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Wednesday 23 September 2009

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Mercredi 23 septembre 2009

**Standing Committee on
General Government**

Mining Amendment Act, 2009

**Comité permanent des
affaires gouvernementales**

Loi de 2009 modifiant
la Loi sur les mines

Chair: David Oraziotti
Clerk: Trevor Day

Président : David Oraziotti
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES**

Wednesday 23 September 2009

Mercredi 23 septembre 2009

The committee met at 1602 in room 228.

MINING AMENDMENT ACT, 2009

**LOI DE 2009 MODIFIANT
LA LOI SUR LES MINES**

Consideration of Bill 173, An Act to amend the Mining Act / Projet de loi 173, Loi modifiant la Loi sur les mines.

The Chair (Mr. David Oraziotti): Good afternoon, everyone. I call the committee meeting to order, and resume clause-by-clause on Bill 173, An Act to amend the Mining Act.

We are at a proposed new section, 11.2, and it's amendment 9.2 in your package. Mr. Hillier, if you'd like to begin, go ahead.

Mr. Randy Hillier: I move that section 11.2 of the bill, section 27.2 of the Mining Act, be amended by adding the following section:

"11.2 The act is amended by adding the following section:

"Prospecting within a municipality

"27.2 The holder of a prospector's licence may not prospect for minerals or stake out a mining claim on any crown lands that are within a municipality unless prospecting or staking is consistent with the municipality's official plan."

I think it should be obvious to everybody on the committee what some of the inherent failings of Bill 173 are, and that's what this amendment is for. Bill 173, as it's presently constructed, creates three different classes of communities, different classes of citizens and property owners. We can see, in the far north, for mining and mineral exploration it has to be consistent with the First Nations community land use plans. We see that very much strengthened in Bill 191. What I'm looking at here is reinforcing the concept of equality for the law, that if it's appropriate for far northern communities to designate which properties may or may not be suitable for development, then the concept is equally applicable to the near north and southern Ontario. I think it's quite clear that the government is striving for those land use plans to include mineral exploration in the far north. If that's aiming to have equality—equal protection, equal recognition—the same should apply throughout Ontario.

The Chair (Mr. David Oraziotti): Any further comments?

Mr. Gilles Bisson: I'll let the PA go first.

The Chair (Mr. David Oraziotti): Mr. Brown, care to comment?

Mr. Michael A. Brown: As the member correctly points out, this proposed amendment effectively subordinates provincial interest in mineral development to municipal official plans. As the member would know, no crown lands are subject to official plans, period. He also would know that private lands in southern Ontario have been withdrawn from staking, so we are talking only about crown lands. You're making a distinction that I don't believe is there.

Mr. Randy Hillier: Well, let me clarify it.

The Chair (Mr. David Oraziotti): Mr. Hillier.

Mr. Randy Hillier: In Bill 191 it clearly indicates, and we know, that that applies to crown land—right?—and it clearly indicates the need for land use plans developed by communities in the far north. So that concept, if it's necessary to have it in the far north, should also be included in the near north, and in the south, and that deals with crown land in the far north. It's not dealing with private land; it's dealing with crown land.

The Chair (Mr. David Oraziotti): Mr. Brown, go ahead.

Mr. Michael A. Brown: I would suggest to the member that any municipal official plans are treated the same way in the 191 area as they are in southern Ontario. There's no difference. Any municipal official plans are treated the same in the north—

Mr. Randy Hillier: In the far north.

Mr. Michael A. Brown: —in the far north, as they are in any other part of the province.

The Chair (Mr. David Oraziotti): Okay. Further discussion? Mr. Bisson, go ahead.

Mr. Gilles Bisson: I'm just wondering if I can have counsel for the ministry show up. I have a question in regard to this particular section.

Mr. Michael A. Brown: Maybe you can put the question and we'll see.

Mr. Gilles Bisson: If I could have counsel come forward, I just want to make sure that I understand how the current law works before—and maybe just stay there, because there probably will be a series of questions. Make yourself comfortable.

Mr. Michael A. Brown: Were you not briefed?

Mr. Gilles Bisson: Oh, yes, I'm briefed. I just want to make sure I properly understand this. I'm sure if I asked

you a 10-point questionnaire on this, you'd have a problem.

So to legislative counsel, and I'll give you a chance to be introduced in a second, the question is as follows:

We clearly heard at committee that there were certain people in the north who lived in communities where private lands were subject to staking. I think it was in Thunder Bay. I forget the name of the municipality; maybe somebody can help me out. I don't have my notes. It was some municipality just outside of Thunder Bay, and they were referring, as I understood it, to private lands. So on the first point, the point that the parliamentary assistant makes, how would crown lands that are within municipal boundaries, because there is such an animal, be treated under the current official plans?

1610

Ms. Catherine Wyatt: It's Catherine Wyatt for the ministry. Thank you.

Unfortunately, I'm not that well versed on municipal planning issues, as it's not our area. My understanding is that crown land within municipalities is not subject to municipal official plans.

Mr. Gilles Bisson: Okay. That was my understanding. But the private lands are, and private lands then would be subject to the official plan, would they not?

