



**In the matter of the Mining Act before the
Provincial Mining Recorder:**

IN THE MATTER OF

**Mining Claim K.3007372 situate in the south half of Lot 4, Con. IV,
Redvers Township, Kenora Mining Division, hereinafter referred to as the “mining
claim”;**

AND IN THE MATTER OF

**“Filed Only” application to record mining claim 4204769 situate in
Lot 4 and Lot 5, Con. IV, and covering all or part of the mining claim on record,
hereinafter referred to as the “filed only mining claim”;**

AND IN THE MATTER OF

**A dispute against the mining claim pursuant to Section 48 of the
Mining Act, RSO 1990, filed by**

Dave Meek (Disputant)

- against the mining claim of record held by -

Michael Chute (Respondent)

UPON consideration of all the evidence submitted by the parties

**I FIND that there were no fatal errors in the staking of the mining claim and
the standard of substantial compliance, pursuant to Section 43 of the
Mining Act, has been met, and therefore**

**I ORDER that the dispute against mining claim K.3007372 is hereby dismissed
and the filed only application to record the staking out of mining
claim 4204769 remains refused**

I FURTHER ORDER

**that the time for performing and reporting assessment work on the
mining claim is excluded for the period during which proceedings
were pending, being from March 6, 2006 to December 20, 2006.**

**pursuant to Subsection 67(3) of the Mining Act, RSO 1990, November
17, 2008, is fixed as the due date for work, in the amount of \$1,600.00,
on the mining claim**

that all subsequent “anniversary dates” are adjusted to November 17th of each year for the mining claim

Dated at the Provincial Recording Office
This 20th day of December 2006.

original signed by Sheila T. Lessard
Sheila T. Lessard
Provincial Mining Recorder

NOTE: SECTION 112 OF THE MINING ACT, RSO 1990, PROVIDES THE PARTIES WITH A RIGHT OF APPEAL TO THE MINING AND LANDS COMMISSIONER. AN APPEAL MUST BE FILED WITHIN 30 DAYS OF THE DATE OF THIS DECISION.

AND TAKE NOTE THAT UNLESS AN APPEAL IS FILED WITHIN 30 DAYS OF THE DATE OF THIS DECISION, SUBSECTION 110(5) OF THE MINING ACT MAKES THIS DECISION FINAL AND BINDING.

