



## Mining Claim Staking in Remote Areas – Ontario Mining Recorder Order Confirms Use of Helicopters

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*On June 24, 2014, the Ontario Provincial Mining Recorder released reasons for his decision in Noront Resources Ltd. (Disputant) v Canada Chrome Corporation and KWG Resources Inc. (Respondents). In his reasons, the Mining Recorder dismissed Noront's dispute against KWG's mining claims, which KWG staked using helicopters. The Mining Recorder's decision is one in a line of cases recognizing the challenges of mining claim staking in remote areas, such as the Ring of Fire region of northern Ontario. The decision also provides a pragmatic and modern interpretation of the Mining Act and its claim staking regulations. Willms & Shier Environmental Lawyers LLP acted for the Respondent and successful party KWG.*

### Background

Noront Resources is a junior mining company developing the Eagles Nest Mine and Black Bird chromite project, both located in the Ring of Fire. KWG Resources is an exploration stage company participating in the discovery, delineation and development of chromite projects in the Ring of Fire, including the Black Horse and Big Daddy deposits.

The Ring of Fire is a region of significant mineral concentration in central and northern Ontario. It is located approximately 540km northeast of Thunder Bay, encircling McFaulds Lake in the James Bay lowlands area. While the crescent shape of the Ring of Fire covers approximately 5,000 km<sup>2</sup>, most of the significant discoveries have been made in a 20 km long strip in the south east, near Koper Lake. The mining claims at issue in this dispute are located in this area of focused exploration. Prospecting in the Ring of Fire is highly competitive. The logistics of mining claim staking in the Ring of Fire is a challenging exercise, due to topography and distance.

### Staking Rush and Helicopter Protocol

Crown lands located near Koper Lake opened for staking on June 17, 2011. The mining claim staking proceeded pursuant to the 24 Hour Rule – special rules under O Reg 43/11 applied to the staking rush.

Noront hired two men to stake the Crown land on foot. By contrast, KWG used two helicopters and more than a dozen stakers in a coordinated effort to stake the claims as quickly and efficiently as possible.

At 9:00 a.m., KWG's recording licensee, Ken Pye, inscribed the first mining claim post (with tags), erected the post in the ground and immediately proceeded to the helicopter. Mr. Pye was strapped into the back of the helicopter, which followed the mining claim boundary. He inscribed

additional line posts and corner posts in the helicopter. He dropped the posts at predetermined locations along the mining claim boundary. Mr. Pye dropped posts from the helicopter at a height of approximately 10–30 metres (depending on surrounding tree tops). The posts entered the ground vertically, and stuck into the muskeg environment, remaining upright.

Mr. Pye placed team members at key locations around the mining claims. The team commenced “blazing” the mining claim boundaries (marking trees and attaching flagging tape) after the 9:00 a.m. start time, and only after Mr. Pye erected the first post. Mr. Pye and all team members travelled in a clockwise direction. Mr. Pye finished at the number 1 post, where he started, and inscribed his finish time (the Helicopter Protocol).

KWG completed the Helicopter Protocol for two additional mining claims and completed three mining claims before Noront was able to complete its first. Noront’s witness at the hearing admitted that they were “caught off-guard” by KWG’s Helicopter Protocol.

Mr. Pye completed the Applications to Record Mining Claims and filed them with the Mining Recorder’s office on June 21 and June 23, 2011.

### **Alleged Defects in Staking**

During the hearing, Noront alleged that the mining claims should not be recorded and should be disqualified on the basis that the Helicopter Protocol did not comply with the *Mining Act*.

Noront argued that KWG’s staking was illegal because Mr. Pye was not present “on the ground” during staking. Noront also argued that KWG’s staking was void because it used multiple team members blazing the claim boundary in multiple locations. The Mining Recorder dismissed both arguments.

- ♦ **“On the Ground”** – The Mining Recorder held that having the recording licensee’s feet on the ground at all times is not a requirement of the *Mining Act* or its staking regulations. The previous version of the claim staking regulation (O Reg 7/96) required the licensee to be present on the ground during staking. However, the current version O Reg 43/11 does not contain that language. The updated regulation states that the licensee must be present in the area under staking at the time of staking the area. The Mining Recorder found that Mr. Pye was indeed in the area, even though he did not have his feet on the ground at all times.

The Mining Recorder further relied on a decision by the Mining and Lands Commissioner that held that the staking regulation does not require a licensee to proceed on foot at all times during staking. In the matter of *Estate of Carl Forbes, et al. v Michael Tremblay et al.*, the Commissioner held that the use of a vehicle is not prohibited by the wording of the Act. The Commissioner held that it is increasingly clear that those engaged in competitive staking are now using every available means by which to save precious seconds. In this case, Mr. Pye’s mode of transportation was a helicopter, and although he was not on the ground at the time each post was erected, the posts were properly erected by dropping them from the helicopter and having them land vertically into the ground.

- ♦ **Multiple Team Members** – The Mining Recorder also found that it was not fatal to the KWG’s claim staking to have Mr. Pye’s team members stationed at key locations around the claims. The team members commenced blazing the claim boundary only after Mr. Pye erected the first post. All team members proceeded in a clockwise direction. Consistent with the decision in *Royal Oak v Strike Minerals*, the Mining Recorder found that having multiple claim blazers acting in concert does not offend the claim staking regulation.

## Conclusion

The Mining Recorder found that there is nothing in the *Mining Act* that prohibits erecting mining claim posts by dropping them directly from a helicopter. The recording licensee need not be “on the ground” during every step of claim staking, and the wording of the regulation now permits the recording licensee to be present in each area under staking, as Mr. Pye was at all times. The Mining Recorder upheld the Helicopter Protocol and dismissed Noront’s dispute.<sup>i</sup>

This decision confirms the validity of the modern practice of claim staking using helicopters. In remote and inaccessible environments, helicopter staking has become more and more common. The decision will help to advance mineral development in remote regions, including the Ring of Fire and the far north.

The matter is currently under appeal to the Office of the Mining and Lands Commissioner.

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<sup>i</sup> KWG launched its own cross-dispute against shortcomings in Noront’s mining claims; however, by finding the KWG claim valid the Mining Recorder did not need to address Noront’s staking.