Ms. Catherine Wyatt: Again, I'm afraid I don't really know how municipal planning works to any extent.

Mr. Gilles Bisson: I've got the wrong person. I'm very sorry.

I wonder if I can ask legislative counsel to provide—I know there was a briefing note that was put together on this issue. I don't have a copy of it now. I know there was a briefing note that was prepared, asking this question in regard to how the official plan affects private lands and crown lands within municipalities. Which one trumps? I know that legislative research put together some documents, and I'm wondering if we can get a copy of that very quickly.

Ms. Catherine Oh: I don't have a copy of that. I'm not sure where it is, but—

Mr. Gilles Bisson: Yes, I know. I have it; it's in my office. I'd have to run back, and I'm just wondering if the clerk is able to get that for us. You may want to stay or you may want to go.

So to the point, then, Mr. Chair, the amendment that's put forward by my colleague Mr. Hillier: As I understand what the problem is, the parliamentary assistant is kind of right and kind of wrong. The official plan doesn't apply to crown land, and there's much in the way of crown land in many municipalities in northern Ontario. In fact, in places like where I come from or where you come from there are pretty large tracts of land that actually would be crown land. So there's some debate as to, is it desirable for people in northern Ontario to want to segregate crown land from staking within municipalities? There are people who fall on both sides of that argument. Those who, obviously, want to invest encourage mining exploration in places like Timmins—my God. Most of our mines are crown land within the municipality, so it's a bit

of a tough issue to say that we're going to exclude crown land.

But when it comes to private land, I think there is an argument to be made. My understanding of the Municipal Act—and that's why I'm looking for a bit of help; maybe Mr. Hillier can help me—is that the current municipal plans actually trump in that case. I'm just wondering if you can clarify, if you've done any work on that.

Mr. Randy Hillier: Say that last—

Mr. Gilles Bisson: Okay. There are two different issues. The last part of it is on private land: My understanding is that if I'm a private property owner within a municipal boundary, within a municipality, in fact there is an ability for the municipality to say that you have to follow the official plan. There's some grey area to that, but my understanding is that that's the case.

The Chair (Mr. David Oraziotti): Okay. Mr. Hillier, you want to comment on that?

Mr. Randy Hillier: Yes. There is, except for when it comes to mining or mineral exploration. The Mining Act clearly trumps official plans under the present act.

Going back to the first part of the statement: Yes, there are lots of municipalities that have crown land—in southern Ontario, in the near north, in the far north—that is off limits from official plans. However, what we've clearly seen in this committee from all the representation is that in the far north it's going to be treated differently. All the lands, just about without exception, are crown land in the far north. However, we are saying that mineral exploration will be off limits in the far north unless there is a community-based land use plan that permits it. Okay? That's what is being proposed under Bill 191.

So if that is indeed a legitimate, thoughtful expression of the government, that the communities ought to be determining what mineral exploration goes on in the far north, then the same concept and the same principle must apply to the near north and to the south.

We don't have community-based land use plans in the south. What we have are official plans. So let's put official plans and community-based plans on the same playing field.

The Chair (Mr. David Oraziotti): Mr. Brown, do you want to comment?

Mr. Michael A. Brown: Thank you.

Well, that's a gigantic leap. The same thing applies in northern Ontario, southern Ontario, eastern Ontario, the city of Toronto, anywhere else in the province. According to your amendment, which speaks specifically to crown land, everything is exactly the same in all of the province. So if you want to talk about this, it's kind of an interesting conversation, but it has nothing to do with the amendment you're presenting.

Mr. Gilles Bisson: Well, actually it does. The reason I was asking the question was because he talks about crown land in the amendment. Private land is coming up a little bit later. I was trying to understand something. There are two different stages. As I understand it, there's nothing that currently prevents somebody from staking a

claim on crown land in a municipal boundary. But if it comes to moving forward on development, then you need to adhere to the municipal plan, because then you're talking about physical structures that have to be built within a municipality, which might be a mine headframe, a mill or whatever. That would fall under the Municipal Act. It would fall under the official plan.

As I understand it, the way it works right now is that you would be able to stake the claim, let's say within the city of Timmins, on crown land, but the minute that you want to go up and build a garage, a headframe, a mill, then you would have to adhere to the municipal plan. Am I correct?

Mr. Michael A. Brown: No, you are incorrect. You're incorrect because crown land is not subject to municipal plans. Right?

Mr. Gilles Bisson: Chair, with due respect, can I ask for about five minutes so I can run and get those notes that I requested from my office? I know where they are. Maybe that's them coming. No? Let me see if that's it.

I'd just ask for a few minutes, because my understanding is different than yours.

Interjection.

Mr. Gilles Bisson: Can I get a five-minute recess, Chair? I will be very quick. I'll get what I need, and I'll be right back.

The Chair (Mr. David Oraziotti): Five minutes?

Mr. Gilles Bisson: Would you grant me five minutes?

The Chair (Mr. David Oraziotti): Agreed.

The committee recessed from 1615 to 1621.

The Chair (Mr. David Oraziotti): The committee is in session. Mr. Bisson, go ahead.

