

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

IN THE MATTER OF: Recorded mining claims L 4209400 located in South Lorrain Township, Larder Lake Mining Division, hereinafter referred to as the “mining claim”;

AND IN THE MATTER OF: a dispute filed by:

CHARLES W. E. JOHNSON AND LINDA W.
SAILER

Disputant

- against recorded claims L 4209400 held by:

RONALD J. REIDPATH/ALAN
KITCHEN/DOREEN M. GATES

Respondent

UPON: consideration of the evidence submitted by the parties,

I ORDER: that the dispute is hereby **allowed**.

I FURTHER ORDER THAT: mining claims L 4209400 will be reduced in size by separate order of the Provincial Mining Recorder to exclude that area of land owned by Ms. Sailer and Mr. Johnson, which includes R.L. 482, excluding approximately 4 acres in the northwest corner.

I FURTHER ORDER: pursuant to 67(3) of the Mining Act, the time during which mining claim has been pending before the Recorder, being **268 days**, will be excluded from the mining claim and that **August 29th 2008** be fixed as the date by which the first unit of assessment work must be performed and filed on mining claims L4209400 and all subsequent anniversary dates are deemed to be **August 29th**.

Dated at Sudbury, this 29th day of December 2006.

Roy Denomme
Provincial Mining Recorder

Note: Parties have the right to appeal to the Mining and Lands Commissioner as indicated in Section 112 of the Mining Act RSO 1990. An appeal must be filed within 30 days of the date of this decision.

A hearing was held on June 21st, 2006, in New Liskeard to determine this matter.

Linda W. Sailer attended in person and made submissions as co-Disputant.

Ronald J. Reidpath, Doreen M. Gates and Alan Kitchen attended in person and made submissions as co-Respondents.

BACKGROUND:

According to documents filed in the Provincial Recording office, on December 4th and 5th, 2005, Ronald J Reidpath staked mining claim 4209400 in south Lorrain Township, Larder Lake Mining Division. The mining claim was a 5-unit, irregularly shaped claim, which included the land covered by surface rights only patent identified as R.L. 482 (mining claim T24774 Parcel 24657 SST), hereinafter referred to as R.L. 482. The Mining claim was recorded on December 5th, 2005.

On April 6th, 2006 a dispute was filed against mining claim L4209400 by Charles W.E. Johnson and Linda W. Sailer. The dispute alleges that they are the owners of R.L. 482, and the staking of L4209400 is in direct contravention with Section 32(1) of the Mining Act.

The Disputants live on R.L.482, and for the most part live off the fauna and flora that grow within the boundaries of the property, as well as produce and livestock they raise on the land. They live on the property year round and sustain themselves by growing food, raising livestock, and harvesting local plants on the property for food and natural medicines. Heat and electricity are generated, water is drawn from a local lake, and refrigeration is created by cutting ice blocks from the lake in winter and storing through the summer in an ice house. Mr. Johnson receives a small pension, which is used mainly to purchase gasoline, for equipment to maintain the household.

EVIDENCE:

The Disputant submitted a significant amount of documentation to support the dispute.

The evidence was presented in 4 parts:

Part A-Consent to stake not given

Part B-Improvements pre-dating staking and ecological values

Part C-Sustainable lifestyle relative to health issues

Part D-Final comments

Each of the Parts was further broken down in to sub-categories relevant to topic.

Part A-Consent to Stake not Given:

1. Legal ownership of the property:

This included a copy of a parcel register (not date stamped or certified) showing the mineral rights of parcel 23164 (mining rights of mining claim R.L. 482) shown the mineral rights in the name of Robert Aikenhead Elliot.

The original survey plan for R.L 482

A Transfer/Deed of land for Pt of surface rights of mining claim R.L.482 (recorded as T.24774), from Sandra Lea BIRNIE, to Charles William Edward JONHSON, and Linda Winnifred SAILER as joint tenants', dated October 17th, 2000.

2. Date of discovery of staking, and 3. Witnesses to discovery of staking:

This included several pages from an Ontario Provincial Police complaint report dated January 31st, 2006, from an interview with Mr. Johnson and Ms. Sailer. Also included are a number of signed statements from friends and neighbors regarding the complaint. In the report it is stated by Mr. Johnson and Ms. Sailer that they were first told by someone (blacked out in report), that the mineral rights to their property had been obtained and that it can be accessed at any time without permission.

