

**IN THE MATTER OF THE MINING ACT BEFORE THE
PROVINCIAL MINING RECORDER**

IN THE MATTER OF:

Mining Claim P 4203078 situate in Douglas Township, Porcupine Mining Division, hereinafter referred to as the mining claim of record.

AND IN THE MATTER OF:

Filed only application to record mining claim 4220862 indicated to be staked for more or less the same area of land as the mining claim of record.

AND IN THE MATTER OF: a dispute filed by

BRIAN BEYER
Disputant

-against the mining claim of record held by-

JOSHUA BOUCHER
Respondent

WHEREAS: The parties were offered opportunity to file submissions in writing and there were no objections.

I FIND: That the evidence submitted by the disputant is sufficient to establish the probability that the No. 2 corner post for the mining claim of record was not a new post erected by the Respondent but was a post previously used for the staking of an older claim.

AND IN CONSIDERING: The Mining and Lands Commissioner found in Martin vs. Arrowsmith, MCC Volume 5, page 128, that the intent of the Mining Act is to prohibit the use of used posts therefore making the use of a used post fatal to the staking.

I ORDER: 1) That the dispute is allowed
2) Mining claim P 4203078 is cancelled

3) Filed only claim 4220862 is to be accepted for recording effective the date of this order.

AND PLEASE TAKE NOTICE: That Section 112 of the Mining Act allows the parties a right of appeal to the Mining and Lands Commissioner within 30 days of the date of this order. An appeal is begun by filing the necessary documents in the office of the Mining and Lands Commissioner, Toronto. Also, should you choose to file an appeal, please file copies in the Provincial Recording Office, Sudbury.

Dated at the Provincial Recording Office
this 6th day of May, 2010

Roy Spooner
Provincial Mining Recorder

REASONS

The Respondent, Joshua Boucher, filed his application to record for mining claim 4203078 on April 23, 2007. According to the application the claim was staked on April 20, 2007. The Disputant, Brian Beyer, asserts in a written submission that he had staked and recorded an adjacent mining claim, P 4203077, in 2006. The mining claim records verify a mining claim P 4203077 staked by Brian W. Beyer September 15, 2006 and recorded October 2, 2006. In addition, Mr. Beyer asserts that he also had the metal claim tags numbered 4203078 (the disputed Boucher mining claim of record). According to Mr. Beyer, in 2006 he had begun to stake an additional claim bearing his claim tags 4203078 immediately to the west of his now recorded claim P 4203077. Mr. Beyer did not complete his staking of 4203078 and failed to return in 2006 to complete the claim therefore he did not record it. Photographs submitted by the Disputant suggest that there were common corner posts for the common claim line between 4203077 and 4203078. The photographs also illustrate that the inscription on the No. 2 corner post has been tampered with.

This decision is made without a hearing in person. Mr. Boucher was sent correspondence from the Provincial Mining Recorder on three separate occasions:

- 1) May 3, 2007 advising that a dispute had been filed by Brian W. Beyer and attached to the correspondence was a copy of Dispute including details.
- 2) On May 27, 2008 the Provincial Mining Recorder advised he would deliver a decision in the matter following written submissions unless either of the parties felt an in-person hearing was necessary.
- 3) Following a written submission by the Disputant, the Provincial Mining Recorder asked, on June 16, 2008, Mr. Boucher for a response to Mr. Beyer's allegations and provided a copy of the Disputant's submission.

The Respondent apparently chose not to respond to any of the Recorder's correspondence in the matter. In not indicating he preferred an in-person hearing, the Respondent seemed to accept the evidence as submitted by the Disputant leaving the

Recorder to consider the Disputant's written evidence and arguments without contradiction.

I note that Mr. Boucher first applied for his Prospector's licence in 2005. Since that time Mr. Boucher has not changed his "address for service". The Recorder sent the correspondence of May and June 2008 (2 and 3 above) by a method that documented delivery. Someone accepted delivery for Mr. Boucher at his address for service therefore he was given reasonable opportunity to understand the allegations by the Disputant and to respond or to ask questions. Mr. Boucher did not respond in any fashion.

The photographs submitted by the Disputant do not clearly support all the allegations in the Dispute. In considering the photographs as evidence, however, I see that the No. 2 corner post for 4203078 is a common post with No. 3 of 4203077. I can also detect that, perhaps, the inscription on 2-4203078 has been tampered with. It also follows that there is a fair probability that the Disputant acquired the metal claim tags for 4203078 at the same time that he acquired the tags for 4203077 simply because of the numbering sequence. Therefore, in considering the entire Disputant's evidence I find, on the balance of probabilities, that Mr. Boucher used Mr. Beyer's claim post at corner 2-4203078. I do not find the evidence sufficient, however, to conclude that Mr. Boucher failed to stake any part of the claim he applied to record.

Subsection 14(2) of the Claim Staking Regulation O.Reg. 7/96 states:

- 14.** (1) Every claim post used for staking a mining claim must,
- (2) Only a post or a standing stump not previously used for staking a mining claim may be used as a claim post. O. Reg. 7/96, s. 14 (2).

