

**IN THE MATTER BEFORE THE PROVINCIAL
MINING RECORDER**

IN THE MATTER OF: Recorded Mining Claim P4211059, located in Ogden Township, Porcupine Mining Division, (hereinafter referred to as the “Pye claim”);

IN THE MATTER OF: Recorded Mining Claim P4211058, located in Ogden Township, Porcupine Mining Division, (hereinafter referred to as the “Lucas claim”)

AND IN THE MATTER OF: Mining Claims 4210986 and 3015952, located in Ogden Township, Porcupine Mining Division, and taken as “filed only, as it overlaps portions of the “Pye claim” and “Lucas claim” respectively (hereinafter referred to as the “West Daxl claim” and East Daxl claim” respectively):

AND IN THE MATTER OF: Mining Claims 4207682, located in Ogden Township, Porcupine Mining Division, and taken as “filed only, as it overlaps portions of the “Pye claim” (hereinafter referred to as the “Yungwirth claim”):

AND IN THE MATTER OF: Mining Claims 4211027 and 4211029, located in Ogden Township, Porcupine Mining Division, and taken as “filed only, as it overlaps portions of the “Pye claim” and “Lucas claim” respectively (hereinafter referred to as the “West Gryba claim” and “East Gryba claim” respectively):

AND IN THE MATTER OF: a dispute filed by

**Hermann Daxl (Disputant)
F.O. 4210986 vs. P 4211059
F.O. 3015952 vs. P 4211058**

and

**Francis Yungwirth (Disputant)
F.O. 4207682 vs. P 4211059**

and

**Patrick Gryba (Disputant)
F.O. 4211027 vs. P4211059
F.O. 4211029 vs. P4211058**

Against recorded mining claims held by

**Goldcorp Canada Ltd. And Goldcorp Inc. (Respondent/claim holder)
P 4211059 and P 4211058**

WHEREAS: A hearing was held on March 17th, 2009 and March 18th, 2009, at the Travelodge, 1136 Riverside Drive, Timmins, Ontario, and the parties were given the opportunity to present material and make representations on their behalf.

I FIND: upon consideration of the evidence before me that Mining Claims P 4211059 and P 4211058 should be cancelled,

I ORDER:

1. the disputes filed against Mining Claim P4211059 are hereby allowed and Mining Claim P4211059 is cancelled as of this date;
2. the disputes against Mining Claim P4211058 are hereby allowed and Mining Claim P4211058 is cancelled as of this date;
3. filed only Mining Claims 4211029, 4210986 and 3015952 are hereby refused as of this date;
4. filed only Mining Claims F.O. 4207682 and F.O. 4211027 are hereby recorded effective the date of this decision;
5. that the land subject to this matter is withdrawn from staking for a period of thirty days from the date of this order or if an appeal is filed until such time the matter is decided upon by the Commissioner.

THE BACKGROUND AND REASONS FOR THIS DECISION FOLLOW IN THE SUBSEQUENT PAGES.

AND PLEASE NOTE: THAT THE Parties have the right of appeal to the Mining and Lands Commissioner as provided in Section 112 of the Mining Act R.S.O. 1990. If a party chooses to appeal, the necessary documents must be filed in the office of the Mining and Lands Commissioner, Toronto within 30 days of this decision and served on the Provincial Recording Office, Sudbury.

Dated at Sudbury, this 8th day of June, 2011.

ORIGINAL SIGNED BY STEPHEN DEVOS

Stephen M. DeVos
Provincial Mining Recorder

A hearing was held on March 17th, 2009 and March 18th, 2009, at the Travelodge 1136 Riverside Drive, Timmins, Ontario.

Over the course of March 17th and 18th, 2009 a number of parties were in attendance including:

Herman Daxl, Disputant,
Fran Yungwirth, Disputant,
Lionel Bonhomme, witness for the Disputant (Yungwirth),
J.V. Bonhomme, witness for the Disputant (Yungwirth),
Luc Landry, witness for the Disputant (Yungwirth),
Isabelle Boisvert, witness for the Disputant (Yungwirth),
Pat Gryba, Disputant,
Ian Blue, representing the Respondent,
Ken Pye, witness for the Respondent,
Joel Trivers, witness for the Respondent,
Rhys Lucas, witness for the Respondent.

