File No. MA 014-06

L. Kamerman	)	Wednesday, the 15th day
Mining and Lands Commissioner	)	of August, 2007.

THE MINING ACT

IN THE MATTER OF

Mining Claim SSM-1235757, situate in the Township of Chabanel, in the Sault Ste. Marie Mining Division, recorded in the name of Paulette A. Mousseau-Leadbetter, on the 22nd day of November, 2002 and transferred to the name of 3814793 Canada Inc., on the 21st day of April, 2006, hereinafter referred to as the "3814793 Canada Inc. Mining Claim";

AND IN THE MATTER OF

Filed Only Mining Claim 3009900, situate in the Township of Chabanel, in the Sault Ste. Marie Mining Division, staked by Mr. Richard Daigle, to have been recorded in the names of Pele Diamond Corporation and 2098680 Ontario Inc., each as to a 50% interest, respectively, hereinafter referred to as the "Pele Diamond Filed Only Mining Claim";

AND IN THE MATTER OF

Ontario Regulation 7/96, Claims Staking;

B E T W E E N:

PELE DIAMOND CORPORATION AND
2098680 ONTARIO INC.

Appellants

- and -

PAULETTE A. MOUSSEAU-LEADBETTER AND
3814793 CANADA INC.

Respondents

- and -

MINISTER OF NORTHERN DEVELOPMENT AND MINES

Party of the Third Part

AND IN THE MATTER OF

An appeal from the decision of the Provincial Mining Recorder, dated the 13th day of April, 2006, for the recording of all or that portion of the Pele Diamond Filed Only Mining Claim that does not overlap the 3814793 Canada Inc. Mining Claim.

ORDER FOR COSTS

WHEREAS the hearing of this matter, scheduled for March 29 and 30, 2007, was adjourned to allow counsel for the respondents, Mr. Bruce Willson, an opportunity to review the additional filing by counsel for the appellants;

AND WHEREAS it was determined at the motion on March 29, 2007, that the requested adjournment would be granted;

1. **IT IS ORDERED** that lump sum costs of $3,515.85 be paid by Pele Diamond Corporation and 2098680 Ontario Inc. to Paulette A. Mousseau-Leadbetter and 3814793 Ontario Inc. within thirty (30) days of the date of this Order For Costs.

DATED this 15th day of August, 2007.

Original signed by L. Kamerman

L. Kamerman
MINING AND LANDS COMMISSIONER

File No. MA 014-06

L. Kamerman	)	Wednesday, the 15th day
Mining and Lands Commissioner	)	of August, 2007.

THE MINING ACT

IN THE MATTER OF

Mining Claim SSM-1235757, situate in the Township of Chabanel, in the Sault Ste. Marie Mining Division, recorded in the name of Paulette A. Mousseau-Leadbetter, on the 22nd day of November, 2002 and transferred to the name of 3814793 Canada Inc., on the 21st day of April, 2006, hereinafter referred to as the "3814793 Canada Inc. Mining Claim";

AND IN THE MATTER OF

Filed Only Mining Claim 3009900, situate in the Township of Chabanel, in the Sault Ste. Marie Mining Division, staked by Mr. Richard Daigle, to have been recorded in the names of Pele Diamond Corporation and 2098680 Ontario Inc., each as to a 50% interest, respectively, hereinafter referred to as the “Pele Diamond Filed Only Mining Claim”;

AND IN THE MATTER OF

Ontario Regulation 7/96, Claims Staking;

B E T W E E N:

PELE DIAMOND CORPORATION AND
2098680 ONTARIO INC.

Appellants

- and -

PAULETTE A. MOUSSEAU-LEADBETTER AND
3814793 CANADA INC.

Respondents

- and -

MINISTER OF NORTHERN DEVELOPMENT AND MINES

Party of the Third Part

. . . . 2

AND IN THE MATTER OF

An appeal from the decision of the Provincial Mining Recorder, dated the 13th day of April, 2006, for the recording of all or that portion of the Pele Diamond Filed Only Mining Claim that does not overlap the 3814793 Canada Inc. Mining Claim.

