

File No. MA 013-04

File No. MA 017-04

M. Orr)
Deputy Mining and Lands Commissioner)

Thursday, the 2nd day
of December, 2004.

THE MINING ACT

IN THE MATTER OF

Mining Claim L-3000607, situate in the Township of Cook, in the Larder Lake Mining Division, staked by Mr. Jacques Robert and recorded in the name of Royal Victoria Minerals Ltd., (hereinafter referred to as the "Royal Victoria Mining Claim");

AND IN THE MATTER OF

Filed Only Mining Claim 3004143, situate in the Township of Cook, in the Larder Lake Mining Division, staked by Mr. Charles Arnold Marshall to have been recorded in the name of Mar-Land Minerals Ltd., (hereinafter referred to as the "Marshall Filed Only Mining Claim");

AND IN THE MATTER OF

Ontario Regulation 7/96, Claim Staking;

B E T W E E N:

CHARLES ARNOLD MARSHALL

Appellant

- and -

ROYAL VICTORIA MINERALS LTD.

(who merged into St. Andrew Goldfields Ltd. effective June 23, 2003)

Respondent

AND IN THE MATTER OF

An appeal by Mr. Charles Arnold Marshall, pursuant to subsection 112(1) of the **Mining Act**, from the decision of the Provincial Mining Recorder, dated the 20th day of May, 2004, for a declaration that the Royal Victoria Mining Claim L-3000607 be declared invalid and for the recording of the Marshall Filed Only Mining Claim 3004143;

AND IN THE MATTER OF

Cancelled Mining Claim L-1205874, situate in the Township of Cook, in the Larder Lake Mining Division, recorded on the 11th day of July, 2000, in the name of Mr. Charles Arnold Marshall as to a 10% interest and Mar-Land Minerals Ltd. as to a 90% interest, (hereinafter referred to as the “Marshall Cancelled Mining Claim”).

AND

IN THE MATTER OF

Mining Claim L-3011303, situate in the Township of Cook, in the Larder Lake Mining Division, staked by Mr. Daniel E. Dunstan and recorded in the name of St. Andrew Goldfields Ltd. on the 16th day of June, 2003, (hereinafter referred to as the “St. Andrew Mining Claim”);

AND IN THE MATTER OF

Cancelled Mining Claim L-1205874, situate in the Township of Cook, in the Larder Lake Mining Division, recorded on the 11th day of July, 2000, in the name of Mr. Charles Arnold Marshall as to a 10% interest and Mar-Land Minerals Ltd. as to a 90% interest, cancelled on the 12th day of February, 2003, (hereinafter referred to as the “Marshall Cancelled Mining Claim”);

AND IN THE MATTER OF

Ontario Regulation 7/96, Claim Staking;

B E T W E E N:

CHARLES ARNOLD MARSHALL
Appellant

- and -

ST. ANDREW GOLDFIELDS LTD.
Respondent

AND IN THE MATTER OF

An appeal by Mr. Charles Arnold Marshall, pursuant to subsection 112(1) of the **Mining Act**, from the decision of the Provincial Mining Recorder, dated the 4th day of June, 2004, for the St. Andrew Mining Claim to be declared invalid and for the reinstatement of the Marshall Cancelled Mining Claim or, for the ownership of the St. Andrew Mining Claim to be transferred from the Respondent to the Appellant;

AND IN THE MATTER OF

The statutory authority of the tribunal found in the **Mining Act**.

ORDER

WHEREAS THESE APPEALS were received by this tribunal on the 26th day of May, 2004 and the 9th day of June, 2004, respectively;

AND WHEREAS these appeals were heard consecutively by this tribunal on the 13th day of October, 2004;

1. THIS TRIBUNAL ORDERS that the appeals from the decisions of the Provincial Mining Recorder, dated the 20th day of May, 2004 and the 4th day of June, 2004, be and are hereby dismissed.

2. THIS TRIBUNAL FURTHER ORDERS that the notation “Pending Proceedings” which is recorded on the abstract of Mining Claim L-3000607, to be effective from the 26th day of May, 2004, be removed from the abstract of the Mining Claim.

3. THIS TRIBUNAL FURTHER ORDERS that the notation “Pending Proceedings” which is recorded on the abstract of Mining Claim L-3011303, to be effective from the 9th day of June, 2004, be removed from the abstract of the Mining Claim.

4. THIS TRIBUNAL FURTHER ORDERS that the time during which Mining Claim L-3000607 was under pending proceedings, being the 26th day of May, 2004 to the 2nd day of December, 2004, a total of 191 days, be excluded in computing time within which work upon the Mining Claim is to be performed.

5. THIS TRIBUNAL FURTHER ORDERS that the time during which Mining Claim L-3011303 was under pending proceedings, being the 9th day of June, 2004 to the 2nd day of December, 2004, a total of 177 days, be excluded in computing time within which work upon the Mining Claim is to be performed.

