

Understanding mining rights in Ontario

Purpose of the Ontario Mining Act:

The purpose of the act is:

1. to encourage prospecting, staking and exploration for the development of mineral resources; and
2. to minimize adverse effects of these activities on public health and safety and the environment through rehabilitation of mining lands in Ontario.

Prepared for



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August 2005

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1. SOME DEFINITIONS

1.1 Crown Land: land that belongs to the province of Ontario. It does NOT include:

- (a) land, the surface rights, mining rights or mining and surface rights of which are under lease or license of occupation from the Crown,
- (b) land in the actual use or occupation of the Crown, the Crown in right of Canada, or of a department of the Government of Canada or a ministry of the Government of Ontario,
- (c) land the use of which is withdrawn or set apart or appropriated for a public purpose, or
- (d) land held by a ministry of the Government of Ontario.

1.2 Ground Assessment Work: is the process of investigating and searching for minerals in the land, including:

- stripping of overburden;
- bedrock trenching;
- shaft sinking;
- digging pits;
- exploratory drilling;
- re-cutting boundary claim lines once every five years;
- dewatering of underground workings

1.3 Licensee: A person who holds a prospector's license, issued under the *Mining Act* or a renewal thereof.

1.4 Mining Claim: A parcel of land, including land under water, that has been staked, and recorded by the Provincial Mining Recorder.

1.5 Mining Operations: Any excavation or working of the ground to collect minerals.

1.6 Mining Recorder: An employee of the Ministry of Northern Development and Mines, appointed for a specific mining area who is the first contact when dealing with compliance with the *Mining Act*. Duties include: recording and filing mining claims and applications, issuing prospector's licenses, hearing and deciding disputes.

1.7 Mining Rights are the rights to minerals located in, on or under the land. Also referred to as **Mineral Rights**.

1.8 Prospecting: the investigating of, or searching for, minerals (see ground assessment above).

1.9 Staking: the action of setting out of the boundaries of a mining claim by marking [blazing or flagging] lines and erecting and tagging posts with the objective of claiming the exclusive right to prospect and obtain priority to the mining privileges attached to the land.

1.10 Surface Rights: All those rights to land that are not mining rights. A person who owns surface rights is a person to whom the surface rights of land have been granted, sold, leased or located [s.79].

2. LAND STATUS FOR STAKING AND PROSPECTING

2.1 What lands are open for staking and prospecting?

Overall, in Ontario, the holder of a prospector's licence may stake out a mining claim on land that is open for staking and prospect for minerals on any Crown lands or on lands within which the minerals have been forfeited through the *Mining Tax Act* or were reserved to the Crown after May 6, 1913. The holder of a mining claim has the legislative right to obtain a mining lease, although surface rights provisions under the *Ontario Mining Act* control that activity and apply as work progresses.

Most Crown land can be staked out and prospected for minerals. Private property may also be staked as a mining claim when the mineral rights are controlled by the Crown. [s.27(b)]. Land can be bought without knowledge that the title is deeded for surface rights only. A mining claim is not registered on the title. Lawyers and real estate agents may be unaware that there is an active mining claim on the property that is being bought or sold. Landowners may be unaware that a claim has been staked on their property because they are not notified of the staking,

2.2 Where can I find out if I own the mineral rights?

Whether or not you own the mineral rights can be verified by a detailed title search at the appropriate Land Registry Office. The Provincial Mining Recorder or the website of Ministry of Mining and Northern Development can provide information on the status of a particular parcel of land.¹

2.3 What's the status of my land if I do not have the mineral rights?

If you do not own the mineral rights, the Crown or someone else may hold title to the mining rights. If the land you own or lease has not been staked, then your land may be open for staking.

2.4 What lands cannot be staked?

The *Mining Act* sets out a number of types of properties and areas which are NOT open – i.e. on which a mining claim cannot be staked out or recorded. These include:

- town sites [29(a)]
- registered residential subdivisions [29(b)]
- summer resort locations identified by the Minister of the Ministry of Natural Resources, unless a discovery of valuable minerals on the land has been made [s.30(1c)]
- lands where mineral rights are not reserved to the Crown [s.30(1a)]
- Provincial Parks, although some provisions are allowed within the Public Lands Act section 13(6) [s.31]
- land for public purpose owned by the Ministry of Transportation
- pleasure grounds (not defined yet under law)
- areas that are necessary for the occupation and utilisation (access) of buildings or improvements to the land (such as buildings, waterworks and roads) that were erected prior to the staking of the land. [s.80(2)] It should be noted that these areas **are** open for staking and require a decision by the recorder or commissioner before they are excluded from the claim.
- fire areas that are closed under the *Forest Fires Prevention Act* [s.42]
- on parts of land that contain water flows capable of producing 150 horsepower [s.33(1)]
- lands within 45 metres of a highway or road without the consent of the Minister.

