Ontario

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The Mining and Lands Commissioner
Le Commissaire aux mines et aux terres

File No. MA 038-99

L. Kamerman) Tuesday, the 20th day
Mining and Lands Commissioner) of March, 2001.

THE MINING ACT

IN THE MATTER OF

Mining Claims L-1225677 and 1226882, both recorded in the names of Glenn Walter Bray, as to a 32% interest, Sharon Adelia Cotton, as to a 24% interest, Fred Ross Swain, as to a 20% interest, 903573 Ontario Limited, as to a 16% interest and Margaret Kaye Montgomery, as to an 8% interest, situate in the Township of Van Hise, in the Larder Lake Mining Division, hereinafter referred to as the "Mining Claims Drilled by Johnson";

AND IN THE MATTER OF

Mining Claims L-1076976, 1221753, 1223175, 1223921, 1223939, 1223942, 1224210, 1224235, 1224237 to 1224239, both inclusive, 1224293 to 1224295, both inclusive, 1227201 and 1238906, situate in the Township of Milner; and 1207053, 1223905, 1223906, 1223932, 1224216 and 1224217, and 1238902 to 1238905, both inclusive, situate in the Township of Van Hise, in the Larder Lake Mining Division, recorded in the name of Lake Superior Resources Corporation, hereinafter referred to as the "Superior Mining Claims";

(Amended March 20, 2001)

AND IN THE MATTER OF

Mining Claims L-1225672 situate in the Township of Milner; and 1225673 to 1225676, both inclusive, 1225678, 1226881, 1227025, 1227027 to 1227029, both inclusive, 1227048, 1227049, 1227199, 1227255 and 1234970, situate in the Township of Van Hise,in the Larder Lake Mining Division, recorded in the names of Glenn Walter Bray, as to a 32% interest, Sharon Adelia Cotton, as to a 24% interest, Fred Ross Swain, as to a 20% interest, 903573 Ontario Limited, as to a 16% interest and Margaret Kaye Montgomery, as to an 8% interest, hereinafter referred to as the "Swain Mining Claims";

AND IN THE MATTER OF

A Joint Venture Agreement between Randsburg International Gold Corporation and Lake Superior Resources Corporation involving lands in Milner and Van Hise Townships and alleged to include the Mining Claims;

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B E T W E E N:

W. JOHNSON MINING AND OIL FIELD SERVICES LTD.
Applicant

- and -

RANDSBURG INTERNATIONAL GOLD CORPORATION and LAKE SUPERIOR RESOURCES CORPORATION
Respondents of the First Part

- and -

GLENN WALTER BRAY, SHARON ADELIA COTTON, FRED ROSS SWAIN, 903573 ONTARIO LIMITED and MARGARET KAYE MONTGOMERY
Respondents of the Second Part

AND IN THE MATTER OF

An agreement dated the 16th day of July, 1999, between Randsburg International Gold Corporation, as company and W. Johnson Mining and Oil Field Services Ltd. as contractor for drilling and other services on lands in Milner and Van Hise Townships and alleged to be on the Mining Claims;

AND IN THE MATTER OF

An application under section 69 of the **Mining Act** for the vesting of ownership of the Mining Claims Drilled by Johnson from the Respondents of the Second Part, Bray, Cotton, Swain, 903573 Ontario Limited and Montgomery and a vesting of the interest in the Mining Claims Drilled by Johnson, the Superior Mining Claims and the Swain Mining Claims from the Respondents of the First Part, Randsburg International Gold Corporation and Lake Superior Resources Corporation, to the Applicant, by reason of default in payment for work performed by the said Applicant and such other relief as the tribunal deems just.

VESTING ORDER

WHEREAS an Interlocutory Judgment was issued by this tribunal on the 6th day of December, 2000 and a Supplementary Order was issued on the 13th day of February, 2001;

AND WHEREAS on the 15th day of March, 2001, the tribunal was informed by Mr. Kenneth Fitz, counsel for the applicant, that the money or money and shares declared owing by Randsburg International Gold Corporation and Lake Superior Resources Corporation had not been paid by either of the Respondents of the First Part;

UPON reading the materials filed in support of the application and the Vesting Order and hearing from the parties;

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1. **THIS TRIBUNAL ORDERS** that the application pursuant to section 69 of the **Mining Act** be and is hereby granted and that an undivided 15 percent interest in the Mining Claims be transferred to the Applicant, W. Johnson Mining and Oil Services Ltd. as follows:

(a) in the Mining Claims Drilled by Johnson and the Swain Mining Claims, 15 percent to be transferred in proportion to the interests of the current registered holders, namely

(i) 4.8 percent transferred to Johnson from the interest of Glenn Walter Bray, resulting in 27.2 percent remaining;

(ii) 3.6 percent transferred to Johnson from the interest of Sharon Adelia Cotton, resulting in 20.4 percent remaining;

(iii) 3 percent transferred to Johnson from the interest of Fred Ross Swain, resulting in 17 percent remaining;

(iv) 2.4 percent transferred to Johnson from the interest of 903573 Ontario Limited, resulting in 13.6 percent remaining;

(v) 1.2 percent transferred to Johnson from the interest of Margaret Kaye Montgomery, resulting in 6.8 percent remaining; and

(vi) in the Lake Superior Mining Claims, 15 percent to be transferred from Lake Superior to Johnson.

2. **THIS TRIBUNAL FURTHER ORDERS** that the aforementioned interest ordered transferred with respect to the Mining Claims Drilled by Johnson and the Swain Mining Claims shall be set off in equal proportion against the 37.5 percent interests of each of Randsburg and Lake Superior, at such time as the beneficial interests of the aforementioned Randsburg and Lake Superior may be recorded as legal interests on the abstracts for the aforementioned Mining Claims Drilled by Johnson and the Swain Mining Claims, failing which the interest of Johnson shall remain as set out in paragraph 1 above.

3. **THIS TRIBUNAL FURTHER ORDERS** that the aforementioned interest ordered transferred with respect to the Lake Superior Mining Claims shall be set off in equal proportion against the 50 percent interests of each of Randsburg and Lake Superior, at such future date as the beneficial interest the aforementioned Randsburg, may be recorded as legal interest on the abstracts for the aforementioned Lake Superior Mining Claims, failing which the interest of Johnson shall remain as set out in paragraph 1 above.

