

File Nos. MA 014-06 &
MA 015-06

L. Kamerman)
Mining and Lands Commissioner) Thursday, the 27th day
of December, 2007.

THE MINING ACT

IN THE MATTER OF

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

AND IN THE MATTER OF

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

AND IN THE MATTER OF

Filed Only Mining Claim 3017484, situate in the Township of Chabanel, in the Sault Ste. Marie Mining Division, staked by Mr. Richard Daigle, to have been recorded in the names of Pele Diamond Corporation and 2098680 Ontario Inc., each as to a 50% interest, respectively, hereinafter referred to as the "Pele Diamond Filed Only Mining Claim 3017484";

AND IN THE MATTER OF

Ontario Regulation 7/96, Claims Staking;

B E T W E E N:

PELE DIAMOND CORPORATION AND
2098680 ONTARIO INC.

Appellants

- and -

PAULETTE A. MOUSSEAU-LEADBETTER AND
3814793 CANADA INC.

Respondents

- and -

MINISTER OF NORTHERN DEVELOPMENT AND MINES
Party of the Third Part

AND IN THE MATTER OF

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

INTERLOCUTORY ORDER FOR COSTS**Introduction**

This interlocutory decision on costs involves a determination of who will pay for the unnecessary attendance of the inspector, Mr. Michael Weirmeir, at the reconvened hearing of these matters in December. Based upon the pre-existing agreement and events which transpired, I find that the respondent, Paulette A. Mousseau-Leadbetter and 3814793 Canada Inc. (“Leadbetter”) will bear all of the costs associated with the attendance of Mr. Weirmeir to the reconvened hearing.

Facts

Certain lands under water in Chabanal Township were open for staking to a limit of 200 feet of the high water mark. Although the lands remained open for some time, having been previously held under forfeit licences of occupation, there was no interest in them until the mining claims which are the subject of this appeal and Mining and Lands Commissioner’s File MA 016-06 were staked several years later. The discovery of diamonds has spurred this interest and litigation.

Early after the initial appeals were filed in these matters, at the request of the Appellants, Pele Diamond Corporation and 2098680 Ontario Inc. (“Pele Diamond”), Mr. Michael Weirmeir was appointed by me to carry out an inspection of the two Pele Diamond Filed Only Mining Claims and the 3814793 Canada Inc. Mining Claim (the “Leadbetter Mining Claim”) pursuant to subsection 119(1) of the **Mining Act**. There was agreement between counsel for Pele Diamond and the then counsel for Leadbetter that the costs of inspection, preparation of the inspection report and attendance at the hearing to give evidence would be evenly split between those two parties.

The matter of inspections has changed in recent years. At one time, the Ministry of Northern Development and Mines (“MNDM”) had inspectors who carried out this function. These permanent positions have been eliminated. There remain certain employees within the Ministry with skills and experience to carry out inspections provided for under the **Act**. However, in circumstances such as this appeal, where MNDM is a party, an independent inspector is necessary, as MNDM has an interest in the outcome. This being the case, the costs of this inspection must be borne either by the parties or the Commissioner, as circumstances warrant. In this case, there was agreement as to how these costs would be borne.

For reasons which have no bearing on this case, there was no agreement on payment for similar inspection-related activities involving claims to the south. It was determined that the costs would be covered on the basis of one-third (1/3) each between Pele Diamond, Leadbetter and the Mining and Lands Commissioner until the matter was heard and disposed of. The merits of that appeal have been substantially dealt with, although the issuance of the final order and a decision on costs remain outstanding. The matter of final payment of costs remains outstanding and the parties will be canvassed for their submissions.

The agreed Order for Inspection was issued on October 25, 2006, at which time Mr. Malcolm MacLeod was counsel for Leadbetter. After the inspection, but before the hearing on the merits which was originally scheduled for February, 2007, Mr. MacLeod was appointed to the bench and Mr. Bruce Willson succeeded him. In deference to Mr. Willson's schedule and at his request, requiring time to bring himself up to speed, the matter was put over until March, 2007.

Days prior to the scheduled hearing, Pele Diamond filed considerable additional documentation. Since time was short, counsel for Pele Diamond did not serve Mr. Willson, but merely advised him via facsimile of their intentions. At the convening of the matter in March, 2007, considerable objections were heard from Mr. Willson as to the manner in which the material was treated, including its late filing, resulting in a further adjournment and an Order that a portion of the costs thrown away paid by Pele Diamond. A portion of the costs incurred were found to be attributable to Leadbetter, since no one from the respondents were in attendance, with Mr. John Leadbetter unreachable in the bush, leaving Mr. Willson with no means of conferring with his clients and obtaining further instructions.