¹ www.mndm.gov.on.ca/mndm/mines/lands/bulbrd/surface_rights/prosp_e.asp

2.5 What is the status of Indian Reserves?

Indian Reserves cannot be staked except as provided by the *Indian Lands Act*, 1924 [29(e)]. The *Indian Lands Agreement Act* (1986) provides that the Indian band of the said lands can enter into agreement with the government of Ontario and the Government of Canada over minerals, mineral rights and royalties, although the mineral rights are reserved to the Crown.

2.6 What is the status of Land that is occupied or being used?

A mining claim cannot be staked out nor can prospecting be done on the part of a lot where any of the following are situated, subject to the exemptions noted below:

- house/residence/cottage/dwelling
- church
- cemetery
- public building
- spring
- artificial reservoir
- dam or waterworks
- outhouse
- manufactory
- a garden, orchard, vineyard, nursery, plantation or pleasure ground or where crops *can* be damaged [s.32(1)].

If any of the above exist on your property, a licensee cannot:

1. enter,
2. prospect, or
3. stake

these areas without your consent. A licensee may stake out or prospect without your consent if s/he obtains an order by the Mining Recorder or Commissioner allowing him/her to do so [s.32(1)].

If a dispute arises about the parts of the land which cannot be prospected or staked, the Mining Recorder or Commissioner will determine the areas which cannot be prospected or staked [s.32(2)]. The holder of the mining claim or licensee then cannot enter the areas of the land found to be exempt from staking. Any areas exempt from staking are also exempt from a mining claim.



Assessment Work on Private Property, Eastern Ontario

Photo Credit: Marty Cadieux

Legal Interpretations of land uses²:

Crop: Crop is given a broad interpretation and includes grass and hay fields. ‘Orchard’ can consist of several fruit trees on the property. In *Griesbach 2003*, the mining recorder held that 14 fruit trees constituted an orchard which is exempt from staking & prospecting.

Vineyard: The Mining Recorder also held that areas where fruit are growing are not necessarily ‘plots’. Section 32 protects “plots” that are managed in the usual agricultural sense for personal or commercial purposes.

Nursery: The Mining Recorder used the meaning for “Nursery stock” as defined under the *Forestry Act RSO 1990* as coniferous or hardwood seedlings, transplants, grafts, or trees propagated or grown in a nursery and with the roots attached, and includes cuttings with or without the roots attached. The Mining Recorder also used the meaning for nursery stock grown for sale as: 1. any place where fruit trees, fruit stock, or ornamental plants are propagated for sale; 2. a place where plants other than herbaceous plants are grown, for the purpose of marketing.³

Plantation: A woodlot. Exemption for plantations does not necessarily imply that areas of reforestation under the *Woodlands Improvement Act* are exempt from staking. The Mining Recorder also concluded that a silviculturally managed woodlot⁴ is not necessarily exempt from staking as a plantation. Furthermore, an agricultural woodlot is not necessarily exempt from staking.

Pleasure Ground: Grounds for recreation, including summer resort locations.

Waterworks: The Ontario Mining Recorder has used the following definitions in defining waterworks:

i. *water works*: Any public, commercial or industrial works for the collection, production, treatment, storage, supply, and distribution of water or any part of any such waterworks.⁵

ii. *waterworks system*: Any system of plants, wells, structures, equipment, pipes, apparatus or other things for the obtaining, treating, purifying, disinfecting, distributing or supplying of water intended to be used for human consumption or in swimming pools and, without limitation, includes aqueducts, cisterns, culverts, cuts, flumes, mains, pumps, reservoirs, tanks, engines, and machinery used in connection with the system.⁶

² Interpretations taken from *Tracey L. Griesbach v. Graphite Mountain Inc. (2003)*. In the matter before the Provincial Mining Recorder.

³ Dictionary of Canadian Law, Dukelow and Nuse, 1991.

⁴ Silviculture is the practise of caring for forests with respect to human objectives.

⁵ Dictionary of Canadian Law, Dukelow and Nuse, 1991.

⁶ Dictionary of Canadian Law, Dukelow and Nuse, 1991.

2.7 What are the rights of a claim staked on Agricultural Lands?

A mining claim staked out on agricultural land does not give the staker any right, title or interest in or to the surface rights. [s.39(2)] The original ruling of the Commissioner in *Wollasco Minerals Inc. versus Ronald Price* ordered that any assessment work or drilling activity must be conducted to minimize disruption of farming activity and noise that may be heard in the farmhouse. In the Amended order, however, this requirement was deleted.⁷

2.8 Can a mining operation obtain the Surface rights?

Surface rights may be sold or granted to a mining operation if the surface rights are necessary for the carrying out of mining operations. The Minister will determine the scope of the surface right so granted. [s.39(2)].

