



**In the matter of the Mining Act before the  
Provincial Mining Recorder:**

**IN THE MATTER OF**

**Mining Claims TB 3008529 situated in the Areas of Pout Lake, Zapus Lake, Sun Lake and McLeod Lake; and TB 3008530 situated in the Area of McLeod Lake, Thunder Bay Mining Division, hereinafter referred to as the “mining claims”;**

**AND IN THE MATTER OF**

**“Filed Only” application to record mining claims 4201016, 4201017, 4201031, 4201032, 4209072, 4209073, 4209086 and 4209087 covering the mining claims on record, hereinafter referred to as the “filed only mining claims”;**

**AND IN THE MATTER OF**

**A dispute against the mining claims pursuant to Section 48 of the Mining Act, RSO 1990, filed by**

**Cliff Hickman (Disputant)**

**- against the mining claims of record held by -**

**Vaughn Donald Arsenault (Respondent)**

**UPON consideration of the evidence submitted by the parties**

**I FIND that the dispute should be allowed, and therefore**

**I ORDER that mining claim TB 3008529 and TB 3008530 is deemed abandoned as provided in Section 71, subsection 1, of the Mining Act RSO 1990, and the record is to be marked cancelled.**

**I FURTHER ORDER**

**that the filed only mining claims 4201016, 4201017, 4201031, 4201032, 4209072, 4209073, 4209086 and 4209087, are accepted and recorded effective the date the application to record was first received.**

**I FURTHER ORDER**

**that the time for performing and reporting assessment work on the filed only mining claims is excluded for the period during which proceedings were pending, being a total of 602 days**

**I FURTHER ORDER**

pursuant to Subsection 67(3) of the Mining Act, RSO 1990, October 22, 2009 is fixed as the due date for the first unit of assessment work to be performed and filed on each of the filed only mining claims, and all subsequent anniversary dates are adjusted to October 22nd of each year for the said claims.

Reasons for this Order are attached.

Dated at the Provincial Recording Office  
this 22nd day of October 2007.

*original signed by Sheila T. Lessard*  
**Sheila T. Lessard**  
Provincial Mining Recorder

**NOTE: SECTION 112 OF THE MINING ACT, RSO 1990, PROVIDES THE PARTIES WITH A RIGHT OF APPEAL TO THE MINING AND LANDS COMMISSIONER. AN APPEAL MUST BE FILED WITHIN 30 DAYS OF THE DATE OF THIS DECISION.**

**AND TAKE NOTE THAT UNLESS AN APPEAL IS FILED WITHIN 30 DAYS OF THE DATE OF THIS DECISION, SUBSECTION 110(5) OF THE MINING ACT MAKES THIS DECISION FINAL AND BINDING.**

