

Ministry of
Northern Development
and Mines

Ministère du
Développement du Nord
et des Mines

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

**IN THE MATTER OF: Mining claim L 3012963 in Frecheville Township, Larder
Lake Mining Division**

AND IN THE MATTER OF: a dispute filed by

**YVON GAGNE
Disputant**

-against the mining claim of record held by-

**MINES ET EXPLORATION NORANDA INC.
/NORANDA MINING AND EXPLORATION INC. AND NORANDA INC.**

Respondent

**ALSO IN THE MATTER OF: The decision of the Provincial Mining Recorder, July
28, 2004 regarding Yvon Gagne vs. Noranda where the recorder dismissed the first
dispute filed against the same mining claim.**

**WHEREAS: The Disputant was given leave to file a second dispute by order of the
Mining and Lands Commissioner, File No. MA 028-04, January 6, 2005**

AND WHEREAS: The second dispute was filed April 13, 2005

**I FIND: That the new Statement of Claim filed by the Disputant does not provide
me with any substantially new facts, evidence or arguments, therefore**

I ORDER: That the dispute is dismissed.

Original signed by Roy Spooner Dated this 24 day of June, 2005
**Roy Spooner
Provincial Mining Recorder**

PLEASE NOTE THAT SECTION 112 OF THE MINING ACT ALLOWS THE PARTIES A RIGHT OF APPEAL TO THE MINING AND LANDS COMMISSIONER. AN APPEAL IS BEGUN BY FILING THE NECESSARY DOCUMENTS IN THE OFFICE OF THE COMMISSIONER AND SERVING THE PROVINCIAL RECORDING OFFICE WITHIN 30 DAYS OF THE DATE OF THIS DECISION.

BACKGROUND

This is the second dispute filed against the claim of record by the same party. In his decision July 28, 2004, Provincial Mining Recorder Roy Denomme provides details of the first dispute and reasons for a decision to dismiss the first dispute. A copy of [that decision is attached](#) to this order.

Although the first prescribed unit of assessment work was filed and approved and although the validity of the mining claim had been adjudicated by the recorder, leave to file this second dispute was allowed by the Mining and Lands Commissioner pursuant to 48(c)(i) of the Mining Act R.S.O. 1990 (MA).

The sequence of events:

- **Claim 3012963 staked by David Jones December 16, 2003.**
- **Claim 3012963 recorded January 9, 2004 (refer to [attached sketch](#) illustrating the claim of record and subsequent stakings by the Disputant taken “filed only”).**
- **Dispute filed by Yvon Gagne February 3, 2004.**
- **Mining Recorder dismissed dispute July 28, 2004.**
- **Claim 3017350 staked by Gary Windsor August 4, 2004 inside claim of record 3012963 (see attached sketch).**
- **Application to record 3017350 filed August 9, 2004 and stamped “filed only” August 12, 2004.**
- **Claim 3011755 staked by Yvon Gagne August 31, 2004 inside claim of record 3012963 (see attached sketch).**
- **Application to record 3011755 filed September 13, 2004 and stamped “filed only” September 17, 2004**
- **November 1, 2004 filed only application 3017350 is cancelled due to the expiry of 60 days as provided in 46(6) MA**
- **November 16, 2004 application for leave to file the second dispute submitted to the Mining and Lands Commissioner (60 days after 3011755 stamped filed only)**
- **Leave to file a second dispute ordered by Mining and Lands Commissioner January 6, 2005**
- **Second dispute filed April 13, 2005.**

REASONS

With regard to the Disputant's filed only applications to record 3017350 and 3011755, it would appear that both applications are now automatically cancelled by Subsections 46(5) and 46(6) MA.

Invalidity of application

(5) An application filed under subsection (3) is invalid and of no effect 60 days after it is filed unless a dispute is filed under section 48 or an appeal is taken under section 112 or the Commissioner or recorder orders otherwise. 1999, c. 12, Sched. O, s. 20.

Cancellation of application under subs. (5)

(6) The recorder shall cancel an application that becomes invalid under subsection (5) or as a result of the determination of the dispute under section 48 or the appeal under section 112. 1999, c. 12, Sched. O, s. 20

Filed only 3017350 was duly marked cancelled November 1 as the 60 days mentioned in 46(5) had expired (marked "filed" August 12 and no dispute or appeal filed by October 12).

The disputant did file an application with the Mining and Lands Commissioner within 60 days after the application for 3011755 was marked "filed". In doing so, the Disputant did not satisfy 46(5) that requires the filing of a dispute or an appeal.

The application for leave, Commissioner's order allowing leave and the actual filing of the second dispute had to occur by November 16, 2004. In fact, the dispute was not filed until April 13, 2005. There was an alternative remedy as Subsection 46(5) MA provides authority for the recorder or Commissioner to "order otherwise". It does not appear that the Disputant requested that the "filed only" application to record be continued. The Commissioner's order in the matter is silent on the status of the application to record. The result is that the "filed only" application to record for 3011755 cancelled automatically pursuant to 46(5) MA. Therefore the Disputant does not have a valid mining claim to record regardless of the outcome of this second dispute process. The Disputant does maintain a right ,however, to have the recorder decide if mining claim L 3012963 is illegal or invalid in whole or in part (48{1} MA).

I also note that note that the Disputant did not file the second dispute until three months after the Commissioner's order provided leave. I cannot find anything in the Mining Act, however, that would limit the time for dispute after leave was granted.