BACKGROUND:

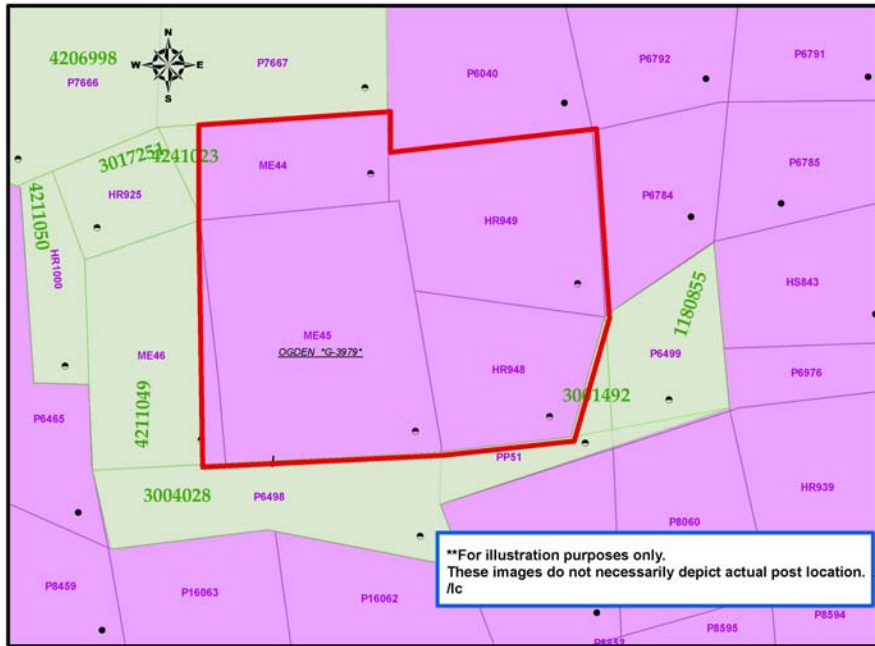
The following lands were forfeited to the Crown on October 7th, 2005:

- 6086SEC Mining Rights Only, being Mining Claim ME44 containing 9.915 hectares of lands more or less;
- 6087SEC Mining Rights Only, being Mining Claim ME45 containing 26.912 hectares of lands more or less;
- 6092SEC, Mining rights Only, being Mining Claim HR948, containing 12.141 hectares of lands more or less;
- And 6093SEC, Mining Rights Only, being Mining Claim HR949, containing 16.997 hectares of lands more or less.

Subsequently, the land came open for staking at 8:00 A.M. standard time (9:00 am DST) on the 1st day of June, 2006:

The land which came open for staking had a total area of 65.965 hectares more or less. The area was surrounded by a mixture of surface and mining rights patents, surface rights patents and unpatented mining claims as depicted on the sketch below, “June 1, 2006, Area of Dispute”.

“JUNE 1, 2006, AREA OF DISPUTE” (SKETCH)



The location of the land, within the Timmins area, created considerable interest by a number of parties. This interest resulted in a competitive situation with multiple parties all intensely competing for all or portions of the same lands upon opening as depicted on the sketch below “Staked Claims, Area of Dispute”.

“STAKED CLAIMS, AREA OF DISPUTE”

Mr. Francis Yungwirth presented the case on behalf of Joint Venture Partnerships. Through a number of witnesses and evidence presented Mr. Yungwirth argued the “Pye Claim” was not in substantial compliance with the Act and Regulations as a result of a number of defects in the staking.

Mr. Lionel Bonhomme indicated that Mr. Pye did not obtain permission from the Surface Rights holders, The Corporation of the City of Timmins, to enter the lands prior to June 1st, 2006 to prepare the area for staking. Mr. Bonhomme also contends merchantable trees were destroyed as a result of the preparatory work by Mr. Pye.

Mr. Bonhomme presented the Ministry of Northern Development and Mines Staking Guide which is a tool to guide licensees in how to stake a claim in substantial compliance with the Act and Regulations. Mr. Bonhomme referred to Paragraph 9 on Page 9. Lands Open less than 24 hours. Mr. Bonhomme also raised the Declaration contained on Page 26 of the guide that the licensee was personally on the ground.

Mr. Gryba in addition to arguing if helicopter staking is in substantial compliance of the Act and Regulations, also pointed to the defects with the staking of the “Pye Claim” which in his opinion resulted from the use of a helicopter.

