



October 7, 2002

IN THE MATTER OF:

File 2002-02
Appeal by David Meek - Manitoba Mining
Claims Nos. MB3156 (Kim 1), MB 3165
(Kim 2) and MB 3147 (Kim 3)

DECISION OF THE MINING BOARD

Participating Board Members:

Roy McPhail - Presiding Member
Barbara Sherriff - Deputy Presiding member
Ernie Guiboche – Member
Harvey Slobodzian - Member

REASON FOR APPLICATION

On March 7, 2002, S.S. Shetty, Chief Mining Recorder, wrote to Mr. Robert Ducharme, Sr., who had submitted applications to record mining claims in unsurveyed territory for Manitoba Mining Claims Nos. MB3156 (Kim 1), MB 3165 (Kim 2) and MB 3147 (Kim 3).

In that letter Mr. Shetty took three actions:

1. He recommended that the Minister cancel the claim for Kim 1.
2. He indicated that the Chief Mining Recorder would not process the claim for Kim 2 and refunded the recording fee.
3. He refused to accept the application for Kim 3 and refunded the recording fee.

On April 8, 2002, a Ministerial Order was issued, cancelling Mining Claim Kim 1.

On April 22, 2002, these decisions were appealed by Richard Stefanyshyn, acting on behalf of David Meek, in whose name the claims were to have been recorded.



DECISION

The Appeals from the decisions of the Chief Mining Recorder and the Minister relating to the cancellation and/or refusal to register mining claims MB 3156 KIM 1 (“KIM 1”), MB 3165 KIM 2 (“KIM 2”), and MB 3147 KIM 3 (“KIM 3”) are dismissed.

REASONS FOR DECISION

1. KIM 1 AND KIM 2 CLAIMS

The Appellant appealed to the Mining Board (“the Board”) the decision of the Minister to cancel mining claim KIM 1 and the refusal of the Chief Mining Recorder to record the application for mining claim KIM 2. The Board heard this appeal on September 6, 2002, at which time Mr. Meek was represented by his counsel, Mr. Richard Stefanyshyn .

Since the circumstances surrounding these claims are inter-related, they will be discussed together.

The relevant background to this case is as follows:

1. In July, 2001, Mr. Robert Ducharme, Sr. and his son, Mr. Robert Ducharme Jr., acting on behalf of Mr. David Meek, submitted several *Applications to Record a Mining Claim in Unsurveyed Territory*. The documentation for Mining Claims Kim 1 and Kim 2 were completed as follows:
 - Kim 1 completed June 11, 2001 at 5:00 p.m.
filed July 10, 2001
 - Kim 2 completed June 12, 2001 at 5:00 p.m.
filed July 11, 2001
2. On July 23, 2001, and followed up on January 17, 2002, Ms Janet Forbes, Acting Deputy Mining Recorder wrote to Mr. Ducharme, Sr. and Mr. Ducharme, Jr., questioning the documentation of various claims, including Kim 1 and Kim 2. Analyses, which were provided to Mr. Ducharme, Jr. and Mr. Ducharme, Sr. in the letters, indicated that the father and the son assisted each other with respect to the staking of these claims, some of which occurred on the same date, with all posts erected at the same time although the claims were not adjacent to each other.
3. On February 15, 2002, the Acting Deputy Mining Recorder received a facsimile transmission from Mr. Ducharme, Sr., indicating that it was Mr. Ducharme, Jr. who had staked the Kim 1 and Kim 2 claims, not Mr. Ducharme, Sr.



4. On March 7, 2002, Mr. Shetty, Chief Mining Recorder for the Province of Manitoba, wrote to Mr. Ducharme, Jr. and Mr. Ducharme, Sr. informing them of his recommendation to the Minister that the claim for Kim 1 be cancelled and of his decision not to process the applications for claims Kim 2 and Kim 3. On that same day, he wrote to Mr. Meek, advising him that he would recommend to the Minister the cancellation of claim Kim 1, which had been registered in Mr. Meek's name.

