erected it. The second line came back to the highway, which he crossed and his third post was not far off the highway. He inscribed his post and erected it. The third line went through an area where vehicles could park and Mr. Schultz stated that he crossed a dirt road. He inscribed and erected his fourth post and returned along the fourth line to his number one post, where he inscribed his finish time. Mr. Schultz did not recall whether he passed his second runner. Back at the number one post, he was the only person present.

Mr. Schultz stated that he did some blazing every now and then. Under cross-examination, Mr. Schultz stated that he did not recall seeing his second helper, but that all helpers were told to start at 9:00 a.m. Mr. Schultz described the features he encountered, including the hill off the highway, the bush and clearings which were along parts of his lines. The lines were cleared, and Mr. Schultz stated that he walked his claim once and ran it once before staking.

Mr. Forbes submitted that the time is awfully fast for being in the bush with only two helpers, particularly as it is not pre-blazed. As for Mining Claim 1227149, Mr. Forbes stated that he did not find evidence of staking at all, when he staked Mining Claim 1226813 to the south.

Findings

The tribunal must commence by stating that it finds Mr. Schultz to be a credible witness and has no difficulty in believing that he was able to run the perimeter of the claim in the approximately 9 minutes, although perhaps up to 9 minutes 55 seconds, which Mr. Tremblay has suggested.

The issue in the Schultz staking is one of adequate blazing or marking of the boundary of the mining claim. There were two known helpers at the time of staking, being Chan and Williams. While Mr. Tremblay suggested that Mr. Verraine was also helping on this claim, unfortunately with the passage of time, the inability of Mr. Schultz to recall much detail other than his first helper, the failure to name Verraine on the Application to Record, which would have been completed when memories were fresh, all lead the tribunal to conclude that there is insufficient evidence to sustain that there could have been three helpers present on this mining claim at the time of staking.

The other factor in this staking is the terrain. It is recognized by the tribunal that considerable preparatory work had been done by way of clearing of underbrush, marking of lines, cutting of corner posts. However, it still remains a claim of one unit in size. Although it runs along an old survey line, other than a short distance in the junk yard and the crossing of the highway, it runs largely through the bush. As was seen from the view and from the evidence of Mr. Schultz, there is a steep hill next to the highway, which would slow down not only the runner, but helpers as well.

The tribunal echoes the reasoning of Mr. Spooner in stating that blazing is the most time consuming aspect of staking. It should be noted that the terrain of Schultz' Mining Claim 1227146 was different from that of Gosselin's 1227145, discussed above. This Mining Claim does not involve large open areas where pickets can be erected, cutting precious time off of the time needed to adequately mark the boundary. It cannot be regarded as a simple matter of either doubling or halving the times discussed with Gosselin to arrive at an acceptable time for marking the boundary for Schultz. The tribunal is left to conclude that, without credible evidence of a helper or witness, and owing to the fact that Mr. Schultz must have been moving so quickly that he even failed to note his second helper, there is insufficient evidence to find that this claim has been adequately blazed so as to be in substantial compliance or deemed substantial compliance, within the meaning of section 43 of the **Mining Act**. In addition to this is the failure of the second helper to even arrive at the #1 post, which places Schultz' time of completion in further unacceptability. It should be stated that the runner must either wait for his helper before marking the completion time, or meet the helper waiting at the #1 post, in which case the completion time coincides with the arrival time of the runner.

The tribunal finds that there is insufficient evidence upon which to make a finding that Mining Claim 1227146 was sufficiently blazed, that the time and location of the second helper are unaccounted for and therefore, this appeal will be dismissed.

Mining Claim 1227149

As to Mining Claim 1227149, Mr. Tremblay highlighted that the 4 to 1 line, being the north boundary, crosses the highway at a right angle for a distance of 350 metres. The remainder is in the bush, but he is not certain of the topographic features. Wardle had two helpers in this staking.