Post # 1:
Incorrect License number
No am
No year

Line Post 400 m south of #1:
2/3rd of the proper height
No license number
Facing east instead of south

Post #2:
Incorrect license number
Facing south instead of west
Post too short
Post on an angle

Line post 400 metres west of #2:
No license number

Post #3 (Southwest corner of the claim):
Incorrectly marked as Post #2
Incorrect license number

Line post 400 metres north of SW comer:
Incorrectly inscribed as 400 metres north of Post #2
No license number

Post #4:
Facing south instead of east

Line Post 400 metres east of Post #4:
No license number
Post too short

Line post 400 metres east and 100 metres south of Post #4:
No license number
Too short (1 metre in height)
Facing west instead of east
Incorrectly inscribed as 500 metres east of Post #4

Mr. Pye, on behalf of the Respondent, stated he was contracted by the Respondent to stake the mineral rights for the lands coming open. After discussions with Mr. Green, on behalf of the Respondent, Mr. Pye conceived the plan of staking as much of the area as possible by helicopter. Mr. Pye indicated that Mr. Green accepted the idea and Mr. Pye set about making preparations for the staking.

Mr. Pye's plan was to prepare the claim so that a helicopter could follow the claim lines from the air to each post location. A helipad was constructed at #1 Post location so he could complete the #1 post. The boundary of the claim was prepared using a Muskeg tractor.

Mr Pye states he put together a team of helpers to complete the preparation work and to assist with the staking on the day of the opening. The team started their preparations 4 days prior to June 1 and completed their preparation on May 31st. Prefabricated claim posts were purchased.

Mr. Pye further states, his team prepared the area, while he scouted the property. As part of his preparations, Mr. Pye also spent time looking for survey monuments for the surrounding properties but was unable to locate any survey monuments. Consequently, he decided to use coordinates obtained through the Ministry of Northern Development, Mines and Forestry's CLAIMaps. During the time Mr. Pye spent scouting the property he met several other parties also interested in the same lands.

As part of Mr. Pye's testimony he indicated that he had practiced, on his own property nearby, dropping claim posts from the helicopter by dropping four (4) posts. On the day of the opening Mr. Pye stated that he flew in prior to 9:00 A.M (DST). and landed at the #1 Post location. At 9:00 A.M. (DST) Mr. Pye erected the #1 Post, entered the helicopter and proceeded to the #2 post. While in the air Mr. Pye inscribed his next post. The helicopter hovered, at approximately tree top elevation (approximately 15 metres), over the next post location while Mr. Pye dropped the post into location. Mr. Pye moved around the claim in a clockwise direction similarly inscribing and dropping each post as

he proceeded. Upon his return to the #1 post location, the helicopter landed and Mr. Pye got out and inscribed his #1 post with his finish time.

Mr. Pye stated that while he was dropping posts his helpers, as listed on his Application to Record Staked Mining Claim were blazing each segment of the prepared lines between each post simultaneously.

Mining Claim P4211058 (“Lucas Claim”)

Mr. Daxl’s provided photographs and testimony as to various defects contained with the “Lucas claim”. Mr. Daxl points to a series of defects which he presents as not being in substantial compliance with the Act and therefore misleading. These include: finishing time on a separate face of the #1 Post to the original inscription, not properly tied onto the adjoining patents, over staking other claims, staked without tags however inscribing claim numbers, and a line marker at 437 metres.

Mr. Gryba argued that the “Lucas claim” doesn’t become a wedge until the other claim is recorded. He provide testimony and pointed to the evidence submitted by others to demonstrate the staking of the “Lucas claim” commenced at the same time the “Pye claim” commenced and although was completed shortly after the “Pye claim” was completed. The “Pye Claim” had not been recorded. In addition Mr. Gryba points to a number of defects in the staking including post inscriptions facing the wrong direction, portions of the line being un-blazed, inscriptions on two separate sides of the post.

Post #1:
Facing north instead of south

Line post 437 metres south of #1:
Not inscribed by Mr. Lucas

Post #2:
300 metres of un-blazed line

Post #1:
Contends that the completion time was changed

Mr. Gryba also argues that the “Lucas claim” did not tie onto the surrounding fabric which was quite evident.