Provincial Mining Recorder Roy Denomme adjudicated the first dispute in this matter. His decision was not appealed. Subsection 110(5) MA indicates the recorder's decision is final and binding unless appealed. Therefore, I will not consider again any facts, evidence or arguments already heard in the first dispute.

Subsection 111(1) MA requires me to give directions for the conduct and carrying on of proceedings. Given that there was already one hearing in this matter and that there is not a great deal of new material in the "Statement of Claim" attached to the

second dispute I am deciding the dispute without a hearing and without further submissions.

I quote and address each of the statements in the “Statement of Claim” individually as follows:

- **“David Jones staked the hole in the donut #3013064 November 26, 2003, and the donut #3012963 surrounding the hole, December 16 2003.”**

This is factual. All the facts as outlined in the new Statement of Claim were already known and accepted by Mr. Denomme.

- **“He did not record the staking of the hole in the donut.”**

Additional fact.

- **“Yvon Gagne staked the hole in the donut August 31, 2004, #3011755.”**

Fact

- **“To allow the donut to cover the hole, as well, would completely change the staking procedure on an opening day rush, or at any time, and is contrary to the Act, Sections 16(1) and (2), Section 19”.**

There is neither a Subsection 16(1) nor a 16(2) MA. Also the reference to Section 19 MA makes no sense therefore I take it that the sections referred to are in the Claim Staking Regulation, O.Reg. 7/96:

16. (1) If metal tags are affixed to corner posts and line posts at the time of staking a mining claim, the licensee who staked the claim must so indicate in the application to record the claim. O. Reg. 7/96, s. 16 (1).

(2) If metal tags are not used at the time of staking a mining claim, the holder of the claim must affix, as soon as possible after the recording of the claim but not later than six months after,
(a) to each corner post, a corner post tag inscribed with the recorded number of the claim; and
(b) to each line post, a line post tag inscribed with his or her license number, the claim number, the corner post number, the direction of the corner post last erected and the distance from the line post to that corner post. O. Reg. 7/96, s. 16 (2).

19. A person who stakes land open for staking and fails to apply to record the mining claim within the time set out in subsection 44 (1) of the Act is not entitled to have a mining claim recorded on the land or to stake the land again, and a mining recorder may refuse or cancel any such staking. O. Reg. 7/96, s. 19.

I recognize no conflict with Section 16 of the Staking Regulation. Allowing the “donut” is irrelevant to affixing corner tags and line post tags.

Mr. Denomme already considered the applicability of Section 19 to the facts of the case in his decision of July 28, 2004. His decision is final and binding unless appealed. An appeal was not filed.

- **“Yvon Gagne attended at the site of the hole in the donut on December 2, 2003, but it had already been staked by David Jones on November 26, 2003.”**

Fact

- **“Therefore, the hole in the donut was no longer open for staking, and after checking the staking out, he left the property.”**

Fact

- **“Then, he waited for the recording thereof to take place at the Mining Recorder Office. He did this to determine what part of the surrounding area was available for staking.”**

According to Mr. Denomme on the final page of his decision: “The tribunal has difficulty with the argument of the disputants that they needed to see where the claim was situated on a claim map in order to determine its true location. It is well known that the true location of the claim is best ascertained in the field and the position on a claim map may be suspect as it is only a rendition of what has been staked in the field.”

- **“David Jones did not record the hole, but instead staked a 16-unit claim, being its donut and the hole, on December 16, 2003.”**

Fact

- **“This donut was recorded on January 9, 2005, but he never recorded the hole in the donut.”**

Fact

- **“When we speak of substantial compliance that refers to physical requirements in the field.”**

While I would tend to agree I must add that substantial compliance is a statutory standard applied, by those in authority to do so, while considering Section 43 MA completely:

Substantial compliance with Act and regulations sufficient

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. R.S.O. 1990, c. M.14, s. 43 (1); 2000, c. 26, Sched. M, s. 5.

Deemed substantial compliance

(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. R.S.O. 1990, c. M.14, s. 43 (2).

- **“The disputant would have staked the property if there was not evidence and Jones had staked. Therefore, the disputant was thoroughly misled.”**

Mr. Denomme already gave due consideration to whether or not the disputant was misled.

- **“The four unit claim being disputed No.#L-3013064 (the hole in the donut) was staked by David Jones in substantial compliance with 43 (2) (a) of the Act, but was not recorded within 31 days. Section 44. (1) of the Act, states that a licensee that stakes a claim shall no later than 31 days after staking make application to record.”**

Fact

- **“Section 19 of the Regs. 7/96 states that a person who stakes a claim and fails to apply to record it within the time set out in Section 44. (1) of the Act, is not entitled to have a claim recorded on the land or to stake the land again.”**

Already addressed by Mr. Denomme.

- **“The ground covered by the 4 unit claim being disputed No. #3013064 (the hole in the donut) was staked for the second time by the same staker as part of a new 16 unit Claim No. #3012963 while the original 4 unit claim No. #3013064 was pending recording. Claim No. #3013064 was originally staked November 26, 2003 by David Jones who by being the first to stake the ground had authority over the land and while the land was protected by the 31 day recording period staked it again Dec. 16, 21 days into that 31 day window as part of Claim No. #3012963.”**

Fact

A substantial part of the Statement of Claim simply reiterates the case originally considered and decided upon by Provincial Recorder Roy Denomme. The dispute is dismissed.

**Roy Spooner
Provincial Mining Recorder**