WHEREAS this Application was received by this tribunal on the 22nd day of November, 1999 and notations of "pending proceedings" were placed on the abstracts of the Mining Claims Drilled by Johnson, the Lake Superior Mining Claims and the Swain Mining Claims, respectively;

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AND WHEREAS the tribunal notes that on the 17th day of December, 2000, the "pending proceedings" notation was placed for a second time on the abstracts of Mining Claims L-1225672 to 1225678, both inclusive, 1226881, 1226882, 1227025, 1227027 to 1227029, both inclusive, 1227048, 1227049, 1227199, 1227255 and 1234970, situate in the Township of Van Hise, in the Larder Lake Mining Division, being the subject matter of File No. MA-007-00, having been filed in this Office on the 17th day of February, 2000;

AND WHEREAS the tribunal further notes that as a result of the aforementioned applications and "pending proceedings" notations, it is unable to exclude time and set new anniversary dates on any of the aforementioned Mining Claims as set out above at this time; **AND FURTHER ADVISES** that at such time as those Mining Claims which continue to be governed by "pending proceedings" notations in Mining and Lands Commissioner's File No. MA-007-00, shall have their time excluded from the 22nd day of November, 1999 up to and including the date of the final disposition of the aforementioned File No. MA-007-00;

4. **THIS TRIBUNAL FURTHER ORDERS** that the notation "Pending Proceedings" which is recorded on the abstracts of the "Mining Claims Drilled by Johnson", the "Superior Mining Claims" and the "Swain Mining Claims", effective from the 22nd day of November, 1999, be removed from the abstracts of the "Mining Claims Drilled by Johnson", the "Superior Mining Claims" and the "Swain Mining Claims".

5. **THIS TRIBUNAL FURTHER ORDERS** that the time during which Mining Claims L-1076976, 1221753, 1223175, 1223921, 1223939, 1223942, 1224210, 1224235, 1224237 to 1224239, both inclusive, 1224293 to 1224295, both inclusive, 1227201 and 1207053, 1223905, 1223906, 1223932, 1224216, 1224217 and 1238902 to 1238906, both inclusive, were under pending proceedings, being the 22nd day of November, 1999 to the 20th day of March, 2001, a total of 485 days, be excluded in computing time within which work upon the Mining Claims is to be performed.

6. **THIS TRIBUNAL FURTHER ORDERS** that the 4th day of November, 2001, be fixed as the date by which the next unit of prescribed assessment work on Mining Claim L-1076976, as set out in Schedule "A" attached to this Order, pursuant to subsection 67(3) of the **Mining Act** and subsequent anniversary dates are deemed to be November 4 pursuant to subsection 67(4) of the **Mining Act**.

7. **THIS TRIBUNAL FURTHER ORDERS** that the 4th day of April, 2002, be fixed as the date by which the next unit of prescribed assessment work on Mining Claims L-1221753, 1223175, 1224235, 1224237 to 1224239, both inclusive and 1224293 to 1224295, both inclusive, as set out in Schedule "A" attached to this Order, pursuant to subsection 67(3) of the **Mining Act** and subsequent anniversary dates are deemed to be April 4 pursuant to subsection 67(4) of the **Mining Act**.

8. **THIS TRIBUNAL FURTHER ORDERS** that the 16th day of January, 2002, be fixed as the date by which the next unit of prescribed assessment work on Mining Claims L-1223921, 1223939, 1223942, 1223905, 1223906 and 1223932, as set out in Schedule "A" attached to this Order, pursuant to subsection 67(3) of the **Mining Act** and subsequent anniversary dates are deemed to be January 16 pursuant to subsection 67(4) of the **Mining Act**.

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9. **THIS TRIBUNAL FURTHER ORDERS** that the 25th day of January, 2003, be fixed as the date by which the next unit of prescribed assessment work on Mining Claim L-1224210, as set out in Schedule "A" attached to this Order, pursuant to subsection 67(3) of the **Mining Act** and subsequent anniversary dates are deemed to be January 25 pursuant to subsection 67(4) of the **Mining Act**.

10. **THIS TRIBUNAL FURTHER ORDERS** that the 17th day of December, 2001, be fixed as the date by which the next unit of prescribed assessment work on Mining Claim L-1227201, as set out in Schedule "A" attached to this Order, pursuant to subsection 67(3) of the **Mining Act** and subsequent anniversary dates are deemed to be December 17 pursuant to subsection 67(4) of the **Mining Act**.

11. **THIS TRIBUNAL FURTHER ORDERS** that the 4th day of December, 2002, be fixed as the date by which the next unit of prescribed assessment work on Mining Claims L-1238902 to 1238906, both inclusive, as set out in Schedule "A" attached to this Order, pursuant to subsection 67(3) of the **Mining Act** and subsequent anniversary dates are deemed to be December 4 pursuant to subsection 67(4) of the **Mining Act**.

12. **THIS TRIBUNAL FURTHER ORDERS** that the 1st day of March, 2002, be fixed as the date by which the next unit of prescribed assessment work on Mining Claims L-1207053, 1224216 and 1224217, as set out in Schedule "A" attached to this Order, pursuant to subsection 67(3) of the **Mining Act** and subsequent anniversary dates are deemed to be March 1 pursuant to subsection 67(4) of the **Mining Act**.

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 20th day of March, 2001.

Original signed by

L. Kamerman
MINING AND LANDS COMMISSIONER

SCHEDULE "A"

Mining Claim	Due Date	New Due Date
L-1076976	July 7, 2000	November 4, 2001
L-1221753	December 5, 2000	April 4, 2002
L-1223175	"	"
L-1224235	"	"
L-1224237 to 1224239 incl.	"	"
L-1224293 to 1224295 incl.	"	"
1223921	September 18, 2000	January 16, 2002
1223939	"	"
1223942	"	"
1223905 & 1223906	"	"
1223932	"	"
1224210	September 27, 2001	January 25, 2003
1227201	August 19, 2000	December 17, 2001
1238902 to 1238906 incl.	August 6, 2001	December 4, 2002
1207053	November 1, 2000	March 1, 2002
1224216 & 1224217	"	"

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The Mining and Lands Commissioner
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L. Kamerman) Thursday, the 20th day
Mining and Lands Commissioner) of March, 2001.

THE MINING ACT

IN THE MATTER OF

Mining Claims L-1225677 and 1226882, both recorded in the names of Glenn Walter Bray, as to a 32% interest, Sharon Adelia Cotton, as to a 24% interest, Fred Ross Swain, as to a 20% interest, 903573 Ontario Limited, as to a 16% interest and Margaret Kaye Montgomery, as to an 8% interest, situate in the Township of Van Hise, in the Larder Lake Mining Division, hereinafter referred to as the "Mining Claims Drilled by Johnson";

AND IN THE MATTER OF

Mining Claims L-1076976, 1221753, 1223175, 1223921, 1223939, 1223942, 1224210, 1224235, 1224237 to 1224239, both inclusive, 1224293 to 1224295, both inclusive, 1227201 and 1238906, situate in the Township of Milner; and 1207053, 1223905, 1223906, 1223932, 1224216 and 1224217, and 1238902 to 1238905, both inclusive, situate in the Township of Van Hise, in the Larder Lake Mining Division, recorded in the name of Lake Superior Resources Corporation, hereinafter referred to as the "Superior Mining Claims";

(Amended March 20, 2001)

