

# In Parts of Canada, Landowners Battle Prospectors

By Ian Austen for The New York Times

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Peter Griesbach found trees on his property chopped down to stake a mining claim. Years later, he is still fighting the prospector.

SOUTH FRONTENAC, Ontario — When Peter Griesbach discovered someone had chopped down trees at his weekend house to make crude posts staking out a mining claim, he assumed he could rid his land of the uninvited prospector relatively quickly. He was wrong.

Like Mr. Griesbach, Mary Loucks also found claim stakes on her land. After a legal wrangle, the exploration stopped.

Indeed, seven years later Mr. Griesbach is still campaigning to change the provincial law that allows anyone who pays the equivalent of \$23.50 to dig for pretty much any mineral on private property in much of rural Ontario.

Historically high mineral prices have set off a new wave of prospecting in Canada, and with it new battles over mineral laws, some of which date to the 19th century. Under the so-called free entry system, effective in much of Ontario, prospectors and miners have had relatively unfettered access to private land in many areas.

Now, after decades of promises to modify the law from successive governments, Mr. Griesbach and other landowners may finally find some measure of relief.

After a highly publicized clash between an Indian tribe and a mining company this year, which led to the jailing of one native leader, Ontario's government said it would alter the law by December. But change is so controversial that even the broad details of any modification will not be worked out for some time.

British Columbia has had a rise in conflicts between landowners and prospectors, too, as it experiences a similar mining boom despite recent legal reforms in that province that have made it harder to invade private land.

But the controversy has been most intense in Ontario, where it has also led to increased divisions along economic, regional and class lines.

Many owners of homes and "cottages," as weekend or vacation homes are known here, as well as farmers and ranchers in southeastern Ontario, where Mr. Griesbach has his cottage, are not keen to have their trees chopped down, land dynamited and soil turned over.

But in the vast, and relatively unpopulated, northern part of the province (where summer homes are

usually called “camps”), many residents see increased mining as one of the few ways to avoid economic ruin from the collapse of the pulp and paper industry there. Anything with the potential to curb mining’s expansion will meet with significant opposition in that region.

Still, even some mining companies have started to feel a bit embarrassed by the controversy. “There’s a recognition from our members that private property owners deserve more rights than exist under the current act,” said Chris Hodgson, president of the Ontario Mining Association, which represents large mining companies. “I have a lot of empathy for a cottage owner that’s discovered someone staking their property.”

The large mining companies represented by Mr. Hodgson, a former mines minister, do conduct some exploration work. But most prospecting and nearly all land conflicts involve small prospectors working on their own or for tiny mining companies. In Ontario, anyone can become a prospector provided they are at least 18 years old and have 25 Canadian dollars, plus tax, to acquire a license.

“Claim staking is actually a pretty lucrative way of putting money into your pocket,” said Garry Clark, the executive director of the Ontario Prospectors Association. But most people in the industry acknowledge that the chances of any particular claim becoming a mine are remote.

The promise of becoming rich through a mining discovery is enough for prospectors, or their clients, to raise money through Canada’s venture markets or private investments, even though such efforts usually end in disappointment. “The odds are really against people,” Mr. Clark said from his office in Thunder Bay, Ontario, the largest city in the north. “All we do is take money, not all of it our own, and then we gamble it on one in 10,000 prospects.”

There are about 5,000 licensed prospectors in Ontario, but Mr. Clark estimates that only 2,000 people actively engage in the business, and many spend some of their time plying other trades, such as trapping or logging.

The one in 10,000 odds apply to staked claims that show evidence of mineral deposits. Neither Mr. Clark nor anyone else in the industry could quantify the overall number of staked claims that become mines, although all agree that they are small.

Canada’s constitution does not provide property rights like those under most American laws. Unlike Canada and many other countries, original land grants in the United States included both mineral and surface rights, making the fictional tale of the Clampett family as told in “The Beverly Hillbillies” at least legally plausible. While the mineral rights were sometimes sold by landowners over time, most state laws place limitations on prospecting.

Over the years, the Canadian provinces have retained various rights to land they granted to private property owners. On some private land, for example, the government still owns white pine trees, a law dating from the era when their timber was valued as naval ships’ sailing masts. The law is no longer enforced.

More commonly, particularly in the north, the government retained all the mineral rights underneath privately owned land.

Some landowners, mostly in the populous southern and eastern parts of Ontario, were given both the surface and mineral rights to their properties, depending on when the land was settled. But in many cases, the mining rights reverted back to the government after an owner at some point over the last 150 years or so failed to pay mining as well as property taxes.