Mr. Gilles Bisson: Just to the point I was making earlier, this particular question came up a number of times within the committee. Property owners were coming before us, worried about a mine being established in their backyard without any say by the municipality. This is what I got from legislative research:

"I'm responding to the question, 'Are municipalities able to prohibit mining operation within their municipalities,'" etc. "Section 34 of the Planning Act generally provides that municipalities may prohibit the use of land except for such purpose as may be set out in bylaws"—within their own municipal bylaws. "While this gives municipalities the general authority to regulate land use, one aspect of the question which you have raised revolves around whether a mining operation, which is comprised of the extraction of minerals, is a use of land," which is to your point. That's why I'm saying that this thing gets kind of confusing. "In this respect, you will note that subsection 34(2) of the act specifically provides that pits and quarries are land use for the purpose of subsection 34(1), but there is a distinction between pits and quarries" on the one hand "and mining operations" on the other hand. "In addition to whether a mining operation is a use of land to which section 34 applies, a distinction needs to be made between above-ground structures, appurtenant to a mining operation and the mining operation itself, while structures located above ground which

are pertinent to the mining operation would be subject to zoning regulations," which is the point that I make.

In fact, we find ourselves in a bit of an odd situation with the bill because we're saying, and desirably so for some, that you should allow exploration to happen on crown lands within municipalities. We understand why that's done. In communities like mine, mining exploration happens on a daily basis within the boundaries of the city of Timmins. I don't think there are a lot of people in the city of Timmins who would want to see no exploration happen within a municipal boundary without the approval of the municipality, because you may get, for whatever reason, a municipal government that says no, and then all development and all possibility of new mines in places like Timmins or your community or mine would be blocked.

The safeguard is the buildings, and that's what I was speaking about earlier to legislative counsel, that from what was explained to me how the Municipal Act operates, the council has the authority to say yea or nay on the actual physical structures that are to be built above land—not the below-ground ones, but the pits and quarries and anything above-ground. So there's a bit of safeguard.

The question becomes—and that's why I wanted to ask you the question—a whole different ball of wax when it comes to private land because then you get into property rights owner issues. I find myself in a bit of an odd position where I support the idea of a private landowner being able to have some say about what happens on their private land, and on that, I want to support you, but I find myself somewhat conflicted because crown land in municipal boundaries—I wouldn't want to be, and I don't think any of the other members who are affected by this would want to be, in a position of having to say no to any exploration that happens on crown land.

I think the safeguard is, municipalities do have some wiggle room when it comes to what's going to happen in the end when it comes to the physical structure.

The Chair (Mr. David Oraziotti): Mr. Brown, go ahead.

Mr. Michael A. Brown: I just would remind members that we knew we were dealing with this amendment, and this amendment says, just so we know, "The holder of a prospector's licence may not prospect for minerals or stake a mining claim...." It doesn't contemplate buildings or anything else. What this says is that a prospector cannot stake a mining claim within a municipality unless it's consistent with the municipal plan. Am I reading that right? But the crown land isn't subject to a municipal plan in the first place, so I don't really understand the amendment. Well, I understand the amendment, but I don't see its usefulness—or its application, anyway.

The Chair (Mr. David Oraziotti): Mr. Hillier.

Mr. Randy Hillier: You're making a bit of a circular argument. Let's go back to the very essence. All crown lands in the far north under Bill 191 will be subject to

community-based land use plans approval prior to mineral exploration and development. Is that correct?

Mr. Michael A. Brown: Did I hear you right?

Mr. Randy Hillier: Yes. Under Bill 191, the government is proposing that all lands north of 51 will be subject to community land use plans before development activity happens on those lands, right?

Mr. Michael A. Brown: That is a proposal, that there be an agreement with the First Nations that have an interest in their traditional lands that there be a community land use plan. That is not a municipality; that is not a municipal official plan. So the same issue in northern Ontario, in the undertaking area of Bill 191, is the same. If there is a municipal plan there, there would not be subject to—crown land is not subject to a municipal official plan.

Mr. Randy Hillier: But the government is recognizing the value of the people in those communities to be involved and participate in the decision-making of what happens in their communities and in their areas, right? That is clearly evident. The government recognizes value in the communities developing plans for land use.

If that is clear, cut and dried—there's no wiggle room on that one—why is the same principle not contemplated for others below the 51st parallel?

Mr. Michael A. Brown: It is exactly the same below the 51st parallel and above. If there's a municipal official plan, it has no jurisdiction over the crown land within it. You can make an amendment about that; that's a different issue.

Mr. Randy Hillier: I'll be happy to hear the proposal.

Mr. Michael A. Brown: I said that you can, if you wish. I'm just at a loss here.

Mr. Randy Hillier: It should be so obvious—

Mr. Michael A. Brown: It is.

Mr. Randy Hillier: —that the government is recognizing communities to be involved in participating about land use above 51. Let us expand that to all of Ontario.

Mr. Michael A. Brown: The Mining Act does provide opportunities for consultation about particular mines, no matter where you are. I believe the Mining Act provides that when you're bringing a mine into production, there is a necessity—you could maybe help me, Catherine.