AND IN THE MATTER OF

Mining Claims L-1225672 situate in the Township of Milner; and 1225673 to 1225676, both inclusive, 1225678, 1226881, 1227025, 1227027 to 1227029, both inclusive, 1227048, 1227049, 1227199, 1227255 and 1234970, situate in the Township of Van Hise,in the Larder Lake Mining Division, recorded in the names of Glenn Walter Bray, as to a 32% interest, Sharon Adelia Cotton, as to a 24% interest, Fred Ross Swain, as to a 20% interest, 903573 Ontario Limited, as to a 16% interest and Margaret Kaye Montgomery, as to an 8% interest, hereinafter referred to as the "Swain Mining Claims";

AND IN THE MATTER OF

A Joint Venture Agreement between Randsburg International Gold Corporation and Lake Superior Resources Corporation involving lands in Milner and Van Hise Townships and alleged to include the Mining Claims;

. . . . 2

B E T W E E N:

W. JOHNSON MINING AND OIL FIELD SERVICES LTD.
Applicant

- and -

RANDSBURG INTERNATIONAL GOLD CORPORATION and LAKE SUPERIOR RESOURCES CORPORATION
Respondents of the First Part

- and -

GLENN WALTER BRAY, SHARON ADELIA COTTON, FRED ROSS SWAIN, 903573 ONTARIO LIMITED and MARGARET KAYE MONTGOMERY
Respondents of the Second Part

AND IN THE MATTER OF

An agreement dated the 16th day of July, 1999, between Randsburg International Gold Corporation, as company and W. Johnson Mining and Oil Field Services Ltd. as contractor for drilling and other services on lands in Milner and Van Hise Townships and alleged to be on the Mining Claims;

AND IN THE MATTER OF

An application under section 69 of the **Mining Act** for the vesting of ownership of the Mining Claims Drilled by Johnson from the Respondents of the Second Part, Bray, Cotton, Swain, 903573 Ontario Limited and Montgomery and a vesting of the interest in the Mining Claims Drilled by Johnson, the Superior Mining Claims and the Swain Mining Claims from the Respondents of the First Part, Randsburg International Gold Corporation and Lake Superior Resources Corporation, to the Applicant, by reason of default in payment for work performed by the said Applicant and such other relief as the tribunal deems just.

REASONS

On February 13th, 2001, the parties were directed to provide their respective positions on the following:

(a) the valuation of the Mining Claims Drilled by Johnson, the Superior Mining Claims and the Swain Mining Claims;

(b) detailing actual expenditures or estimated value of in-kind costs for staking, assessment work [as may have been found in the Interlocutory Judgment or other such costs incurred within the knowledge of the respective party] and consulting fees, and notwithstanding the generality of the foregoing, any other or additional factors which, in the party's submission may have an impact on the valuation, including, but not limited to goodwill, mining activity in the area, including producing mines;

(c) along with submissions as to what proportion of the Respondents' of the First Part interest in the Mining Claims Drilled by Johnson should be vested in the Applicant, including characterization of those interests;

(d) what proportion of the Respondents' of the First Part interest in the Swain Mining Claims should be vested in the Applicant, including characterization of those interests;

(e) what proportion of Randsburg International Gold Corporation's interest in the Superior Mining Claims should be vested in the Applicant, including characterization of that interest; and

(f) what proportion of Lake Superior Resources Corporations' interest in the Superior Mining Claims should be vested in the Applicant.

Preliminary Issue

On the 13th day of February, 2001, the tribunal issued an Order to Supplement and Amend Interlocutory Judgement. The purpose of this Order was to deal with the issue of what liability, if any, Lake Superior had with respect to the money or money and shares owed Johnson.

In a letter to the tribunal, dated February 14, 2001, Mr. Opara wrote the following:

> "We respectfully point out to the tribunal that this was not the operative instrument between the two companies. The Memorandum of Understanding is the instrument that is attached with this letter and dated June 17, 1999. It was also included in material before the tribunal, specifically in the material provided by the Respondents of the Second part. This document was we believe referred to in the testimony of Fred Swain. This was also the Memorandum of Understanding delivered to the Vancouver Stock Exchange and approval bodies. This Memorandum of Understanding makes no reference to Lake Superior having to raise any money. The Memorandum of Understanding that the tribunal refers to in its decision was not legal, would not be approved by the regulatory bodies nor was the operative instrument between the two companies.

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> Based on the foregoing, we respectfully request the Commissioner to amend her decision and find Lake Superior free of any liability in the matter as in her original decision. If necessary we are asking for a further hearing into this matter."

Mr. Opara referred to an adverse inference being drawn from his not having given evidence, as Mr. Fitz for Johnson had submitted the tribunal was able to do. He stated that he was willing and ready to testify, but made allegations of threats against him. Mr. Opara requested that the hearing be reconvened so that he might shed light on the issues raised in the Order to Amend and Supplement. He concluded by pointing out that the time frames set for submissions for purposes of valuation were too short to do a credible job.

Mr. Swain wrote to the tribunal on February 20, 2001 and stated the copy of the Memorandum of Understanding between Randsburg and Lake Superior upon which the tribunal relied was the copy which Swain et al. relied upon when entering into their letter agreement with Lake Superior on June 20, 1999, in which Lake Superior acquired a 75 percent interest in the Swain Mining Claims. Mr. Swain indicated that he saw only the version which Mr. Opara is asking the tribunal to rely upon when he received the documentation produced through this proceeding.

Finding on Preliminary Issue

The tribunal did not respond in writing to this correspondence, nor give any indication of what should be done with submissions found therein. Section 117 of the **Mining Act** states:

> **117.** Despite the *Statutory Powers Procedure Act*, the Commissioner may hear and dispose of any application not involving the final determination of the matter or proceeding, either on or without notice, at any place he or she considers convenient, and his or her decision upon any such application is final and is not subject to appeal but, where the Commissioner makes his or her decision without notice, he or she may later reconsider and amend such decision.

The tribunal does not accept the reasons given by Mr. Opara for having failed to give evidence during the course of the hearing. The allegations of threats should not be made covertly, under cover of correspondence, but should have been raised through counsel. It is pointed out that, during the course of the hearing, Lake Superior had its legal representatives present. The tribunal finds that it can give no credence to these allegations.

As to the substance of the determination made, the tribunal finds that it will not consider additional evidence on which of the two copies of the Memorandum of Understanding between Randsburg and Lake Superior governs their relationship. This information will undoubtedly be addressed in the action between Swain et. al. and Lake Superior, bearing Tribunal File No. MA 007-00, whose proceedings will commence in earnest following the disposition of this section 69 application.