The respondent presented a video as evidence to the commencement and completion of the staking of the “Lucas claim”. The video which is situated from the #1 Post of the “Lucas claim” is missing video of the crucial moments of completion and only contains audio reportedly due to the lens cap being left in place for a portion of the filming. Video is restored a short time after the completion of the staking.

Mr. Lucas, on behalf of the Respondent, stated he is a competitive National Adventure Racer. On the June 1st, 2006 he arrived at the site between 8:15am and 8:30am. At 9:00am (DST) he began by inscribing and erecting his #1 Post. He believed that he erected it with the inscription facing south as Mr. Labelle headed out to blaze the lines ahead of him and the inscription was facing towards Mr. Labelle. Mr. Lucas states he headed south and staked the claim in a clockwise direction. When he returned to his #1 Post he inscribed his finish time as 9:21. He had lost his pen so in order to inscribe his finish time he obtained a pen/pencil from Mr. Labelle.

REASONS:

Throughout the hearing a number of issues have been raised with respect to both **P 4211059 and P 4211058.**

1. the severity of the technical defects, with respect to the staking in accordance with Section 43 of the Mining Act;
2. whether or not the Mining Act provides for helicopter staking;
3. and under what circumstances staking of an undersized claim is permitted.

Please note that all references to the Mining Act (MA) and Regulations are those which were in affect on June 1, 2006. The MA in June of 2006 reads as follows:

Disputes

110. (1) A recorder may hear and, subject to the right of appeal provided in section 112, determine disputes between persons with respect to unpatented mining claims. 1999, c. 12, Sched. O, s. 39 (1).

Same

(2) If a dispute relates to whether the provisions of this Act regarding mining claims have been complied with, the recorder shall hear and determine the dispute unless,

- (a) the Commissioner orders otherwise; or
- (b) the Commissioner agrees to hear and determine the question pursuant to a request made by the recorder. 1999, c. 12, Sched. O, s. 39 (1).

Note of decision

(3) The recorder shall forthwith,

- (a) record a detailed note of all decisions that he or she makes; and
- (b) notify all persons affected by a decision. 1999, c. 12, Sched. O, s. 39 (1).

(4) Repealed: 1999, c. 12, Sched. O, s. 39 (2).

Finality of decision

(5) The decision of the recorder is final and binding unless appealed from as provided in section 112. R.S.O. 1990, c. M.14, s. 110 (5).

Deemed abandonment of claim

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 and recording of a mining claim or with a direction of the recorder in regard thereto, within the time limited therefore, 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. R.S.O. 1990, c. M.14, s. 71 (1); 2009, c. 21, s. 101 (4).

Saving

(2) Despite subsection (1), where in respect of a mining claim, no dispute is on file and,

- (a) one year has elapsed since the day of the recording of the claim; or
- (b) the first prescribed unit of assessment work has been performed and filed and, where necessary, approved,

the mining claim shall be conclusively deemed to have been staked and recorded in compliance with the requirements of this Act and the regulations. R.S.O. 1990, c. M.14, s. 71 (2); 2009, c. 21, s. 101 (2).

Substantial compliance with Act and regulations sufficient

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.

Deemed substantial compliance

(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).

With regard to the issues of this particular case I find:

Specifically, with respect to P 4211059, the main issues are:

1. the severity of the technical issues, with respect to the staking in accordance with Section 43 of the Mining Act;
2. and whether or not the Mining Act provides for helicopter staking.

In *Royal Oak Mines Inc. vs. Strike Minerals Inc.*, MA 012-98, Oct. 2, 1998, the Mining and Lands Commissioner discussed the act of staking commencing at two different locations. In the case the Mining and Lands Commissioner noted an interesting question had been raised in that two helpers began at the same time from different locations within the claim. The Mining and Lands Commissioner noted that although the Staking Regulations do not specifically authorize the action but does not prohibit it either. In the case the recording licensee was required to start in the northeast corner and proceed in a clockwise direction which they did.

In this case, Mr. Pye started in the northeast corner and proceeded in a clockwise manner as required by the Act and Regulations. He did however; employ a number of helpers who coincidentally started blazing at each post. As noted in *Royal Oak Mines Inc. vs. Strike Minerals Inc.*, MA 012-98, Oct. 2, 1998, “the regulation does not address whether it can be done or not”. In this regard, I defer to the Mining and Lands Commissioner that neither the Act nor the Regulations prohibit blazing lines, once the act of staking has commenced, in advance of the recording licensee reaching that portion of the line and therefore is it a defect?

