

File No. MA 025-97  
File No. MA 026-97

L. Kamerman )  
Mining and Lands Commissioner ) Wednesday, the 21st day  
of July, 1999.

**THE MINING ACT**

**IN THE MATTER OF**

Mining Claim P-1222832, having been recorded in the name of Reginald James Charron, hereinafter referred to as the "Charron Mining Claim" and Mining Claim P-121594, staked by Frank Racicot, to have been recorded in the name of Frank Racicot, marked "refused", hereinafter referred to as the "Racicot Mining Claim", all of which are situate in the Township of Chester, in the Porcupine Mining Division;

**AND IN THE MATTER OF**

The appeal of Frank Racicot from the decision of the Mining Recorder for the Porcupine Mining Division, dated the 17th day of June, 1997, to not record a mining claim staked without tags, on the basis that it was not in compliance with clause 2(1)(a) of Ontario Regulation 7/96 and for an Order cancelling the Charron Mining Claim on the basis that its staking was second in priority to the Racicot staking, which forms the subject matter of File No. MA-025-97;

**B E T W E E N:**

FRANK RACICOT

Appellant

- and -

THE MINISTER OF NORTHERN DEVELOPMENT AND MINES

Respondent

- and -

REGINALD JAMES CHARRON

Party of the Third Part

**AND IN THE MATTER OF**

Mining Claim P-1215188, situate in the Township of Chester, in the Porcupine Mining Division, to have been recorded in the name of Edward J. Korba, marked "filed only", hereinafter referred to as the "Korba Mining Claim";

**AND IN THE MATTER OF**

A revised Application To Record Mining Claim P-1222822, situate in the Township of Chester, in the Porcupine Mining Division, staked by Jerry E. Jerome and Reginald James Charron, to be recorded in the name of Reginald James Charron should the Charron Mining Claim be cancelled, hereinafter referred to as the "Charron Restaked Mining Claim";

**B E T W E E N:**

EDWARD J. KORBA

Applicant and Disputant

- and -

REGINALD JAMES CHARRON

Respondent

**AND IN THE MATTER OF**

Leave of the tribunal to Edward J. Korba, to file a dispute, pursuant to subclause 48(5)(c)(i), in the event that the appeal is dismissed and the hearing of the dispute to be transferred to the tribunal pursuant to subsection 110(2) of the **Mining Act**, through consent or alternatively order of the tribunal;

**AND IN THE MATTER OF**

The hearing of the dispute of Edward J. Korba against the Charron Mining Claim, should the appeal of Frank Racicot in File No. MA 025-97 be dismissed.

**DIRECTION AND ORDER TO FILE**

**WHEREAS** a pre-hearing conference in these matters was held by telephone conference call on the 13th day of July, 1999 at 10:30 o'clock in the forenoon in order to discuss and determine certain matters including the issues relating to the above appeals and dispute;

**AND WHEREAS** those in attendance included the individual parties being Messrs. Charron, Racicot, and Korba and Mr. Roy Spooner, Provincial Mining Recorder;

**AND WHEREAS** during the course of the pre-hearing conference, Mr. Spooner brought to the tribunal's attention what he described as a defect in Mr. Racicot's application in that the procedure under subsection 46(2) of the **Mining Act** had not been followed;

**AND WHEREAS** the tribunal is satisfied that the appeal portion of Mr. Racicot's action is properly before it for the Reasons attached to this Direction and Order to File and furthermore that the defect in his application can, in the circumstances of this case, be rectified after the fact;

**UPON** hearing from the parties,

**1. THE TRIBUNAL DIRECTS** that the Appellant of File No. MA 025-97, Mr. Frank Racicot, pay the prescribed fee required pursuant to subsection 46(2) of the **Mining Act** to the Provincial Mining Recorder and provide evidence of having done so at the time of the hearing.

**2. THIS TRIBUNAL FURTHER ORDERS** that the Applicant and Disputant of File MA-026-97, Mr. Edward J. Korba, file two copies with the tribunal and serve on the Respondent in File MA 026-97 and Party of the Third Part in File Ma 025-97, Reginald James Charron, and on the Appellant, Frank Racicot and on the Party of the Third Part, the Minister of Northern Development and Mines, both of File MA 025-97, no later than the 30th day of August, 1999, all documentation, evidence and things to be relied upon in the hearing of this dispute and notwithstanding the generality of the foregoing, a summary of the facts alleged, a list of both expert and lay witnesses along with a summary of their evidence, **curricula vitae** of expert witnesses, correspondence, maps, photographs, copies of reports of experts or consultants to be relied upon along with all documentation used in the preparation of such reports, such as field notes, computer program print outs, excerpts from textbooks or journals, maps, photographs, video cassette recordings or any other material or thing to be relied upon.