6. THIS TRIBUNAL FURTHER ORDERS that the 22nd day of January, 2006, be fixed as the date by which the next unit(s) of assessment work, must be performed and filed on Mining Claim L-3000607, as set out in Schedule “A” attached to this Order, pursuant to subsection 67(3) of the **Mining Act** and all subsequent anniversary dates are deemed to be January 22 pursuant to subsection 67(4) of the **Mining Act**.

7. THIS TRIBUNAL FURTHER ORDERS that the 10th day of December, 2005, be fixed as the date by which the next unit(s) of assessment work, must be performed and filed on Mining Claim L-3011303, as set out in Schedule “A” attached to this Order, pursuant to subsection 67(3) of the **Mining Act** and all subsequent anniversary dates are deemed to be December 10 pursuant to subsection 67(4) of the **Mining Act**.

8. THIS TRIBUNAL FURTHER ORDERS that no costs shall be payable be either party to this appeal.

THIS TRIBUNAL FURTHER ADVISES that pursuant to subsection 129(4) of the **Mining Act** as amended, a copy of this Order shall be forwarded by this tribunal to the Provincial Mining Recorder **WHO IS HEREBY DIRECTED** to amend the records in the Provincial Recording Office as necessary and in accordance with the aforementioned subsection 129(4).

Reasons for this Order are attached.

DATED this 2nd day of December, 2004.

Original signed by M. Orr

M. Orr
DEPUTY MINING AND LANDS COMMISSIONER

SCHEDULE "A"

Mining Claims #	Due Date
L-3000607	January 22, 2006
L-3011303	December 10, 2005

File No. MA 013-04

File No. MA 017-04

M. Orr)
Deputy Mining and Lands Commissioner)

Thursday, the 2nd day
of December, 2004.

THE MINING ACT

IN THE MATTER OF

Mining Claim L-3000607, situate in the Township of Cook, in the Larder Lake Mining Division, staked by Mr. Jacques Robert and recorded in the name of Royal Victoria Minerals Ltd., (hereinafter referred to as the "Royal Victoria Mining Claim");

AND IN THE MATTER OF

Filed Only Mining Claim 3004143, situate in the Township of Cook, in the Larder Lake Mining Division, staked by Mr. Charles Arnold Marshall to have been recorded in the name of Mar-Land Minerals Ltd., (hereinafter referred to as the "Marshall Filed Only Mining Claim");

AND IN THE MATTER OF

Ontario Regulation 7/96, Claim Staking;

B E T W E E N:

CHARLES ARNOLD MARSHALL

Appellant

- and -

ROYAL VICTORIA MINERALS LTD.

(who merged into St. Andrew Goldfields Ltd. effective June 23, 2003)

Respondent

AND IN THE MATTER OF

An appeal by Mr. Charles Arnold Marshall, pursuant to subsection 112(1) of the **Mining Act**, from the decision of the Provincial Mining Recorder, dated the 20th day of May, 2004, for a declaration that the Royal Victoria Mining Claim L-3000607 be declared invalid and for the recording of the Marshall Filed Only Mining Claim 3004143;

AND IN THE MATTER OF

Cancelled Mining Claim L-1205874, situate in the Township of Cook, in the Larder Lake Mining Division, recorded on the 11th day of July, 2000, in the name of Mr. Charles Arnold Marshall as to a 10% interest and Mar-Land Minerals Ltd. as to a 90% interest, (hereinafter referred to as the “Marshall Cancelled Mining Claim”).

AND

IN THE MATTER OF

Mining Claim L-3011303, situate in the Township of Cook, in the Larder Lake Mining Division, staked by Mr. Daniel E. Dunstan and recorded in the name of St. Andrew Goldfields Ltd. on the 16th day of June, 2003, (hereinafter referred to as the “St. Andrew Mining Claim”);

AND IN THE MATTER OF

Cancelled Mining Claim L-1205874, situate in the Township of Cook, in the Larder Lake Mining Division, recorded on the 11th day of July, 2000, in the name of Mr. Charles Arnold Marshall as to a 10% interest and Mar-Land Minerals Ltd. as to a 90% interest, cancelled on the 12th day of February, 2003, (hereinafter referred to as the “Marshall Cancelled Mining Claim”);

AND IN THE MATTER OF

Ontario Regulation 7/96, Claim Staking;

B E T W E E N:

CHARLES ARNOLD MARSHALL
Appellant

- and -

ST. ANDREW GOLDFIELDS LTD.
Respondent

AND IN THE MATTER OF

An appeal by Mr. Charles Arnold Marshall, pursuant to subsection 112(1) of the **Mining Act**, from the decision of the Provincial Mining Recorder, dated the 4th day of June, 2004, for the St. Andrew Mining Claim to be declared invalid and for the reinstatement of the Marshall Cancelled Mining Claim or, for the ownership of the St. Andrew Mining Claim to be transferred from the Respondent to the Appellant;

AND IN THE MATTER OF

The statutory authority of the tribunal found in the **Mining Act**.

REASONS

These matters were heard on October 13, 2004, in Toronto. Those appearing were Ms. Christine Marshall, representing the Appellant, her father, Mr. Charles Marshall. Representing the Respondent was Mr. Wayne Reid. Both representatives testified and were not represented by legal counsel. There were no other witnesses.