REASONS

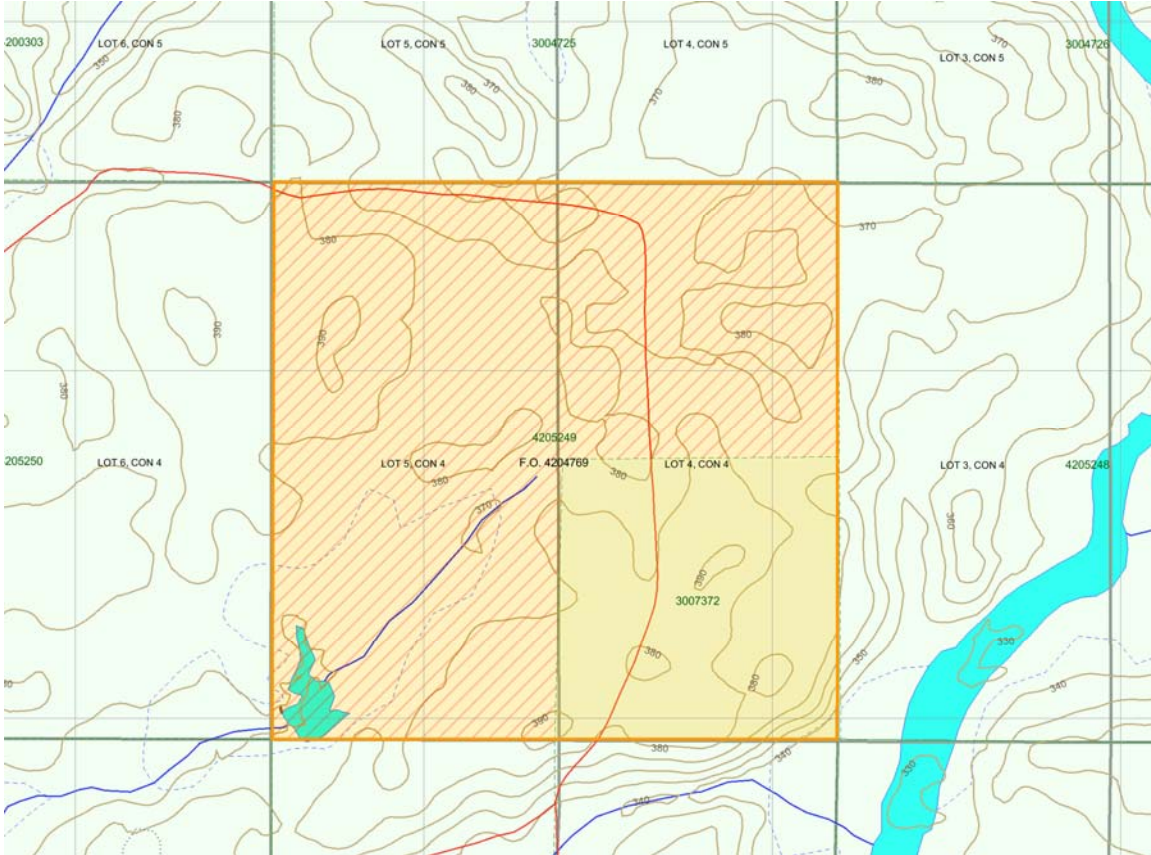
The parties agreed to have this matter determined by written submissions. A registered letter was sent to the parties on July 5, 2006, directing the disputant (Dave Meek) to file his arguments and evidence, with the Recorder and the respondent, no later than August 8, 2006. The respondent (Michael Chute) was directed to file his response, with the Recorder and the disputant, no later than September 5, 2006. Submissions were received by both parties by their respective due dates and have been taken into consideration in making my determination in this matter.

Background

On February 2, 2006, Michael Chute filed an application to record the staking out of mining claim K.3007372 located in the south half of Lot 4, Concession IV, Redvers Township, Kenora Mining Division. The south half of the said lot comprises four claim units, measuring 800 meters x 800 meters.

On February 8, 2006, Dave Meek filed an application to record the staking out of mining claim number 4204769 located in all of Lot 4 and 5, Concession IV, Redvers Township, Kenora Mining Division. These said lots comprise a total of 16 claim units, measuring 1600 meters x 1600 meters.

On the following page is a portion of the Redvers Township claim map illustrating the staking as recorded:



The application to record the Chute claim indicates that staking commenced at 9:00 a.m., on January 31, 2006, at the No. 3 corner post, and was completed at the No. 3 corner post at 12:00 p.m. on February 1, 2006. Patrick M. Chute is listed, on Part C of the application to record, as assisting in the staking.

The application to record the Meek claim indicates that staking commenced at 9:10 a.m. on February 1, 2006, at a line post, and was completed at a line post on February 1, 2006, at 1:58 p.m. Stephen Enns is listed, on Part C of the application to record, as assisting in the staking.

In accordance with subsection 44(2) of the Mining Act, RSO 1990, the Chute claim was allowed to remain on record. Subsection 44(2) reads as follows:

Priority of completion prevails

(2) Priority of completion of staking shall prevail where two or more licensees make application to record the staking of all or a part of the same lands. R.S.O. 1990, c. M.14, s. 44 (2).

Mr. Meek's application was taken "filed only" as per his request. On March 30, 2006, he filed a dispute alleging that mining claim K.3007372 was staked illegally and was misleading to others because:

- 1. 400 meters of the southern claim line was not cut between the #2 post and south line post.**
- 2. the original completion date on the #3 post was Jan 31, 2006 when actually the claim had not been completed**
- 3. the second completion time inscribed on the #3 post was 12 noon February 1, 2006 was premature as the line post to the east was being made at approximately 1 pm**
- 4. the #1 post tag faces west not south as required**

SUBMISSIONS

The submissions presented by the disputant included two photographs of the No. 3 claim post for mining claim K.3007372, a written statement outlining the events which occurred on February 1, 2006, and a signed statement by Stephen Enns, assistant in the staking.