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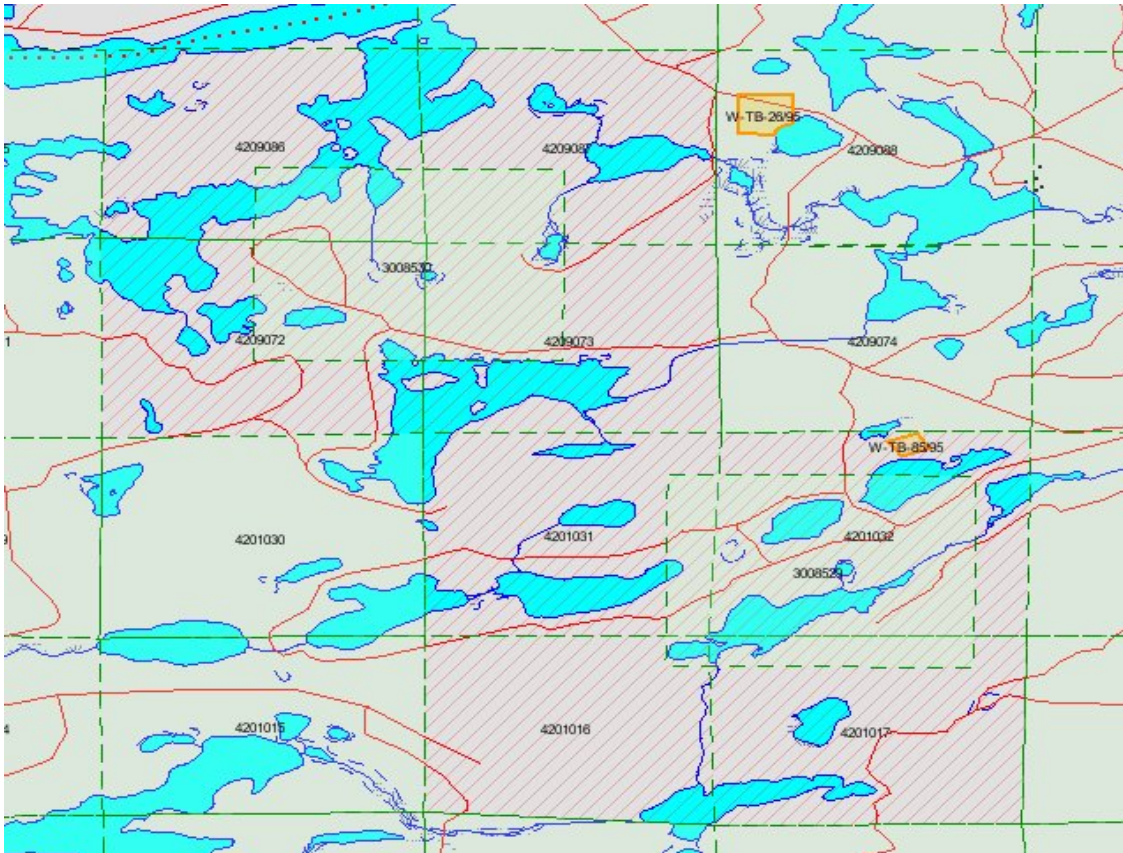
**Background**

On February 22, 2006, applications to record the staking out of mining claim 3008529 and 3008530 were filed by Real David Arsenault, recording licensee, recording 100% interest in the name of Vaughn Arsenault as recorded holder. Both claims were recorded as being located in the unsubdivided areas of Zapus Lake and McLeod Lake, Thunder Bay Mining Division. The size of both claims is recorded as 256 hectares measuring 1600 metres x 1600 metres. Staking of mining claim 3008529 was reported to have commenced on January 27, 2006 and completed on February 2, 2006. Staking of mining claim 3008530 commenced on January 31, 2006 and was completed on February 2, 2006. There were no staking helpers listed on Part C of the applications.

On February 28, 2006, Cliff Hickman, recording licensee, filed applications to record the staking out of 34 sixteen-unit mining claims recording 100% interest in the name of Ripple Lake Diamonds Inc. Seven of these claims were staked over part of the area covered by recorded mining claim 3008529 and 3008530 (see map inserted below). Since the Arsenault claims had an earlier completion time of staking, the Hickman claims were refused pursuant to Subsection 44(2) of the Mining Act.

Priority of completion prevails

44.(2) *Priority of completion of staking shall prevail where two or more licensees make application to record the staking of all or a part of the same lands.*  
R.S.O. 1990, c. M.14, s. 44 (2).



**Mr. Hickman’s application was taken “filed only” as per his request. On May 29, 2006, he filed a dispute alleging that mining claims TB 3008529 and TB 3008530 was illegal or invalid in whole or in part for the following reasons:**

*Claim 3008529 does not exist on the ground. No corner post or line post of any sort can be found.*

*With respect to claim 3008530 only the four corner posts were located but no line posts, blazes, or flags between them could be found except for 100m south of the #4 Post. The #3 corner post of claim 3008530 is located 690 meters east of where it is marked on the map.*

**In addition to the dispute document, Mr. Hickman also provided signed statements by five licenced prospectors, who assisted with the staking, together with a large number of colored photographs depicting the four corner posts for 3008530, compass bearings, blazes, trees and brush.**

**The parties to this dispute were contacted by telephone to arrange a mutually agreed upon date for a hearing in this matter. Since both parties resided in Thunder Bay, the hearing was to be held at that location in accordance with section 111, subsection 1, of the Mining Act, which reads as follows:**

Proceedings before recorder  
Directions as to conduct of proceedings

111.(1)The recorder may give directions for the conduct and carrying on of proceedings before him or her, and in so doing the cheapest and simplest methods of determining the questions arising that afford to all interested parties an adequate opportunity of knowing the issues in the proceedings and of presenting material and making representations on their behalf shall be adopted. R.S.O. 1990, c. M.14, s. 111 (1).