Background

On the simplest level and without intending to diminish the importance placed upon these matters by Mr. Marshall, this hearing had to do with the following. Mr. Marshall owned two claims at one time, one above the other, when viewed on a claim map. He had staked them according to what he thought was the township fabric. He failed to carry out assessment work and lost the top claim through forfeiture (which is automatic under the **Mining Act**). That land was staked by another (the Respondent). The Respondent had staked according to what it thought was the township fabric. Mr. Marshall contended that the Respondent's staking had run into his bottom claim. He filed a dispute. The Provincial Mining Recorder warned both parties against disturbing the evidence of staking. Mr. Marshall took this to mean that he could not get on his bottom claim to work it. He waited upon the Provincial Mining Recorder to hold a hearing and make a decision. With no assessment work being done, Mr. Marshall lost his bottom claim through forfeiture. The Respondent staked this land as well. Mr. Marshall filed a dispute against this second claim of the Respondent saying that he would not have lost it had it not been for the delay in getting the first dispute settled. He maintained that he could not get on the land to carry out assessment work, given his interpretation of the Provincial Mining Recorder's warning letter.

The Appeals

Mr. Charles Marshall filed disputes with the Provincial Mining Recorder against two claims that had been staked on behalf of Royal Victoria Minerals Ltd. and St. Andrew Goldfields Ltd. (the "Respondent") in 2002 and 2003.

The first dispute (received on July 19, 2002) alleged that the Respondent's first claim L-3000607 (recorded on July 15, 2002) overlapped Mr. Marshall's claim to the south (L-1205874) thereby making it impossible to carry out assessment work. He also disputed the staking itself saying that there were "very few" blazes and "minimal flagging".

The second dispute, dated April 22, 2004 and made against L-3011303, stated that Mr. Marshall had abided by a letter from the Provincial Mining Recorder warning him to not go on to the ground (vis-a-vis the staking of L-3000607). As a result of heeding the warning and since the staking of L-3000607 overlapped his own to the south, he could not perform the

necessary prescribed assessment work on his southern claim. Mr. Marshall's southern claim had been cancelled under the **Mining Act (Act)** in February, 2003 and then staked by the Respondent in June, 2003. Mr. Marshall wanted his southern claim back and argued that the Respondent should have abided by the same warning that he did.

The hearing for the first dispute was held on April 21, 2004, and the decision given on May 20, 2004. The hearing for the second dispute was held shortly after and the decision given on June 4, 2004. The Provincial Mining Recorder dismissed the first dispute, finding that the Mining Claim L-3000607 was staked in substantial compliance with the **Act** and the Regulations and would remain the claim of record. With respect to Mining Claim L-3011303, the Provincial Mining Recorder dismissed the dispute made against it for not having a basis in law. Mr. Marshall subsequently appealed both decisions of the Provincial Mining Recorder to the Mining and Lands Commissioner.

Mr. Marshall's appeal with respect to Mining Claim L-3000607 stated that the claim had not been staked in substantial compliance with the claim staking regulations. He also said that the warning of the Provincial Mining Recorder to not disturb the staking evidence was ambiguous and that he should be held to a clear standard in terms of how the warning should be interpreted. Mr. Marshall felt that his interpretation of the warning should not be held against him. He maintained that that the authority given to the Provincial Mining Recorder was "limited" and gave an unfair advantage to "big business" over "the prospector".

As for the Provincial Mining Recorder's decision regarding Mining Claim L-3011303, Mr. Marshall referred to his dispute made against Mining Claim L-3000607 on July 19, 2002 and again raised the issue of the interpretation that should be given to the July 23, 2002, letter sent by the Provincial Mining Recorder. The letter warned against disturbing or altering staking evidence. Mr. Marshall's appeal states, "It is clearly state [d] in this dispute that we were anxious to begin work on claim 1205874 and needed this dispute addressed ASAP. It is the Mining Recording Office that did not address this matter in a timely fashion as it was over 1½ yrs [sp] before anyone ever contacted us to proceed." Mr. Marshall also argued that the Respondent's staking of Mr. Marshall's forfeited southern claim ran afoul of the Provincial Mining Recorder's warning to not disturb the staking evidence for the disputed Mining Claim L-3000607. Mr. Marshall alleged that there was confusion on both sides in these matters; Mr. Marshall interpreting the warning letter in such a way that he thought he was prohibited from going on the land and the Provincial Mining Recorder's misunderstanding of the original dispute request. Mr. Marshall argued that "a government official should be held to a higher standard of conduct and communication than (sp) a lay person."

Issues

Has Mining Claim L-3000607 been staked in substantial compliance with the **Act** and the Regulations?

Is Mining Claim L-3011303 a valid claim?

Evidence

Mr. Marshall filed copies of various documents including historical records and detailed information related to the events surrounding the disputed claims. The Respondent also supplied documents for the hearing. The following summary of the evidence is derived from the material that was filed with the tribunal by both parties as well as the oral evidence given at the hearing itself.