In his statement, the disputant makes the following arguments relative to his dispute of the mining claim:

- The mining claim was started on Jan 31/06 @ 9:00 AM and inscribed completed Jan 31/06 on the same #3 post (see photo). However no claim line or snow shoe tracks were visible heading east of the trail near the #3 post. At that time I thought that 3007372 had not been completed.
- While staking the east boundary of 4204769 the 1&2 posts of 3007372 were encountered, however no southern claim line or snowshoe tracks were located westerly up a hill from the #2 post.
- After cutting my line west from the #2 post up the hill 400 meters, a freshly made LP post of 3007372 was encountered dated February 1/06 along with fresh snowshoe tracks. This post was located after hearing chopping sounds from that area at approximately 1:00 pm. I had called out to the staker but no one answered.
- No claim line or snowshoe tracks were located east from this fresh LP towards the #2 post (or the staker would have met me and the claim would have been finished much later).
- Viewing the #3 post of 3007372 again the previous completion time of January 31/06 was scratched out and a new time of 12 noon Feb. 1/06 inscribed (see photo).

In the statement signed by Stephen Enns, assistant in the Meek staking, Mr. Enns gives the following account:

- While helping Dave Meek stake 4204769 on Feb 1/06, I found a claim line that headed west from an old logging road for about 50 meters to a post that was

tagged post 3 3007372. The writing on the post said the claim was completed on January 31/06.

- Dave and I found no line/tracks, headed east from the logging road assuming claim 3007372 was not complete.
- After finishing staking claim 4204769 I returned to post 3 of 3007372 and found the completed date crossed out and February 1/06 12 pm written on it.
- Upon returning to the logging road fresh tracks were clearly traveling east. I followed the fresh line 400 m east of the road and found a fresh line post dated February 1/06. There was no claim line or snowshoe tracks east of this line post towards the #2 post.

Submissions presented by the respondent included eight photographs depicting the No. 1, 3 and 4 corner claim posts, as well as the line post located 800 meters east of post No. 4, for mining claim 4204769, and the No. 1, 2 and 3 corner claim posts for mining claim K.3007372, a written statement outlining the events which occurred on January 31 and February 1, 2006, copy of four pages of field notes, and a signed statement by Patrick Chute, assistant in the staking, stating that he has read the account prepared by Michael Chute and believe it to be a true and accurate description of the events described.

In his statement, the respondent provides the following account of his actions on January 31 and February 1, 2006:

- On January 31, 2006, my son, Patrick Chute and I began staking claim 3007372 at Post 3. He had recently received his prospectors licence and was accompanying me to learn the staking process.
- We erected Post 3, attached the claim tag and inscribed the post with: post number, claim number, my name, licence number, township and portion, lot and concession numbers, start date, start time. Anticipating completing the four unit claim that day I inscribed a date of Jan 31/06 but did not inscribe a completion time.
- We proceeded clockwise around the claim erecting claim Post 4, 1 and 2 and the intervening line posts. All claim and line posts were erected and inscribed with all the information required by the regulations and claim or line tags were attached per the regulations.
- Between the line post located 400 meters south of Post 1 of 3007372 and Post 2 of 3007372 we descended a steep to locally vertical 30 meter cliff face which required us to jump down several 2.5 meter levels. This cliff face trends west-southwesterly across the claim gradually decreasing in height. We erected Post 2, attached the claim tag and inscribed the post with all the required information.
- We proceeded west, establishing the claim line by flagging and blazing until we intersected the cliff face where we flagged and blazed several trees to facilitate finding the line. Being late and not able to scale the cliff at that location and realizing we were running out of light, I decided that we should traverse out along the creek to the road and cut the claim line east from Post 3 to the line post which would be at the top of the cliff overlooking the line below.