**Mr. Arsenault was advised that it would be in his best interest to attend the hearing, or to have his staker Real Arsenault attend, in order that the tribunal and parties could hear the evidence and arguments to the dispute. Mr. Arsenault advised the tribunal, both verbally and in writing, that he did not wish to attend a hearing and, although requested, did not provide any reasons why he and/or his staker would not attend. Instead Mr. Arsenault chose to submit his arguments and evidence in writing after conducting his own inspection of the area in September, 2006.**

**On October 3, 2006, Mr. Vaughn Arsenault submitted a one-page letter wherein he summarized his findings in the field, and also included 2 black and white pictures (copied) depicting a claim post on each.**

## **SUBMISSIONS**

By Disputant:

**Cliff Hickman submitted 60 photographs and statements signed by four of his licenced helpers.**

**Rob Lyght, prospector's licence E33944, staked several claim boundaries of the filed only claims on February 11 and 12, 2006. One boundary crossed over the location of the south boundary of mining claim TB 3008530 however Mr. Lyght stated that he did not witness any staking or snowshoe tracks where this south boundary should have been. While staking another two claims, he crossed over the location of the east and west boundary of TB 3008529 however he did not witness any staking or snowshoe tracks where the east and west boundary should have been.**

**Rob Dyer, prospector's licence 1001999, staked several claim boundaries of the filed only claims on February 12, 2006. While staking, he crossed over the location of the north and south boundary of mining claim TB3008529 however he did not witness any evidence of staking or snowshoe tracks where these boundaries should have been.**

**Wes Keats, prospector's licence 1001849, staked several claims boundaries of the filed only claims on February 11, 2006. While staking, he crossed over the location of the north and west boundary of mining claim TB 3008530 however he did not witness any evidence of staking or snowshoe tracks where these boundaries should have been.**

**Ghislain Gervais, prospector's licence 1001298, staked the common boundary of two filed only claims on February 11, 2006. While staking, he crossed the east boundary of mining claim TB 3008530 however he did not witness any evidence of staking or snowshoe tracks where this boundary should have been.**

**The photographs submitted by Mr. Hickman included a photo of each of the four corner posts for TB 3008530 and numerous photos showing a compass bearing, blazes on several trees, and trees and underbrush.**

**By Respondent:**

**In his letter, Vaughn Arsenault stated that he visited the area on September 21, 2006 and went directly to the #1 corner of mining claim TB 3008529 guided by a GPS instrument. He included two copied photos of the post; one photo clearly shows the #1 tag of 3008529 affixed thereto. He remarked that the post was located where it is supposed to be and therefore negates the disputant's claim of "no corner post or line post of any sort can be found". He went on to state, however, that he could find no other obvious evidence of lines or posts on this claim.**

**With respect to mining claim TB 3008530, Mr. Arsenault stated that he did not disagree with the disputant in that the corner posts are there although one is out of place and the lines and blazing are "*less than desirable*".**

**ISSUES:**

- 1. Were the mining claims staked in accordance with the Mining Act and its regulations?**
- 2. Where there are deficiencies in the staking, does the effort substantially comply or can it be deemed to substantially comply pursuant to section 43 of the Mining Act?**

**FINDINGS/REASONS:**

**The erection of corner posts and line posts with tags along with their inscriptions, and the blazing of a line between these posts, is crucial information to licensees**

**wishing to stake a mining claim in the vicinity as it provides information as to what land has already been staked. A staker cannot accurately tie on to an existing claim if he cannot locate the claim boundary. The provision for the erection of corner posts and line posts, and demarcation of claim boundaries, is outlined in Section 2, Subsection 4, and Section 8, Subsection 2, 3, 4, 5 and 6, of Ontario Regulation 7/96 pertaining to Claim Staking, as follows:**

2.(4) If a mining claim consists of two or more 16 hectare units, line posts must be erected along the perimeter of the claim at 400 metre intervals. O. Reg. 7/96, s. 2 (4).