Mr. Marshall has been a licensed prospector for over forty years. His work in the mining industry began in his youth. He can even make claim to a connection with the old “Adam’s Mine” near Kirkland Lake.

Mr. Marshall staked two claims in the summer of 2000. They were Claim L-1242039, staked on June 6, 2000 and recorded on June 15, 2000, and Mining Claim L-1205874, staked on July 27, 2000 and recorded on July 11, 2000. He eventually lost both of these claims because he failed to carry out the assessment work required by the **Act** and regulations. The cancellation of the claims occurred at different times. Mining Claim L-1242039 – the top claim - was cancelled on June 18, 2002; Mining Claim L-1205874 – the bottom claim - was cancelled on February 11, 2003.

Royal Victoria Minerals Ltd. and St. Andrew Goldfields Ltd. staked the disputed claims in 2002 and 2003. Claim L3000607 (the first claim) was staked on land originally covered by Mr. Marshall’s top claim on July 4, 2002 and recorded in the name of Royal Victoria Minerals Ltd. on July 15, 2002. Claim L-3011303 (the second claim) was staked on land originally covered by Mr. Marshall’s bottom claim on June 12, 2003 and recorded in the name of St. Andrew Goldfields Ltd. on June 16, 2003. Royal Victoria Minerals Ltd., and St. Andrew Goldfields Ltd., merged in June 2003, and are herein referred to as the “Respondent”.

Mr. Wayne Reid, the Respondent’s representative, told the tribunal that he began working with the Respondent in the spring summer of 2002. The Respondent was involved in compiling airborne magnetic surveys and staking claims in the general area of the contested claims. The Respondent was interested in gold deposits and was reviewing extensive swaths of land in its exploratory work. In Mr. Reid’s words, “...we staked a lot of ground in a short time...” He said that the Respondent’s stakers were “professionals” and that while they might be “quick”, they were “efficient” and that the staking was done in an “acceptable manner”.

Mr. Marshall contended that the Respondent’s first claim L-3000607 overlapped his still valid Mining Claim L-1205874 (his southern or “bottom” claim) at the time the

Respondent's claim was staked. He alleged that this overlapping had a negative effect on his efforts to carry out assessment work on his southern claim which had not yet been lost to forfeiture and (along with the fact that the overlapping occurred) was a major issue for Mr. Marshall.

As far as Mr. Reid was concerned, the Respondent's stakings were done on open land and in the right locations. He referred to an Inspection Report (described below) and said, "our claim (L3000607) was more correct than what the older claim (L1242039) was." (According to the material filed with this tribunal, the Inspection Report relied on by the Respondent was requested by Mr. Marshall and was provided to the parties in December 2003.) Mr. Reid also said, "...in a surveyed township the claim posts generally go back to where the real surveys show they should be, i.e., if you stake the south half of lot 2, concession 3, that's where you end up getting your claims staked back – or put back – say if you leased it and went back to a survey." Mr. Reid maintained that the staking had been done in substantial compliance with the **Act** and regulation.

As was noted above, Mr. Marshall's bottom claim was cancelled in February 2003. The reason for this was that on July 9, 2002 he had been granted an extension on his assessment work deadline. In his application for the extension, Mr. Marshall said that he was "unable to perform work due to health related reasons.... Within last week was given clean bill of health and immediately went on ground, contracted work with backhoe and heavy equipment operator to perform trenching and stripping but due to swamp area surrounding property, equipment was unable to get on property until ground is frozen." Mr. Marshall indicated on his application that he needed an extension of six months and that he planned to spend \$5,000.00 on assessment work. The work itself would consist of "trenching, stripping and drilling, sampling". He received an extension to February 11, 2003, to perform and report upon the needed assessment work. This was made known to him in a letter from Mr. Ron Gashinski, Senior Manager, Mining Lands Section, Mining Lands Management Branch, MNM, at Sudbury, dated July 9, 2003.

As it happened, while Mr. Marshall was engaged in seeking an extension for his bottom claim, the Respondent was busy in the area of Mr. Marshall's forfeited top claim. In fact, the Respondent (Royal Victoria Minerals Ltd.) had already staked its first Mining Claim L-3000607 on July 4, 2002, and would later have it recorded on July 15, 2002.

Evidence regarding Mr. Marshall's communication experiences with the MNM was provided through notes made by his daughter (who also represented him at the hearing). According to these notes, Mr. Marshall and his daughter telephoned the MNM on a number of occasions starting on June 14, 2002. They requested information about his claims and asked for tags and maps. Mr. Marshall did not use a computer and relied on the MNM for assistance and information. He did not use the information posted by the MNM on the Internet. The notes refer to conversations held with MNM officials and the topics ranged from when lands would be open for staking to such topics as the effects of an OPSEU strike.

The Respondent's representative could not relate to any of the communication problems experienced by Mr. Marshall. Quite the opposite, the Respondent did not experience any problems and in fact had people in the area that could access ministry offices in person. The Internet was used to access information as well. In fact, Mr. Reid said that claim maps could be accessed on a daily basis. This was useful, as they would not want to stake ground that had been staked by someone else on a previous day.