The issue of "used posts" was discussed at length by Mining and Lands Commissioner Ferguson in the case of Martin vs. Arrowsmith, 1974, MCC Volume 5, page 115. On page 128 the Commissioner found: "...Following this trend, the Legislature enacted a provision in negative wording, in effect prohibiting the practice that had developed. I can only conclude that, by the enactment of a subsequent provision, which was special as contrasted with the general provision of substantial compliance and negative in form, the Legislature intended to reverse the practice that had developed and to prohibit the use of used posts." The current rules for staking appear in Regulation as opposed to the complete statutory system (the Mining Act) that applied in 1974 when Commissioner Ferguson adjudicated the matter. The wording of Subject 14(2) above continues to be in the "negative" however, indicating a continuing intent to prohibit the use of a post ever before used for the staking of a mining claim. I find the evidence sufficient to conclude Mr. Boucher used Mr. Beyer's old post and that defect alone is fatal to the mining claim P 4203078 therefore it is to be cancelled.

I find the evidence insufficient with regard to the staking of the remainder of claim P 4203078. Mr. Beyer seems to suggest that Mr. Boucher did not carry out any of the staking for the claim. While I have not reached any conclusions in that issue I take this opportunity to point to the following sections of the Mining Act:

Revocation, suspension and cancellation of claims, etc. of licence

26. (1) Where the Commissioner finds, after a hearing, that a licensee has been guilty of a wilful contravention of any of the provisions of this Act or the regulations, the Minister may, on the recommendation of the Commissioner, revoke the licence of the licensee and a licence shall not thereafter be issued to such licensee without the authority of the Minister. R.S.O. 1990, c. M.14, s. 26 (1).

Idem

(2) Where a licence is revoked under subsection (1), the Minister shall determine and notify the holder of the licence revoked of the period of time during which a licence shall not be issued to him. R.S.O. 1990, c. M.14, s. 26 (2).

Suspension or revocation of licence

(3) Where a recorder finds, after a hearing, that a licensee has contravened any of the provisions of this Act or the regulations, the Minister may, upon the recommendation of the recorder, suspend or revoke the licence of the licensee. R.S.O. 1990, c. M.14, s. 26 (3); 2000, c. 26, Sched. M, s. 1.

Idem

(4) Where a licence is suspended under subsection (3), the Minister shall determine and notify the holder of the licence suspended of the period of time during which the licence is suspended. R.S.O. 1990, c. M.14, s. 26 (4).

Rights of licensee under suspension

(5) While a licence is suspended under subsection (3), the licensee may renew the licence but the licensee may not stake or apply to record a mining claim. R.S.O. 1990, c. M.14, s. 26 (5); 2009, c. 21, s. 101 (1).

Where holder of mining claim contravenes Act

(6) Where the recorder finds, after a hearing, that a holder of a mining claim has contravened any of the provisions of this Act or the regulations, the Minister may, on the recommendation of the recorder, order that the holder may not acquire an unpatented mining claim or interest therein through transfer or obtain an extension of time in which to perform work or to apply for lease on any unpatented mining claim recorded in the name of the holder. R.S.O. 1990, c. M.14, s. 26 (6).

Cancellation of mining claims

(7) Where the Commissioner finds, after a hearing, that a holder of a mining claim has been guilty of a wilful contravention of any of the provisions of this Act or the regulations, the Minister may, on the recommendation of the Commissioner, declare any mining claims of the holder to be cancelled and upon cancellation all rights of the holder in or to mining claim lands cease. R.S.O. 1990, c. M.14, s. 26 (7).

Order pending hearing

(8) Pending the holding of a hearing on any matter under this section, the Commissioner or the recorder, as the case may be, before whom the hearing will be held, may order that any mining claim of the licensee or holder whose conduct is in question shall not, before the conclusion of the hearing and final disposition of the matter, be transferred to any other person. R.S.O. 1990, c. M.14, s. 26 (8).

Prohibition against staking claims, etc.

(9) Where mining claims are cancelled under subsection (7), the former holder of the mining claims may not stake or apply for a mining claim or acquire an unpatented mining claim or interest therein through transfer for such period of time as the Minister determines, and the Minister shall notify the former holder of the period of time so determined. R.S.O. 1990, c. M.14, s. 26 (9); 2009, c. 21, s. 101 (1).

Appeal

(10) A finding by the Commissioner that a licensee or holder of a mining claim has wilfully contravened this Act or the regulations or by a recorder that a licensee or holder of a mining claim has contravened this Act or the regulations, as the case may be, may be appealed in like manner as any decision of the Commissioner or recorder, respectively, and the Minister shall give effect to the decision on the appeal. R.S.O. 1990, c. M.14, s. 26 (10).

Application to record mining claim

44. (1) A licensee who has staked out a mining claim shall, not later than 31 days after the day on which the staking out was completed, make an application to record the claim to the recorder. 1996, c. 1, Sched. O, s. 12 (1); 1999, c. 12, Sched. O, s. 18 (1).

False statement

(1.2) The recorder or the Commissioner may, after a hearing, cancel the recording of a licensee or holder who knowingly made a false statement in the application to record the claim. 1996, c. 1, Sched. O, s. 12 (1).

Offences

164. (1) Every person who,

False statements

(2) Every person who knowingly makes a false statement in an application, certificate, report, statement or other document filed or made as required by or under this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not more than \$25,000. R.S.O. 1990, c. M.14, s. 164 (2); 2009, c. 21, s. 72 (8).

Roy Spooner
Provincial Mining Recorder