Part B- Improvements pre-dating staking and ecological values:

1. Application to Record:

This is a copy of Application to Record 4209400, referring to Part C (Certification) and Part D Sketch.

- Highlighting #8 Part C, which Certifies that the only improvements indicated on the Certification is “cabin on south west corner post of R.L. 482.
- Highlighting on Part D that no improvements within R.L. 482 are shown on the claim sketch.

2/3/5/. Photographic documentation:

Showing the position of the house relative to claim corner and surveyor's pin,

Showing improvements which pre-dated the staking

Showing ecological values on the land as per section 32(1)

4. Witness statements:

Three signed statements outlining discussions with Mr. Johnson, and Ms. Sailer about the staking of mining claim 4209400, the Respondents pit-bull, the building of the their house, and their lifestyle.

6. *List of Ontario species at risk:*

This is a list of Ontario's Endangered Species List which was appeared to be downloaded from www.environmentaldefence.ca and www.speciesatrisk.gc.ca.

Part C-Sustainable Lifestyle relative to health issues:

1. *Gathering locations:*

Map of R.L. 482, showing locations of ecological values, protected species, foraged naturally occurring foods, herbs and medicines, and improvements to the land. The map shows approximately 70 locations, where plants and trees are found within R.L. 482 which are gathered by the Disputant, for food, medical needs, and other purposes.

2. *Witness statements:*

Included are signed statements from two friends of the Disputant's describing, conversations about staking of the Disputants property, and their use of plants and trees for food, medicine and other needs and describing their lifestyle.

3. *2005 tax information:*

Income tax statement for Mr. Johnson showing his total income for 2005.

4. *Health issues:*

This includes a signed statement from Mr. Johnson's and Ms. Sailer's doctor outlining that both are in his care. Dr. Davies also outlines in his statement that the Disputants suffer from significant health issues, they use herbal medicines to supplement their prescription medicine, and that in his opinion, their lifestyle in the bush contributes significantly to improving their mental and physical health.

5. *Preserved food, dried food and herbal medicines:*

This includes a number of photos of the Disputant's pantry, cupboards and storage areas, filled with what appears to be herb, spices, jams jellies, and a significant number of preserve jars. There are also photos of sugar maples being tapped.

Part D-Final comments:

1. *Photography of Respondents impact on habitat:*

This includes a number of photographs which shows claim posts, blazing and flagging of trees, some trees cut down, and several pictures of the Respondents, in and around the property of Mr. Johnson and Ms. Sailer.

2. *Police complaint by Respondent:*

This is an OPP report indicating that the Police attended the Johnson/Sailer residence with the end result being both parties being told to cease from contacting each other.

3. *Final statement:*

A final statement from Mr. Johnson and Ms. Sailer, summing up, and indicating that their lifestyle, health needs, and the link to the land is essential to their well being and that the improvements on the land are significant.

Ms. Sailer used the evidence to outline a number of specific circumstances that relate to R.L. 482, the lifestyle that they have chosen for themselves, the clear link to the land and specifically, aspects of the land noted in Section 32(1) of the Mining Act, and how staking and mining could impact this balance.

Mr. Kitchen responded verbally on behalf of the Respondents in this matter.

He first pointed out that much of the evidence and submissions were regarding a dispute between neighbours and had no relevance to this matter.

Mr. Kitchen and Mr. Riedpath spent a significant amount of time trying to re-establish the property lines between R.L. 481 (which Reidpath owned), and R.L. 482 (owned by Sailer/Johnson). In the course of their investigation they discovered mineralization on Mr. Reidpath's property. They proceeded to the Kirkland Lake Mining Land Consultants Office to find out if the mineral rights were available in the area and what they needed to do to acquire them. At that time they were told that the mineral rights to R.L. 482 were also available and could be staked, however notice had to be given to the owner prior to carrying out assessment work.

They staked 4209400, to include R.L. 482 because they did not know which direction the veins were running, and it made sense to include it.