Ms. Catherine Wyatt: I think if you're getting at the idea of a closure plan in order to do mine development, then there would be public and aboriginal consultation.

Mr. Michael A. Brown: Yes.

The Chair (Mr. David Oraziotti): Mr. Bisson, any further comments on this amendment or —

Mr. Gilles Bisson: No, no. I'm wondering where my friend was at here.

The Chair (Mr. David Oraziotti): Are members ready to vote on this amendment?

Mr. Randy Hillier: I think you've gone through the—clearly we are creating different classes of communities in this province with these bills, both Bill 173 and Bill 191. Wiggle as much as you like, that's what it comes down to. Whether it's private lands being treated

differently in the south than the north, whether it's community land-use-based plans, we're creating a multitude of conflicts down the road because we are breaking that fundamental principle of protection and equality before the law.

The Chair (Mr. David Oraziotti): Mr. Brown?

Mr. Michael A. Brown: All I can say is, Mr. Hillier, it is exactly the same in both places.

The Chair (Mr. David Oraziotti): Any new comments to add here to the discussion?

Mr. Gilles Bisson: Yes. Just in fairness to the parliamentary assistant, I think Mr. Hillier and I are arguing about two different issues here, so let's not get too mixed up. On 29(1)—

Mr. Michael A. Brown: I'm arguing the amendment that's before us.

Mr. Gilles Bisson: The reason I raise it is twofold. There is a real sense on the part of property owners that somebody can come in and stake a claim within a municipal boundary that's private land and, more specifically, cottagers are worried about crown lands around their own private lands and cottages. That's a real fear that people have about development. It's true when it comes to any kind of development that happens on those types of land. We heard that very clearly.

On the other hand, although I understand what Mr. Hillier is trying to do, this particular amendment, if taken all the way, would mean that in my community there would be no mining. Am I correct? That's the way I read it. That would not be something that I could support, I just want you to know.

I'm not unfavourable to the argument of the private property owners, but crown land in the place where I come from is huge. In fact, that's where all the mining is taking place, or 60%, 70% of mining in our community. I wanted to raise it.

The Chair (Mr. David Oraziotti): Okay. Any further comments on this? Are members ready to vote on this amendment?

Mr. Randy Hillier: I'll ask for a 20-minute recess, please.

The Chair (Mr. David Oraziotti): Okay, a 20-minute recess has been called for.

Mr. Gilles Bisson: Recorded vote.

The Chair (Mr. David Oraziotti): And a recorded vote when you return.

The committee recessed from 1632 to 1652.

The Chair (Mr. David Oraziotti): The committee is in session. Members, take your seats. We have a recorded vote called for on a new section to be added, 11.2. It's number 9.2 in your package. A recorded vote has been called for. The committee has resumed; the recess is over.

Ayes

Hillier.

Nays

Bisson, Brown, Jeffrey, Kular, Mangat.

The Chair (Mr. David Oraziotti): Okay, thank you. The motion is lost.

The next item is 9.3, a Conservative motion, section 12. Mr. Hillier, go ahead.

Mr. Randy Hillier: I move that subsection 29(1) of the Mining Act, as set out in section 12 of the bill, be amended by adding the following clause:

“(c.1) on any land where a municipal official plan prohibits claim staking;”

We’ll just go through there again. Subsection 29(1) identifies a number of clauses where—it’s called “Restricted Lands”—lands are prevented from being staked or claimed. They include registered lots and subdivisions. I’m not going to read through all of it. However, further to previous amendments, this identifies municipal official plans, as well, as having been on that restricted list where land is identified as part of the municipal official plan.

The Chair (Mr. David Oraziotti): Any further comment? Mr. Brown, go ahead.

Mr. Michael A. Brown: I would just point out to the member that in southern Ontario, private surface rights are withdrawn automatically. If a surface rights holder in the south wishes to reopen private lands to staking, the minister would have to take into consideration factors related to municipal planning. So, first of all, the staking rights will be withdrawn in southern Ontario, and if someone wishes to have the land staked in southern Ontario on private land, he or she would have to make an application to the minister, who would consider municipal planning views. So we think this would be totally unnecessary.

Mr. Randy Hillier: I think what ought to be clear is, what these amendments are doing is exposing the contradictions and the hypocrisy of these bills that affect mining: Bill 173 that’s in front of us, and Bill 191 that’s coming shortly to us. There is a treatment, a recognition, of different classes of communities, different classes of citizens, different classes of property owners, depending on where one is situated. These amendments are showing those contradictions—that, in this one, is recognizing that municipal official plans, as we talked about in the previous amendment with community land use plans—putting them on par with other communities.

Once again, if it’s good north of the 51st parallel, if it’s appropriate, if it’s going to be recognized within law that communities are involved and full participants in making decisions on what happens in their communities, then it should also be recognized below the 51st parallel. You can’t have your cake and eat it too. What’s good for the goose is also good for the gander. These are contradictions. Legislation ought not to be creating contradictions, ought not to be creating conflicts; it should be reducing and eliminating them.

The Chair (Mr. David Oraziotti): Mr. Brown, go ahead.