Evidence was presented and argued as to the technical deficiencies of the Pye staking. In this regard, there a number of Mining and Lands Commissioner cases which provide clarity with respect to Section 43, Substantial Compliance, of the Mining Act.

In *Royal Oak Mines Inc. vs. Strike Mineral Inc.*, MA 012-98, Oct. 2, 1998, the Mining and Lands Commissioner wrote “a staker cannot accurately tie onto an existing claim if he cannot locate it, or if a tagged line or witness post is facing the wrong direction, so that its inscribed information becomes meaningless.”

In *Kelnick Resources Ltd. vs. Kosy*, MA 025-98, Feb. 9, 1999, the Deputy Mining and Lands Commissioner established a test for misleading staking as not just in the present but also in the future. Other stakers use the posts “as visual points of reference.”

In *Morgan, Barnes and Rosseau vs. Anderson*, MA 019-98, Feb. 11, 2000, the Deputy Mining and Lands Commissioner found the placement of a tag on the wrong side of the post, “instead of facing south, it faced north”, and finding no reason for the failure to comply, could mislead other licensees in the field.

In *Klassen vs. Staines*, MA 011-06, July 11, 2007, the Mining and Lands Commissioner, further established the principle that it is not only those participating in the staking at the time but also if “a stranger to this situation would have been well within their rights to

assume that there was either no valid staking on the lands or such staking as was present had been abandoned.... This would be a classic instance of one being misled in the field as to what was apparent from the ground.”

It should be noted, all of the parties involved in the hearing were intimately involved in the competitive staking occurring at 9:00am (DST) on June 1st, 2006. Most if not all parties, were aware of the preparations for staking (line creation) which had been completed by Mr. Pye’s crew and therefore had a good indication , in advance, of the ground in which Mr. Pye was interested. That being said, if a party had not been so involved and had come upon the staking even that afternoon would it be clear to them, based upon the staking evidence, what lands had been staked or if the staking had properly been completed or abandoned.

As a result of testimony, evidence presented and the Ministry of Northern Development, Mines and Forestry Inspection Report (MIL-11 R07/06) a number of defects were identified in the staking of the “Pye claim”.

It is important to remember that the ground acquired through the act of staking is the ground between the four corner posts as established on the ground. The rules for establishing these posts, so that prospectors and others understand what ground has already been staked, are contained with Ontario Regulation 7/96.

Section 8 of Ontario Regulation 7/96 states:

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).

(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).

By following these instructions any individual would be able to know the claims is located to the west of the line between the #1 and #2 posts, north of the line between the #2 and #3 posts, and east of the line between the #3 and #4 posts and finally south of the line between # 4 and #1 posts, thereby forming the rectangle.

The inscription on the post located at the southeast corner of the Pye Claim is facing south therefore giving the impression the claim would be to the west and not north as intended.

In addition, Mr. Pye inscribed the post at the southwest corner as #2 and not #3 as directed by Regulation. This was further compounded by the inscription on his line post 400 metres to the north of the southwest corner as “400 metres north of Post #2”. This

would lead someone trying to establish what ground had been staked to believe the claim was to the west of these posts.

To complicate matters further, the inscription on Post #4 was facing south instead of east as directed by Section 8 of the Regulations. This would also give the impression the claim existed to the west.

Given the claims were staked without tags, it would not be entirely possible, given the layout of the posts and the orientation of the inscriptions, for an individual coming across the staking to be misled and believe these posts belonged to different claims or at the very least the claim may exist to the west or the staking had actually been abandoned.

On the question of a requirement to obtain land owner consent prior to preparing the ground, in *Kerr vs. Strike Minerals* MA 006-95 Feb. 26, 1996, #96-2, the Mining Lands Commissioner noted “there is no specific section in either the Act or Regulation that prohibits blazing lines before land comes open for staking.” And “likewise, there is no specific section that would indicate that the marking of boundary lines before land opens is fatal to the subsequent staking.” The Mining and Lands Commissioner goes on to state “only the work that is done after the land is open can be considered towards satisfying the legal requirements.” In this regard, testimony was provided during the hearing that helpers blazed the lines for both the “Pye” and “Lucas” claims once the actual act of staking has commenced on June 1st, 2006.