What owners do once they find out the limitations of their rights varies.

After learning that the prospector had the right to wander around his cottage and chop down trees, Mr. Griesbach, a real estate appraiser who lives near Kingston, Ontario, initially responded by taking out his own prospector's license.

Metal tags on the stakes on his land indicated that they had been placed of behalf of A. David Houston, the president and chief executive of Graphite Mountain, a company that was actually controlled by another of Mr. Houston's firms, Diamond Lake Minerals.

(While incorporated in Utah, Diamond Lake was headquartered at Mr. Houston's home in Warkworth, a town in eastern Ontario.)

Believing that Mr. Houston had not properly followed all of the government's staking rules, Mr. Griesbach used his prospector's license to file a counter claim on his own land. That challenge set off what became a series of seven hour drives to Sudbury, Ontario, to attend hearings before the Provincial Mining Recorder.

To further dissuade prospectors, Mr. Griesbach had part of his land registered as a private firearms range with the federal government and posted suitably frightening signs saying, in effect, that anyone wandering on his land was in danger of being shot.

Down the road from Mr. Griesbach, Donald T. Loucks and his wife, Mary, had also discovered Graphite Mountain's stakes on the lands surrounding Long Pond Lake which they had gradually acquired over several decades. The private lake had originally been the couple's summer cottage site but they built a house and became full-time residents after Mr. Loucks's retirement from the insurance business in Toronto.

The mining stakes were just the beginning. A woodlands preservation group backed away from an agreement with the Loucks when it learned about the mining claim. Shortly afterwards, Graphite Mountain moved heavy mining equipment onto a claim across the road from the Loucks's land and began blasting and drilling. For two summers, aerial survey planes buzzed overhead.

"It was like being under siege," said Mrs. Loucks, whose husband died just over five years ago.

The situation drew to a legal stalemate and the exploration stopped. While Graphite Mountain still holds claims in the area, the company became inactive last September after the death of Mr. Houston.

By contrast, the dispute over a uranium mining claim not far from the Griesbach and Loucks properties

in North Frontenac, Ontario, continues to escalate.

Frank and Gloria Morrison mounted a different counterattack than Mr. Griesbach, after stakes from Frontenac Ventures appeared in 2006 on 100 acres of land they had retired to from Ottawa.

Much of Eastern Ontario, including North Frontenac, is the subject of a complex and longstanding land claim launched by the Algonquin Indian tribe. The Ardoch Algonquin First Nation, the local branch of the tribe, soon joined in protests against the uranium mining project after being contacted by Mr. Morrison.

Frontenac Ventures, a privately held uranium mining company based in Oakville, Ontario, eventually obtained a court injunction to keep protesters out of the areas it was exploring. But Bob Lovelace, the chief negotiator for the Ardoch Algonquins and a lecturer at Queen's University in Kingston, defied the order. He argued that he was governed by Algonquin law. That defiance led to a six month jail sentence and a 25,000 Canadian dollar fine against Mr. Lovelace.

Ultimately Mr. Lovelace served only 102 days in prison before the jail order and fine were both struck down by an appeals court in a decision, released in July, that rebuked the trial court for ignoring earlier rulings related to native land claims. The appeals court also criticized the current mining act for being "remarkably sweeping."

The ruling has not ended the dispute. Nor has it reduced Mr. Morrison's resolve to block the project, a crusade that, he acknowledged, has divided him from neighbors, generally lifelong residents of the area, who see the mine as a potential source of jobs.

"We've got our life savings right here in this land and now it's worthless," said Mr. Morrison, a professional musician and former employee of the Canadian Police Association. "I now understand what makes a person an anarchist and what makes a person break the law."

Exactly how the government will keep both the prospectors and landowners happy with its revised mining act is unclear.

Michael Gravelle, the minister of mines, said the bill will only be drafted following another in a long series of consultations now underway. Any legislation, he said, will have to contain "an appropriate balance" between landowner and mining interests.

George S. White, the president of Frontenac Ventures, which has spent about 4 million to 5 million Canadian dollars on its project to date, said it would be a mistake to limit miners and prospectors, particularly in the current buoyant minerals market.

"The mining business in Ontario has been the backbone of the economy, it has served the province well for 150 years," he said. "In a situation like this, the responsibility is on the landowner to find out what they bought. We shouldn't be held up to ransom by somebody who doesn't want mining."

And although Mr. White has little sympathy for Mr. Morrison in particular, the two men do share one

thing: frustration.

“Had I known that this kind of opposition would develop, I would not have got involved in the project,” Mr. White said. “It’s something I don’t think anyone foresaw.”

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