With regard to Kim 1 and Kim 2, the decisions of the Minister and of the Chief Mining Recorder were based upon the information received from Mr. Robert Ducharme, Sr. that these claims were not, in fact, staked by him, but by his son, Robert Ducharme Jr. The Minister exercised her authority under subsection 89(2) of *The Mines and Minerals Act*, S.M. 1991-92, c.9-Cap. M 162 (*The Act*), to cancel KIM 1, which had already been recorded by the Chief Mining Recorder, on the basis that a material misrepresentation had occurred in the application.

At the hearing, Mr. Meek conceded that misrepresentation occurred with respect to the *licensee's* applications under subsection 64(1) of *The Act*. However, he argued that these misrepresentations were not material.

The Board has concluded that the misrepresentations are, in fact, material and that the Minister, on the advice of the Chief Mining Recorder, was justified in cancelling the registration for mining claim KIM 1 on this basis. In addition, the Chief Mining Recorder was justified in refusing to record the Appellant's mining claim KIM 2 on the same basis.

The Board is of the view, particularly in the circumstances of the evidence presented in this appeal, that a misrepresentation as to the identity of a *licensee*, in an application to record a claim under subsection 64(1) of *The Act*, cannot be viewed as merely a "clerical error". Furthermore, during the hearing, the appellant agreed that the clerical work done in Mr. Meek's office would have been supervised by Mr. Meek, and that he is therefore responsible.

Following Mr. Ducharme, Sr.'s facsimile transmission of February 15, 2002, no further information was submitted to the Chief Mining Recorder addressing the stated concerns. In addition, no further cogent evidence was proffered by the Appellant at the hearing of this appeal to clarify the issues raised by the Chief Mining Recorder.



Upon receipt of the new information provided by Mr. Ducharme, Sr. on February 15, 2002, the Chief Mining Recorder was, in effect, left without an application under subsection 64(1) by “a licensee who stakes a claim, or in whose name a claim is staked...making an application”. No subsequent *Application to Record a Mining Claim in Unsurveyed Territory* was submitted to the Chief Mining Recorder by the purported staker of claims KIM 1 and KIM 2, Mr. Ducharme Jr. All that the Chief Mining Recorder had before him was a statement by Robert Ducharme Sr., the father, that his son had staked KIM 1 and KIM 2.

In the event that the Appellant truly desired the Board to accept as fact that Robert Ducharme Jr. was, in fact, the *licensee* who staked the KIM 1 and KIM 2 claims, the Board would have expected cogent evidence from Mr. Ducharme, Jr. that he, in fact, was the staker of these claims. With no such evidence forthcoming, the Board is left with no alternative but to find that the threshold requirement in subsection 64(1) has not been met, and that a *licensee* had not filed an application to record the claims in accordance with the Regulations.

The Board agrees with the Chief Mining Recorder that the appellant has not met the threshold requirement to submit an *Application to Record a Mining Claim in Unsurveyed Territory*, by the holder of a valid Prospecting License, who has properly staked the claim and who has submitted the *Application* to the Chief Mining Recorder within 30 days of staking the claim.

Consequently, the Board dismisses Mr. Meek’s appeal of the decision of the Minister to cancel Mining Claim Kim 1.

The Board also dismisses Mr. Meek’s appeal of the Chief Mining Recorder’s decision not to process the claim for Kim 2.

2. KIM 3 CLAIM

The relevant background to this case is as follows:

1. Mr. Ducharme, Sr. completed an *Application to Record a Mining Claim in Unsurveyed Territory* for Mining Claim Kim 3, in which he indicated that the claim had been staked on June 13, 2001 at 5:00 p.m. This Application was filed on July 11, 2002.
2. On July 23, 2001, and followed up on January 17, 2002, Ms Janet Forbes, Acting Deputy Mining Recorder wrote to Mr. Ducharme, Sr. and Mr. Ducharme, Jr., questioning the documentation of various claims, including Kim 3.
3. On February 15, 2002, Mr. Ducharme, Sr. responded to Ms Forbes by facsimile transmission, in which he indicated that Mining Claim Kim 3 had actually been staked on June 10, 2002 and not on June 13, 2002 as indicated on the *Application*.