8.(2) A mining claim is staked by erecting a corner post at each of the four corners of the claim so that,

- (a) the No. 1 corner post is at the northeast corner;
- (b) the No. 2 corner post is at the southeast corner;
- (c) the No. 3 corner post is at the southwest corner; and
- (d) the No. 4 corner post is at the northwest corner. O. Reg. 7/96, s. 8 (2).

8.(3) A corner post tag affixed to a corner post must face the next post following the corner post in the order set out in subsection (2). O. Reg. 7/96, s. 8 (3).

8.(4) If there are standing trees on the perimeter of the area being staked, 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. O. Reg. 7/96, s. 8 (4).

8.(5) Despite subsection (4), the perimeter of a mining claim or a portion of a claim located in an area referred to in subsection 32 (1) of the Act may be clearly marked by durable flagging tape securely affixed to standing trees and underbrush along the boundaries of the claim. O. Reg. 7/96, s. 8 (5).

8.(6) If there are no standing trees on the perimeter of the area being staked, the perimeter of the mining claim must be clearly marked during staking by erecting durable pickets or monuments of earth or rock along the boundaries of the claim. O. Reg. 7/96, s. 8 (6).

**There is provision in the Mining Act whereby staking need not be in strict compliance. The test for substantial compliance provides that the staking must comply “as nearly as circumstances will reasonably permit”, and is addressed in Section 43, Subsection 1, of the Mining Act.**

43.(1) Substantial compliance as nearly as circumstances will reasonably permit with the requirements of this Act and the regulations as to the staking out of mining claims is sufficient. R.S.O. 1990, c. M.14, s. 43 (1); 2000, c. 26, Sched. M, s. 5.

**Where there is a failure to comply with a number of staking requirements, if the failure is unlikely to mislead others in the field and if it is apparent that an attempt in good faith has been made to comply, the deemed substantial compliance provision will govern.**

43. (2) The staking out of a mining claim shall be deemed to be in substantial compliance with the requirements of this Act and the regulations even if there is a failure to comply with a number of specific staking requirements if,

- (a) the failure to comply is not likely to mislead any licensee desiring to stake a claim in the vicinity; and
- (b) it is apparent that an attempt has been made in good faith by the licensee to comply with the requirements of this Act and the regulations. R.S.O. 1990, c. M.14, s. 43 (2).

**In the case of Royal Oak Mines Inc. v. Strike Minerals Inc., Commissioner Kamerman said at p. 23** *“The tribunal had come to the conclusion, regarding the seemingly liberating tests of substantial and deemed substantial compliance, that the staking of a mining claim must remain to be regarded as a serious enterprise, one in which going through the motions cannot be found to be sufficient. Otherwise, the erosion of the role of prospectors in staking a mining claim will be accomplished, and there will remain very little compelling reason for the legislature to avoid the logical next step. If the concrete staking elements, ie. the posts, inscriptions, erecting of posts, demarcation of boundaries during the staking itself, are done in such an off-hand manner as to be of no useful purpose on the ground, then there will remain no reason why the industry should not be moved to map staking and eliminate ground staking activities altogether. The legislature has clearly not taken this step, and therefore, the tribunal finds the staking requirements set out in O.Reg. 7/96, and the tests in section 43 must be taken seriously and be of a quality which is apparent on the ground immediately after the staking.”*

**Mining Claims TB 3008529 and TB 3008530 were recorded as comprising 16 units each, with claim boundaries measuring 1600 metres x 1600 metres. In addition to the corner posts, there is a requirement to erect a line post at every 400 metre interval on the claim boundary where the topography permits. In this case, a total of 12 line posts and tags, with locational information inscribed thereon, would be required for each of the claims. On his sketch attached to his applications to record, Real Arsenault, recording licensee, indicates that he erected the line posts as required by the regulations. In fact, he indicates that he has erected additional line posts where his claim boundary crosses a body of water.**