If the lessee or owner of mining rights or the holder of a mining licence of occupation requires the use of surface rights within or outside the limits of lands covered by the lease, patent or licence of occupation for the mining rights, the Minister may lease to that person any available surface rights for the purpose of mining or mining exploration. [s.84(1)]

The Commissioner may make an order that gives an owner of a mining claim a variety of rights. Some examples include the right to construct ditches, insert pipes, discharge water, divert the flow of water of a river, pass through or over land or water, and to construct roads. [s.175(1)]

These types of rights will only be granted if they are reasonable in the circumstances and the damage caused to any other person's property can be sufficiently compensated. [s.175(2)] After making an order, the Commissioner can change or revoke his/her decision. This can only be done for good cause. [s.175(13)] In the case of *Wollasco Minerals Inc. v Ronald Price*, the Commissioner issued an amended order because the previous order contained terms and conditions that were outside the ambit of the appeal and beyond the subject matter for which both parties had notice. [File No. MA 004-03 Feb 23 2005]

2.9 Can a surface rights holder be obligated to sell his/her property?

Initially, the Commissioner held in *Wollasco Minerals Inc. v Ronald Price* [File No. MA 004-03, Oct. 2003] that if the holder of the mining claim makes a production decision, the mining company has the option to purchase the property at 200% of its fair market value (as averaged by two appraisals), and the surface rights holder has the obligation to sell the property. Because it was outside of the ambit of the appeal, this order was rescinded in February 2005.

2.10 What surface rights are reserved to the Crown?

Surface rights may be reserved to the Crown on land (owned by the Crown- not privately owned) that is:

- within 120 metres of land bordering on water [s.40(1)]
- within 90 metres of both sides of a road or highway [s.40(2)]

This applies to all unpatented mining claims unless waived by the Crown. [s.40(3)]. The Crown may also reserve surface rights for the establishment or extension of town-sites on an unpatented mining claim [s.55(1)].

⁷ The Mining and Lands Commissioner issued a first ruling on the case of *Wollasco Minerals Inc. vs. Ronald Price* in October 2003 (see <http://www.mndm.gov.on.ca/mndm/mines/lands/pro/comdecis/ma004-03.pdf>). The same Commissioner subsequently issued a second decision which deleted or rescinded certain paragraphs of the original decision (see <http://www.mndm.gov.on.ca/mndm/mines/lands/pro/comdecis/AmendedMA004-03.pdf>). References to this case will provide details of both the first (2003) and amended (2005) decisions.

2.11 What rights does the holder of an Unpatented Mining Claim have?

Subject to the statutory and common law rights of the surface owner, the holder of an unpatented mining claim has the right prior to any subsequent right to the use of the surface rights for prospecting and efficient exploration, development and operation of the mines, minerals and mining rights [s.51(1)]. This is a broad right that permits entry onto privately owned lands and virtually any kind of activity necessary for mineral exploration, development and extraction.

The holder can consent to the disposition of surface rights under the *Public Lands Act* and the surface rights may be dealt with as provided in that Act [s. 51(2)]. The Minister may require a survey of the surface rights which will be provided at the expense of the person who has acquired the surface rights.

3. STAKING A CLAIM

3.1 Who is allowed to stake out a piece of land?

Staking, prospecting, or the recording of a mining claim is prohibited unless that person holds a valid prospector's licence [s.18(1)]. Anyone who is eighteen years or over can obtain a prospector's licence upon payment of the required fee of \$25.50[s.19(1)].

3.2 How do you obtain a Prospector's Licence?

- A prospector's licence is issued by any mining recorder [s.19(5)].
- It is valid for 5 years after the licensee's birthday that follows the issue of the licence [s.19(2)].
- A licensee can renew his licence before expiration. [s.21(1)].
- Any recorder can renew a prospector's licence [s.21(3)].
- The Ministry of Mining and Northern Development will automatically renew the licence of a person who has held a licence for 25 years or more without a fee, and the licence remains in good standing during the lifetime of the licensee [s.21(6)].
- No person can apply for or hold more than one prospector's licence [s.23(1)]
-

3.3 Does an officer of the Crown require a prospector's licence?

An officer of the Crown and his/her assistants acting under the Mining Act, who discover valuable minerals on behalf of the Crown, on lands open to prospecting, do not require a licence. [s.36(1)] When staking, the agents of the Crown will mark "Staked out for the Crown".