**3. THIS TRIBUNAL FURTHER ORDERS** that the Reginald James Charron, Respondent of File MA 026-97, file two copies with the tribunal and serve on the Applicant and Disputant of File MA 026-97, Edward Korba, and on the other parties to the appeal bearing File Number MA 025-97, being Frank Racicot and the Minister of Northern Development and Mines, no later than the 30th day of September, 1999, all documentation, evidence and things to be relied upon in the hearing of this application dispute and application, and notwithstanding the generality of the foregoing, the facts that the aforementioned Reginald James Charron admits, the facts that he denies and any other facts he alleges, a list of both expert and lay witnesses along with a summary of their evidence, **curricula vitae** of expert witnesses, correspondence, maps, photographs, copies of reports of experts or consultants to be relied upon along with all documentation used in the preparation of such reports, such as field notes, computer program print outs, excerpts from textbooks or journals, maps, photographs, video cassette recordings or any other material or thing to be relied upon.

**4. THIS TRIBUNAL FURTHER ORDERS** that the Appellant, Frank Racicot and the Respondent, Minister of Northern Development and Mines, of the Appeal being File Number MA 025-97, file any supplementary materials and documentation in reply to above- noted filing of Edward Korba no later than the 30th day of September, 1999.

Reasons for this Direction and Order are attached.

**DATED** this 21st day of July, 1999.

Original signed by L. Kamerman

L. Kamerman  
MINING AND LANDS COMMISSIONER

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Mining and Lands Commissioner ) Wednesday, the 21st day  
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**AND IN THE MATTER OF**

The hearing of the dispute of Edward J. Korba against the Charron Mining Claim, should the appeal of Frank Racicot in File No. MA 025-97 be dismissed.

**REASONS**

This Direction and Order To File are the result of a Pre-Hearing Telephone Conference Call which arose out of a desire on the part of the tribunal to determine how to proceed in hearing these two matters at the same time, to determine which additional filings would be required and in which order they should occur and to discuss the issues for determination.

Significant clarification of the underlying facts took place to explain how matters came about. The appeal and application/dispute involve an irregular area of land, comprised of some 22 hectares, which came open on the morning of June 1, 1997. For purposes of simplicity, the stakers will be referred to not necessarily by who did the actual staking, but on whose behalf the staking was done, which reflect the parties named in the various actions.

At approximately 9:00 a.m., three stakings did take place, being the entire area by Charron, the half unit claim by Racicot and the one unit claim by Korba, the latter two of which were attempting to divide up the available land and had a verbal agreement to this effect. Mr. Korba subsequently caused his exact area to be restaked that afternoon, upon discovering that his own staking and that of Charron had alleged problems, the details of which will be reserved to the hearing proper. Suffice it to say that Mr. Korba's comments in this regard raise questions concerning the manner in which the Charron staking was performed, such that matters of credibility were identified for adjudication.

Mr. Charron, meanwhile, also restaked his mining claim later that day. This was done because he was under the impression that line posts were required every 400 metres for a claim which was greater than one unit. He later determined that line posts are required only on claims of greater than two units and did not record the second staking, relying instead on the first. Mr. Charron's staking was recorded.

In the course of the Pre-Hearing Conference and in the Minister's filed materials (Ex. 6), Mr. Spooner advised that he had concerns regarding the perfection of Mr. Racicot's application. It was determined that Mr. Racicot had filed his application with the required fee in the form of a cheque. Upon recording Mr. Charron's mining claim, Mr. Gary White, the then Mining Recorder for the Porcupine Mining Division, advised Mr. Racicot in writing of this fact in a letter dated June 17, 1997, retained the original application to record and returned Mr. Racicot's cheque.

On June 27, 1997, Mr. Racicot signed his Notice of Appeal which was received in the Office of the Porcupine Mining Division on July 2, 1997, within the 15 days allowable for filing of an appeal from a decision of a mining recorder [ss. 112(3)].

The implication arising out of Mr. Spooner's point is that the appeal launched by Mr. Racicot is tainted to the point of being invalid as the fee requested by section 46 has not been paid.