- Given the snow and bush conditions we didn't get back to the snow machines until dark and planned to return the next morning to complete the claim between Post 3, the line post and the cliff.
- On February 1st we returned to claim Post 3 at 11:40 AM. I flagged and blazed the line 400 meters east and erected the line post 400 meters east of Post 3, attached the tag and inscribed the post. My son remained at Post 3 with instructions to wait until 12:00 noon to inscribe the completion time and date. The Jan 31/06 was struck out.

Particulars Not in Dispute by Parties

There are several allegations made by the disputant in this matter which has been admitted to by the respondent. These include

- a) **The completion date on the No. 3 corner post was changed from January 31, 2006 to February 1, 2006. A completion time of 12 noon was added to the post on February 1, 2006. This information is supported by the photos submitted by both parties.**
- b) **The south boundary of the mining claim was not completely blazed or marked out on January 31, 2006.**
- c) **A line post, on the Southern boundary of the mining claim, was not erected until February 1, 2006.**

One point which was raised by the disputant, and not admitted to by the respondent, was the actual time of completion of staking on February 1, 2006. The respondent has indicated, both on his claim post and on his application to record, that he completed staking on February 1, 2006 at 12 noon. The disputant indicated that the line post on the southern boundary was made at approximately 1 PM on February 1st.

Issues

Upon reviewing the submissions of both parties, I find there are several fundamental issues that need to be addressed in order to determine if the mining claim on record has been staked in substantial compliance with the Mining Act and Regulations. These include:

- **Is it fatal to the staking when the recording licensee changes the staking completion date on a corner post prior to recording the claim?**
- **Did the failure to comply with the staking requirements mislead any licensee desiring to stake a mining claim in the vicinity?**
- **Is it apparent that an attempt has been made in good faith by the licensee to comply with the requirements of the Mining Act and the Regulations?**

Findings

Mr. Chute indicated that he commenced his staking at 9:00 a.m. at his corner post #3, and inscribed the post with “*post number, claim number, his name, licence number, township and portion, lot and concession numbers, start date, and start time*”. Anticipating that he would complete the four unit claim that day, he inscribed a date of Jan 31/06 but did not inscribe a completion time.

Mr. Chute was training his son on the staking process, and after erecting and inscribing their #3 post, they proceeded in a clockwise direction around the claim erecting and inscribing claim post #4, #1 and #2, as well as the intervening line posts. It was after erecting the last corner post #2 that they encountered problems due to darkness, snow and bush conditions, and were unable to finish their south boundary. They returned to their #3 post on February 1st, at 11:40 am to complete the south line of their claim, reinscribe a new date on the No. 3 post, as well as add the time of completion to the No. 3 post.

Subsection 10.(1) of Ontario Regulation 7/96, Claim Staking, outlines the rules which apply to the staking of a mining claim in areas that have been open for staking for 24 hours or more. Clause 3 of that section is reproduced below:

10. (1) The following rules apply to the staking of a mining claim in areas that have been open for staking for 24 hours or more:

3. The date and time of completion of the staking must be inscribed on one of the corner posts after all of the required work of staking the claim has been completed. O. Reg. 7/96, s. 10 (1).

I find that Mr. Chute complied with this requirement of the regulation.

Subsection 72. (1) (a) of the Mining Act reads as follows:

Forfeiture of mining claim

72.(1) Except as provided by section 73, all the interest of the holder of a mining claim before a lease has issued ceases without any declaration, entry or act on the part of the Crown or by any officer, and the claim is open for prospecting and staking out,

- (a) if, without the consent in writing of the recorder or Commissioner, or for any purpose of fraud or deception or other improper purpose the holder removes or causes or procures to be removed any stake or post forming part of the staking out of such mining claim, or for any such purpose changes or effaces or causes to be changed or effaced any writing or marking upon any such stake or post;

In Section 1 of the Mining Act, mining claim is defined as follows:

“mining claim” means a parcel of land, including land under water, that has been staked and recorded (underline added) in accordance with this Act and the regulations; (claim”)