Finally, the joint venture with Randsburg apparently provides that Randsburg would supply capital for drilling and Lake Superior would provide the land and administration. There is no doubt that Randsburg and Lake Superior, at the relevant time, were operating a joint venture. A vesting order involves an interest in land. It is Lake Superior which has both a legal interest in the Lake Superior Mining Claims and a priority as against Randsburg with respect to the Swain Mining Claims, including those drilled by Johnson. The finding as to the liability of Lake Superior, will stand. The tribunal finds, on the real merits and substantial justice of the facts, that Lake Superior cannot avoid Johnson's application for the vesting of an interest in the Mining Claims by asserting that it had no contractual relationship with Johnson. Randsburg and Lake Superior are found to be inextricably intertwined through their dealings with Johnson, which is proper and fitting in a joint venture arrangement.

Submissions on Valuation

Note: The following submissions are an amalgamation or direct excerpts or precis of the material submitted by the parties. In the interest of expediency the original material which has been directly quoted has not been distinguished from the summarized material. This in no way reflects on the weight to be given to the various submissions. Rather, it is in an effort to capture the essence of each of the parties' arguments, without unnecessarily burdening the text with quotation marks, square brackets and indentations.

Applicant, W. Johnson Mining and Oil Field Services Ltd.

The Purpose of a Vesting Order

The valuation of the Claims for the Vesting Order must be made from the perspective that it is made pursuant to section 69 of the **Mining Act**. The purpose is that of compensating the person performing work on mining claims, namely the applicant, where there has been a default in payment for the work performed. In this case, the purpose of section 69 is to compensate Johnson, who has not received remuneration for work performed.

By virtue of this provision, the person who receives the vested claims is placed in a position to sell the claims to a willing purchaser or to otherwise develop the claims in the expectation of recovering an amount equivalent to the amount owing to him.

Accordingly, for purposes of the Vesting Order sought, the valuation of the Mining Claims should give value only to work performed by Randsburg/Lake Superior which actually provided value to the applicant, Johnson. Therefore, unless the expenditures actually assist Johnson in selling or developing the Mining Claims, they should be assigned no value for the purpose of calculating the value of the Mining Claims.

Expenditures of Value

There will be underlying information, documentation related to applicable expenditures and results which will be used to support any valuation relating to the Mining Claims. It is submitted that such valuations based on work actually performed should not be

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considered by the tribunal unless the supporting documentation had already been filed during the course of the proceeding. There has been no full and thorough disclosure. Therefore, only that information which was filed in support of the application to determine the amount owing to Johnson should be used in valuating the Mining Claims.

Market Value

As has been judicially noted, a market value is the highest price available in an open and unrestricted market between **informed**, prudent parties acting at arms length and under no compulsion to act [***Brant Investments Ltd. v. Keeprits Inc.*** (1987), 42 D.L.R. (4th, 15) (Ont. H.C.)]. In the absence of full disclosure relating to an expenditure, Johnson has not been *fully informed* and can derive no benefit from that expenditure for valuation purposes.

The Order to File, issued November 26th, 1999, required all parties to produce all documentation which they intended to rely upon in the proceedings. This filing was fraught with repeated requests for additional documentation and yet Randsburg and Lake Superior both failed to provide all documentation in advance of the hearing. This was acknowledged during the hearing of the merits. In addition to the general disclosure request, Johnson had asked Randsburg and Lake Superior to produce the drill core obtained from the drilling work. There was no agreement as to whether there was a discovery of a significant mineral deposit or merely of disseminated sulphides and flowing from this fact, Johnson repeatedly requested production of the drill core and related reports. Randsburg had the capacity to produce the requested material to the tribunal, but elected to not do so.

With reference to the exploration costs referred to in the financial statements of Randsburg dated January 31st, 2000, which have been appended to Randsburg's submission of February 28th, 2001, Johnson submitted that most expenditures shown provide no value to Johnson for purposes of sale or development. While some may have provided value to Johnson, they cannot provide any such value through the ongoing failure of Randsburg and Lake Superior to provide the drill core and related documentation from the drilling on the Mining Claims Drilled by Johnson.

There has also been an ongoing failure to produce all documentation related to the geological consulting and geophysical surveys as had been requested. The evidence of Mr. Puskas that ground geophysics were never applied to the area of the FL-99-01 hole is contrasted with the validity of expenditures claimed by Randsburg. Therefore, Randsburg and Lake Superior should not be entitled to rely on purported expenditures which were not fully disclosed during the course of the proceedings.

The Actual Market Value

It is submitted that the aim of valuation is to determine the exchange value of the Mining Claims, namely the price at which the property is saleable [***Montreal v. Sun Life Ass'ce of Canada,*** [1952] 2 D.L.R. 81 at p. 90 (Judicial committee of the Privy Council)]. Also, while Frank Puskas has given evidence that the Mining Claims may have potential, there is no project due to the ongoing uncertainties. Obtaining financing for this project has become extremely difficult.

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The saleability of the Mining Claims must be considered when assessing the Vesting Order.

Actual Expenditures

The Memorandum of Understanding between Randsburg and Lake Superior contemplated the expenditure of $160,000 over a twelve month period for drilling, geological consultation, geophysics and ancillary expenditures. The financing raised by Randsburg and Lake Superior was approximately $350,000 to $400,000. However, Mr. Lenigan admitted that the financing raised by Randsburg was based primarily upon the strength of their Angola Project and not due to the Mining Claims.

Given the limited documentary disclosure, it is submitted that the "expenditures" purported to relate to the Mining Claims should be viewed by the tribunal with caution.

The Objective Valuation

It is submitted that Randsburg and Lake Superior have demonstrated that they value the Mining Claims at less than $85,415.08, which is the amount which the tribunal found owing to Johnson. Given that the Mining Claims drilled by Johnson, the Superior Mining Claims and the Swain Mining Claims have all been placed in issue in this proceeding, the failure by Randsburg and Lake Superior to pay the amount reflects the fact that the value of these claims to them is less than the monetary value of the Judgement.

Johnson does acknowledge that costs for staking and recording are expenditures which would accrue to its benefit. It is submitted on behalf of Johnson that the following interest in the claims specified should be vested in Johnson:

- The entire interest of Randsburg and Lake Superior in the two Mining Claims Drilled by Johnson;
- The entire interest of Randsburg and Lake Superior in the Swain Mining Claims;
- The entire interest of Randsburg in the Superior Mining Claims, or alternatively, the entire interest of Randsburg in some of the Superior Mining Claims; and
- the entire interest of Lake Superior in the Superior Mining Claims, or alternatively, the entire interest of Superior in some of the Superior Mining Claims.

Costs

It was further submitted that, in addition to the Judgement Amount, the Vesting Order should also take into account the costs which Johnson has incurred in prosecuting this matter.

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Respondent of the First Part, Randsburg International Gold Corporation

Pursuant to the Memorandum of Understanding dated June 17, 1999, Randsburg had the right to earn a 50% interest in mineral properties held by Lake Superior in Van Hise and Milner Townships. It was required to spend $160,000 on exploration over a twelve month period and issue to Lake Superior a total of 75,000 shares, of which 45,000 shares had already been issued at a deemed value of $33,750.