Section 46 of the **Mining Act** gives to the recorder discretion to decide if a claim is in accordance with the **Act** [ss 46(1) and (2)]. If it is not in accordance as decided by the recorder, then section 46 says that the recorder shall not record same. Subsection 46(2) then goes on to say that if the applicant desires it, the recorder shall receive and file the application, upon receiving the required fee. This action allows for an adjudication of any question as provided in the **Act**.

This paying of a fee has technically not been done in this instance although Mr. Racicot did tender the same fee in order to have his application recorded. This fee was returned, along with a copy of the application to Mr. Racicot by the then Recorder of the Porcupine Mining Division.

The tribunal notes that there is no time limit within which a request for a filed application must be made and the fee must be paid. However, once filed, there is a time limit within which an applicant must commence an action in order to keep the application valid. [Subsection 46(3), leading to either a dispute, as set out in section 48 or an appeal, as set out in section 112].

The question is has Mr. Racicot done everything necessary to keep his application valid for the purposes of an appeal? The tribunal finds that he has met the intent of the legislation by commencing his action, in this case an appeal, within the statutory time frame required. It further finds an administrative matter such as paying a fee should not stand in the way of his bringing his appeal forward before this tribunal.

Paying a fee under Section 46 is an administrative measure and as far as the tribunal is concerned, is still owing to the recorder. The tribunal notes that this particular administrative measure is one that normally does not come to the tribunal's attention, nor should it.

The facts in this case give rise to an interesting situation in that the tribunal does not, as a matter of course, check to ensure whether the required fee has been paid and request that an application to record be filed has been made when it receives an appeal. This administrative step is solely within the jurisdiction of the mining recorder. There is also nothing in the **Mining Act** which either allows the tribunal or the mining recorder to address this particular problem, no provision to allow for the tribunal to ensure that an application has been perfected, when not done at first instance. To the tribunal's knowledge, this has not happened before and the reasons for it may rest with the particular circumstances in this case.

At the time of the receipt of the appeal in the Mining Recorder's Office, as required by the legislation, it should have immediately been noticed that Mr. Racicot had not requested that his application be filed. Owing to the fact that the mining recorders offices were in transition due to centralization, this fact somehow managed to slip through unnoticed.

While Mr. Racicot did not specifically direct the recorder to treat his application as received and filed under subsection 46(2), the tribunal believes that his desire was indicated by his commencing his action well within the time period set out in subsection 46(3), namely 60 days, as well as the time allowable for appeals under subsection 112(3), of 15 days.

The remedial powers granted to the tribunal in the **Mining Act** do not specifically address this type of situation. The Courts have been given the power to confirm a proceeding under section 136, where there may be a defect in form or substance or a failure to comply with the Act or the regulations, where no substantial work or injustice has been occasioned, where the problem occurred before the recorder or tribunal. However, the tribunal does not have similar powers to confirm a proceeding in similar circumstances, where the problem occurred in the recorders Office. However, the tribunal regards this as recognition that these proceedings are unlikely to be called into question by the Courts, owing to the failure to request the filing of the Racicot application and the payment of the fee.



The tribunal finds that it will rely on its powers pursuant to section 121 of the **Mining Act**, to make its findings on the real merits and substantial justice of the case and on section 105 of the **Mining Act**, to determine any right, privilege or interest conferred by this **Act** to find that there is an inferred power to allow for the perfection of an appeal, where the appellant has demonstrated the required intent to appeal, through his filing of the appeal within the required time. This is a case where, owing to an administrative oversight in the mining recorder's office, the fact that the application was not filed with the required fee, was not noticed in any time frame implied through the importation of subsection 44(1), namely 31 days, although not specifically mentioned in subsection 46(2). The tribunal makes this finding fully cognizant of the fact that this is an unusual case, that the mining recorders are in a position to normally catch such oversights and it is unlikely that the circumstances leading up to such an occurrence are likely to happen again. The tribunal also bases this finding on the fact that there are significant issues to be heard here, namely the manner in which some 22 hectares of land coming open for staking in unsurveyed territory should be staked, the actions on the ground of partners seeking to divide up the 22 hectares in some manner as allowed by the regulation and the allegations that the recorded staking was not done in compliance with the requirements of the legislation. On balance, the tribunal finds that the interests of justice would not be served by disallowing the perfection of Mr. Racicot's appeal on a technicality.