Mr. Chute made the change to the inscription on his No. 3 claim post before recording his mining claim and therefore had not yet become the holder of the mining claim. I cannot find that the change of the completion date on the claim post was done to commit fraud or to deceive or done for any other improper purpose. Although I would caution anyone against inscribing a date of completion on a claim post prior to having completed the physical act of staking, I believe Mr. Chute truly expected that he would finish his staking on January 31st. He did not inscribe the completion time on the post and intended to do this when he finished staking that day. I find the explanations he provided, for not returning to the No. 3 post that day, to be credible and reasonable given the circumstances and situation he found himself in. Mr. Chute explained that he was teaching his son, who had just acquired a prospector’s licence, that he met with difficulty due to the rugged terrain in the southeast portion of the claim, and that darkness was setting in thereby making it unsafe to travel.

There was no indication that this was a competitive situation. In fact, a review of the records in the Provincial Recording Office shows that these lands had been open for a number of years. Most competitive situations occur in the first 24 hours that lands come open for staking which affords all licensees an equal opportunity of acquiring mining rights in Crown lands. Staking has occurred more recently, however, in the surroundings lots and concessions. Mr. Chute presently holds mining claims to the south; a Mr. Mike Desmeules is the recent holder of the mining claims to the west, north and east.

There are specific requirements for staking in surveyed territory which are outlined in Section 5, 6 and 7 of Ontario Regulation 7/96 pertaining to Claim Staking. Redvers Township is surveyed into lots of 130 hectares more or less, and subsection 5. (13) is specific as to the minimum size of a claim as well as the area to be covered in townships surveyed into lots of this size. This subsection is reproduced herewith:

5. (13) In a township surveyed into lots of 130 hectares, a mining claim of minimum size must contain 16 hectares and consist of the northeast, northwest, southeast or southwest quarter of the north half of a lot or an equivalent quarter of the south half of a lot. O. Reg. 7/96, s. 5 (13).

Given that the surrounding lands were staked, and the fact that Redvers is a surveyed township, anyone desiring to stake a claim in this area would need to ensure their specific location.

Mr. Meek did not have difficulty in locating the subject area and observed the absence of the southern claim boundary of the Chute claim when he first went into

the area on February 1st. He made a decision to dispute the claim based on this deficiency in staking. This is supported in the submissions made by both Meek and his assistant, Enns, wherein they outline that they viewed the inscription “completed January 31/06” on the # 3 post of the mining claim however noted that there was no claim line or snow shoe tracks visible heading east of the said post, and assumed the mining claim had not been completed.

Mr. Meek began staking his claim at a line post on the north boundary of his claim, being approximately 800 meters north of the No. 4 post of recorded mining claim 3007372 and proceeded to stake a 16-unit mining claim (256 ha), being all of Lot 4 and Lot 5, Concession, IV. The Chute claim contained 4 units (64 ha), being the south half of Lot 4, Concession IV, and was thus encompassed in the southeast portion of the Meek filed only claim.

It was not until he was cutting his line west from his #2 post, which was the same location for the #2 post of the mining claim on record, that Meek discovered a freshly made line post of 3007372 dated February 1/06 along with fresh snowshoe tracks. Viewing the No. 3 post of 3007372 again, he noted that January 31/06 was scratched out and a time of 12 noon Feb. 1/06 inscribed thereon.

Section 43, Subsection 2, of the Mining Act reads:

43. (2) The staking out of a mining claim shall be deemed to be in substantial compliance with the requirements of this Act and the regulations even if there is a failure to comply with a number of specific staking requirements if,

- (a) the failure to comply is not likely to mislead any licensee desiring to stake a claim in the vicinity; and**
- (b) it is apparent that an attempt has been made in good faith by the licensee to comply with the requirements of this Act and the regulations.**

I cannot find that the actions of Mr. Chute were misleading to Mr. Meek. When Mr. Meek entered the area, he could see that the ground was staked however noted the deficiency of there being no “time of day” inscribed on the post and no blazing along the south boundary of the mining claim. He made a conscious decision to stake the larger claim and thus encompass the claim on record.