REASONS

This matter was set for hearing on the 29th and 30th days of March, 2007. This was the second set of hearing dates scheduled. Mr. Malcolm MacLeod, the original counsel for the Respondents, Paulette A. Mousseau-Leadbetter and 3814793 Canada Inc., had been appointed to the bench between the time the appeal was commenced and the dates first set for hearing of this matter.

While Mr. MacLeod had some experience in hearings or files before the Commissioner, this was a first experience for the seasoned replacement counsel, Mr. Bruce Willson, counsel for the Respondents, Paulette A. Mousseau-Leadbetter and 3814793 Canada Inc. Mr. Michael Bourassa, senior counsel on behalf of Appellants, Pele Diamond Corporation and 2098680 Ontario Inc., has had a number of files before the Commissioner and is more experienced with this particular process. Mr. Bourassa appeared with his co-counsel, Mr. Stephen Rosenhek, who was before the tribunal for the first time. Neither Ms. Catherine Wyatt nor her client, the Ministry of Northern Development and Mines, were responsible for events leading to the request for an adjournment and attendant costs.

What occurred decries the considerable experience of either senior counsel on behalf of the Respondents or Appellants.

On March 27, 2007, Mr. Bourassa in a letter sent by a facsimile at 5:36 p.m., addressed to me, Mr. Willson and Ms. Catherine Wyatt, advising that his client would be providing additional documents and relying on some cases at the hearing scheduled two days following. He advised that the document book was in the throes of preparation, and would be provided to Ms. Wyatt and the Commissioner on March 28, 2007. Since it would not be possible to courier a copy to Mr. Willson prior to the hearing, it would be made available to him when he arrived at the hearing.

In what was described as being in the interests of time, an index of the proposed filing was included. Mr. Bourassa pointed out that Mr. Willson could obtain all documents found at tabs 1 through 9 and those at 11 and 12 from his client or electronically from the MNDM website and from Sedar. Mr. Bourassa attached those documents from tabs 10, 13 and 14 in his fax to Mr. Willson.

Mr. Willson responded in writing to this letter on March 28, 2007, the facsimile having been sent out at 9:32 a.m., stating that he only received Mr. Bourassa's letter one hour earlier when he arrived at his office. He explained that, in his haste, this letter was merely dictated and not read and explained that its tone reflected this fact.

. . . . 3

Mr. Willson advised that his client would not be attending with him at the hearing in Toronto on March 29 and 30, 2007 and was in fact currently in the bush at a location approximately 120 miles away. Mr. Willson indicated that he would not be able to consult with his client about the documents as Mr. Bourassa seemed to expect, many of which would not be shown to him until the following day. In addition, Mr. Willson had only learned earlier in the week the name of the expert witness to be called by Mr. Bourassa, had not received a copy of his C.V., nor was he made aware of the nature of his evidence.

Mr. Willson indicated that he was forced, under the circumstances, to ask for an adjournment.

Mr. Bourassa responded to Mr. Wilson on March 28, 2007. Given that Mr. Willson's client would not be available to provide instructions and could not be reached, Mr. Bourassa assumed that Mr. Leadbetter's decision to go into the bush was not recent. To be unavailable to his counsel, Mr. Bourassa stated, is an action which Mr. Leadbetter undertook at his own legal peril and is not one for which Pele Diamond should bear responsibility. He advised that the additional documents were provided as a courtesy, having been done instead of presenting them at the hearing. The additional maps were those which had originally been filed by or on behalf of Mr. Willson's client and were intended to show Mr. Leadbetter's conduct in relation to Mining Claim SSM 1235757. Mr. Bourassa suggested that the additional documents were in no way controversial since they were either those of Mr. Willson's client or publicly filed by Dianor, with whom Mr. Willson's client was involved in a business transaction. While his intent was to refer only to one map within each document, he felt that it would only be proper to provide the entire document from which the maps originated.