Once Mr. Marshall had received the maps he needed, he and his daughter went into the bush to stake the area covered by his old cancelled top claim on June 29, 2002; however, he suffered health problems the next day and the staking was not completed. Calls were made to the MNDM seeking information. On July 5, 2002, they asked the MNDM about an extension for Mr. Marshall's bottom claim.

On July 6, 2002, Mr. Marshall and his daughter went on to the bottom claim with a backhoe operator (and his rig) but swampy conditions made it impossible to use the hoe. They were told they would have to wait for the ground to freeze. They "walked over the claim approximately 400 ft in" and found that "nothing on claim indicated line of other stakes crossed." At the hearing, Mr. Marshall's daughter stated that "we were on the ground and we noticed that the other claim ... there was no line when we went on to bring the back hoe on to the ground, which is the second claim we're talking about, [L-3011303] there was no line on it. We were right through that ground trying to find a way for that bulldozer to get on it."

A further series of telephone calls to the MNDM made on July 9th and 10th confirmed that the extension for the bottom claim had been granted and that the top claim had come open for staking. A trip to the area on July 11, 2002, confirmed that the Respondent had staked the top claim on July 4, 2002. At this point, (July 11th, 15th) Mr. Marshall and/or his daughter lodged a complaint with the MNDM focusing on issues of accessing information, poor communication of procedures and complaining that there was no protection for filed assessment information.

On July 17th, Mr. Marshall re-staked his old top claim. He and his daughter believed the Respondent to have, (in their words), "staked wrong" since they had not seen evidence of staking the day they tried to work their bottom claim with a backhoe. They finished re-staking on July 18th. They also checked to see if the Respondent had staked the southern line of Mining Claim L-3000607 inside Mr. Marshall's bottom claim. They did find the southern line for the Respondent's first claim located 600 feet inside Mr. Marshall's bottom claim. Mr. Marshall believed that the Respondent had missed locating the concession line in question and that had it located the line, it would not have run into his bottom claim as it had.

Mr. Marshall attempted to record the claim he had re-staked. However, it was refused as the lands had been withdrawn from staking on July 16th. The notation on the refused claim states "Refused. Land withdrawn from staking July 16/02 by Order W – L- 42/02. This application is filed as indicated in 46(3) Mining Act (filed only) R. Spooner". The Provincial Mining Recorder sent a letter dated July 24, 2002, to Mr. Marshall advising him of this Order.

The tribunal was able to access a copy of the Withdrawal Order from the MNDM website and the document notes that the land was withdrawn from staking “while the Ministry of Northern Development and Mines clarifies the status of the land.” Based on the notes provided by Mr. Marshall’s daughter, either she, or her father was advised of the Withdrawal Order on the 16th of July. Her notes read “Ron called said he withdrew land from staking – this after Royal Victoria recorded claim - leaves us no alternative for staking although when I spoke with him [Ron Gashinski] I could not understand purpose of this and thought it was if claim was not recorded.... We thought withdrawal meant of their staking, not land.” The Provincial Mining Recorder said in his decision, “Early in the day, July 16, 2002, the land was withdrawn from further staking, pursuant to Section 35 of the MA [the **Mining Act**], as an interim measure while the facts were being analyzed. After the Section 35 order was signed it was verified that the land had been staked by Mr. Robert [for the Respondent] and a valid application to record for Mining Claim L-3000607 had been filed. The Ministry was not in a position to offer Mr. Marshall any remedy since another licensee had established a legal right to the ground.” The Provincial Mining Recorder also noted that since Mr. Marshall’s staking had taken place after the lands had been withdrawn from staking, his claim (3004143) “was not valid regardless of the outcome of the dispute.”

On July 19, 2002, Mr. Marshall filed a dispute against the Respondent’s Mining Claim L-3000607. He alleged that L-3000607 overlapped his old bottom claim by 600 feet; that it had very few blazes and minimal flagging; and that all tags were in the opposite direction of staking. He also said that because it overlapped his bottom claim, assessment work for that bottom claim could not be performed. He added that “We are anxious to begin work on claim no. 1205874 and need this matter to be addressed ASAP.” Mr. Marshall pointed out (using the Respondent’s claim map) the location of the concession line (between Concessions 5 and 4) saying that “[t]his is also the same line we have been calling our base line. To the west of this claim on the concession line is a rock anomaly which our previous claim line crossed completely over. This is identified on the Gov’t Mines tenure map. Our tie line between post 4 & 3 is directly on this line.” He went on to describe his efforts to complete work “on this line”, and said that with the amount of work he had done on the line over the years, that he could confidently point to the location of the concession line. He also noted that the Respondent’s #3 post could not be found where his old number 3 post was located, but that after walking south on the line, the post was located approximately 600 feet south of the Marshall number 3 post.