According to the audited financial statements of Randsburg for the twelve month period ending January 31, 2000, during which time the majority of the exploration work was conducted, a total of $274,065 was spent on the Mining Claims. This total does not include an estimated $22,500 Canadian, as an allocation for management supervision. This amount is half of the $5,000 US per month management fee paid to James Lenigan, the President of Randsburg, during the six month period from July to December, 1999, during which work was conducted on the Mining Claims.

During the fiscal year ending January 31, 2000, Randsburg spent a further $6,179 on the Mining Claims, primarily for core storage and geological consulting.

This results in a total, to date of $336,494 having been spent on the Mining Claims by Randsburg towards earning its 50% interest in the Mining Claims, which is summarized:

Common shares issued (audited)	$ 33,750
Exploration expenditures to January 31, 2000 (audited)	$274,065
Management fees - James Lenigan	$ 22,500
Exploration Expenditures February 1, 2000 to date (Unaudited)	$ 6,179
Total	$336,494

In its Interlocutory Judgement, the tribunal determined that Johnson was owed $85,415.08 by Randsburg for work conducted on the Mining Claims. Adding this to the $336,494 which has been spent to date, results in a total of $421,909.09. This is money spent on properties in which Randsburg has earned a 50 percent interest. The money owed to Johnson represents a 20.2 percent interest of the total amount spent on the properties.

Based on the facts outlined, the value of Randsburg's 50 percent interest in the Mining Claims, also based on out-of-pocket development costs would be $421,909.08. It would therefore be reasonable for Johnson to be entitled to receive a 20.2 percent interest of Randsburg's 50 percent interest in the Mining Claims or a 10.1 percent interest in the Mining Claims.

Further in support, it should be noted that Johnson drilled one of the five holes on the Mining Claims and has already been paid for this work. This would represent 1/5 or 20 percent of the total number of holes drilled on the Mining Claims, which would make Randsburg's submission of a 20 percent interest in Randsburg's interest fair and reasonable to all parties in this matter.

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Respondent of the First Part, Lake Superior Resources Corporation

It was submitted that the time given was too short to prepare a complete professional valuation of the properties involved, as had been pointed out to the tribunal in earlier correspondence.

Lake Superior has based its valuation of the Mining Claims on one earlier valuation conducted by A.C.A. Howe International Limited, dated October 31, 1997 and the report of Frank Puskas, project geologist, dated February 27, 2001. Both were included.

Lake Superior submitted that the Mining Claims range in value between $1,691,859 and $96,000. The first figure is based on the Appraised Value Method (Howe). The second figure is based on figures developed in the Puskas report to which certain comments by and on behalf of Johnson were applied, which Lake Superior has analyzed and projected the value of a large mineral deposit valued worth $960,000,000. Mr. Puskas has determined the probability of such a deposit being found on the Mining Claims being ten percent, the value would be $96,000,000.

The Mining Claims are on one large circular anomaly. Therefore, Lake Superior takes the position that any Vesting Order should apply equally over the whole of the properties. It is difficult at this time to ascribe a higher or lower value to any specific claim.

It is submitted that Johnson be awarded 0.0889 percent of the total interest in the Mining Claims. This is based on the Puskas Report, probability of mineral discover calculation/Net Present Value (NPV) Method.

Valuation Report

The Howe valuation, done in 1997 ascribed a value between $1.15 and $1.83 million based 22,808 acres of ground. The valuation does not take into account the litigation in which the current holding of an aggregate of 16,940 acres is held by Swain et al. and Lake Superior.

Expenditures on Property to Date

Estimated Staking Costs	$ 17,000
Estimated Recording fees	$ 2,000
Money spent by Lake Superior -includes airborne geophysics, trenching, assaying, trenching, geological consulting	$126,000
Money spent by Randsburg including Johnson award - geophysics, drilling consulting etc.	$387,659
Total Expenditures Related to Property	$532,659

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Valuation Approaches

Three valuation approaches are defined in the Howe report. They are:

Net present value (NPV) method based on a series of Discounted Cash Flow (DCF) projections. This method is used typically where there are ore reserves classified as either proven or probable and uses the discounted cash flow projections of the ore reserves.

In the Puskas report, the past program was characterized as a technical success. It stated that the probability of finding an ore body with an average reserve of 4 million tons valued at $320 U.S. per ton on these properties is in the order of 10%. Deducting for mining, milling and smelting costs would set a Net Present value of $160 per ton for the 4 million tons.

Based on those figures, projections would yield an ore body with a value of $640 million U.S. or $960 million Canadian. With the probability being 10% that such an ore body is present on the property, if discounted on the basis of probability, the value would be $64 million U.S. or $96 million Canadian.

It was submitted that the tribunal should bind Johnson to his testimony that there was in fact such a large mineral discovery on the property and should not be able to now assert that the Mining Claims are worth considerably less.

In the immediately adjoining township of Tyrrell, Inmet Mining has discovered an ore body of 2 million ounces of gold. Discounted for mining, milling and smelting costs would give a value to the gold of approximately $100 per ounce. The value of the Inmet property could be as high as $200 million.

The **Appraised Value Method** is considered one method most applicable to appraising the value of properties which have no viable ore reserves or commercial production possibilities upon which to establish a value. Howe produces the following quote at page 5, attributable to Roscoe, 1986, but no reference is provided:

> "the real value of an exploration property is its potential for the existence of an economically viable orebody and the most objective way to value a property's exploration potential is to equate it to the cost of exploration work that is warranted to assess the potential."

Two assumptions are required in applying this method. The first recognizes that there is a relationship between exploration work performed and the value of the property, so that work done can either enhance or diminish value. The second is that past and future expenditures on a property of merit will produce a current value at least equal to the money expended. Therefore, all expenditures are assumed to contribute to the value of the property, as having been carried out according to normally accepted business practices and as being relevant.

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The Howe report reached the conclusion that the Gowganda property, comprising 22,000 acres at the time had a value of $1.15 million based on the Appraised Value Method, before any work had been conducted.

The past expenditures of $532,659, it is submitted, meet the first test and have enhanced the appraised value of the property. The past program has generated a technical success. The Puskas report recommends an additional program of $1,159,2000 on the properties, to include additional diamond drilling, geophysics, geochemistry and geology.

It is pointed out that the cost per foot of drilling and assaying estimated in the Puskas report is less than one-third what the Commissioner awarded to Johnson on a per foot basis. It is submitted that, as an experienced geologist who is thoroughly familiar with the property and drilling results to date, Frank Puskas is the most knowledgeable person to value the merits of the property.