At the hearing of the motion, Mr. Willson indicated that he was opposed to the receipt by the tribunal of this late-filed material. However, if it were to be allowed, he would be asking for costs.

Mr. Willson submitted that what had taken place did not amount to good advocacy, was not timely, nor was it fair. The fax of March 27, 2007, was sent after normal business hours. The filing was particularly unseemly as none of the documents were recent, dating back to 2004. If the documentation is in fact meaningless, then it begs the question of why it needed to be filed at all, particularly if it does not advance the case of the Appellants. Why hadn't adequate preparation been done well in advance of the hearing? No consideration had been given to the fact that Mr. Willson may have wished to cross examine on the new documents, let alone determine whether there may be better or additional documents which he may chose to file which would refute or provide additional evidence. Allowing the filing would interfere with Mr. Willson's clients rights that he be permitted to adequately prepare their case.

Mr. Willson pointed out that there was no way for him to mitigate or prevent his own costs as he was still required to fly down and attend in case the requested adjournment was not granted.

. . . . 4

Referring to sections 10 and 10.1 of the **Statutory Powers Procedure Act (SPPA),** Mr. Willson suggested that it is permissible for a hearing such as the one scheduled before the Commissioner to go ahead on the record through counsel or an agent without clients having to be present. As a result, it cannot be presumed that his client would automatically be available to review the documentation filed. It would be imprudent for him to rely on Mr. Bourassa's assertions that the documents were innocuous as he could just as readily be ambushed as a result. Without conferring with his client, Mr. Willson was also unable to determine whether he would need to retain the services of an expert to further advise.

Mr. Willson submitted that the situation was extremely prejudicial to his clients. Mr. Willson stated that he was not an expert at the reading of maps and would have to determine whether there are better or contradictory maps available. Issues in this case revolve around staking and boundaries, so maps would be essential to any findings.

Mr. Rosenhek opposed the requested adjournment, submitting that it was not warranted in the circumstances. He submitted that the matter of what documents could be presented at a hearing is a fluid one and while it is desirable that they arrive ahead of time, it is not a requirement. Parties should have the required documents in their possession at the hearing.

The issue of whether Mr. Willson would be calling witnesses was raised, wherein he did not respond to earlier written requests and only advised of his intentions on March 27, 2007.

Mr. Rosenhek submitted that the whole thrust of Mr. Willson's arguments were that he could not consult with his client regarding the documents and yet it was through Mr. Leadbetter's actions and Mr. Willson's belief that his client's attendance was not necessary which brought the matter to the juncture faced by the tribunal. How can it be prejudicial when his own client put himself out of reach and failing to arrange a means of communication in anticipation of the hearing proper? Mr. Rosenhek questioned who should bear responsibility for this fact and submitted that it should not be Pele Diamond's fault that Mr. Leadbetter was not made available. As to whether one must show all the documents one intends to put before a witness under cross-examination, there is nothing in the tribunal's Order to File nor in the **SPPA** to suggest that this is required.

As to the documents contained in the late filing, all originated with the Appellants, are public documents or were filed with MNDM by contractors on their behalf. Tabs 1, 2 and 4 are the Appellants' own assessment work documents prepared on their behalf by their contractor, while tabs 3 and 5 are enlarged maps from those same documents. Tabs 6 though 9 relate to Dianor Resources Inc, being either press releases or technical reports. The Appellants have optioned to Dianor to develop the property. The Respondents have relied upon their references to Dianor and evidence of this relationship to support their position in this proceeding. It is not a big leap to say that they should be familiar with the documents.

Tab 10 is merely a calculation of areas involved, namely in hectares and acres, water and land portions only and overall totals. It was produced as an intended aid to the proceedings and was intended to be of benefit to all.