On July 23, 2002, the Provincial Mining Recorder notified both the Marshalls and the Respondent that a dispute had been filed against the Respondent’s claim. The letter warned the parties “not to disturb or alter any of the staking evidence that is presently in the field until a determination of this dispute has been made.” The Provincial Mining Recorder sent another letter dated July 24, 2002, to Mr. Marshall advising him that (following his daughter’s request), the Appellant’s re-staked claim would be accepted as “Filed Only” pursuant to subsection 46(3) of the **Mining Act**. He further advised Mr. Marshall that the lands had been withdrawn from staking at the time before he re-staked his old claim.

Mr. Marshall's daughter contacted the Provincial Mining Recorder following the July 24th letter. She was made aware of the options that were available to the Marshall's in terms of the "Filed Only" status of their claim as well as the Order of Withdrawal as it applied to the lands they had re-staked. Mr. Marshall's daughter recounted the contacts she had with the MNDM and her story is repeated in the notes she kept.

Mr. Marshall lost his bottom claim to forfeiture on February 11, 2003. It came open for staking on February 12, 2003, was staked by the Respondent on June 12, 2003, and recorded on June 16, 2003 as Mining Claim L-3011303. Mr. Marshall and his daughter filed a dispute against this claim on April 22, 2004. The dispute stated that the Respondent's claim was invalid "due to a dispute on claim no. 3000607." Mr. Marshall and his daughter referred to the Provincial Mining Recorder's letter of July 23, 2002, "not to go on to the ground until dispute was settle [sp] which was disregarded when this ground was staked [by the Respondent]." Clause 30(1)(f) of the **Mining Act** was given as the basis for their argument regarding "going on the ground". The dispute notes, "Charles Marshall held this ground under claim #L1205874. He had an extension to perform work but due to dispute was unable to go onto ground." Mr. Marshall was arguing that his inability to perform assessment work stemmed from the fact that the Respondent had staked part of his bottom claim and the Provincial Mining Recorder had warned against disturbing that staking.

Mr. Marshall also filed an Application for Extension of Time to Perform and/or File Work on April 22, 2004 – the same time that they filed their dispute. When asked at the hearing what was being disputed with respect to L-3011303, Ms. Marshall replied "[t]hat we had the ground and we weren't – I felt that ground, from the letter that that ground was still ours until this case [the dispute against L-3000607] was settled. I didn't realize those claims were opened – could come open."

On December 3, and 4, 2003, a Mining Claims Inspector for the MNDM carried out an inspection in order to "determine the location of Mining Claim L-3000607 relative to the township fabric". The evidence filed with the tribunal indicates that Mr. Marshall requested the inspection. One of the observations made by the Inspector was that the #4 post for the cancelled claim L-1242039 was found in the "immediate location" of the #4 post for disputed claim L-3000607. The Inspection Report summary noted that all four corner posts for L-3000607 were located; that the locations for the posts were determined by way of a GPS unit and that the post locations "were superimposed using ArcView (GIS Software) onto the township data extracted from Claim Maps....According to the township fabric taken from Claim Maps, the posts are approximately 40 to 70 meters North West of the township fabric shown on the claim map. Due to the heavy forest activity in the area such as clear cutting and scarification, we were not able to locate any evidence of the township fabric on the ground." The inspection carried out by M. Descoteaux did not identify the anomaly used by Mr. Marshall as a feature used to identify the township fabric. He did reference the Original Township Survey made in 1904, and noted that "the surveyor only erected a 5 inch square pine post to mark what would be the mid point of the West boundary". This was according to the surveyor's own field notes. He also concluded that "given the evidence I encountered during the inspection, I believe only a cadastral survey performed by an Ontario Lands Surveyor would determine the proper location of the township fabric." 10

The Respondent's representative, Mr. Wayne Reid, while not having any direct knowledge of the staking of the two disputed claims, was able to describe how the Respondent carried out its exploratory activities in the area. He referred to use of the computer, the Internet, and having geologists and people in the area to access information from the MNDM to stake whatever lands were open. He noted that the lands in question had been open for a number of days before the Respondent staked them. He said that the Inspector's report supported the Respondent's staking efforts and that if anyone was off in terms of locating the township fabric, it was Mr. Marshall. Mr. Marshall was not in the right place, the Respondent was.

Findings

The Law

There are a number of sections of the **Act** and O. Reg. 7/96 that apply in this matter.

Under clause 5(1)(b) of O. Reg. 7/96, a mining claim must be staked so that it (among other things), "has boundaries coincident with or parallel to section, lot, concession or range line established by the original survey...."

Under subsection 44(2) of the **Act**, "[p]riority 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". Subsection 44(4) states "...if the other application or applications to record a mining claim cover any land that is not part of the mining claim that is entitled to priority under subsection (2), the recorder may record a mining claim with respect to that part of the land and shall amend the application or applications with respect to the land covered by the previously completed claims."

The issue of "substantial compliance" is addressed in Section 43 of the **Act**.