I also cannot find any indication that Chute proceeded to stake in a manner intended to mislead and that he made an honest attempt to comply with the staking requirements. This is actually supported by his attempt to complete his southern boundary the next day and thus reinscribe his claim post with the later date and time of completion. By doing so, he risked losing his claim to one with an earlier completion time. There is no indication that there was any conscious decision to circumvent the staking rules or to gain a competitive advantage against anyone else in this matter.

There is some question however in the actual “time” the Chute staking was completed. Mr. Chute submitted that on the morning of February 1st he returned to claim Post 3 at 11:40 am. He flagged and blazed the line 400 meters east and erected the line post 400 meters east of Post 3, attached the tag and inscribed the post. His son remained at Post 3 with instructions to wait until 12:00 noon to inscribe the completion time and date.

I am unclear as to how Mr. Chute determined that he would take 20 minutes to flag and blaze 400 meters of line and erect, tag and inscribe a line post, having left his son to mark a completion time of 12 noon on the No. 3 post. Although I do not find it impossible to perform these tasks in twenty minutes, I question that anyone could determine an exact time in this regard when the actions have not yet been carried out and without some means of communication between the stakers. Although Mr. Chute has held a prospector’s licence since 1986 and has staked numerous claims, I am of the opinion that even such an experienced staker would have great difficulty in determining a precise time in a situation such as this unless Chute planned to stop the staking process at the precise time of 12 noon. Again, I would caution the respondent against such a practice.

Mr. Meek stated he heard chopping from the area of the southern line post at approximately 1:00 pm however did not speak to, or see, anyone. Accordingly, there is no evidence of whom or what caused the chopping sounds, or whether the “chopping sounds” were coming from the southern line post belonging to Chute. Mr. Chute signed a Certificate on Part C of his application to record the mining claim. Part 5 of this certificate reads that “all other statements and particulars herein set forth in my application and shown on the sketch or plan on Part D are true and correct. I have no evidence to indicate that the time of completion of staking is other than that indicated in his application.

However, even with a completion time of “approximately 1pm”, Mr. Chute would still have remained on record as a prior staking since the Meek staking was not completed until 1:58 pm on February 1, 2006 as indicated on his application to record the staking out of his mining claim.

The disputant also made note of a couple of other deficiencies in the Chute staking, namely that 400 meters of the south boundary was not marked and that the No. 1 tag was placed on the wrong side of the post. Given that the staking was carried out in a surveyed township, I cannot find that these two technical deficiencies would cause another person to be misled while staking in this area. There are specific rules for staking in surveyed territory as outlined in Section 5 of Claim Staking Regulation 7/96. These include that the boundaries of the mining claim must be coincident with or parallel to the section, lot, concession or range lines established by the original survey [subsection 5.(1)(b)], and that a mining claim may consist of any combination of contiguous lots or parts of lots, quarter sections or subdivisions of a section according to the township fabric but must not deviate from the township fabric.

In the case of Leduc v. Grimston 2 M.C.C. 285, Commissioner Godson said at p. 287, “While Leduc did not make complete blazes around his boundaries or from his discovery to the No. 1 post, his excuse is that the land having been burnt over it was

difficult to do so. That is not an answer which would at all times prevail as he could have placed pickets where the land did not permit of blazes, but in substance I find, it being a surveyed claim the lines were sufficiently pronounced and in that respect Leduc had substantially complied with the Act.”

The test for substantial compliance provides that the staking must comply “as nearly as circumstances will permit”, and is addressed in Section 43, Subsection 1, of the Mining Act.

43.(1) Substantial compliance as nearly as circumstances will reasonably permit with the requirements of this Act and the regulations as to the staking out of mining claims is sufficient.

Where there is a failure to comply with a number of staking requirements, if the failure is unlikely to mislead others in the field and if it is apparent that an attempt in good faith has been made to comply, the deemed substantial compliance provision will govern. This is addressed in Section 43, Subsection 2, of the Mining Act, (*section inserted on page 9*).

On the test of substantial compliance and deemed substantial compliance, I find that the incorrect placement of a corner tag and lack of blazing on the southern boundary of the mining claim, are not likely to mislead others wishing to stake in the vicinity. There is no indication that there was any conscious decision to circumvent the staking rules and I believe an attempt was made by the licensee to comply with the requirements of this Act and the regulations.