The technical deficiencies, posts facing the wrong directions and incorrectly labelled, are substantial enough to mislead other licenses desiring to stake a claim in the same vicinity.

With respect to the action of helicopter staking, historically, priority was established through the Mining Act based upon time of recording in the Provincial Recording Office. These requirements lead to a number of circumstances where recording licensees were carrying out unsafe practices in order to establish their priority. Anecdotal information described incidents of road races occurring, helicopters landing on the roofs of buildings or in nearby school yards, competitors blocking each others access all in order to beat competitors to the Provincial Recording Office and establish the priority of recording. These actions could be argued not only put the safety of the licensees at risk but also the safety of the general public. For safety’s sake, changes were made to the MA in 1991, so that time of completion of staking prevailed instead of time of recording. This was intended to provide licensees the ability to complete the act of staking without leaving the claim area and reduce the risk to themselves, competitors or the public. Therefore, any interpretation/application of the Act or Regulations should be viewed in this light.

Section 2 of the MA states:

The purpose of this Act is to encourage prospecting, staking and exploration for the development of mineral resources and to minimize the impact of these activities on public health and safety through rehabilitation of mining lands in Ontario. 1996, c. 1, Sched. O, s. 2.

Ontario Regulation 7/96 states:

Section 9. (1) A mining claim must be staked under the direction of a recording licensee who shall be present on the ground during the staking of the claim. O.Reg.196/06, s.3.

Neither the Act nor the Regulation defines the word “on”. Webster’s Ninth New Collegiate Diction, 1990 defines on as a function word to indicate position in contact with and supported by the top surface of and to indicate position in contact in or in contact with an outer surface. The regulation requires the recording licensee to be “on the ground during the staking”.

The Regulation goes on to define what specific acts are required of the Recording licensee during staking of a mining claim in areas that have been open for less than 24 hours, as was the case in these circumstances.

Section 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:

1. The staking must start at the northeast corner of the mining claim and proceed in a clockwise direction.
2. Only the recording licensee may erect, inscribe or affix a tag to a corner post, line post or witness post.
3. The date and time of both the start and completion of the staking must be inscribed on the No. 1 corner post by the recording licensee. O. Reg. 7/96, s. 10(2).

Only the recording licensee may erect a corner post or line post. Therefore the Act and Regulation envisioned that the Recording licensee would be physically on the ground while erecting his or her corner and line posts.

In *Forbes vs. Coyne*, MA 005-99, Dec. 24, 1999, the Mining and Lands Commissioner noted “[a]ll that is necessary is for the recording licensee to present him or herself at the proper location for the erection of the witness posts.”

Further, the Act requires that 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. Despite Mr. Pye testifying to successfully dropping four practice posts from the air, the day prior, it is apparent by the fact that all three (3) corner posts dropped from the air contained defects. Post were facing the wrong direction. In some circumstances posts were lodged at 45 degree angles towards the ground and were driven into the ground too far. The only exception was the #1 post erected by Mr. Pye while standing on the ground, prior to taking off in the helicopter. This would lead a reasonable person to assume the means of erecting posts by helicopter is unreliable, and therefore, given the circumstances, in good faith, would not consistently and reliably result in compliance with the Act and Regulations.

Given these considerations, helicopter staking is not provided for by the Act or Regulations. Therefore, for the above reasons, mining claim P 4211059 is cancelled.

Specifically, with respect to P 4211058, I find:

3. under what circumstances staking of an undersized claim is permitted.

It was argued that the “Lucas claim” was not in fact a wedge at the time of staking and therefore the manner in which Mr. Pye and Lucas laid out and Mr. Lucas staked his claim did not meet the requirements of the Act and Regulations.

The Mining Act states:

27. Except where otherwise provided, the holder of a prospector's licence may prospect for minerals and stake a mining claim on any,

(a) Crown lands, surveyed or un-surveyed;

(b) lands, the mines, minerals or mining rights whereof have been reserved by the Crown in the location, sale, patent or lease of such lands where they have been located, sold, patented or leased after the 6th day of May, 1913,

not at the time,

(c) **on record as a mining claim that has not lapsed or been abandoned, cancelled or forfeited;** or

(d) withdrawn by any Act, order in council, or other competent authority from prospecting, location or sale, or declared by any such authority to be not open to prospecting, staking or sale as mining claims. R.S.O. 1990, c. M.14, s. 27; 1996, c. 1, Sched. O, s. 8.