James Richard Russel Wardle gave evidence by telephone and was affirmed as a witness. It was his evidence that he inscribed his first post and ran down his line, across the highway to his second post with no problem. The second post was located just inside the bush a short way. Again, he inscribed his post with the required information. He was fairly certain that he passed his blazer on the second line, but as he was going along the perimeter, Mr. Wardle was also blazing trees with his hatchet. At his third post, he inscribed the information, erected it and moved along his next line, blazing as he went. The north line of his claim was along the highway, so that it was only necessary to erect markers (pickets), which were already up. When Mr. Wardle arrived at his number 1 post, his blazer was already there waiting. Mr. Wardle inscribed his completion time.

Mr. Wardle confirmed that he had two helpers. To the best of his recollection, his time was twelve minutes, but Mr. Tremblay corrected him, that it had been ten minutes.

Under cross-examination, Mr. Wardle confirmed that he passed his first blazer on his second line and that his second blazer would have started at the number three post.

The tribunal asked Mr. Wardle to describe the terrain. His number one post was just behind a large pile of garbage, tires and stumps, being just off of the parking lot clearing. Mr. Wardle stated that he ran through the clearing, which was right beside the highway, through the ditches, across the highway and into the bush. He could not recall his second line very well. His third line, according to his recollections, involved a very steep uphill incline, either at the end of the line or for his fourth line. The fourth line involved coming down a steep hill to the highway, and required that he run diagonal along the highway, finally back through the woods for a short portion, before coming back into the clearing and his number one post. Asked to characterize the lines, Mr. Wardle characterized the ground as pretty rough, but it was clearly marked. By rough, he meant fallen debris as well as actual growth.

Mr. Tremblay stated that O'Connor's map is problematic. It shows merely the centre line of the roads, without depicting any open area. In contrast, the highway is 66 metres wide, and is at a much lower angle, as can be seen from the Gosselin and Schultz sketches. Mr. Tremblay stated that it was unclear what Mr. O'Connor used to measure the road, whether it was steel rod, rods and chains or GPS. Without knowing how it was done, the map could not be given much weight. Mr. Forbes countered that Tom O'Connor had been a claims inspector for the Ministry.

Findings

Again, it must be stated at the outset that the tribunal found Mr. Wardle to be an entirely credible witness.

The issue in the Wardle Mining Claim is also one of adequate blazing. The tribunal notes that the #1 post is within the junk yard, just off the highway. The east line runs through this cleared area, then throughout the highway right of way, crosses the highway at a near 90 degree angle, the south right of way and then proceeds largely in the bush until approximately 50 metres into the running of the north line back to the #1 post. Based upon the view and the sketch in the Application to Record, the cleared area is approximately 20 to 25 percent of the east boundary, with the remaining portion of the east and south boundaries in the bush. This amounts to approximately 10 to 12 percent of the 800 metres required to be run by the first helper. Again, without evidence, the tribunal is not satisfied that it can make a finding that this provides adequate opportunity to adequately blaze these two boundaries.

The situation faced by the second runner is another matter. The highway was seen to curve into an arc along the north boundary of this mining claim, so that between the right of ways and the highway itself, very little of this north boundary was in the bush, allowing for the erecting of pickets. Based upon the view, and the submissions of Mr. Tremblay, pickets could be used for approximately 350 metres of this boundary. This would result in

approximately 43 to 44 percent of the total 800 metres being in the open. It is within the realm of possibility, and the tribunal finds on the balance of probabilities, that the helper could have blazed or marked these two boundaries adequately in the time indicated. It is also helpful that Mr. Wardle could recall his helper waiting for him at the #1 post.

It is most unfortunate that Mr. Tremblay's missing blazer was not reported to have been present by Mr. Wardle on this claim. Had the first line been done by one helper, the second by a second, with the third and fourth by the third helper, the tribunal would have been in a position to find that the mining claim had been adequately marked in the field.

The tribunal finds that it has not been proved that the blazing and marking of this mining claim has been adequate in the competitive staking situation, so as to comply with the requirements of substantial compliance or deemed substantial compliance under section 43 of the **Mining Act**.

Exclusion of Time

The fact that the Tremblay Notice of Appeal requires mentioning at this juncture, as the Forbes Mining Claim 1226813 was not mentioned, and the tribunal did not seek a notation of "pending proceedings" to be placed on the abstract of this Forbes Claim. Nonetheless, it is subject to a proceeding which was pending before the tribunal, within the meaning of section 67(2). The Tremblay appeal was received March 2, 1999, so that the time during which the Forbes Mining Claim 1226813 was pending will commence on that date and be removed on the **effective** date of this Order.

