



Kitchenuhmaykoosib Inninuwug Litigation Chronology March 2008

Kitchenuhmaykoosib Inninuwug (KI) is an Ojibwa/Cree First Nation in Northern Ontario, and signatory to Treaty No. 9.

Platinex is an Aurora based junior mining exploration company holding Ontario issued mining claims and leases within the territory of the Kitchenuhmaykoosib Inninuwug.

In May 2000, KI filed a Treaty Land Entitlement Claim with Ontario and Canada. The Platinex claims and leases fall within the area at issue in the KI land claim.

Shortly thereafter, KI issued a moratorium on resource development in its traditional territory, in order to help ensure that parts of these lands would not be put to uses incompatible with its selection as reserve lands through the TLE. The moratorium applied to mineral exploration.

In August and November of 2005, KI leadership sent letters to Platinex indicating that KI strongly opposed any development. Platinex did not tell the investing public about these letters, and instead claimed that KI had consented to exploration.

In February 2006, Platinex mobilized a drill team without consent from KI. After encountering peaceful protesters from KI, Platinex flew in a private security consultant who organized the withdrawal of the drill team.

In April 2006 Platinex went to court and filed a \$10 Billion lawsuit for damages against KI and sought a permanent order preventing KI from interfering with exploration activities, as well as \$ 10 Billion in money damages.

KI counter-sued Platinex for damages, and has sued Ontario for a declaration that the Mining Act is unconstitutional. KI claims that the Mining Act is unconstitutional because it does not recognize, prioritize and respect Aboriginal and Treaty rights, and does not provide for adequate consultation with First Nations peoples.

In May 2006, four environmental groups, led by Ecojustice Canada, filed a complaint with the Ontario Securities Commission alleging that Platinex "breached disclosure requirements" when it assured investors it had permission to seek explore and drill on KI territory.

ON July 27, 2006, KI won the interlocutory injunction, and Platinex lost.

The court ordered Platinex not to do any drilling or exploration for five months. The injunction was granted on the condition that KI develop a consultation committee to engage in negotiations with Platinex and the Government of Ontario.

Mr. Justice G.P. Smith wrote "It is critical to consider the nature of the potential loss from an aboriginal perspective. ... The land is the very essence of their being. It is their very heart and soul. No amount of money can compensate for its loss. Aboriginal identity, spirituality, laws, traditions, culture, and rights are connected to and arise from this relationship to the land. This is a perspective that is foreign to and often difficult to understand from a non-aboriginal viewpoint."

The Court stated: "A decision to grant an injunction to Platinex essentially would make the duties owed by the Crown and third parties meaningless and send a message to other resource development companies that they can simply ignore Aboriginal concerns. The grant of an injunction enhances the public interest by making the consultation process meaningful and by compelling the Crown to accept its fiduciary obligations and to act honourably."

In February 2007 Ontario was granted intervenor status to participate in the injunction proceedings in the litigation.

On May 9, four KI community members-- Mark T. Anderson, Darryl Sainnawap, Wallace Mosquito and Dylan Morris -- began walking from Pickle Lake to Queen's Park to raise public awareness of KI's fight for justice.

On May 22, 2007, the Court issued three orders imposing a Consultation Protocol, timetable and Memorandum of Understanding upon Platinex, the Government of Ontario and KI. The parties were unable to come to agreement on these items prior to a Court imposed deadline of May 15, 2007

On September 24, 2007, Platinex and their consultants ignored KI's letters and notices saying that they were not welcome and flew in to the community of KI. Platinex and their representatives were met at the airport by KI community members and after a lengthy dialogue Platinex decided to leave.

Shortly thereafter Platinex brought a motion for contempt against KI.

On October 25, 2007 K.I. was forced to abandon its legal fight with Ontario and Platinex, the victim of a legal strategy adopted by its opponents that effectively bankrupted the already impoverished community.

On December 7, 2007, Platinex's legal counsel proceeded with a contempt of court hearing against KI.

KI did not defend the contempt motion.

The Court found KI and named members of KI including the Chief and several Council members to be in contempt of Court.

ON January 25, 2007 Justice Smith heard submissions from Platinex, Ontario and KI on sentencing. Ontario called for fines against the contemnors. It is unclear what position Platinex has taken on sentencing. In a press release the company has said that it is not seeking jail for the KI contemnors. However, a reading of the hearing transcript and submissions to the court support the position that Platinex is seeking jail time.

On March 17, 2008 Justice Smith sentenced KI Chief Donny Morris, Deputy Chief Jack McKay, Sam McKay, Bruce Sakakeep, Darryl Sainnawap, and Cecilia Begg to six months in jail.

What's at issue.

For K.I. The honour of the Crown. The resolution of their Treaty Land Entitlement Claim. Meaningful consultation and accommodation. The right to free, prior and informed consent to mineral exploration and resource development in their territory. Punishing fines and jail time.

For Platinex. Platinex's right to drill on mining claims and leases in a culturally and ecologically sensitive watershed that drains into Big Trout Lake.

For the McGuinty government. Ontario's so-called "new relationship" with First Nations. A multi-billion dollar resource bonanza in the far north could be put at risk if the 49 communities in Nishnawbe Aski Nation decide to freeze development in the north. The price of mineral commodities has enjoyed a record run-up with gold passing \$1000 per ounce.

For the Mining Industry. Free entry. Under the free entry regime all Crown lands are open for mineral operations unless they are specifically withdrawn. There is no requirement that government consult Aboriginal peoples or other land users (i.e. Muskoka cottagers) prior to opening lands for mineral exploration. There is no prior planning to establish which tracts of Crown land are particularly sensitive, or serve as critical habitat for endangered species, or are valued ecosystem components.

The Kitchenuhmaykoosib Inninuwug First Nation, a signatory to the 1929 adhesion to Treaty No. 9, is a remote fly-in community of about 1,200 people, located 580 kilometres north of Thunder Bay.