3.4 What are the rights and obligations of Licensees?

The holder of a prospector's licence has the right to enter upon the land *only* for the purpose of prospecting and staking. A licensee may stake out a mining claim on any land open for prospecting. [s.28(1)]. The licensee has the right to file an application for a mining claim in accordance with Ministry guidelines [s.50(1a)]. The licensee does have the right to perform assessment work subject to approval by the Ministry [s.50(1a)]. The prospector does not have any right to take, remove or dispose of any mineral found in, upon, or under the mining claim [s.50(1b)].

3.5 Can staking be done for other purposes?

People have sought to stake mining claims for holiday cottages or other non-mineral purpose. However, the *Mining Act* provides that a mining claim can be cancelled where it is being used for purposes other than mineral purposes. Thus, a surface owner wishing to prevent others from prospecting and staking the property, by staking the land himself (where the land is open for prospecting), may result in cancellation of the mining claim. However, the Commissioner will not cancel a mining claim merely because it is done by a surface owner.⁸ However, a suspicion of non-mineral purposes may support cancellation.⁹ The lease of mining rights and, where applicable, surface rights can only be used for mining purposes. [s.85]

⁸ Rapski v. Davis (1982) 6 MMC 213 (Ont. MC)

3.6 How is a mining claim recorded?

The licensee must make an application to record the mining claim to the recorder within 31 days after the day on which the staking was completed. [s.44(1)] The licensee must also pay a required fee and submit a sketch or plan showing the required information [s.44(1.1)]. Any false statements that were knowingly made in the application to record the claim may result in cancellation of the application [s.44(1.2)].

If the recorder approves the application, the recorder will record the mining claim and file it with the sketch or plan and certificate [s.46(1)].

If the recorder rejects an application because of failure to comply with staking requirements or because the claim was made in regard to land that is not open to staking, the recorder will not record a claim [s.46(2)].

3.7 What happens if staking requirements are not followed?

Even if a licensee fails to adhere to a number of staking requirements, the Ministry will deem the staking out to be in accordance with the Ministry's laws and regulations if:

1. failure to comply does not mislead other licensees interested in the vicinity; and
2. that an attempt was made in good faith by the licensee to comply with staking requirements. [s.43(2)]

Substantial compliance with the staking regulations is deemed to be sufficient.

3.8 How big is a Mining Claim?

The mining claim should be no larger than is sufficient for working the mines and minerals. The Commissioner or recorder can reduce the area of a mining claim if the area staked out goes beyond what is sufficient for working the mines and minerals. [s.80(1)] The minimum size is one 16 hectare unit, the maximum is 256 hectares –*Ontario Regulation 7/96 Claim Staking* s. 2 (1) and 5 (1) (a).

3.9 What are the rights of holders of a mining claim?

The holder of a mining claim does have the right to:

1. enter the property
2. use; and
3. occupy

the part of the land that is necessary for prospecting and efficient exploration, development and operation of the mines, minerals and mineral rights [s.50(2)]. Thus, access to a mining claim cannot be denied by the surface rights owner. Access is a statutory right.

Legal Interpretation:

In the amended decision on *Wollasco Mineral Inc. v. Ronald Price*, the Commissioner rescinded the order that *walking* access to the property be allowed in any season, with the proviso that persons accessing the property not interfere with any farming activity. Also, the commissioner rescinded the order that *motorised* access to the property *required* the prior approval of the surface rights holder (not to be unreasonably denied).

The holder of the mining claim does not have any other right, title or claim to the surface rights [s.50(2)].

3.10 What if no consent is obtained from the surface rights holder?

Even if staking was conducted without permission of the surface rights holder in contravention of the *Mining Act* (prospecting on property which requires consent as provided by 32(1)), the recorder may not invalidate the entire mining claim for failure to obtain the surface owner's consent. O. Reg. 7/96 s. 11 (1) (*Griesbach v. Graphite Mountain Inc., Ontario Mining Recorder, January 2003*)

⁹ *Hahn v. Director of the Lands Management Branch, Ministry of Natural Resources (1986) 7 MMC 163 (Ont. MC)*

3.11 What is the status of a mining claim on the death of the Licensee or holder of a mining claim?

If licensee or holder of mining claim dies before a lease has been issued, then the land cannot be staked out or claimed until 12 months after his death. Further, no one can acquire any right, interest or privilege in the mining claim. [s.74]

4. ASSESSMENT WORK

4.1 When is Assessment Work required?

Following the recording of a mining claim, the holder of the claim must perform assessment work as prescribed by the Ministry and report such work to the Ministry [s.65(1,2)].

4.2 What rights does the claim holder have?

The holder of a mining claim does have the right of:

1. drilling
- 2 mining, milling and refining soils for testing mineral content with permission by Ministry [s.52(1)]

4.3 What notice is required before starting assessment work?

The holder of a mining claim cannot perform assessment work without notifying the surface rights holder [s.78]. Notification is done by filling out a 'Notice of Intention to Perform Work' form and delivering the form to the surface rights holder. Assessment work will not be recorded by the ministry if proper notice was not given. An exception is made in cases where it is not feasible to give proper notice to the owner of the surface rights or where the owner of the surface rights has given written consent to the assessment work.