. . . . 5

Tab 11 is a clear copy of the application to record which is at the heart of this case, not otherwise distorted through having been sent by fax. Tab 12 is a blow up of the sketch, merely intended to be helpful to all, something which is nice for counsel to have ahead of time.

Mr. Rosenhek pointed out that the cases which would be relied upon were provided ahead of time merely as a courtesy, as there was no legal requirement to do so. He pointed out that Mr. Willson did not provide his cases and cannot complain.

Mr. Rosenhek concluded by submitting that the failure of Mr. Leadbetter to attend the hearing thereby being available for consultation is at the root of the difficulties faced with the documents which were filed. The grounds for an adjournment have not been made out. Nor is there a basis to exclude the documents on the basis of the **SPPA**, the rules of the tribunal, common sense practice of advocacy before this or any tribunal. Mr. Rosenhek further submitted that if an adjournment were granted, it should be done on the basis of costs to his clients.

Ms. Wyatt pointed out in her brief submission that the Order to File issued by the tribunal was clear, that parties or their counsel were to file all documentation to be relied upon in their cases by the ordered date.

Costs

Mr. Willson provided the following costs of the adjourned hearing on behalf of his clients:

Fee	$5,000.00
G.S.T.	300.00
Airfare	$ 868.50
Hotel	189.00
Weirmeir	$1,466.05
Total	$7,823.55

Mr. Bourassa provided the following costs of the adjourned hearing on behalf of his clients:

Costs for witness, Bailey: Fees	$ 424	
Accommodation, meals, taxi,	$ 332	
Airfare	$ 903	
Subtotal	$1,659	
Weirmeir	$1,394	(3 hours of fees and GST were deducted as this was time which otherwise would have been used for the hearing.
Lawyers preparation cost thrown away	$3,525	
Total:	$6,578	

. . . . 6

Findings

It was determined at the conclusion of the motion that the request for adjournment would be granted. These reasons deal with the issue of costs.

The Order to File documentation, which was issued on April 19, 2006, specified that the parties were to file, "all documentation, evidence and things to be relied upon in the hearing of the appeal, 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." There is no requirement to file case law at this stage of proceedings.

This Order and all like it are quite clear in that what is to be filed should permit the opposing party or parties to prepare their case. As too often happens, it is not until counsel is in the throes of preparing for the actual hearing that the sufficiency or insufficiency of the documentation becomes apparent.

At this stage in the proceedings, I am not going to rule on whether the documentation filed by Mr. Bourassa's colleague, Mr. Stephen Rosenhek, is in fact comprised of material which should not be new to Mr. Willson's clients, having formed either part of their own assessment work filings or appeared in documentation involved in their transactions with Dianor, which apparently has an option on 49 Mining Claims held by Leadbetter in Chabanal Township.

These are the pertinent facts. Two days prior to the scheduled hearing, Mr. Rosenhek and/or Mr. Bourassa filed what has been made Exhibit 5, comprised of 12 tabs of documents and two cases. The material is quite voluminous, comprised of 282 pages, more or less, not including the cases. Included are a proton magnetometer report, crone VLF-EM Electromagnetics Report, summary of VLF-electromagnetics, magnetometer, geology, bulk sampling and diamond drilling, a technical report, enlargements of maps, sketches and figures, press releases. Copies of abstracts and a number of technical maps form parts of the various reports.

Buried in all this material, but apparently sent to Mr. Willson via Facsimile from tab 10 was the calculation of the area of SSM 18639, in acres and hectares, for the land portion, water portion and total of land and water. This one sheet of information, a distillation of information available elsewhere in this matter, is exactly the sort of last minute, useful key which I would not wish to discourage parties or their counsel from preparing, even if it is done so at the last minute. But this is one sheet of paper in contrast with the late filing, which has the size and heft of a medium sized phone book

Mr. Bourassa and Mr. Rosenhek have assured me and attempted to assure Mr. Willson that nothing in this documentation should come as a surprise to Mr. Willson, that all documents were well within the knowledge of this client or readily available in the public domain. That is really beside the point. Whether or not Mr. Willson had previously obtained access to all of these documents through his clients or his own efforts is also beside the point.

