

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

**IN THE MATTER OF: Recorded Mining Claims 4208883 to 4208885 both inclusive, 4208917 to 4208921 both inclusive, 4208923 to 4208926 both inclusive, 4201162 and 4208890, located in Levack and Cartier Townships, Sudbury Mining Division, (hereinafter referred to as the Falconbridge claims);**

**AND IN THE MATTER OF: Mining claims 3018776 to 3018780 both inclusive, 3014412 and 3014413, taken as “Filed Only” mining claims, (hereinafter referred to as the Daigle claims);**

**AND IN THE MATTER OF: a dispute filed by**

**Richard J. Daigle**

**Disputant**

**- against recorded mining claims held by -**

**Falconbridge Limited**

**Respondent**

**UPON: consideration of the evidence submitted by the parties,**

**I ORDER: that the dispute in whole is hereby dismissed.**

**I FURTHER ORDER: that “Filed Only” applications claims 3018776 to 3018780 both inclusive, 3014412 and 3014413, are hereby cancelled as of this date.**

**I FURTHER ORDER: that pursuant to Section 67(2) of the Mining Act that the time during which claims 4208883 to 4208885 both inclusive, 4208917 to 4208921 both inclusive, 4208923 to 4208926 both inclusive, 4201162 and 4208890, were under dispute, being January 23<sup>rd</sup>, 2006 until December 7<sup>th</sup>, 2006, being 318 days is hereby excluded and a new anniversary date for performing and filing assessment work is as set out in Schedule “A” attached to this order.**

**Dated at Sudbury, this 7<sup>th</sup> day of December, 2006.**

*Originally signed by Roy Denomme*

**Roy Denomme  
Provincial Mining Recorder**

*Schedule "A"*

**Mining Claim**

**New Anniversary Date**

4208883	October 8, 2008
4208884	October 8, 2008
4208885	October 8, 2008
4208917	October 8, 2008
4208918	October 8, 2008
4208919	October 8, 2008
4208920	October 8, 2008
4208921	October 8, 2008
4208923	September 27, 2008
4208924	September 27, 2008
4208925	September 27, 2008
4208926	September 27, 2008
4201162	September 27, 2008
4208890	October 8, 2008

**Note: Parties have the right of appeal to the Mining and Lands Commissioner as indicated in Section 112 of the Mining Act R.S.O. 1990. An appeal must be filed within 30 days of the date of this decision.**

A hearing was held on May 31<sup>st</sup>, 2006 this matter  
Richard J Daigle attended in person as the disputant  
Dave Richardson and Andre Dufresne attended on behalf Falconbridge Limited as the Respondent  
Glen McBride attended as a witness on behalf of the Respondent

## **BACKGROUND:**

Based on applications to record, filed and recorded in the Office of the Provincial Mining Recorder, the Falconbridge claims were part of a larger package of claims staked over the period between October 30<sup>th</sup>, 2005 and November 19<sup>th</sup>, 2005. The mining claims were staked under recording licensee Glenn McBride, and assisted by Edward Blackned, Pierre Coulombe and Leonard McBride.

The mining claims were recorded in two packages, one filed and recorded on November 14<sup>th</sup>, 2005 and the other filed and recorded on November 25<sup>th</sup>, 2005.

The Daigle mining claims were staked between November 10<sup>th</sup>, 2005 and November 16<sup>th</sup>, 2005. The mining claims were staked under recording licensee Richard J. Daigle, and assisted by Luc Gagnon, Eric Dion and Steve Simser. The claims were filed on November 23<sup>rd</sup>, 2005 in the Office of the Provincial Mining Recorder, and due to the prior staking of the Falconbridge claims were taken "Filed Only" pursuant to section 46(3) of the Mining Act.

On January 23<sup>rd</sup>, 2006 Richard Daigle filed a dispute against the Falconbridge claims pursuant to Section 48 of the Mining Act. In his statement of claim, Daigle states "*These claims are in violation of the Mining Act*". *Did not meet substantial Compliance Guidelines. Therefore we were completely misled. Post's not dated or wrongfully dated, and pre-dated. See Attached Schedule "A"*.

Schedule "A" is a detailed list of posts for the Falconbridge claims, which were inspected by the disputant. It provides details of post locations, post inscriptions, and any deficiencies found with the staking.

## **EVIDENCE:**

### **Disputant:**

The disputant submitted a number of exhibits which he referenced throughout the hearing. These included; a reference map showing the location of sites visited and claim post locations; the two page list of deficiencies that was included as "Schedule A" attached to the dispute form; McBride's applications to record; a DVD showing video

footage of the field evidence; and a Bell phone statement from November 22, 2005 (Daigle's) detailing calls made from November 2, 2006 to November 21, 2005. The disputant, in his submission, referred to "Schedule A" and outlined the locations that had been visited and the discrepancies which were found at each location. These were also referenced using the DVD footage to provide further confirmation of the evidence. The disputant provided evidence for 35 of the 56 corner posts and inscriptions (63%) of the 14 Falconbridge claim posts. The evidence detailed common discrepancies with inscriptions, (namely 12 posts with no date, and 8 posts with different times than indicated on the application to record). There were other notations on the schedule indicating that individual stakers had commenced a number of claims on the same day.