4.4 Is consent from the surface rights owner required?

If the holder of the mining claim has properly given notice, he is allowed to enter on the land and perform assessment work at any time immediately following the day the notice is given [s.78(2)]. Consent from the surface rights owner is not a requirement,

4.5 What other Acts apply to assessment work?

Before carrying out any assessment work on a mining claim, the holder must obtain a written permit entitling the holder to perform work as provided, if applicable, by the *Forest Fires Prevention Act* or the *Public Lands Act* [s.37].

5. CANCELLATION OR ABANDONMENT OF CLAIMS OR LICENSES

5.1 Non-Compliance with Regulations:

If there is non-compliance with:

1. staking regulations; or
2. regulations regarding the recording of a mining claim; or
3. directions of the mining recorder,

then the mining claim is deemed abandoned. The land will then be opened for prospecting and staking out [s.71(1)].

However, if one year has elapsed since the recording of the claim or assessment work was performed and filed and where necessary approved, the mining claim is deemed to have complied with the *Mining Act* and mining regulations [s.71(2a,b)].

5.2 Where claim, rights or lands are abandoned:

A holder of a mining claim may abandon, in whole or in part, the claim by filing a notice of abandonment with the recorder [s.70(1,2)]. The recorder then posts a notice of abandonment in the recorder's office [s.70(3)]. Where partially abandoned, the recorder will redefine the boundary lines of the mining claim and post a notice [s.70(4)].

The mining claim or the part of a mining claim abandoned is open for staking at 8 a.m. on the eleventh day after the notice of abandonment is filed [s.70(8)].

If the holder, licensee or lessee of a mining claim, mining lands or mining rights abandons or surrenders the claim, lands or rights or if they are cancelled by the Ministry, the person may take buildings, structures, machinery, chattels, personal property within 6 months. Otherwise it is taken by the Crown. In the case of an unpatented mining claim, that person cannot remove any minerals or ore from the land [s.53(1)].

5.3 Cancellation of Mining Claim

If the holder of a mining claim removes any stake or post forming part of the staking out of the mining claim, or changes any markings for the purpose of fraud or deception, his interest in the mining claim ceases [s.72(1)]. Likewise, failure to do prescribed assessment work results in cancellation unless the holder has applied and paid for a lease [s.72(1b)].

At 8 a.m. on the day after the mining claim has been cancelled, the land is open of re- staking [s.72.1(2)]

5.4 Suspension and Revocation of Licence

If the recorder finds after a hearing that a licensee has contravened the *Mining Act* or regulations, the Ministry may suspend or revoke the licence of the licensee [s.26(3)]. While a licence is suspended, the licensee may renew the licence but the licensee may not stake out or apply to record a mining claim [s.26(5)]. Furthermore, the Minister may order that the licensee not:

- i. acquire;
- ii. acquire an interest through transfer;
- iii. apply for lease;
- iv. obtain a time extension to work;

on any unpatented mining claim recorded in the name of the holder. [s.26(6)]

If, after a hearing, the Commissioner finds that a licensee is guilty of contravening the *Mining Act* or regulations, the Minister may revoke the licence of the licensee. The licence will not be issued to that licensee without the permission of the Minister.[s.26(1)].

The Minister may also declare any mining claims of the holder to be cancelled. Upon cancellation, all rights of the holder in or to mining claim lands cease. [s.26(7)]. If mining claims are cancelled, the holder cannot stake out, acquire or apply for a mining claim for a period of time determined by the Commissioner. [s.26(9)].

Pending the holding of a hearing the Mining Commissioner or recorder may order that any mining claim of a licensee whose conduct is in question be transferred to another person [s.26(8)].

6. COMPENSATION

6.1 Compensation for damage to property & nuisance

The surface owner or an occupier of the land who has made improvements to the land is entitled to compensation for damages done to property from prospecting, staking out, assessment work or operations by a prospector, holder of a mining claim, or person carrying out mining operations. [s.79(2a-d)].

Compensation is not just for *physical* damage to land. Compensation is for interference with surface rights, including the right of peaceable possession, the right to decide which trees are to be cut down, the right of rental profits, and so forth.

The policy of the Mining Commissioner suggests that proof of damages is persuasive in obtaining compensation. To succeed in a claim of compensation, you need to provide evidence indicating injury.

Legal Interpretation

In *Brown v. Green (1985) 7 MCC 102 (Ont. MC)* a complaint of loss of sleep was ignored due to lack of medical evidence; the effects of an access road, rock dumps, skidder tracks were also ignored due to the lack of evidence regarding the value of trees removed and soil disturbance.¹⁰

Damages to land of special value may not reflect the high value without evidence of such.

