

PRE-CAM EXPLORATION &  
DEVELOPMENT LTD. and  
MAURICE MURTACK (*Plain-*  
*tiffs*) .....

APPELLANTS;

1966  
\*May 9, 10  
June 21

AND

DONALD McTAVISH (*Defendant*) .....RESPONDENT.  
and DONALD J. SHERIDAN (*Defendant*).

ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN

*Master and servant—Information acquired during course of employment—  
Implied term of employment that employee could not use information  
for his own advantage—Constructive trust.*

The defendant (McT) was employed by the plaintiff company on the inspection of certain mining claims which had been staked by one M. The latter wanted some exploratory work done on these claims and gave instructions to the plaintiff company to do this work. All that McT had to do was to take readings from a magnetometer and record them in a log book. The results, when plotted and recorded, established that a mineralized zone on the claims ran in a southwesterly or northeasterly direction and indicated that the area north and east of the claims contained an extension of the mineralized zone. This was ground that the company would have staked for M in the normal course of events. While McT did not see the final plot and record of the readings, he could tell from the showings and the magnetometer work that he did that the area north and east of the claims was on the strike of the mineralized zone. He made up his mind to stake this area for himself. After having turned over his log book containing the record of the magnetometer readings and having later severed his employment, McT staked a number of claims north and easterly of and contiguous to M's claims.

In an action brought to compel McT to transfer the claims which he had staked around the first group, the trial judge held that McT held these claims as trustee and that he must transfer them to the owner of the other claims. The Court of Appeal, with one member of the Court dissenting, allowed the appeal and held that McT was free to stake these claims for his own benefit. An appeal was then brought to this Court.

\* PRESENT: Fauteux, Abbott, Martland, Judson and Ritchie JJ.

1966

PRE-CAM  
EXPLORATION  
& DEVELOP-  
MENT LTD.  
*et al.*  
v.  
McTAVISH  
*et al.*

*Held:* The appeal should be allowed and the judgment at trial restored.

The information acquired by McT during the course of his employment was highly confidential and the purpose for which it was being sought was obvious—the acquisition of other connected claims which would be of advantage to the existing claims. Neither the company nor McT, its servant, could acquire these connected claims against the interest of M. It was a term of his employment, which McT on the facts of the case understood, that he could not use this information for his own advantage. A constructive trust was imposed in a case of this kind because of the mere use of confidential information for private advantage against the interest of the person who made the acquisition of the information possible.

APPEAL from a judgment of the Court of Appeal for Saskatchewan<sup>1</sup>, allowing an appeal from a judgment of Hall C.J.Q.B. (as he then was). Appeal allowed.

*L. N. Hyman and M. A. Kuziak, for the plaintiffs,*  
appellants.

*E. C. Leslie, Q.C., and John Stein, for the defendant,*  
respondent.

The judgment of the Court was delivered by

JUDSON J.:—This action was brought to compel Donald McTavish, who had been employed on the inspection of certain mining claims, to transfer other mining claims which he staked around the first group after he had severed his employment. The information which led him to stake these claims was acquired in the course of his employment. The learned trial judge held that McTavish held these claims as trustee and that he must transfer them to the owner of the other claims. The Court of Appeal<sup>1</sup>, with Hall J.A. dissenting, allowed the appeal and held that McTavish was free to stake these claims for his own benefit.

The facts are that one Maurice Murtack had staked fifteen claims near Brabant Lake in the Rottenstone Mining District of Saskatchewan. These claims were known as Peg 1 to 15. Murtack wanted some exploratory work done and on December 8, 1956, he gave Pre-Cam Exploration & Development Ltd., instructions to do this work in the following letter:

<sup>1</sup> (1965), 53 W.W.R. 662.

Prince Albert, Saskatchewan  
December 8, 1956.

Mr. Berry Richards,  
Pre-Cam Exploration Ltd.,  
Prince Albert, Saskatchewan

Dear Sirs:

I have completed the staking of 15 mineral claims in the Rottenstone Mining District near Brabant Lake named Peg 1 to 15, which I am having recorded in my name for myself and associates.

It is our wish to have your firm carry on exploratory work on the showings which I have described to you, details of which we will be discussing as work proceeds. The map which I have left with you shows location, etc., of the claims. As an immediate step, I suggest that you proceed with Magnetometer work on the claims and that you follow up any anomalous conditions that may be found to extend from this block of 15 claims in any direction and that you stake the ground on which these extensions may appear for myself and my associates.

Please keep me advised of progress in this work.

Yours truly,  
(sgd.) M. Murtack

At that date Donald McTavish was an employee of Pre-Cam at a salary of \$275 per month. He had had some instruction from Pre-Cam in the operation of a magnetometer and on December 5 the company had him flown to Brabant Lake along with a helper.

