

## **COMMUNIQUÉ**

### **This message is being distributed to the Kitchenuhmaykoosib Inninuwug First Nation at the direction of the Superior Court in the litigation involving Platinex Inc., KI and Ontario**

Platinex has been trying to carry out test drilling for platinum and other minerals on land south of Big Trout Lake since early in 2006. However, the people of Kitchenuhmaykoosib Inninuwug First Nation prevented the company from moving drilling equipment onto the land. When KI was unwilling to negotiate with Platinex about ways to let the test drilling go ahead, the company went to court.

#### ***Court Order – July 28, 2006***

Justice G.P. Smith held the Superior Court's first hearing on the case between Platinex and KI in the early summer of 2006. KI participated in the hearing. The Ontario government did not. At the end of July, Justice Smith decided not to let Platinex on the land at that time. He gave KI, Ontario and the company five months to talk and to try to work out an agreement that would fairly respect the rights of the people of KI and would allow Platinex to conduct its test drilling. He also told KI to form a committee to take part in the discussions with Ontario and Platinex.

#### ***Court Order – May 1, 2007***

KI did form a committee and talks took place amongst KI, Ontario and Platinex. In these talks, KI asked for a written consultation protocol before it would discuss Platinex's exploration plans. Several draft protocols were exchanged. The five months became eight months. When the parties could not reach agreement on a protocol, the case came back to court for a further hearing in April 2007. By then Ontario was participating in the litigation.

In the April hearing, KI's legal counsel asked Justice Smith to continue to stop Platinex from doing any exploration work on the lands south of Big Trout Lake. All of the parties gave evidence and made legal arguments on many subjects. They included KI's treaty rights, Platinex's legal rights, and Ontario's duty to consult with KI. They also included KI's TLE claim, which Ontario had decided not to accept for negotiation.

After considering the evidence and the legal arguments, Justice Smith decided that Platinex should now have access to the exploration lands. However, he added an important requirement.

The requirement was that Ontario, KI and Platinex were to continue to talk and consult. Together, they were to work towards developing a Consultation Protocol and Memorandum of Understanding (or MOU) to guide their relationship with respect to Platinex's exploration program. These agreements were to provide for ways to respect KI's treaty hunting and fishing rights and to protect sacred and other culturally and historically significant places, while Platinex carried out its work.

Justice Smith also said he would be available to provide assistance to KI and the other parties on outstanding issues, including questions of compensation and funding.

### ***Court Order – May 22, 2007***

Representatives of KI, Ontario and Platinex met after the court's May 1 order. Platinex and Ontario were able to agree on what a Consultation Protocol and MOU should contain, but KI rejected these proposals. Because the parties could not agree, Platinex asked Justice Smith to make the decision for them. This led to a further court hearing on May 18, 2007.

On May 18, Justice Smith heard from lawyers for KI, Ontario and Platinex. He decided that the court should step in and assist the parties by establishing basic agreements for them. This led to the court's May 22 order which includes a written Consultation Protocol and Memorandum of Understanding.

These two documents are designed to work together. The Consultation Protocol sets out such things as the issues that Platinex, KI and Ontario are to address, the information that each party is to share with the others, when discussions will take place, and who will pay for KI's participation in consultation. The MOU sets out the different responsibilities of Platinex, KI and Ontario regarding the exploration program. Under this court approved MOU, one of the responsibilities of KI is to permit Platinex free access to the exploration lands without any interference.

Justice Smith also gave Platinex permission to start Phase One of its exploration program at any time after June 1, 2007. Phase One of the exploration program includes the drilling of 24 test holes about two inches in diameter.

Under Justice Smith's May 22 order, Platinex is to have an archaeologist investigate or "pre-screen" each drill hole location before test drilling takes place. This is to make sure that there are no burial sites or culturally significant remains in the area. Justice Smith directed that Platinex was to have access to the exploration lands to begin this archaeological work and the other work of mineral exploration.

Justice Smith encouraged KI, Ontario and Platinex to continue to talk with one another and to work out their differences. He urged them to work toward an agreement that would make sure that Platinex's work on the land was carried out in a way that was respectful of the land and of KI's treaty rights. Justice Smith also invited KI to come back to court if they felt they needed his assistance with respect to funding to take part in the negotiations or with respect to payment of legal bills.

### ***Court Order – October 25, 2007***

The May 22 court order said that KI should cooperate in assisting Platinex to carry out the archaeological work involved in the pre-screening of drill holes. KI did not provide the required information to Platinex and interfered with the company's ability to gain access to the exploration lands, so Platinex took the case back to court. That led to a further hearing before Justice Smith on October 25.

At the October 25 hearing, KI told Justice Smith that its legal bills were so large that the community could not afford to continue to participate in the court case. Its lawyer and community representatives then left the courtroom and did not take part in the day-long hearing.

The evidence heard by Justice Smith on October 25 included testimony on how KI's leadership had stopped communication with Ontario's negotiator about KI's finances and funding, even though the community had consistently expressed concern over financial difficulties it faced as a result of legal and consultation expenses.

On the basis of the evidence he heard and the history of the case, Justice Smith directed that:

- The archaeological work and the rest of Platinex's exploratory drilling program are to start right away.
- Members of KI and supporters may not prevent or interfere with Platinex and its people as they carry out the archaeological work and other work involved in the company's exploratory drilling program.
- Platinex is to provide KI and Ontario with a timetable for exchanging information as required by the Consultation Protocol that is part of the court's May 22 order. Platinex did this on November 1, 2007.
- A statement or communiqué should be prepared describing the court's orders and what has happened in the court case in plain language.

Justice Smith also expressed disappointment that the parties had not managed to work things out for themselves. He was dismayed that KI had not accepted his invitations to come back to court if the community felt they needed his assistance with respect to funding and the payment of legal expenses.

#### ***Ontario motion for Independent Assessment***

Also on October 25, Ontario asked Justice Smith to order an independent and impartial assessment of the legal bills faced by KI. He reserved his decision on this motion so that he could consider it further.

Justice Smith also reserved his decision on whether or not a hearing on the issue of costs for all of the litigation to date will be held on December 6 and 7, 2007.

This message has been sent to KI in accordance with Justice Smith's October 25 order. It will also be made available in the Ojibway and Oji-Cree languages.

*Order of October 25, 2007*

*Platinex v. Kitchenuhmaykoosib Inninuwug First Nation, Ontario, Third Party  
Court Files 06-060 / 06-271 – Thunder Bay*