In this circumstance, Mr. Pye's staking commenced coincidentally with that of Mr. Lucas. In fact, the “Pye claim” was not received in the Provincial Recording Office and recorded until June 19, 2006. Therefore, in accordance with Section 27 of the Act, there was no recorded mining claim to prevent Mr. Lucas from complying with the Act.

Section 2 of Ontario Regulation 7/96 states:

2. (1) Subject to subsections (2) and (3), a mining claim in unsurveyed territory must be staked so that it,

- (a) consists of one or more square 16 hectare units;
- (b) has a contiguous area of not less than 16 hectares and not more than 256 hectares;
- (c) has boundaries running only north and south and east and west astronomically; and
- (d) has the form of a square or rectangle. O. Reg. 7/96, s. 2 (1).

In the matter of Moneta Porcupine Mines Inc. and O'Connor vs. Tremblay, MA 016-98, Feb. 4, 1999, the Mining and Lands Commissioner notes "in a competitive situation, when the lands have just opened for staking, particularly when the licensee has commenced immediately at the hour when the lands have come open for staking, coming across a recently staked line or recently erected posts, should be taken as nothing more than indication that the lands are under competition."

The Mining and Lands Commissioner goes on to say "similarly, the definition of mining claim is clear, that it includes the recording of the claim and until such time as a claim has been recorded, its staking does not constitute a mining claim. This is more particularly so in the competitive situation". "The best and only way to proceed under competition is to attempt to stake in accordance with the requirements of the regulation and see how the competition plays out in the end."

The Commissioner further explains "by turning half way through a proposed line, the resulting size of the mining claim would be half of what is required under ideal circumstances and the staking of this substantially smaller portion of land would create a distinct unfair advantage to the licensee in competition with others."

In the decision, the Commissioner has placed particular emphasis on the size of the claim as apposed to the length of the particular unit boundaries. The Commissioner indicates the length of a unit being 400 metres is taken from the requirement of square units of 16 hectares.

In *Racicot vs. The Minister of Northern Development and Mines*, MA 025-97 and MA 026-97, Nov. 23, 1999, the Deputy Mining and Lands Commissioner further cements this decision. In the decision, Deputy Mining and Lands Commissioner notes "what if [the staker] had taken ill or had simply walked away from his staking." The Deputy Mining and Lands Commissioner goes on to state "the Act and its regulations provide a clear picture of what stakers can consider "barriers". In this particular case the Tribunal notes the relevance of section 2 of the Regulation 7/96 to this matter."

Although Mr. Lucas's boundaries run in a general direction of north and south and east and west astronomically and has the general form of a rectangle, except where prohibited

by the Act or Regulations. Mr. Lucas failed to stake in a manner which consists of one or more 16 hectare units and has a contiguous area of not less than 16 hectares. His claim consists of approximately 8 hectares more or less. Although previous Mining and Lands Commissioner decisions have provided some latitude in adherence to the total area of a unit, those decisions were very clear in the amount of latitude they were willing to extend. In circumstances where there were no obstacles to prevent compliance with the Act or Regulations latitude to the extent of 1 or 2 hectares was reasonable. However, 8 hectares was not. Given the staking of the "Pye claim" was arguably still in progress and certainly had not been recorded there was nothing to stop Mr. Lucas from proceeding further east in his staking in an attempt to meet the requirements of the Act and Regulations.

Mr. Lucas' staking did not comply with the Act or Regulation in that he did not stake in 16 hectare units nor was there any barrier, at the time, to prevent him from doing so.

Therefore mining claim P 4211058 is cancelled.

This same argument would then also have to be applied to Mr. Gryba and Mr. Daxl with respect to mining claims 4211029, 3015952 and 4210986. Mr. Gryba's own staking commenced and completed on June 1st, 2006, and contained approximately 2.8 hectares; while Mr. Daxl's own staking commenced on June 1, 2006 and June 3, 2006, and approximately 1.5 hectares and 2.4 hectares more or less respectively.

Therefore mining claim 4211029 is refused.

Further, mining claim 3015952 is refused.

And further, mining claim 4210986 is refused.