There had been some development done on the Peg claims. The mineralized zone had been exposed in five places by blasting, making a discovery trench of 60 feet long, with four additional trenches 100 feet apart, each of which exposed mineralized rock. Material from these trenches had been assayed and found promising. There was no overburden in the area of the trenches but the surrounding areas were covered by muskeg. In preparation for the magnetometer work, the brush had been cut along a base line with nine cross lines at right angles. All that McTavish had to do was to take readings from the magnetometer and record them.

These readings were taken along the base line and cross lines at 100 foot intervals. The results were entered in a log book. When plotted and recorded these established that a mineralized zone on the Peg claims ran in a southwesterly or northeasterly direction and indicated that the area north and east of the Peg claims contained an extension of the mineralized zone. This was ground that Pre-Cam would

1966  
PRE-CAM  
EXPLORATION  
& DEVELOP-  
MENT LTD.  
*et al.*  
*v.*  
McTAVISH  
*et al.*  
Judson J.

1966  
PRE-CAM  
EXPLORATION  
& DEVELOP-  
MENT LTD.  
*et al.*  
*v.*  
McTAVISH  
*et al.*  
—  
Judson J.  
—

have staked for Murtack in the normal course of events. While McTavish did not see the final plot and record of the readings, he could tell from the showings and the magnetometer work that he did that the area north and east of the Peg claims was on the strike of the mineralized zone. He made up his mind to stake this area for himself. There is evidence that he disclosed this intention to at least two men before he returned home for Christmas.

McTavish got out by plane on December 23 and turned over his log book containing the record of the magnetometer readings. He then proceeded home to Weyburn for Christmas. Here he interested two men, Thompson and Laing, in the prospects of the Brabant Lake area and pursuant to an agreement made with them, he returned on December 27 to Brabant Lake. On the way and on December 27, he called at the offices of Pre-Cam in Regina, collected his pay and resigned. He staked 20 claims north and easterly of and contiguous to the Peg claims and called them Betty 1, 2, 3 and 8 to 24 inclusive. He was back in Weyburn by January 10, 1957.

The present case was instituted by Pre-Cam asking for a declaration that McTavish held the Betty claims in trust for Pre-Cam and for an order that he transfer them. The trial came on in 1958 and was adjourned to allow Pre-Cam to amend its Prayer for Relief and to join Murtack as plaintiff. The trial was resumed in November 1958 with Murtack joined and requesting relief for Pre-Cam as trustee for himself. Donald J. Sheridan, the Chief Mining Recorder, was joined as Defendant, only that he might have notice of proceedings.

The conclusions of the learned Chief Justice at trial are summarized in the following extracts from his reasons for judgment:

McTavish fully appreciated the significance of the readings he had made and recorded and that the area Northeasterly of the Peg claims might well contain valuable mineralized deposits along the strike of the zone exposed in the Peg claims. While still on the job on the Peg claims, he decided to stake the area Northeast of the Peg claims for himself. I accept the evidence of Slater including his testimony that on or about December 16th, McTavish showed him a rough sketch of some 14 claims Northeast of the Peg claims and contiguous thereto, which McTavish said he was going to come back and stake for himself.

The really essential thing that McTavish learned while doing the magnetometer survey work on the Peg claims besides what he saw in the discovery trenches was that the strike of this promising mineralized zone

ran in a Northeasterly direction. He admitted in cross examination, that it was as a result of what he learned while working for Pre-Cam on the Peg claims that he decided to stake for himself the area that is now Betty 1, 2, 3 and 8 to 24 inclusive. He did no work on what is now the Betty group while working on the Peg claims, nor did he use any of the plaintiff's instruments outside the Peg limits.

Without the information acquired during the course of his employment, McTavish would not have staked the adjoining claims. This was highly confidential information and the purpose for which it was being sought was obvious—the acquisition of other connected claims which would be of advantage to the existing claims. Neither Pre-Cam nor McTavish, its servant, could acquire these connected claims against the interest of Murtaek. Contrary to the majority opinion in the Court of Appeal, I think that it was a term of his employment, which McTavish on the facts of this case understood, that he could not use this information for his own advantage. The use of the term “fraud” by the learned Chief Justice at trial was fully warranted. The severance of his employment on December 27 was an empty formality which could not improve his position. I do not mean by this that a simple-minded person with his own ideas of common honesty could do this sort of thing without having to answer. The constructive trust is imposed in a case of this kind because of the mere use of confidential information for private advantage against the interest of the person who made the acquisition of the information possible.

I would allow the appeal with costs, both here and in the Court of Appeal, and restore the judgment at trial.

*Appeal allowed with costs and judgment at trial restored.*

*Solicitors for the plaintiffs, appellants: Pearce, Hyman & Kuziak, Regina.*

*Solicitors for the defendant, respondent: MacPherson, Leslie and Tyerman, Regina.*

1966  
PRE-CAM  
EXPLORATION  
& DEVELOP-  
MENT LTD.  
et al.  
v.  
McTAVISH  
et al.  
Judson J.