The matter reconvened in September, 2007 over two days. Mr. Weirmeir was heard from at length. One additional witness, Mr. Bailey on behalf of Pele Diamond, was also heard. At the conclusion of Mr. Bailey's evidence, with very little time left in the day, parties were canvassed on how they wished to proceed. Mr. Willson advised that he would be re-calling Mr. Weirmeir and indicated that he might wish to put to him all of the questions put to Mr. Bailey. Two additional days were scheduled for December, 2007.

At the reconvened hearing on December 6, 2007, Mr. Willson advised that he had changed his mind and would not be recalling Mr. Weirmeir. Final arguments were completed on the 6th day of December, at which time Pele Diamond submitted that it should not have to pay for Mr. Weirmeir's attendance on December 6, 2007, as it had not been required. Mr. Willson countered that he was unfamiliar with the Commissioner's processes and assumed that Mr. Weirmeir was the Commissioner's witness whose attendance was required in case any questions arose.

Analysis

Mr. Willson's position is not accepted and found to be particularly disingenuous, considering his previous vehement opposition to having been dealt a surprise in March. At that time, he spoke at length and passionately about rules of fairness, about not being blindsided in this proceeding and of the extreme prejudice to his clients.

Based upon his past experience before this tribunal, if not common courtesy, Mr. Willson should well have known that the tribunal does not tolerate unnecessary surprises. If he did have any questions on how to proceed with his change in plans, he was welcome to call the Registrar, Mr. Pascoe and ask. It was also open to him to call or write opposing counsel and advise of his change in plans. It is fortunate that Mr. Bailey was not asked to be on hand to advise counsel for Pele Diamond during the anticipated re-questioning of Mr. Weirmeir, or this could have added to unnecessary costs directly attributable to Mr. Willson's failure to advise of his change in plans.

Moreover, the appointment of Mr. Weirmeir was made at the request of counsel for Pele Diamond with the agreement of Leadbetter's former counsel. It is Mr. Willson's responsibility to be familiar with the circumstances leading up to this appointment. While strictly speaking, Mr. Weirmeir is the Commissioner's witness, having been appointed pursuant to subsection 119(1) of the **Act**, the actual inspection, report and giving of evidence was for the benefit of the parties, as is evidenced by their agreement to share the costs.

Conclusion

The attendance of Mr. Weirmeir at the reconvening in December, 2007, was due to the stated intentions of Mr. Willson and was wholly unnecessary directly due to his precipitous change of mind or tactics or strategy, it matters not which. The fact remains that costs were incurred and must be borne in their entirety by Leadbetter.

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

DATED this 27th day of December, 2007.

Original signed by L. Kamerman

L. Kamerman
MINING AND LANDS COMMISSIONER

SCHEDULE "A"

December 18, 2007

INV Chabanal 1207 BW

INVOICE

To: C. Bruce Willson Willson, Carter Barristers & Solicitors 494 Albert Street East Sault Ste. Marie, Ontario P6A 2K2	Period: December, 2007 <hr/> Purpose: Attendance and travel relating to the Mining Commissioner's hearing for files MA 14 06, MA 15 06 and MA 16 06. December 5, 6 & 7, 2007
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SERVICES:	amount
Total hours & \$80.00	27.00 hours \$ 2,160.00
Total days at day rate	0.00 days \$ -
Travel rate	0.00 hours \$ -
Total services	\$ 2,160.00
Goods and services tax (GST) 6%	\$ 129.60

Other charges & expenses:	amount	other tax	GST	
<i>Administrative costs (8% of services for fax, internet phone etc.)</i>	\$ -		\$ -	\$ -
<i>Hotel, meals & parking (breakfast)</i>	\$ 483.31		\$ 27.56	\$ 510.87
<i>Meals December 5</i>	\$ 37.29		\$ 2.25	\$ 39.54
<i>Meals December 6</i>	\$ 52.88		\$ 3.18	\$ 56.06
<i>Meals December 7</i>	\$ 11.25		\$ 0.68	\$ 11.93
<i>8% carry charge on out of pocket expense</i>	\$ 49.47		\$ 2.97	\$ 52.44
				\$ -
				\$ -
<i>Mileage 840km @ .60/km = \$504</i>	\$ 504.00		\$ 30.24	\$ 534.24
<i>GST in charges & expenses</i>		0.00	\$ 36.64	

GRAND TOTAL	\$ 3,494.68
<i>Total GST (6%) charged</i>	\$ 166.24

Please Pay:
 Weirmeir Land Management Services
 565 Queen Elizabeth St.
 Box 524
 Lively, ON P3Y 1M5
 Telephone: (705) 692 1019
 GST number - 883 215 410RT 0002

SCHEDULE "A"

INV Chabanal 1207BW

Details:

date	details	KM	regular hours
December 3, 4, 2007	Preparation for hearing, review files		3
December 5, 2007	Travel to Toronto	420	8
December 6, 2007	MLC hearing		8
December 7, 2007	Travel to Lively	420	8
	Totals	840	27