Mr. Michael A. Brown: Again, there is no contradiction. Official plans are treated the same way in northern Ontario and in southern Ontario.

Mr. Randy Hillier: No, they’re not.

Mr. Michael A. Brown: Yes, they are.

Mr. Randy Hillier: No. Just because you say so—it is not true.

Mr. Michael A. Brown: Show me an example.

Mr. Randy Hillier: Bill 191.

Mr. Michael A. Brown: Yes?

Mr. Randy Hillier: Community land use plans—

Mr. Michael A. Brown: It’s not a municipal plan.

Mr. Randy Hillier: We call them by a different name.

Mr. Michael A. Brown: No, it’s totally different. You know that.

Mr. Randy Hillier: An official plan: Is that not developed by the community?

Mr. Michael A. Brown: A municipal official plan is subject to the Planning Act, which is the Municipal Act of the province of Ontario.

Mr. Randy Hillier: Well, of course, because we have municipal jurisdictions here; we have unorganized districts in the north.

Mr. Michael A. Brown: We have unorganized districts in the south.

Mr. Randy Hillier: We have some different legal terminology, but the concept is the same.

Mr. Michael A. Brown: We’re not talking concept; we’re talking law.

Mr. Randy Hillier: You’re talking about contradictions in law; that’s what you’re doing.

Mr. Michael A. Brown: No, there’s no contradiction in the law.

Mr. Randy Hillier: Absolutely.

The Chair (Mr. David Oraziotti): Okay, let’s hang on here for a second. Mr. Bisson, do you have something to add?

Mr. Gilles Bisson: I guess the government members—Mr. Hillier says they can’t have their cake and eat it too. In fact, they can, because as I read section 29, what he’s doing under section 12, as proposed by this amendment, is just making crystal clear what already exists in the bill.

If you look at section 29, it says, “No mining claim shall be staked or recorded except with the consent of the minister,” and it goes on to spell out a whole bunch of different areas where claims cannot be staked within a municipality. It’s on any land that is a lot within a registered plan of a subdivision—which means to say it would be that of an official plan, because subdivisions normally are subject to an official plan. The other one was cottages—it just goes on. There’s a whole bunch of sections, and I don’t want to read them all because it would be fairly long. But it’s clear that the act, as written now—because this is language, as I understand it, in the current bill, and you’re just bringing forward the new bill. What his amendment would do is just make it clear.

I think it’s not a bad amendment. Unless you can give me a reason why this is a bad idea, I think it’s something

we should be seriously considering. It just clarifies that you can't stake a claim on private land unless you have permission—that would be the case with the legislation now—and you would have to be consistent with a municipal plan. That's what we have now.

I see the ADM and legislative counsel just smiling.

The Chair (Mr. David Oraziotti): Any further comments on this particular amendment? Are members ready to vote on this or—Mr. Hillier?

Mr. Randy Hillier: I'll just reiterate, again, on page 5 of the bill—

Mr. Gilles Bisson: Pages 4 and 5.

Mr. Randy Hillier: Yes, it starts on the bottom of page 4 and continues on to page 5. Clearly it's identifying, it's putting in criteria: not a residential or cottage lot, land that is railway land, land that is used for an airport, land that is used for public purposes—so on any land where a municipal official plan prohibits claim staking. This makes it clear.

Mr. Michael A. Brown: It already is clear.

The Chair (Mr. David Oraziotti): Mr. Bisson, do you want to add something?

Mr. Gilles Bisson: I think it's incumbent upon us as legislators to make sure that the intent of what the government wants in the bill is made clear and that there's no ambiguity about what it is we intended from this committee. We clearly heard from people—and that's why I spoke to the earlier motion, because I didn't want to restrict crown land for the arguments I made previously. I won't repeat them.

But on private lands, there's quite a different argument. The way it stands now, if you own private land, you probably own the mining rights. Normally the surface land owners have mining rights. A mining explorationist or a mining developer—two different things; one looks for a mine, the other one builds it—can't do anything without your permission. That's the law now. If we look at the law now, it goes on to say that you cannot stake a claim—it's very specific—on any lot within a registered subdivision, which are all subject to an official plan, agreed? And then it spells out cottage lots. For example, where I live, it's considered a cottage lot, but it's in a municipal boundary—you can't stake a claim there, and a whole bunch of other places, as laid out in the legislation.

I just think the amendment put forward by Mr. Hillier is one that would clarify. Unless legislative counsel or the lawyers for the ministry can give an explanation as to why this is not a good idea and why it doesn't clarify, I'd be very interested, because I think it's a reasonable amendment.

The Chair (Mr. David Oraziotti): Is there anything else new to add to the discussion on this, or are members ready to vote on this?

Mr. Randy Hillier: I'll take a 20-minute recess.

The Chair (Mr. David Oraziotti): Okay, a 20-minute recess.

The committee recessed from 1702 to 1723.

The Chair (Mr. David Oraziotti): Okay, folks, we'll resume committee. We have on the floor Conservative motion 9.3. There was no recorded vote called for, so we'll vote on that. All those in favour? Opposed? Okay, the motion is lost.

The Chair (Mr. David Oraziotti): Next motion, 9.4: Conservative motion. Mr. Hillier, go ahead.