Based on past and future expenditures the value of the properties are as follows:

Past Expenditure	$ 532,659
Future Expenditure(p. 18)	$1,159,200
	$1,691,859

The **Comparable Transaction Analysis** method looks at other recent transactions on equivalent properties within the same geographic and geological environment. The CTA Method generated a value of $1,832,640 in the Howe report based on a value of $83 per acre. Howe states that a larger discount (versus $124 per acres) on a comparable property was applied "since the properties are deemed as less advanced and having received little or no modern exploration since the exploration moratorium was decreed 25 years ago."

Since the Howe report was produced, the properties have been significantly advanced and the market for such properties has also rebounded since October 1997, which saw the BRE-X debacle.

On February 27, 2001, Novawest Resources announced a transaction with Redmond venture Capital whereby Redmond can earn up to a 50% interest in 81,5000 acres for expenditures of $7 million. The property is a Palladium, Platinum, Nickel, Cobalt, Copper property in the Raglan belt of Quebec. If completed, the implied value of this property is $174 per acre, for land which is remote. Gowganda is only two hours from Sudbury with close rail access, by comparison. Also, the Mining Claims are have promise for the same minerals and are further developed than the Raglan properties, having drill ready targets.

Based on a value of $174 per acre the Milner-Van Hise properties have a value of $2,951,509.

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Summary of Valuation Data (Can$$)

Net Present Value Method	**Value**	**Johnson %**
Johnson	$960,000,000	.00889%
Puskas probability	$ 96,000,000	.0889%
Appraised Value Method	$1,691,859	5.05%
Comparable Transaction Analysis	$2,951,509	2.09%

Howe projected Exploration Program and Expenditures
Phase I (on 22,808 acres, as opposed to 16,940 currently held)

Item	Costs
Landsat Imagery and Air Photo Study	20,000
Line Cutting (520 kms @ $300/km)	156,000
Geological Mapping	
Geologists (160 man days @ 300/day)	48,000
Assistants (160 man days @ $150/day)	24,000
Prospecting (160 man days @ $250/day)	40,000
Geochemistry	
Sampling (300 man days @ $150/day)	45,000
Geochemical Analysis (20,000 samples @ $15/sample)	300,000
Rock Assaying (2,000 samples @ $35/sample)	70,000
Geophysics	
Ground HLEM (680 km @ $120/km)	81,600
Ground Magnetics (450 km @ $75/km)	33,750
Trenching (60 days @ $1,000/day)	60,000
Field costs	130,000
Preparation and Report Writing	103,835
Phase I Total	$1,142,185

If Lake Superior considered such an exploration program, 100% of the proposed Phase I expenditures would contribute to the value of the property. Howe was not aware of the incurred past expenditures on the property although, based on recorded work, must be substantial as they reflect the sum of nearly 80 years of activity.

Lake Superior has based their land acquisition, and additionally, the recommended program is based on the results of the sum of the past work. As such, Howe believes that the 100% value of the recommended program is justified in placing a value on the property. In our estimate, the total value of the Gowganda Project Area, utilizing the Appraised value method is $1,142,185 (say $1,150,000).

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The appendices show that the evaluation is based on 23 units or 920 acres in Van Hise and 199 units or 7980 acres in Milner.

Swain et al., Respondents of the Second Part

The Respondents of the Second Part having notified Lake Superior Resources Corporation on January 21, 2000, that the agreement/letter date June 21, 1999 was void because the terms of the agreement/letter were not carried out, are taking the position that Randsburg International Gold Corporation (Randsburg) and Lake Superior Resources Corporation (Superior) do not have an interest in the Swain Mining Claims.

The value of the claims has become obscured as they had pending proceedings placed on them by Johnson, the Applicant in this action and by Lake Superior Resources Corporation in another action MA-007-00. Mining exploration requires money to proceed and it is extremely difficult if not impossible to raise capital to do exploration with pending proceedings on these claims. The submissions of any of the parties on the valuation of these claims is linked to the ability to raise working capital. That is where the problem arises.

The shares of Randsburg which were never received by the Swain claimholders after the second month of drilling, were worth $.45 on September 22, 1999, two months after the drilling started. The shares were to be issued after the completion of the second month of drilling, as per the Memorandum of Understanding dated June 17, 1999. The Swain claimholders should have received 30,000 shares of Randsburg at that date which would have been worth $13,500. **Therefore, Randsburg and Superior deemed the Swain claims to be worth less than $13,5000.**

The only work that was agreed to by the Swain claimholders was the work done by W. Johnson drilling and the field work prior to that to be done on the Swain group of claims. This was to be at a cost of $25,000 for the first month of drilling as per the Memorandum of Understanding dated June 17, 1999. The Swain claimholders were not consulted as to the cost of any geophysical work or any work done by Norex drilling. Nor did Randsburg respond to the request that drilling by Norex cease.

It is the opinion of Swain that Lake Superior Resources Corporation is a dying entity, as the corporate financial statements have not been done since 1998 and a shareholders meeting has not been held since 1998. Mr. Opara, president, has not produced even unaudited financial statements for the shareholders since 1998.

If a vesting order results from the failure to pay money or money and shares declared owing, W. Johnson Mining should be vested Lake Superior Resources interest and Randsburg International Gold Corporation's interest in the Swain Mining claims in Milner/Van Hise Townships.

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Expenditures

The cost involved in the staking and recording of the Swain Mining claims in Milner/Van Hise Townships was $10,075. Ten days of field work by two individuals, including labour and expenses, by way of exploration, prospecting and sampling was $6,990. Total expenditures, $17,065.

Findings

Valuation

The tribunal has the following comments with respect to the different valuation approaches advocated by the parties. The three approaches advocated by Lake Superior, based in part on the Howe Report, are noted to have been performed on 22,808 acres as opposed to the 16,874 acres which are the subject matter of the application. Therefore, while the principles applied by Howe are compelling, their weight is discounted based on the uncertainty as to whether all or only some of the Mining Claims are included.

The tribunal also finds that the Lake Superior valuations have erred on the side of overvaluing the properties. The Net Present Value of $960,000,000 based on a 10 percent probability of finding an ore reserve of mineable quantity and quality, provides no assistance in determining what portion of the interest in the Mining Claims should be vested in Johnson. The resulting proposal of vesting less than 0.1 percent demonstrates the inequity of adopting this valuation method whose outcomes, at this stage in the property's development, are extremely remote.

The comparable transaction method, while compelling with respect to what a similar property may be worth in the marketplace for purposes of raising capital in a potentially worthwhile venture, remains highly speculative for purposes of vesting a portion of the interest in the Mining Claims in a contractor who was not paid in full for his services. When put into perspective, this is a property for which either Lake Superior or Randsburg is unwilling or unable to come up with $85,000, so that valuating it in the millions has the appearance of serving no other purpose than to diminish the value of Johnson's application.