In his testimony Mr. Daigle stated that he spent 3 days from October 22<sup>nd</sup>, to October 25<sup>th</sup>, looking to find evidence of Falconbridge's staking, to no avail.

The Bell phone statement was verified to be Mr. Daigle's. This statement showed a number of phone calls had been made to Mr. McBride at his home and at his hotel, as well as a number of calls to Falconbridge's Garson Office. These calls were shown to have been made between November 11<sup>th</sup>, 2005 and November 21<sup>st</sup>, 2005. Daigle indicated that the calls were made in order to clarify what lands were being staked by Falconbridge, so that he could stake adjacent lands. Daigle also indicated that he was not able to verify through these calls where McBride was staking, and therefore continued to stake the area that now forms the "Filed Only" claim group.

### **Respondent:**

Mr. Richardson, Project Geologist, Falconbridge Limited indicated that for the most part, there was little dispute with the physical evidence submitted by Daigle and that Falconbridge was willing to concede that most of the evidence was in fact accurate.

Falconbridge submitted a report prepared and signed by Dave Richardson, in defense of the McBride staking. The report included response to Daigle's "Schedule A" deficiencies, and includes photos of corner posts of Daigle and Coulombe's staking and a sketch showing the location of the two claim groups.

Falconbridge also introduced Glenn McBride as a witness, to comment on the staking of the Falconbridge claims. In his testimony, McBride confirmed that his staking practice was not to include dates on the #2, #3, and #4 corner posts. However he always put his date and time on the #1 post. In reference to multiple claims being commenced on the same day, he stated that it is common to commence several mining claims at the same time when staking a claim block and using common posts. He also stated that that they did not see any other stakers in the area at the time of staking, except for one claim which was partially staked by Mr. Daigle but never finished.

## **Findings:**

The Tribunal is satisfied that the evidence presented by both parties and the testimony of Mr. McBride, was factual and not at issue in this case.

The tribunal concludes from the applications to record filed by both parties and the evidence presented at the hearing that the staking of the Falconbridge claims and the Daigle claims can not be considered a competitive staking situation. The Falconbridge claims that fall within the area subsequently staked by Daigle's team were completed at least eight days prior to the commencement of the Daigle staking. The exception to this is 4201162 which is a small wedge claim (less than 8 hectares) which ties on to existing claims of record. Daigle submits that he scouted the area for staking from October 22<sup>nd</sup> until October 25<sup>th</sup>, (prior to the staking of the Falconbridge claims), however it is not until November 10<sup>th</sup>, 2005 that the first of the Daigle claims was commenced. It is mentioned that at least one claim was commenced during this scouting exercise but abandoned by Mr. Daigle before it was finished.

Based on the submissions of both parties, there is no question that there are deficiencies in the McBride staking. It was further admitted by Glen McBride that his practice was not to include dates on his corner posts, except for the #1 post. Most of the deficiencies involved the lack of inscriptions or inscriptions (dates) that differed from the application to record. No deficiencies were noted in the Disputants submission regarding post size, lack of posts or deficiencies in blazing boundaries (there is a mention by Mr. Daigle that claim lines started and stopped, however this was not clarified and did not appear to be a significant issue in the case.

Section 43 of the Mining Act States:

*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.*

*(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.*

It is difficult to conceive that staking evidence from the Falconbridge staking was not visible to the Daigle stakers upon their arrival at the area of staking. It is evident from the documentation presented that all claim posts and line posts were in place from the Falconbridge staking, and that claim lines were demarcated. Further, although a number of deficiencies were present, it would have been evident to Daigle's staking team upon inspection that there was recent staking, and from the inscriptions that did appear on claim posts the staking occurred between October 30<sup>th</sup> and November 3<sup>rd</sup>.

A question arises as to whether McBride's admission that his staking practice is to only inscribe the time on the #1 post can be considered an apparent attempt in good faith to comply with the provisions of the Mining Act. Although the practice cannot be condoned as it is contrary to the requirements of the Act and regulations, the Tribunal is of the opinion that Mr. McBride and his staking crew attempted in good faith to comply with the provisions of the Act and regulations.

Daigle's attempts to call Mr. McBride to determine which lands were all made after the Falconbridge staking was completed cannot be considered an issue in this case.

The Tribunal concludes that there was an attempt to comply with the provisions of the Mining Act, and that identified deficiencies could not be considered likely to mislead other stakers. There was sufficient evidence in the field to show that an apparent attempt in good faith to comply with the provisions of the Act and regulations.

Based on these findings, the Tribunal must dismiss the dispute filed by Mr. Daigle.

*Original signed by Roy Denomme – December 7, 2006*

Roy Denomme  
Provincial Mining Recorder