Mr. Randy Hillier: I move that subsection 29(2) of the Mining Act, as set out in section 12 of the bill, be struck out.

Let me just read that clause that we're looking to have struck out. "If a claim is staked on lands described in subsection (1)"—that's the restricted lands—"without the minister's consent but such consent is subsequently obtained, the claim as recorded shall be deemed to include those lands."

So what we're saying is, "These lands are off limits. They're restricted. You're not allowed to stake on these lands. However, if you do so, if you don't follow the process, if you actually break the law, the minister can then say, 'That's okay. It's acceptable. Your claim is valid.'" Unless I can hear some commentary from the government side as to why it is acceptable to break the law, to engage in activities on lands that are prevented from being engaged on, the way it sits right now, this clause provides rewards and benefits for those who break the law. Is there some comment, thought or suggestion as to why that should be allowed to remain?

The Chair (Mr. David Oraziotti): Mr. Brown, go ahead.

Mr. Michael A. Brown: I think my friend would recognize that this is not a perfect world, that mistakes sometimes occur and that there needs to be an ability to remedy an error. That is what the intention of this clause is: It's to make sure there is an option. As the member might know, it's not always apparent exactly where boundaries are. This just provides some way for a legitimate claim to go through that inadvertently would have been not processed.

I'm kind of surprised that the member thinks that all mapping is perfect, that all areas are exactly the way they would be and that there could never need to be an opportunity to correct a legitimate mistake.

The Chair (Mr. David Oraziotti): Mr. Hillier.

Mr. Randy Hillier: I understand the world is not perfect, but it's not getting any more perfect when we have laws like this.

Obviously we understand the context, but this applies to restricted lands, lands that are not allowed to be staked in the first place, right? This is those people with private property rights. We're now saying, "If somebody inadvertently makes an error and stakes that private land, well, that's okay. The minister has the discretion to come back later and say, 'Well, yeah, there was an error. There was a mistake—honest or whatever it may have been—but we can grant you that claim now, anyway.'" We cannot be having laws constructed that benefit wrongdoing.

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Listen, you mentioned options where somebody makes an error—I don't know what errors—on any land that is part of an airport, on any residential or cottage lot or where there are arenas and libraries. Those are all pretty clear uses. I can't believe that somebody would stake a claim by a library and not understand that there's a library there. To have that sort of latitude, there might as well not be any regulation at all. Why don't we just leave everything to the minister's discretion? There's no sense even having statutes. Some minister up on high will make a decision as to what is acceptable today or not.

The rule of law is there for a purpose. You can't be rewarding somebody for breaking the law, and that's what that clause does. You're on restricted land anyway. This act sets out that you're not allowed to stake on those lands. How can you possibly support a clause that rewards somebody for breaking the law?

The Chair (Mr. David Oraziotti): Mr. Bisson, go ahead.

Mr. Gilles Bisson: A question to the parliamentary assistant: Does subsection 29(2) exist in the current act? Is that the case in the current act? I don't believe so, eh?

I think Mr. Hillier makes an interesting argument here. Essentially what this does is it says that if I stake a claim without the consent of the minister on any of those lands described in section 29(1), there's no penalty. Am I correct? There could be no penalty. Can I get legislative counsel—

Mr. Michael A. Brown: I think we will—

Mr. Gilles Bisson: I'm trying to figure out how this would affect the penalties.

Mr. Michael A. Brown: Ms. Wyatt, help us here.

Mr. Gilles Bisson: Let me rephrase it so that I'm clear: It would give the minister the ability to not levy a penalty under the act.

The Chair (Mr. David Oraziotti): Ms. Wyatt, go ahead.

Ms. Catherine Wyatt: That's an interesting way of putting it. The point is that the minister is the one who would have consented in the first place had it been done absolutely perfectly. If it's not, then the minister is the one who has been given an option here to consent after the fact. The minister's not required to consent after the fact, so should the minister decide not to, then of course, the claim is invalid.

Mr. Gilles Bisson: So normally when we write legislation, when it comes to a fine—let me ask the first question; maybe I need to ask that first. If this subsection (2) was not there, if we only had section 29(1) and there was no 29(2), and the person actually staked a claim on one of these pieces of property without consent, it would be subject to a fine, I would think?

Ms. Catherine Wyatt: For non-compliance with the act, somebody could be prosecuted. In a sense, the penalty here is that the claim wouldn't have been validly staked, and you don't get the claim.

Mr. Gilles Bisson: Okay, there are two issues. There's the claim—

Ms. Catherine Wyatt: There's the whole issue of whether you prosecute people for making errors or you go by what the act says: If you haven't staked the claim properly, you don't have a valid claim.

Mr. Gilles Bisson: Okay, maybe I'm understanding this wrong. Let me try it again; maybe I'm reading it wrong. I see subsection (2) saying, "If you mucked up as the prospector, and you've staked the claim without consent, the minister can go back and give you consent after the fact." That's the way I understand it.

My question is, why didn't we just deal with that in the penalties part of the bill? Normally under penalties you would have the "minister shall" or the "minister may," right? I take it that, when it comes to penalties, the minister may levy a penalty to a certain amount. Why don't we just deal with it that way, the first part, which is the penalty for not having followed the act?