The appraised value method encompasses costs which, under ideal circumstances, will be performed in future. The likelihood of carrying out this work is regarded as comparatively remote by the tribunal, given the current inability or unwillingness to pay Johnson according to the amount found owing. Frankly, it would be difficult to find a purchaser on the open marketplace who would pay the $1,691,859 set out for work which has in part not been performed. It raises the question of why Johnson should be required to discount its award by the projected amount of future investment, when at the same time, it will be required to proportionally perform the work, contribute to the work, or give up some interest in order that the work be done. Therefore, the tribunal finds it will not apply this method.

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Similarly, the proposal by Johnson as to the saleable price of the property being less than the $85,415.08 owed, does not reflect what has occurred on these Mining Claims. The documentation behind the Lake Superior and Randsburg Agreement, and even more particularly with the Swain and Lake Superior Agreement, involved, for the most part, shares. There was supposed to be a fixed amount of funds required to go into the drill program, but once again, as stated in its Interlocutory Judgement, this project has involved under capitalization on the part of Randsburg and Johnson, and it would not be too speculative to suggest that Lake Superior and the Swain group are similarly situated.

Section 69 does contemplate a total vesting of a mining claim, which would be reasonable in the case of a single claim worked upon for less than the tens of thousands of dollars involved here. Given the ongoing interest in these Mining Claims, the efforts being used to ensure that Randsburg files the assessment work resulting from the Johnson and Norex drilling, the tribunal finds that the proposed valuation does not adequately reflect the value of these Mining Claims. In excess of $500,000 has been expended on the claims, including the approximately $85,000 owed to Johnson. Not only does Johnson's proposal seriously undervalue the Mining Claims, but it would see the interest which Randsburg has in the Mining Claims and in particular those drilled by Johnson, cease. The tribunal finds that it would defeat the purpose of the **Mining Act** to take from Randsburg the opportunity to file assessment work on the Mining Claims drilled by Johnson and have that work applied to contiguous claims making up the 16,000 acre group. While section 7 of Ontario Regulation 6/96 does make provision for a subsequent owner of an unpatented mining claim filing assessment work which has been performed but not filed, the tribunal does not have the power to compel Randsburg to hand over the cores upon which such filing, at least in part, would be based.

The Swain submission similarly reflects a total vesting of the interest of Randsburg and Lake Superior in the Swain Mining Claims, and while it may be easier for Johnson and the Swain group to move forward unencumbered by Lake Superior and Randsburg, the purpose of section 69 is not to circumvent existing agreements for purposes of setting up more amicable arrangements.

The tribunal finds that it prefers the approach advocated by Mr. Rogers on behalf of Randsburg, namely that of expenditures on the property. The submission made on behalf of Johnson that the valuation should be based on and limited to the documents filed in support of the application, as ordered. The only new information provided in this regard is that of Lake Superior Resources, as to an earlier airborne survey, and the costs of staking, recording and prospecting by the Swains. While the more sophisticated methods of valuation proposed by Lake Superior may fall within the objection, the information regarding recording costs and assessment work performed prior to the drilling undertaken by Johnson, can be obtained through the **Mining Act** and the abstracts filed on behalf of Lake Superior and Randsburg.

The tribunal finds that it will allow the material filed in support of the valuation over the objections on behalf of Johnson. It is acknowledged that throughout these proceedings, Johnson has sought information regarding and production of the assayed cores. However, the information related to the cores was not necessary for Johnson to prove its claim, as the

Interlocutory Judgement demonstrates. The tribunal finds that it is entitled to receive and consider information and submissions on the matter of valuation, something which was not necessary for purposes of determining whether money was owing. It is sufficiently difficult to come to a conclusion regarding the valuation of the Mining Claims without being forced to make such a determination in a vacuum. Given the out of province locations of several of the parties and the desire on the part of all of the parties to hold down hearing costs as much as practical, the tribunal has agreed to make valuation determinations without requiring an in-person hearing or receiving sworn testimony.

The total assessment work applied to the Lake Superior Mining Claims is $92,578. Mr. Opara has indicated in his submission that $126,000 was spent on airborne geophysics, trenching, assaying and consulting. While there is some disparity between the latter amount claimed and the former amount filed and recorded, the tribunal finds that it is not unreasonable to accept that additional costs were incurred which are not reflected on the abstracts. Similarly, the tribunal finds that it will accept the amounts submitted by Swain et. al. regarding recording and prospecting.

The tribunal finds that past expenditures, including the amount owed to Johnson, total $583,909.08, of which the money found owing to Johnson is 14.628 percent. The tribunal finds that this amount will be rounded up to 15 percent, on account of costs which, although not claimed, are unlikely to be collected by Johnson.

Interest to be Vested

In Barton, Barry, **Canadian Law of Mining** (Calgary: Canadian Institute of Resource Law, 1993) a discussion of the registration system of mining claims in Ontario is discussed at page 415:

> c. Effect of Statute on Common Law and Equity
>
> *i. Legislation that Uses Registry Act Language as to Priorities*
>
> The sections of the Ontario *Mining Act* that state the effect of recording an instrument are copied from the *Registry Act* that prevails in parts of the province [92] The primary effect of these provisions is that a purchaser who records is protected against any unrecorded instrument unless, before recording, he or she had notice of that instrument. In so

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[92] R.S.O. 1990, c.R.20, ss. 70(), 71, 74. The *Registry Act* is a deeds registration system and not a Torrens system of land title registration....

holding, the Mining Commissioner in Re Babayan and Warner[93] observed that this follows the principles prevailing in ordinary cases under the *Registry Act*. ... In *Re Odbert and Farewill*,[94] the Commissioner observed that the *Mining Act* "puts what may be called title to unpatented mining claims upon much the same footing as title to land under the *Registry Act*, the recording office taking the place of the registry office" and proceeded to analyze the similarities and the few differences in detail. ...

d. Legal and Equitable Interests under a Recording System

As noted, under the general law, the ordinary rules of priority by time are altered where an equitable interest can be defeated by a later *bona fide* purchaser for value of the legal interest without notice. Law and equity are relevant where a statute says that a transfer must be recorded to be effectual. An assignment of a legal right or title that fails for want of compliance with the requirements of a statute (or of common law) as to the formalities for a transfer is ineffective at law, but it is effective in equity if valuable consideration has been given...

...

Registry statutes, the more fitting model for the interpretation of mining recording provisions, give priority upon registration without notice over legal conveyances and equitable interests alike. Similarly, the mining statutes draw no distinction between legal and equitable interests in the way that they are treated; unrecorded interests are postponed whether they are legal or equitable. ...

He also states at page 410:

a. Priority of Transfers at Common Law and Equity

The backdrop against which the statutory provisions must be considered is the general law on priority of interests in land.[70] This is a field where the distinction between the rules of common law and the principles of equity is still vital. The basic rule of law is that one cannot give what one does not have: *neodate quod non habet*. As between

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93 (1909), 1 M.C.C. 346 (Ont. M.C.).

94 (1910), 1 M.C.C. 467 at 472 (Ont. M.C.).