Damages are not awarded for sentimental value of the land except where mining work is occurring on the part of the land that will have an adverse effect on the use and enjoyment of the property.¹¹

If there is agreement over compensation, the person to whom compensation is owed may have the agreement filed by the office of the recorder upon payment of the required fee [s.79(9)].

If there is no agreement about the compensation amount between the surface rights holder and the party with the mining rights, the parties should make an application to the Commissioner to decide on the amount, time, and manner of payment of compensation. The Commissioner shall reach a decision after a hearing and subject to appeal to the Divisional Court where the amount claimed exceeds \$1000. [s.79(4)]

Pending the outcome of the proceeding or if compensation hasn't yet been paid, the Commissioner may: 1. order the giving of security for compensation; and 2. may prohibit further prospecting, staking out or working by any person [s.79(5)].

Thus, compensation is secured by halting work if compensation is not paid by the due date giving the owner a special lien on the claim. No further mining work can be done until compensation is paid or secured unless permission is obtained by the Commissioner [s.79(6)].

If an unpatented mining claim is subsequently leased, the surface rights holder who is owed compensation for damages to property can have the compensation agreement or compensation order enforced against the lessee. (subject to the *Land Registry Act* and the *Land Titles Act*) [s.79(10)]

¹⁰ Case cited in Barry Barton, Canadian Law of Mining (Calgary: Canadian Institute of Resources Law, 1993), p.205.

¹¹ Barry Barton, Canadian Law of Mining (Calgary: Canadian Institute of Resources Law, 1993), p.206.
Citing: *Bartlett v. Bacon (1988) 7 MCC 389 (Ont. MC)*.

The holder of a mining claim cannot get a lease on the mining claim if:

1. he fails to reach an agreement over surface rights compensation; or
 2. he fails to secure or settle surface rights compensation under the order of the Commissioner.
- [s.81(2c)].

6.2 What if trees are damaged or cut?

A holder of a mining claim or mining rights must pay compensation for any trees cut on surface-holders property [s.92(8)]

Legal Interpretation

Damage to trees reserved to the Crown are not compensable (*Newmont Mines Ltd. V. Van Fossen (1989) 7 MCC 511 (Ont. MC)*).

Generally, compensation for damage to trees is based on the market value of trees as lumber or firewood. *Suomu v. Bremner (1988) 7 MCC 400 (Ont. MC)* .

If a surface-holder's timber operations are compromised by mining work, compensation may be paid for loss of after-tax profit on a timber contract in addition to land values. *Mono Gold Mines Inc. v. 586108 Ontario Ltd. (1987) 7 MCC 267 at 280-81 (Ont. MC)*.

Legal Interpretation

In the first ruling on *Wollasco Minerals Inc. vs Ronald Price*, the Commissioner held that the holder of the mining rights was obliged to avoid if possible, cutting down trees with a diameter of 2 inches or greater. The Commissioner also held that trees with greater than 4 inches diameter will not be cut without prior consent of the surface rights holder, not to be unreasonably withheld, but with fair market compensation for the surface rights holder. This ruling was subsequently rescinded.

6.3 Can I get compensation for damages done to my property before I acquired it?

No compensation is awarded for damages to property prior to acquisition. (*Graf v. Palu, Mining and Lands Commissioner*, File No. MA 012-95, October 1996).

6.4 How are legal costs awarded?

Generally, the legal costs of proceedings are awarded to the surface rights owner but not where proceedings are initiated or lengthened due to misunderstanding each side's rights. [*Brown v. Green,(1985) 7 MCC 102 (Ont. MC)*] In the case of *Graf v. Palu*, the Mining and Lands Commissioner used its discretion as allowed by law to award costs. In the ruling, the Tribunal found that "the process was unnecessarily lengthy". The tribunal required that the applicant pay the respondent a total of \$11,007.28.

6.5 Is the right to compensation transferable?

The Commissioner has held that if the owner of the surface rights wills or gifts property to another, the heirs or successors also have a right of compensation from the holder of the mining claim for damages to the property in the course of mining operations. (*Morgan v. Emerson Grant et al. ,April 2000*, File No. MA 036-98: Mining and Lands Commissioner)

6.6 Compensation to the holder of a mining claim

Every person who damages mineral explorations workings, claim posts, line posts, tags, or surveyed boundary markers for mining exploration purposes, the holder of a mining claim, or the owner or lessee of the mining lands, as the case may be, is entitled to compensation. [s.79(3)]

7. DISPUTING A MINING CLAIM

7.1 Where do I file a complaint?

If you believe a claim that a mining claim is invalid in whole or in part, you may pay a fee and file a dispute with the Provincial Mining Recorder.[s.48(1)].¹² The *Dispute against a Record Claim* form is available at http://www.mndm.gov.on.ca/mndm/mines/lands/forms/default_e.asp.