Mr. Kitchen confirms that there are omissions in his Application to Record for 4209400 on Part C and D. He suggests that these are as a result of not being on R.L. 482 extensively, just the perimeter and only knowing that the house was on the property. He also indicates that the land is certainly not farm land.

The Sailer house is located very close to the southwest corner of R.L. 482, and the Respondent had a surveyor re-examine the corner to determine whether the house encroaches onto R.L. 481. A sketch was submitted as evidence by Mr. Kitchen, which had been drafted by Sutcliffe Rody Quesnel Inc. O.L.S. showing the southeast corner of R.L. 481 (southwest corner of R.L. 482). This sketch shows the relationship of the southeast corner of R.L. 481, the Sailer/Johnson house, and Secondary Highway R.O.W No. 567 Diversion. The sketch shows that the house is only 15 feet from the boundary between R.L. 481 and R.L. 482.

Finally, Mr. Kitchen indicates that much of the vegetation found on R.L. 482 is natural and grows, in many local places.

FINDINGS:

The Tribunal finds that a significant amount of the evidence supplied by the Disputant is not specific to the dispute, and is related more to personal issues relating to being neighbours. As a result, the tribunal in its findings will concentrate only on the evidence relevant to this matter.

Ownership of R.L. 482:

Surface rights:

The Disputant provided the Tribunal with three documents to perfect ownership of the surface rights to R.L. 482; a copy of the original survey plan for R.L. 482; an undated, and uncertified copy of page one of parcel register 24657, being the surface rights of mining claim R.L. 482 (T.24774) showing the ownership by transfer instrument 287931 to Sandra Lea BIRNIE; and an undated uncertified Transfer/Deed of Land, showing the land transferred from Sandra Lea BIRNIE to Charles William Edward JOHNSON and Linda, Winnifred, SAILER, as joint tenants, registered October 17th, 2000.

These three documents would not stand any test in confirming the ownership of the surface rights belong to Ms. Sailer and Mr. Johnson, as there is no proof to indicate that this transfer was indeed the last. A recently produced certified copy of the parcel document showing the ownership in the name of Sailer and Johnson would have been a much more convincing document.

However there was no challenge or argument from the Respondents, who throughout the hearing referred to Ms. Sailer and Mr. Johnson as the owners of R.L. 482. It does not appear that the ownership is in question, and the Tribunal is satisfied that the surface rights do belong to the Disputants.

Mining Rights:

In the evidence provided by Ms. Sailer, she questions whether the mining rights belong to the Respondents. This question arises through a submission of an uncertified undated copy of parcel 23164, being the mining rights of Mining claim R.L. 482 (recorded as T.24774). The last transfer entry on this document is from Lakeshore Minerals Inc. to Robert Aikenhead ELLIOT, dated 30/03/87. Ms. Sailer suggests that the mineral rights are still held by Mr. Elliot and provides a copy of an entry from Canada 411 with a list of 22 Robert Elliot's in Ontario.

The Tribunal has researched the ownership of the Mining rights for R.L. 482. The mining rights to parcel 23164 were forfeited to the Crown on April 19th 2004 (instrument # 0326461). The mineral rights to this parcel were subsequently re-opened for staking on June 1, 2004 pursuant to Section 197 (7) of the Mining Act. The Mineral rights were acquired by the Respondents through the staking and recording of mining claim 4209400 on December 5th, 2005.

The Land Values and Section 32 of the Mining Act:

Based on the submission of the Disputant, it is evident to this Tribunal that Mr. Johnson and Ms. Sailer, for the most part live off the land, and require the resources which are located on this parcel in order to sustain themselves. This includes the pond for refrigeration, the springs and pond for water, the planted gardens, and livestock for food, solar power, the trees for fuel wood for cooking and heating, and the naturally occurring plants and animals for food, medicinal purposes, and to sell.