70 A.H. Oosterhoff and W.B. Rayner, *Angre and Hosberger Law of Real Property*, vol. 2 (Aurora: Canada Law Book, 1985) at 1592; K.J. Gray and P.D. Symes, *Real Property and Real People: Principles of Land Law* (London: Butterworths, 1981) at 319-20; K.J. gray, *Elements of Land Law* (London: Butterworths, 1987) at 84.

> competing legal interests, priority is fixed by the priority in time of their creation. Equity, always acting *in personam*, protects interests that the common law would not protect. Examples of equitable interests are the interest created by an agreement for sale,[71] an option to purchase land, [72] and that created by a purported assignment for value of a legal interest that fails to comply with the requirement of common law or statute for effective transfer.[73]

Much of the relevant case law regarding interests deals with the bona fide purchaser of mining claims for value without notice and is of no assistance in this current application.

The tribunal acknowledges that the recorded holders of the Mining Claims are the Swain group or Lake Superior, neither of whom had an agreement with Johnson. Johnson's agreement was with Randsburg, which was acting on its Memorandum of Agreement with Lake Superior to acquire a 50 percent interest in the Lake Superior Mining Claims and effectively a 37.5 percent interest in the Swain Mining Claims. Much of the inter-relationship between the various respondents is predicated on the transfer of shares in Randsburg. Randsburg was required to spend money on the claims, through the performance of assessment work. What is apparent from the documentation is that the various respondents are arguing about receipt of the shares, while purporting to allow responsibility to rest with Randsburg with respect to money expended on drilling.

The tribunal finds that all of the respondents were willing to allow Johnson to continue drilling, to not lose the FL-01-99 borehole, at what had to be considerable expense to Johnson. The tribunal finds that the actions of Lake Superior and Swain have permitted Johnson to make potential improvements to the Mining Claims by completing the drilling of Bore Hole Fl-99-01. This drilling assessment work has the potential, combined with that of Norex, to be applied to the entire 16,874 acre claim group, being contiguous with the Mining Claims Drilled by Johnson.

The tribunal has heard no evidence as to why the assessment work from drilling has not been filed by Randsburg. However, undoubtedly, the required assaying and resulting report would require the time of a qualified geologist and sufficient capital to perform the necessary analysis. The irony in this case is that, should Randsburg lose all of its interest in the Mining Claims but have custody and control of the drill cores, it would be left with little incentive to file or make available for filing the drill log resulting from either the Johnson or Norex drilling, excepting the fact that it holds the cores in trust for the joint venture. Section

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[71] *McDougall v. MacKay*, (1922) 64 S.C.R. 1 at 3-4 (Sask.).

[72] *Politzer v. Metropolitan Homes Ltd.*, [1976] 1 S.C.R. 363 at 371 (Man.); *Frobisher Ltd. v. Canadian Pipelines & Petroleums Ltd.*, [1960] S.C.R. 126 (Sask.).

[73] *Re Manthorne* (1977) 26 N.S.R. (2d) 74 at 80 (S.C.).

16 of the **Assessment Regulation Act** (O.Reg 6/96) requires detailed information obtained through diamond drilling, including a completed drill log detailing among other things, assay values.

The purpose of the **Mining Act** is to encourage exploration for the development of mineral resources. The tribunal finds that it would be unconscionable to treat the parties as though this were a simple matter of contract between Johnson and Randsburg. The dealings of the Respondents of the First and Second Parts are inextricably intertwined. To allow Swain and Lake Superior to avoid the consequences of non-payment by Randsburg would undermine the very purpose of the legislation. It is unconscionable on the part of Swain and Lake Superior to allow the drilling to take place on the Mining Claims and maintain the fiction which would effectively remove the Mining Claims from reach for purposes of the remedy which Johnson is seeking to enforce.

The tribunal finds that it will apply its equitable jurisdiction found in section 121 of the **Mining Act**, to make its decision on the real merits and justice of the case, and allow a vesting of the interest in the Mining Claims as follows.

The tribunal finds that 15 percent of the interest in the recorded holders in the Swain Mining Claims will be vested in Johnson. This amount will be set off equally against the prospective interests of either Lake Superior or Lake Superior and Randsburg, which may be determined in future or may come to be registered on the abstracts. In the event that no interest in the Mining Claims is found owing to Lake Superior or Lake Superior and Randsburg, the tribunal finds that the vesting in Johnson will continue, based on the rules of equity, whereby Swain should not be allowed to benefit from the improvements, by way of drilling, performed by Johnson.

The tribunal further finds that 15 percent of the interest of Lake Superior in the Lake Superior Mining Claims will be vested in Johnson. This amount will be set off equally against the interests of either Lake Superior or Lake Superior and Randsburg, which may be determined in future or may come to be registered on the abstracts. In the event that no interest vests in Randsburg as a result of the Memorandum of Agreement between Lake Superior and Randsburg, the tribunal finds that the vesting in Johnson will continue as ordered, based on the rules of equity, whereby Lake Superior should not be allowed to benefit from the improvement, by way of drilling, performed by Johnson.

Vesting Order

The Swain Mining Claims and the two Mining Claims Drilled by Johnson are recorded in the names of Swain et al. The sale to Lake Superior on account of shares, which is the subject matter of File No. MA 007-00, was for a 75 percent interest in the Swain Mining Claims, including those drilled by Johnson. Therefore, the maximum interest which Lake Superior could have purchased is 75 percent, divided on a fifty-fifty basis with Randsburg through their Memorandum of Understanding, would result in 37.5 percent to each. Their respective equitable interest will be reduced by the Vesting Order to 30 percent each, and 15 percent of the legal interest will be vested in Johnson.

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The Lake Superior Mining Claims are recorded in the name of Lake Superior. Based on the Memorandum of Understanding between Lake Superior and Randsburg, each would be entitled to a 50 percent interest. The equitable interest of Randsburg will be reduced to 42.5 percent and the legal interest of Lake Superior will similarly be reduced to 42.5 percent. 15 percent of Lake Superior's legal interest will be vested in Johnson.

Exclusion of Time

Pursuant to subsection 67(2) of the **Mining Act**, the time during which the Mining Claims Drilled by Johnson, the Lake Superior Mining Claims and the Swain Mining Claims were pending before the tribunal, being the 22nd day of November, 1999, to the 20th day of March, 2001, a total of 485 days, are eligible to be excluded in computing time within which work upon the aforementioned Mining Claims is to be performed and filed.

It is noted, however, that Mining Claims L-1225672 to 1225678, both inclusive, 1226881, 1226882, 1227025, 1227027 to 1227029, both inclusive, 1227048, 1227049, 1227199, 1227255 and 1234970, are also the subject claims in an application filed in this Office on the 17th day of February, 2000, File No. MA-007-00. Due to the ongoing proceeding, the tribunal will not exclude time on the aforementioned Mining Claims until File No. MA-007-00 is finally disposed of.