7.2 Who are the sources of authority?

Disputes may be settled by the Provincial Mining Recorder. Appeals are filed with the Mining and Lands Commissioner. Matters can be dealt with either by the Mining Commissioner and the Superior Court of Justice. The two bodies work together to ensure that the concerns are addressed in the most appropriate forum. Applications may be made to the Superior Court of Justice for a transfer of proceedings at any stage.[s.107] Similarly, if it is more convenient for a matter to be dealt with by the Commissioner, the court may refer the matter to the Commissioner.[s.108] The court has the discretion to transfer any proceeding to the Mining and Lands Commissioner as it sees fit, especially if it is a more appropriate forum.[s.109]

7.3 Who is the mining recorder?

The mining recorder is entitled to hear and decide disputes and is the first contact when dealing with compliance with the *Mining Act*. The mining recorder decides such disputes unless they are referred to the Commissioner. Though the mining recorder's decisions are final, they may be appealed to the Commissioner under s.112 of the *Mining Act*.[s.110(1), (2)]

7.4 Who is the Mining and Lands Commissioner?

Any matters relating to rights, privileges or interests covered under the *Mining Act* are resolved by the Mining and Lands Commissioner. The Commissioner has the authority to make decisions regarding claims, questions and disputes and to enforce his/her decisions as necessary.[s.105]

7.5 How is a dispute complaint processed?

You must submit the complaint to the office the mining recorder, using the prescribed form, verified with a detailed statement of claim and an affidavit in the prescribed form. The recorder will file the dispute upon payment of the required fee (\$51.00 – July 2005) and will enter a note upon the record of the disputed claim.

The mining recorder sends a copy of the dispute to the mining claim holder(s) via registered mail on the day following the filing of the dispute [s.48(2)]. Delivery to any adult at the disputant's address is considered sufficient delivery [s.48(3.1)]. If no address is given by the disputant, the recorder will post a copy in the recorder's office. [s.48(4)].

The recorder or the Commissioner adjudicates the validity of a mining claim and will determine the extent of the land that is exempt from a mining claim. [s.32(2); s.48(1) s 80(1)]

In any dispute, the Commissioner or recorder may with or without notice, view or inspect the mining claim or any land or property in dispute [s.75(3)]. The inspecting officer then writes a report which is filed in the office of the recorder [s.76(1)]. If in the recorder's opinion the claim should be cancelled, he or she will mark the report of the claim as cancelled and sign or initial it. The report is then sent no later than the next day to the disputant, holder of the mining claim and any other interested parties [s.72(2)].

¹² The owner, lessee, purchaser or locatee of the land can file a dispute complaint.

7.6 Where will disputes be heard?

Hearings shall take place in a convenient location within the district, upper-tier municipality or local municipality in which the lands or mining rights are located. The Commissioner is permitted to choose another location that is mutually more convenient.[s.114(3)]

7.7 What happens if I do not to attend a hearing?

A hearing may proceed in the absence of a party as long as notice has been served. A person absent under such circumstances is not entitled to notice of further proceedings.[s.115(2)]

7.8 How can I get information about what has taken place during a hearing?

During a hearing, all evidence taken before the Commissioner shall be recorded and transcripts shall be available on the same terms as in the Superior Court of Justice.[s.125] Transcripts can be obtained for a fee.

7.9 What are the limitations on filing a dispute complaint?

A dispute cannot be made against a mining claim:

- after one year from the recording of the claim [s.48(5)]
- after the initial assessment work has been performed and filed and where necessary, approved [s.48(a-b)]

7.10 How do I appeal a decision of the mining recorder?

Appeals to the Commissioner must be made within 30 days after the recording of the decision. This is done by serving notice on the recorder and all other interested parties. It is sufficient to mail notice to the address of the party concerned or, where no address is available, by posting a copy of it. This is usually done in the recorder's office.[s/112(4), (8), (9)]

7.11 What can I do if I am unhappy with a decision of the Mining and Lands Commissioner?

Appeals may be made from the decision of the Commissioner to the Divisional Court unless otherwise provided.[s.133]

7.12 How do I appeal a decision of the Commissioner?

Appeals to the decision of the Commissioner must be brought within 30 days after notice of the order or judgment is sent.[s.134(1)] A notice of appeal must be filed with the Divisional Court and copies of the notice must be sent to the Commissioner, the recorder and the parties to the hearing before the Commissioner.[s.134(2)]

7.13 What if I miss the deadline for appeal?

No appeals or any other proceedings are permitted in respect of a decision of the Mining and Lands Commissioner, the mining recorder or any other officer appointed under the Act after 30 days.[s.135(1)] However, if any provision of the *Mining Act* extends that time limit, a proceeding may be initiated.[s.135(1.1)]

7.14 When does an order of the Mining and Lands Commissioner take effect?

Orders made by the Commissioner shall take effect immediately upon signing, subject to any express terms to the contrary.[s.129(2)]

7.15 Ministry Challenge:

The ministry may challenge the validity of a mining claim at any time and may order an inspection of the mining claim [s.76(5)].