. . . . 7

The point is that none of the documents were identified either by Mr. Willson or Mr. Bourassa prior to March 27, 2007, as being ones that would be relied upon in the conduct of these proceedings. It cannot be taken for granted that Mr. Willson's necessary familiarity with these documents and their contents would have been attained prior to March 27, 2007. Nor can it be assumed that Mr. Willson could readily dismiss their lack of importance to his clients' case. That is a decision he must be allowed to make himself in consultation with his clients. Finally, even if there are only two or three pages which would prove of interest and relevance to the case Mr. Willson wishes to present on his clients' behalf, he should not be precluded from having adequate time to ensure that he can adequately add the necessary references to his preparations, incorporate the information to the presentation of his case and ensure that he is suitably prepared to proceed.

All of the points in the preceding paragraph presume that there is nothing of significant concern raised by the documents. The opposite could turn out to be the case, namely that Mr. Willson will be required to hire an expert to advise and possibly change the nature of his case. Although the passage of time elapsed has revealed that this was not the case, at the time the adjournment was sought, it was not a certainty.

On the other hand, it is problematic that Mr. Willson's client was unavailable. As was pointed out at the motion, these proceedings are considered new hearings, not true appeals. As such, parties must come prepared to make their cases as though they are being heard for the first time. At the very least, parties must be available to provide instructions to their counsel on matters which might arise during the course of the proceedings.

The fact that Mr. Leadbetter was in the bush and could not be raised was not the cause of Mr. Willson's difficulty in receiving this late filing however. It is simply that had he been present and available as everyone at the motion had assumed he would have been, Mr. Willson would have been in the position to mitigate the impact of the situation in which he found himself and offer up the possibility that the hearing could be kept on track with only a small delay. The matter could have been adjourned for a period of an hour or so for Mr. Willson to determine and assess the significance of the documents filed. It may have been possible that Mr. Bourassa's and Mr. Rosenhek's assertions regarding the lack of importance of the documents was substantiated to Mr. Willson's satisfaction and that he was content to proceed with no undue changes to the case he had prepared.

I am satisfied that the costs caused by the extreme late filing of considerable additional materials should be borne by Pele Diamond Corporation and 2098680 Ontario Inc., payable to Paulette A. Mousseau-Leadbetter and 3814793 Ontario Inc. The failure by the Respondents to be in a position to mitigate what transpired by failing to have Mr. Leadbetter attend the hearing of be available for consultation will also be taken into account.

I will order that the lump sum of $3,515.85 be paid by Pele Diamond Corporation and 2098680 Ontario Inc. to Paulette A. Mousseau-Leadbetter and 3814793 Ontario Inc. within thirty (30) days of this order based on an award of $4,687.80 for costs reduced by 25% for failure of the respondents to attend the scheduled hearing with their counsel, thereby being unable to mitigate the situation caused by the late filing, including possibly averting the necessary adjournment.

. . . . 8

Comments on Filing

I had hoped the procedures in place over the last 10 or 15 years would have been sufficient to avoid the late filing of considerable additional materials. Nothing in the procedures seems to compensate for the natural human tendency to do the finely detailed case preparation within sight of the hearing date(s), when it will be fresh in one's mind and near to hand. As I have said above, I would hate to discourage preparation of useful summary documents which may be created through the insights gained during in depth proper preparation.

In future, the tribunal will explore with counsel a disclosure and filing procedure, whereby a more complete listing of documentation may be disclosed, but filings will be limited to those documents parties wish to rely upon. It is hoped that listing all documents within the public domain, for example, could prevent last minute surprises from occurring and avoid many prospective motions for adjournment.