Subsection 67(5) of the **Act** says that "[d]espite anything in this Act, where in the opinion of the Minister special circumstances exist, the Minister may exclude the time within which work upon a mining claim must be performed or reported, or both, ... and may by order fix the anniversary date or dates by which the next or any subsequent periods of work must be performed or reported, or both,"

General Findings

The tribunal's first impression of these appeals was that they evolved out of a great deal of confusion. The confusion was evident in the notes filed by Mr. Marshall's daughter and in her testimony. The tribunal believes that this confusion stemmed from a lack of knowledge of the **Mining Act**. Mr. Marshall's daughter, who acted as his chief advisor, made no effort that the tribunal could see to educate herself or to seek out the guidance of a professional with

respect to the **Mining Act's** features. Mr. Marshall relied on his daughter's perspective and advice at his peril. The idea that assessment information should not have to be made public; the not knowing when claims come open; the lack of understanding as to what would be meant by a warning to not disturb staking and the re-staking of lands withdrawn from staking. These are all matters dealt with in the **Act**. The filing of assessment work is a key activity undertaken by all those involved in the industry. Barry Barton, in his book on mining law talks of it this way, "[a]ssessment work has ... become important as the means by which private explorationists contribute to the province or territory's body of public geological information. The collection of assessment work reports filed over the years by different explorationists working on properties in a district is a valuable resource available to industry and government alike."¹

The tribunal also believes that the confusion caused Mr. Marshall and his daughter to lay blame at the doorstep of those they thought should be keeping them apprised of any and all matters having to do with Mr. Marshall's original claims. There may indeed have been glitches in the communications going back and forth between the Marshall's and officials at the MNDM. However, the tribunal is of the view that these glitches, if they in fact occurred, were not the reason behind the events that befell Mr. Marshall and his claims.

The tribunal was struck by the speed with which Mr. Marshall and his daughter leveled criticism at everyone involved, but took no blame upon their own shoulders for the state of affairs they found themselves in. Mr. Marshall played a waiting game in effect and lost. His daughter admitted as much in her summation. In its review of the evidence, the tribunal was struck by the fact that Mr. Marshall had called the MNDM to find out when his top claim would be open for staking. This call was made at a time when the claim was still active. Why would an experienced prospector be seeking out this type of information? Ms. Marshall supplied the answer without realizing it. "In the situation", she said, "where it's hard to fund and promote as a prospector, it becomes difficult to keep claims in good standing, and as a result, you have to restake the ground at some point. And that's what was happening. He [Mr. Marshall] couldn't keep the work up; it was a lot to keep up." This waiting for claims to lapse in order to re-stake them would certainly have the effect starting the assessment clock over again. However, as a tactic it carries with it the great risk that someone else will move in to stake the ground.

The confusion and the looking to others to correct situations Mr. Marshall and his daughter had created blinded them to some of the options they might have considered to help themselves. The confusing picture was carried right through to the hearing before the tribunal. While this stands against Mr. Marshall, the tribunal felt itself obligated to help this prospector out of the situation he found himself in if it could. It is a well-known fact that the mining industry is extremely competitive. There is very little room for error in judgement and slow reaction times are rarely tolerated. The tribunal has a great deal of respect for the prospector who has been involved in the industry as long as Mr. Marshall has. The work is difficult and the rewards can be long in coming. For these reasons, the tribunal sympathized with the predicament that Mr. Marshall found himself in because of the cascading set of events that happened. Unfortunately for Mr. Marshall, there were no facts that the tribunal could find that would allow it to grant his appeals.

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¹ *Canadian Law of Mining*, by Barry J. Barton. 1993. ISBN 0-919269-39-7. Page 313

1. Has Claim L-3000607 been staked in substantial compliance with the Act and regulations?

The tribunal finds that the Respondent's claim L-3000607 has been staked in substantial compliance with the **Act** and the regulations. Section 43 of the **Mining Act** recognizes that allowances have to be made for the difficulties that sometimes go hand in hand with staking. Clauses 43(2)(a) and (b) describe the circumstances under which the staking out of a mining claim is deemed to comply with the requirements of the **Act** and regulations. The key phrases in those subsections are "not likely to mislead" and "an attempt has been made in good faith". The tribunal accepts the evidence of the inspector that the claim's posts are 40 to 70 metres North West of the township fabric (give or take error factors) – as he has identified it. The Respondent's representative, Mr. Reid, indicated that the Respondent's staker, Mr. J. Robert, probably used GPS to locate posts and find his position on the ground. Given the findings of the Inspection Report, the tribunal is prepared to find that the staker made a *bona fide* effort to stake the claim in line with the township fabric and was in fact as nearly on as he probably could be, given the conditions in the area. There is no evidence to support Mr. Marshall's contention that the rock anomaly he used is any better a marker than what the Inspector relied on to locate the township fabric. While the regulation O.Reg. 7/96 specifies that the claim have boundaries "coincident with or parallel to section, lot, concession or range lines established by the original survey", the effect of section 43 on the Respondent's staking efforts would forgive any failure to line up exactly with the township fabric in this case. Even the inspection report identifies the need for a cadastral survey to identify precise lines. Section 43 applies to the time the claim is staked and not to a time when a proper survey might actually be carried out.