**The regulations for the size of a mining claim substantially changed with changes to the Mining Act made effective June 3, 1991. Prior to that date, one could only stake a single unit claim, comprising of 40 acres (16 hectares) and thus required a corner post and tag at each of the four corners. After that date, the provision for block staking, as it is commonly referred to, was introduced thereby allowing for a single claim to be staked up to 640 acres (256 hectares) in size. Given the extensive distance which might exist between the corner posts, the need for demarcation of the boundary and an indication of the location of the claim became crucial so that anyone wishing to stake a claim in the area would be able to locate the claim and orient themselves accordingly. This is supported by the requirement that information must be inscribed on the line post to indicate the claim number and the**

**direction and distance from the last corner post erected. This requirement is outlined in subsection 13 of Claim Staking Reg. 7/96, and provides as follows:**

**13. (1)** If the nature or conformation of the ground at a particular location, incumbent surface rights or water is an obstacle that makes the erecting of a line post at that location impracticable, a line post must be erected on each side of the obstacle. O. Reg. 7/96, s. 13 (1).

**(2)** If a mining claim being staked is coterminous with land not open for staking and the boundary of the land not open for staking changes direction other than at a corner of the claim, a line post must be erected at the point of change of direction. O. Reg. 7/96, s. 13 (2).

**(3)** A line post tag inscribed with the claim number and the direction and distance from the last corner post erected must be affixed to the line post. O. Reg. 7/96, s. 13 (3).

**The prospectors who assisted Mr. Hickman in the staking of the filed only claims have held a prospectors licence for a considerable number of years. According to the records in the Provincial Recording Office, Mr. Lyght has been the holder of a licence since 1995. Both Mr. Gervais and Mr. Keats have held their licence since 1997 and 1999 respectively. Mr. Dyer has held his licence since 2004. Although there was no indication of how much effort these stakers put into looking for the claim boundaries of the recorded claims, I find that given the experience of these stakers, the snow cover on the ground, and the dates of staking being only 9+ days earlier, staking evidence should have been located if in fact it was there.**

**Vaughn Arsenault did his own field inspection. Although he located the No. 1 corner post of TB 3008529 which Cliff Hickman could not locate, he confirmed that he could find no other evidence of lines or posts on this claim. He did not disagree with the disputants findings with respect to claim 3008530, being that the corner posts were located and one was out of place. I am not sure what Mr. Arsenault means by his statement that “the lines and blazing are less than desirable” on this claim; Mr. Hickman stated that he could not find any line posts, blazes or flags except for 100m south of the #4 post.**

**The absence of staking evidence of the mining claims on record displays a lack of intent to comply with the requirements of Ontario staking regulation 7/96. I find that the absence of such evidence would surely mislead anyone desiring to stake in the vicinity and are far beyond the acceptable limits set by the substantial and deemed substantial compliance tests. Before any deficiencies can be remedied, the rules of staking must be obeyed or at least an attempt must be made in good faith to obey them. A staker may have the tools of the trade in hand to locate himself, and these may include the claim map, application to record sketch for the claims already on record, and a GPS unit, however if there is no visible evidence of staking on the ground it becomes an impossible task to tie on to claims on record in the Provincial Recording Office.**

**I find there was non-compliance by Real Arsenault with the most important requirements of staking and I find that this results in an abandonment under Section 71, subsection 1, of the Mining Act which reads as follows:**

[71.\(1\)](#) Non-compliance by the licensee or holder of a mining claim with any requirement of this Act or the regulations as to the time or manner of the staking out and recording of a mining claim or with a direction of the recorder in regard thereto, within the time limited therefor, shall be deemed to be an abandonment, and the claim shall, without any declaration, entry or act on the part of the Crown or by any officer, unless otherwise ordered by the Commissioner, be forthwith opened to prospecting and staking out. R.S.O. 1990, c. M.14, s. 71 (1).

**Conclusions:**

**I find that Section 71 applies to mining claims TB 3009529 and TB 3008530 and therefore the mining claims are deemed abandoned. The mining claims on record are hereby cancelled and filed only mining claims 4201016, 4201017, 4201031, 4201032, 4209072, 4209073, 4209086 and 4209087, are hereby accepted and recorded.**

Dated at Sudbury, Ontario, this 22nd day of October, 2007.

(original signed by Sheila T. Lessard)

Sheila T. Lessard  
Provincial Mining Recorder