4. On March 7, 2002, Mr. Shetty wrote to Mr. Ducharme, Sr. advising him that the application for claim Kim 3 would not be accepted because it was not received within 30 days of staking, as required by Section 64 (1) of the *Act*.

The Appellant appealed to the Board the refusal of the Chief Mining Recorder to register KIM 3 on the basis that the application to record this claim was not filed within the period of time (“no later than 30 days after the date in which the staking is completed...”) as prescribed by subsection 64(1) of *The Act*. The Board also heard this appeal on September 6, 2002. Mr. Meek was represented by his counsel, Mr. Richard Stefanyshyn.

The importance of the 30-day limitation period is made clear by reference to subsection 64(2) of *The Act* which provides that where an application to record a claim is not filed within the time set out in subsection 64(1), the staking of the claim for the purposes of *The Act* has “no legal effect”. In addition, *The Act* does not provide any procedure to extend this limitation period. Consequently, a fair reading of *The Act* mandates that the time limitation for the filing of an application to stake a claim must be rigidly adhered to as the claim in question may be coveted by another *licensee*.

Counsel for the Appellant in the course of his submission referred the Board to the provisions of *The Interpretation Act*, S.M. 2000 c.26-Cap I80. *The Interpretation Act* may very well apply to the interpretation of *The Act* by virtue of section 2 of *The Interpretation Act* as there does not appear to be a contrary intention in *The Act* that *The Interpretation Act* is not to apply. However, the Board has concluded that there does not appear to be a provision in *The Interpretation Act* that assists the Appellant in establishing that the application to record his claim was filed within the time frame specified in subsection 64(1) of *The Act*.

Subsection 64(1) of *The Act* states:

A licensee that stakes a claim, or in whose name a claim is staked, shall, no later than 30 days after the day on which the staking is completed, file in the office of the recorder, in accordance with the regulations, an application to record the claim.

In this appeal, it is undisputed that the staking of KIM 3 was actually completed on June 10, 2001 at 5:00 p.m. as opposed to June 13, 2001, which was the date originally set out in the *Application to Record a Mining Claim in Unsurveyed Territory*.



It is evident from a reading of subsection 64(1) of *The Act* as well as section 22 of *The Interpretation Act* that June 10, 2001 is not to be included in the calculation of the 30 days. In order for the Appellant to have met the specified time period for the filing of an application to record KIM 3, the *Application* would have to have been filed no later than 30 days thereafter, or July 10, 2001. The application to file a claim was, in fact, filed on July 11, 2001. In addition, it is conceded by the Appellant that July 10, 2001 was not a “holiday” as defined by subsection 23(1) of *The Interpretation Act*, nor were the offices of the Chief Mining Recorder closed during its regular hours of business on that day. Therefore, the Board is of the view that assuming *The Interpretation Act* applies in interpreting *The Act*, subsections 24(1) and 24(2) would not assist the Appellant in extending the period for the filing of the application to record his claim to a date beyond July 10, 2001. The fact that the staking of the claim may have been completed on June 10, 2001 at 5:00 p.m., being ½ hour later than the close of the office of the Chief Mining Recorder on that day does not have the effect of extending the time period for the filing of the application to record the claim by an additional day. Simply put, neither *The Act* nor *The Interpretation Act* provides for such calculations of time for the filing of the application to record the claim.

The Board therefore dismisses Mr. Meek’s appeal of the decision of the Chief Mining Recorder to refuse to accept the application for Kim 3.

Roy McPhail
Presiding Member
On behalf of the Board