Having found that Claim L-3000607 is a valid claim, the tribunal turns to Mr. Marshall's allegation that it overlapped his bottom claim (L-1205874) and that the overlap, both in physical terms and in view of the ministry's warning against disturbing the staking, prevented him from carrying out required assessment work. The tribunal does not accept Mr. Marshall's position or interpretations for two reasons.

First, the tribunal notes that assessment work is a requirement under the Act and that a failure to carry it out leads to automatic cancellation of the claim. The Mining and Lands Commissioner like the Provincial Mining Recorder has no authority to resurrect a claim cancelled for this reason. In any case, the tribunal does not accept that the Respondent's staking presented a physical barrier to Mr. Marshall's working his bottom claim. He and his daughter were on the land in early July 2002, along with a backhoe and were prevented from working the claim by wet conditions on the ground – not posts. Until the Marshall's discovered that Claim L-3000607 was a recorded claim, there was no mention made of any difficulties presented by the staking of L-3000607 when accessing their still valid bottom claim to the south.

Second, the tribunal does not agree that any overlap would work to invalidate the Respondent's first claim. Past Mining and Lands Commissioners have dealt with the issue and have found that overlapping staking does not necessarily work to invalidate a claim. Staking a claim only gives the staker or recorded holder a grant of the mineral in fee with the right to use the surface to get at the mineral. Where circumstances warrant it, posts can be moved.

Nor is the tribunal prepared to accept Mr. Marshall's interpretation of the Provincial Recording Office's warning letter of July 23, 2002 as reasonable. Just as it was initially puzzled by Mr. Marshall's inaction towards his top claim (letting it lapse), the tribunal was equally puzzled by Mr. Marshall's failure to do anything constructive in the circumstances relating to his bottom claim, given the length of time Mr. Marshall has been prospecting. He had applied for an extension for his bottom claim (L-1205874) on one occasion in the past, and in fact had applied again (albeit late) when he filed a dispute against L-3011303. Subsection 67(5) does not place a limit on the number of times one can apply for an extension. The tribunal is not prepared to accept that the Respondent's staking presented a physical impediment. Even if it did, Mr. Marshall had another option. He could not say that he was lacking any sort of remedy for the situation. The tribunal is of the view that Mr. Marshall's inaction was but a part of a set of cascading miscalculations made by both Mr. Marshall and his daughter in an understandable but desperate bid to reclaim what Mr. Marshall had once held. His point that he could not carry out assessment work because he had to abide by the warning letter is without foundation. The warning letter reflects the warning in the **Act** at section 164 and is not a prohibition against entering and working the land – as long as staking evidence is not disturbed. Mr. Marshall cannot blame the MNDM for his misfortune.

2. Is Claim L-3011303 a Valid Claim?

Again, in finding an answer to question #2, the tribunal was required to wade through the confusing picture painted by Mr. Marshall and his daughter. However, the tribunal is satisfied that L-3011303 is a valid Mining Claim. It was staked when the lands were open. The tribunal finds that Mr. Marshall's attempt to connect the validity of L-3011303 to the difficulties he felt he was experiencing trying to dispute the validity of L-3000607 is not supported in law. As set out above, Mr. Marshall's remedy for the dilemma he believed he was facing with respect to not disturbing the ground lay in either finding another way to carry out assessment work or in applying for another extension. He must have realized this latter option, but acted too late, as the documents show. The validity of L-3011303 did not depend on the dispute over L-3000607 getting resolved. Conversely, the fate of L-1205874 was not tied to the dispute getting resolved either. It's fate lay in Mr. Marshall's hands.

Exclusion of Time

Pursuant to subsection 67(2) of the **Mining Act**, the time during which Mining Claim L-3000607 was pending before the Tribunal, being the 26th day of May, 2004, to the 2nd day of December, 2004, a total of 191 days, will be excluded in computing time within which work upon the Mining Claim is to be performed and filed.

Pursuant to subsection 67(2) of the **Mining Act**, the time during which Mining Claim L-3011303 was pending before the Tribunal, being the 9th day of June, 2004, to the 2nd day of December, 2004, a total of 177 days, will be excluded in computing time within which work upon the Mining Claim is to be performed and filed.

Pursuant to subsection 67(3) of the **Mining Act**, as amended by S.O. 1996, c. 1, Schedule O, s. 18, January 22, 2006, is deemed to be the date for the performance and filing of the first and second units of assessment work on Mining Claim L-3000607.

Pursuant to subsection 67(3) of the **Mining Act**, as amended by S.O. 1996, c. 1, Schedule O, s. 18, December 10, 2005 is deemed to be the date for the performance and filing of the first and second units of assessment work on Mining Claim L-3011303.

Pursuant to subsection 67(4) of the **Mining Act**, all subsequent anniversary dates for Mining Claim L-3000607 are deemed to be January 22.

Pursuant to subsection 67(4) of the **Mining Act**, all subsequent anniversary dates for Mining Claim L-3011303 are deemed to be December 10.

Conclusions

For the reasons given, both appeals will be dismissed. No costs will be payable by either party.