Conclusions

Based on the review of evidence submitted in this matter, I must conclude that mining claim K.3007372 was staked out in accordance with the Mining Act and Regulations. The dispute in this case is therefore dismissed.

It has long been a principle, concerning claim disputes, that the disputant’s staking should be examined with the same vigor that the disputant expects applied to the mining claim of record. In 1916, Mining Commissioner T.E. Godson said in *Whiting v. Mather* 2 M.C.C. 318:

“What Whiting did must be judged by the same standard that he expects him to apply to the Mather staking. He who seeks equity must do equity.”

Commissioner G. H. Ferguson went beyond the principle established in *Whiting v. Mather*. For some time Commissioner Ferguson expected a standard of strict compliance in the disputant’s staking. In *Parres et al. v. Baylore Resources Inc. et al.* 7 M.C.C. 2, the Commissioner said :

“Turning to the staking by the disputants, there is a line of authorities going back to the decision of Whiting v. Mather 2 M.C.C.. 318 and being more recently illustrated by the decision of Martin v. Arrowsmith 5 M.C.C. 115 that places a high standard of

staking on a staker who overstakes a recorded staking on the basis that the recording staking does not comply with the requirements of the Mining Act.”

In this particular case, it is clear from the photographs submitted that there were no times inscribed on the No. 1, 3 and 4 corner post of the disputant’s staking. A photo of the No. 2 post was not submitted. It is also clear, from the photo submitted and the filed only application to record the staking out of mining claim 4204769, that the start and completion time was inscribed on a line post of the disputant’s staking.

In accordance with subsection 15.(1) of Ontario Staking Regulation 7/96, a licensee staking a claim must inscribe the time of erecting the post on each corner post.

[15.\(1\)](#) A licensee staking a claim using metal tags must affix to each corner post the appropriately numbered tag and inscribe on each such post his or her name and license number and the date and time of erecting the post. O. Reg. 7/96, s. 15 (1).

In areas that have been open for staking for 24 hours or more the time of completion of the staking must be inscribed on one of the corner posts.

[10.\(1\)](#) The following rules apply to the staking of a mining claim in areas that have been open for staking for 24 hours or more:

[10.\(3\)](#) The date and time of completion of the staking must be inscribed on one of the corner posts after all of the required work of staking the claim has been completed. O. Reg. 7/96, s. 10 (1).

In the case of a claim that partially overstakes another having priority there is an additional avenue of adjudication of Subsection 44(4). This section provides that the recorder may record a mining claim for part of the land that does not conflict with the prior claim.

Overlapping staking

[44.\(4\)](#) Despite subsection (3) and section 46, if the other application or applications to record a mining claim cover any land that is not part of the mining claim that is entitled to priority under subsection (2), the recorder may record a mining claim with respect to that part of the land and shall amend the application or applications with respect to the land covered by the previously completed claims. 1996, c. 1, Sched. O, s. 12 (2).

However, since this subsection directs the recorder with the word “may”, it is obvious that the decision is discretionary and not mandatory. There is no automatic right to be recorded for residual parts of claims which do not conflict with prior claims. I must first apply Subsection 46(2) prior to considering the recording of the residual area.

[46.\(1\)](#) If, in the recorder’s opinion, an application to record a mining claim complies with all the requirements for staking and recording the claim, the recorder shall record the claim and file it, along with the sketch or plan and certificate. 1999, c. 12, Sched. O, s. 20.

Not recording a mining claim

[46.\(2\)](#) If, in the recorder's opinion, an application to record a mining claim does not comply with all the requirements for staking and recording the claim, the recorder shall not record the claim and, in particular, the recorder shall not record a claim relating to land that is not open to staking. 1999, c. 12, Sched. O, s. 20.

It is my decision not to record the residual part of filed only mining claim 4204769 as I do not find it complies with all the requirements of staking.

Dated at Sudbury, this 20th day of December, 2006.

**Original signed by: Sheila T. Lessard
Provincial Mining Recorder**