Ms. Catherine Wyatt: Well, I'm not sure if you're asking what the law says or a policy question.

Mr. Gilles Bisson: No, it's the law, because what this would do is—I guess where I'm coming to is that as I understand it, if I was to contravene section 29(1), the minister would have the right to subject me to a fine, under the act.

What this does is it allows the minister to say, "I'm not going to levy the fine, and I'll allow the claim to stand." I'm just wondering why you did that. It just seems kind of redundant to me.

Ms. Catherine Wyatt: I'm not sure I understand your question. The offence provisions still exist, so any time someone is not in compliance with the act, there's an option to prosecute for an offence.

Mr. Gilles Bisson: That's my point. My point is that you're subject to prosecution if you break the act. In this case we have a section that says if you've broken the act, the minister has the capacity to say, "I'll let the claim stand." I'm just wondering why we did that. It just seems a bit odd.

Mr. Michael A. Brown: Perhaps I can help.

Mr. Gilles Bisson: Okay, thank you.

Mr. Michael A. Brown: In the example of an airport: Obviously, there's an airport there. It's crown land. A prospector stakes the land, not on the airport but adjacent to the airport.

Mr. Randy Hillier: It's only on parts of airports. The lands adjacent to an airport are not restricted.

Mr. Michael A. Brown: For example, the prospector by mistake has put the stake onto airport property in one corner, where we're saying a couple of metres of the claim would be in one corner of the airport. Obviously that wasn't the intent. The prospector meant to be over another couple of metres with one corner of the stake.

Now, is that a violation of law? Was he trying to do something that he shouldn't? Or did he merely make a mistake in that one corner?

This provides—it's kind of like a committee of adjustment, which you would see in a municipality: You can recognize a simple error.

The intent of this is obviously not to change or overturn the act. It's just to take into account that the world is not a perfect place and a stake could be put inadvertently over the line. For somebody who is a prospector, I think they would understand this.

The Chair (Mr. David Orazietti): Mr. Hillier, go ahead.

Mr. Randy Hillier: Well, you speak in such a minimalist, hypothetical fashion, but this does not say, "If it's only a metre onto somebody's property." This doesn't say, "If it's only in a little corner of your property." It says that if you break the law, the minister can reward you.

Typically, in our society, if you break the law, we don't leave it up to one individual to determine innocence or guilt. We have due processes. Nowhere else have I seen a piece of legislation that says, "If you break the law, you can be rewarded for it." And it's at the sole discretion of the minister.

It may be that little corner of an airport but it also could be on a residential or cottage lot. It also could be on properties that are on registered plans of subdivisions. It may be on people who have had the mining rights withdrawn out of this act, because they are also restricted.

So you cannot—if you want to put a clause in there that says, "We can encroach a little bit on these restricted lands; these restricted lands are not really that restricted," and the minister will have it in his or her jurisdiction to determine what lands are indeed restricted or not—that is what it's saying.

If somebody does make a minor error, fine; there may not be any necessity to prosecute. But then the claim goes back, not on those properties that were inadvertently or wrongly staked. You can't be making a claim valid under these conditions.

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Mr. Michael A. Brown: Well, this is clearly to accommodate some minor difficulties with staking. It is still: All private land in southern Ontario will be withdrawn from staking. That is the way—

Mr. Randy Hillier: Unless there's an error.

Mr. Michael A. Brown: What we're talking about is—no. All private land in southern Ontario is being withdrawn from staking. What is being contemplated here is an ability to make a minor adjustment, because I think in the situation you're talking about, Mr. Hillier, if the prospector wanted to, he would just go restake the claim, or maybe Mr. Bisson would have run out and—

Mr. Gilles Bisson: Staked it again.

Mr. Michael A. Brown: —staked it again, and that would not necessarily be a reasonable solution.

This is just one of those accommodations that I think reasonable people would think need to have happen. It is minor in nature. That is what is contemplated. Sure, you could say, "The minister can do this, that or the other

thing." If you want to suggest a process that would do that, you could go ahead and draft a lot of legislation to do that, but I think it's in the interest of the people of Ontario that the minister be allowed this discretionary power to, not reward someone, but to just do—I hate to say the words—a common sense solution to the resolution of the claim.

Mr. Gilles Bisson: Well, that was a red flag.

Mr. Michael A. Brown: I know. I thought I'd get you going, Gilles.

Mr. Gilles Bisson: You got me going here. Chair?

The Chair (Mr. David Orazietti): Mr. Bisson, go ahead.

Mr. Gilles Bisson: Just for the record, to be clear: Currently, if a claim is not properly staked and the prospector goes and registers that claim and there's an error, it then becomes open again and anybody can go stake it. Currently, the way it works is that you snooze, you lose. That's the nature of the business, and it's happened in some very interesting cases that I'm sure you're aware of and I'm aware of that we can talk weeks about. But the point is, if you improperly stake, there's no remedy. The only way you're going to get it back is hope to heck that nobody else has staked it on you since. So that argument I don't think holds in this case.