Section 32 of the Mining Act:

(1) Although the mines or minerals therein have been reserved to the Crown, no person shall prospect for minerals or stake out a mining claim upon that part of a lot that is used as a garden, orchard, vineyard, nursery, plantation, or pleasure ground, or upon which crops that may be damaged by such prospecting are growing, or on the part of a lot upon which is situated a spring, artificial reservoir, dam or waterworks, or a dwelling house, outhouse, manufactory, public building, church or cemetery, except with the consent of the owner, lessee, purchaser or locatee of the surface rights, or by order of the recorder or the Commissioner, an upon such terms as to the Commissioner seem just.

(2) If a dispute arises between the intended prospector and the owner, lessee, purchaser, or locatee as to the land that is exempt from prospecting or staking out under subsection (1), the recorder or the Commissioner shall determine the extent of the land that is so exempt.

Part C (1) of the Disputants submission is a sketch of R.L. 482, showing the location of buildings, springs, pond, and detailed locations of more than 70 gathering sites for 37 varieties of plants, bushes, and trees, used in the preparation of medicinal medicines, or gathered for food. The variety of plants is quite comprehensive. The Tribunal researched all of the plants identified on the sketch, to see if they were indeed edible or could be used for medicinal purposes. It was found that all could be used for medicinal purposes to relieve a variety of ailments, or were well know to be edible. In some cases they were both. It was also revealed through the Tribunal's research that at least one plant. The "Lady Slipper", is a very rare Orchid, will die if transplanted, and cannot be germinated from seed (it is on the MNR's endangered species list, photograph of one taken by Disputant, shown in section B-5).

The 70 gathering sites located on the sketch, are distributed throughout R.L. 482 and show very little area within the property where gathering sites do not occur. The Disputant further indicates on this sketch; "*herbs and wild food grow where condition best suit them and are apt to vary from year to year*". This is quite plausible, depending on the requirements of the plant, the growing conditions in each year, and the natural spread of these local plants.

The first question is whether or not the identified areas within the sketch fall within the definitions under Section 32 of the Mining Act. There is no question that the areas that the areas within R.L. 482 which include the house, out-buildings, gardens and springs, fall within Section 32 and require consent to stake. The question is however, do the 70 gathering sites of wild plants, herbs, and fruit fall within the definition of a "part of a lot upon which crops that can be damaged by such prospecting are growing".

Black's Law Dictionary (Seventh Edition); defines "Crop"

“ crop. Products that are grown, raised, and harvested. Crops usu. are from the soil, but fruit grown on trees are also considered crops.

This definition seems to imply that a crop is only produce that has been first nurtured (grown and raised) by the person who eventually, harvests the produce. This is common with the cultivation of crops using farming techniques. However, any produce which is harvested for the benefit of the harvester, for main purpose of survival (either economic or life), although the growing and raising are done by nature, must be considered a crop.

The second question is could these crops be damaged by such prospecting. The tribunal has no reason to believe that the sketch map of R.L. 482 showing the location of gathering sites, and other values, is inaccurate. The Respondents did not question the sketch or its contents, and the tribunal will take the sketch at face value. Based on the sheer number of value's located on this sketch, the diversity of the values, and the extensive distribution throughout R.L.482, it is difficult to imagine many exploration activities that could occur without damaging some value within this land.

This Tribunal will therefore take that position that all the values shown on the Disputants sketch, including gathering sites, fall within Section 32 of the Act, and that prospecting and staking cannot occur on these sites without consent of the owner.

The gathering sites are distributed extensively throughout R.L 482, and the exact location of the gathering sites may vary from year to year. Also, the sketch shows areas of known gathering sites, however there may be other gathering sites yet to be discovered on this property. For this reason the tribunal determines that all of R.L. 482 is subject to Section 32, and required consent of the land owner prior to staking.

The Respondent, at the hearing admitted that consent was not obtained from Ms. Sailer or Mr. Johnson, as they were to by the Mining Land Consultants Office that the land was open for staking. There was no mention of the requirement for consent.

Therefore, because of the special relationship to the owners in the harvesting of crops throughout the land in this case, the area identified as R.L.482 which is owned by Ms. Sailer and Mr. Johnson (R.L. 482 excluding 4 acres in the northwest corner of the claim), will be excluded from the claim, and a separate order of the Provincial Mining Recorder will be issued for posts and claim boundaries to be moved to comply with this decision.

Roy Denomme
Provincial Mining Recorder