The effective date of this Order will be January 10, 2000, thereby putting the parties in the same position with respect to any potential re-staking when those lands for which the appeals were not successful, namely the south east quadrant, come open for staking.

Pursuant to subsection 67(2) of the **Mining Act**, the time during which Mining Claim L-1227145 was pending before the tribunal, being the 5th day of February, 1999 to the 10th day of January, 2000, a total of 340 days, will be excluded in computing time within which work on the Mining Claims 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, January 7, 2002 is deemed to be the date for the performance and filing of the first and second units of prescribed assessment work, having a total value of \$400, on Mining claim L-1227145, and pursuant to subsection 67(4), all subsequent anniversary dates are deemed to be January 7.

Pursuant to subsection 67(2) of the **Mining Act**, the time during which Mining Claim L-1226813 was pending before the tribunal, being the 2nd day of March, 1999 to the 10th day of January, 2000, a total of 315 days, will be excluded in computing time within which work on the Mining Claims 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, May 11, 2001 is deemed to be the date for the performance and filing of the first and second units of prescribed assessment work, having a total value of \$400, on Mining claim L-1226813, and pursuant to subsection 67(4), all subsequent anniversary dates are deemed to be May 11.

Conclusions

The tribunal will be seeking the cooperating of appellants in providing as much information as possible in future on Notices of Appeal filed. In future, the tribunal will also be enforcing the requirement of subsection 112(3), with evidence that all interested parties have been served with the Notice of Appeal within the time requirements set out.

The tribunal and the Provincial Mining Recorders have considerable leeway in allowing for deficiencies in staking to be corrected under subsection 110(6) of the **Mining Act**. However, in a competitive situation, every effort must be used to adequately mark the perimeter of the mining claim. Failure to adequately blaze amounts to an unfair advantage, not one contemplated by the requirements of subsection 43(1), which states, "Substantial compliance as nearly as circumstances will permit ...". Circumstances do not permit inadequate blazing to be caught by the deemed substantial compliance provisions of subsection 43(2), in that failure to adequately blaze or mark the perimeter does not amount to a good faith attempt to comply.

It must be stated again, as has been done before, that the measures taken to shave time from the competitive stakings should not be allowed to go so far as to amount to a run in the bush. The tribunal requires evidence of the stakers, or their helpers, as to what measures were taken to adequately blaze. As evidence of this sort is so often missing from hearings, these parties and all stakers are encouraged to meet and discuss with their helpers after staking has been completed, what actually took place. Perhaps this added step will serve to assist parties in having recollections more firmly planted in memory, for such eventuality as the giving of evidence at a hearing.

Until and unless the tribunal hears from an actual witness, in cases where the terrain is largely bush, it will continue to regard at least ten minutes as the time which is required to adequately blaze one line of a 16 hectare mining claim. The tribunal continues to be open to hearing differently from those who appeal decisions of the Provincial Mining Recorders or dispute recorded claims, but it would be of great assistance, not only to the tribunal, but to the cases of the parties concerned, to have such witnesses provide actual facts as to what took place. In this regard, many strides have been made in the hearing of such matters. As can be seen from these Reasons, it is possible to have witnesses give evidence by telephone. Such as course is not ideal where credibility is an issue, but in cases where the facts are simply not known or are merely guessed at by the stakers, attendance in one form or another, by helpers would be crucial.

For these reasons, the tribunal has found that the Gosselin Mining Claim 1227145 will be allowed to remain on record and the Forbes appeal is dismissed; the Schultz Mining Claim 1227146 will remain unrecorded; the Wardle Mining Claim 1227149 will remain unrecorded thereby permitting the Forbes Mining Claim 1226813 to remain on record.

There are no costs awarded to either party in this dispute and appeal.

The effective date of this Order, pursuant to subsection 129(4) will be January 10, 2000, thereby placing the parties in a similar position with respect to any potential competitive staking.