The part that I thought was interesting—I had not picked up on this, and it's an interesting amendment that Mr. Hillier brings forward—is that it essentially says that currently, under section 29, you cannot stake a claim on particular pieces of property, and one of those pieces of property is, let's say, a cottage lot. It's fairly clear: You just can't do that. What this basically says is that if a person goes out and makes a mistake and stakes it on the cottage lot, and the minister agrees that it's an interesting claim that should be held by the prospector, then you can go around the law. That's the way I'm reading it, the long and the short of it. I think that's what you're trying to get at. That would be the effect of what this does. I just find it odd that we would put that in legislation.

Mr. Randy Hillier: I think we have to be clear. The intent of the legislation only has meaning by words. The words are clear here. The words are absolutely clear—it doesn't appear in the old act; this is new—that if I make a mistake, I don't go out and restake; I just go and ask the minister. Now, I can be on restricted lands and all I have to do is convince a minister that it's good for me; it's beneficial for me. This would be like saying somebody inadvertently takes my car, they mistake my car for their car, and, "Well, it's okay now. You got it anyway." We have due processes of law, with remedies. This is ridiculous that this is in here.

Mr. Gilles Bisson: Just a question.

The Chair (Mr. David Orazietti): Go ahead, Mr. Bisson.

Mr. Gilles Bisson: To our esteemed colleague, our esteemed, learned lawyer: As I understand it, currently, and correct me if I'm wrong, without permission, you can't stake on a cottage lot. Correct? Currently, with the legislation as written, 29 would say that I'm not allowed

to stake on a cottage lot unless I have permission of the minister. Right?

Ms. Catherine Wyatt: No.

Mr. Gilles Bisson: Okay. Well, then—

Ms. Catherine Wyatt: Not exactly. We did amend 29 and 30 of the existing act so, in fact, it's not a stakeable-with-consent option, and cottage lots aren't specifically referred to.

Interjection.

Mr. Gilles Bisson: Where the resident or cottage lot is one hectare large, or smaller.

Ms. Catherine Wyatt: Yes. That's in the bill. Are you talking about the bill or the act?

Mr. Gilles Bisson: I'm talking about the bill.

Ms. Catherine Wyatt: Okay, sorry. The bill currently—yes?

Mr. Gilles Bisson: My point is, you don't have the right to do that without the consent of the minister. This would allow you to make an error or maliciously stake and, if you're lucky, you can get the minister on side; you can fix the problem. That's what this subsection 29(2) would do?

Ms. Catherine Wyatt: I don't know if that's exactly a legal question. What I can tell you is what it says, which is that you can, with the consent of the minister—yes, that claim could be recorded.

Mr. Gilles Bisson: That's right. And that's the point I think Mr. Hillier was making. I think it's a reasonable point that he makes. Now, I understand why you may want to fix that. As you say, you need a mechanism for minor variances, and that makes perfect sense, but we should have said that in the bill. The problem, as I see it, is that Mr. Hillier I think is—you're both right. We need to allow minor variances, no argument, but in the case of Mr. Hillier, he is saying that a person could maliciously go out and stake, and if you happen to get the minister on side—and I hope the ministers would never do that in your government, mine or yours, but it could happen. A very interesting point, Mr. Hillier.

The Chair (Mr. David Oraziotti): Any further debate?

Mr. Randy Hillier: I'll have to just flesh this out a little bit. Nowhere in here does it say if it's a minor

variance. We're not giving any meaning, we're not giving any instruction, we're not giving any direction to those who come after us who will be reading this legislation and enforcing it. Clearly, whoever reads this legislation and is expected to enforce it down the road will say, "If I'm the minister, I have the authority to allow that claim to proceed."

We've not given any other direction. So the intent is clear. The minister has discretion, without any minor variances or whatever.

The Chair (Mr. David Oraziotti): Any further comment?

Mr. Randy Hillier: I'd like to hear: Is that acceptable, in the government's view, that the minister has full discretion over validating and rewarding those who break the law?

Mr. Michael A. Brown: I explained why this provision is necessary, and we stand by that, Mr. Hillier.

The Chair (Mr. David Oraziotti): Further comment? Seeing no further comment from the—

Mr. Gilles Bisson: I don't agree, but they made an argument.

Mr. Randy Hillier: I'll ask for a recorded vote and a 20-minute recess, please.

The Chair (Mr. David Oraziotti): That's fine, and we will do that. I just want to clarify one thing. As the committee is supposed to move to Bill 191, just as long as we have an understanding, at the committee's discretion or decision-making, on Monday, from 2 to 6, we will continue with Bill 173, and on Wednesday, from 4 to 6, should we need that time, we will also continue with this bill. The notice has to be put out for two days. Are we in agreement on that—Bill 173 next week?

Mr. Gilles Bisson: I just want to be clear: If we're not in on Monday, we're back here Wednesday.

The Chair (Mr. David Oraziotti): Correct.

Mr. Gilles Bisson: Yes.

The Chair (Mr. David Oraziotti): Okay. A 20-minute recess has been called for. Since there is no more time remaining today, this committee is adjourned.

The committee adjourned at 1746.

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