7.16 Recorder's report available to interested parties:

The recorder's report of inspection over a disputed mine claim is available to any interested party upon payment [s. 77]

8. OTHER CONSIDERATIONS RELATED TO MINING CLAIMS

8.1 Environmental Provisions:

A lessee of surface and mining rights or mining rights shall not engage in any activity that will restrict fishing or fishing rights in any navigable waters covering the land. The lessee shall not engage in any activity resulting in damage to fishing or the fishing industry in the waters or to nets or other appliances used in fishing in the waters. [s.86(1) 5]

The holder of the mining claim is also required to adhere to the *Environmental Protection Act*, RSO 1990. c.E 19.

The Commissioner's permission is necessary to obtain land for use as a tailings pond, waste dump, or right-of-way, or to affect bodies of water. (*Marmoraton Mining Co. and Bethlehem Mines Corp. (1954) 3 MCC 126 (Ont. C.A.)*)

With tailings, slimes, or other waste products, the onus is on the miner to establish that the deposit is not injurious to life or health. (*Re Raraday Uranium Mines Ltd. and Arrowsmith, [1962] OR 503 (C.A.)*).

These activities are also subject to federal legislation under the Fisheries Act.

8.2 Public Lands Act:

Although the *Public Lands Act* usually provides for controls on development on public lands, there is an exception for mines in section s. 13(6). This section does not apply to the erection of buildings or structures or the making of improvements on lands for the purpose of the exploration or development of mines, minerals or mining rights. R.S.O. 1990, c. P.43, s. 13 (6).

In all sales, free grant locations, leases, licences of occupation, mining claims and other dispositions of public lands or mining lands or mining rights, where the letters patent have been issued containing a reservation of any of the area for roads, wood, gravel and other materials required for the construction or improvement of any colonization or other road or of any road in lieu of or partly deviating from an allowance for road, may be taken from the land without making compensation therefor or for the injury thereby done to the land from which they are taken, and where the letters patent have been issued without a reservation being made of any of the area for roads, wood, gravel and other materials required for the purposes hereinbefore mentioned may be taken from the land, but compensation shall be paid as provided by the *Expropriations Act*. R.S.O. 1990, c. P.43, s. 65 (2).



Trenches created through Assessment Work, Eastern Ontario

Photo Credit: Marty Cadieux

CHECKLIST

1. Visit your local land registry office to see if you own the mining rights on your property, as this will not show at the registry office.
2. If you are purchasing land, first check to see that the person you are purchasing land from owns the mining rights. If not, check to see if there is an active mining claim or a mining lease on the property. If not, your property may be open for staking and prospecting. Contact the provincial mining recorder.
3. If your land is being staked, refer to the *Mining Act, Ontario Regulations 7/96* (claim staking) to verify that staking is being done in accordance with the ministry's regulations for staking.
4. If you believe prospecting and staking is being done illegally or that there are areas that are exempt from staking and prospecting, file a dispute against the claim with the mining recorder

INTERNET REFERENCES

Ontario *Mining Act R..S.O. 1990* <http://www.canlii.org/on/laws/sta/m-14/20050801/whole.html>

Mining Act, Ontario Regulation 6/96 Assessment Work
<http://www.canlii.org/on/laws/regu/1996r.6/20050801/whole.html>

Mining Act, Ontario Regulation 7/96 Claim Staking
<http://www.canlii.org/on/laws/regu/1996r.7/20050801/whole.html>

For links to the *Mining Act* and Enabled Regulations (12) see <http://www.canlii.org/on/laws/sta/m-14/>

Mining Act Forms http://www.mndm.gov.on.ca/mndm/mines/lands/forms/default_e.asp.

CLAIMaps http://www.mndm.gov.on.ca/mndm/mines/lands/claimap3/Default_e.asp Information on Mining Claims in the Province of Ontario.

Information from the Ontario Ministry of Northern Development and Mines concerning mining lands is available at http://www.mndm.gov.on.ca/mndm/mines/lands/bulbrd/default_e.asp. Of particular interest is a fact sheet on Mineral Rights versus Surface Rights – see http://www.mndm.gov.on.ca/mndm/mines/lands/bulbrd/surface_rights/default_e.asp