

COURT FILE NO.: 06-0271
DATE: 2007-05-22

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

PLATINEX INC.

Plaintiff

- and -

KITCHENUHMAKOOSIB INNINUWUG
FIRST NATION, DONNY MORRIS, JACK
MCKAY, CECILIA BEGG, SAMUEL
MCKAY, JOHN CUTFEET, EVELYN
QUEQUISH, DARRYL SAINNAWAP,
ENUS MCKAY, ENO CHAPMAN, RANDY
NANOKEESIC, JANE DOE, JOHN DOE
and PERSONS UNKNOWN

Defendants

AND BY WAY OF COUNTERCLAIM:

KITCHENUHMAKOOSIB INNINUWUG
FIRST NATION, DONNY MORRIS, JACK
MCKAY, CECILIA BEGG, SAMUEL
MCKAY, JOHN CUTFEET, EVELYN
QUEQUISH, DARRYL SAINNAWAP,
ENUS MCKAY, ENO CHAPMAN, and
RANDY NANOKEESIC,

Plaintiffs by Counterclaim

- and -

PLATINEX INC.

Defendant by Counterclaim

- and -

HER MAJESTY THE QUEEN IN RIGHT
OF ONTARIO,

Third Party

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)
-) *Neal J. Smitheman and Tracy A. Pratt*, for
the Plaintiff

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)
)
-) *Bryce Edwards and Kate Kempton*, for the
Defendants other than Jane Doe, John Doe
and Persons Unknown

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)
-) *Frances Thatcher* for the Intervenor,
Independent First Nation Alliance

Court File No: 06-0271A

-) *Bryce Edwards and Kate Kempton*, for the
Plaintiffs by Counterclaim other than Jane
Doe, John Doe and Persons Unknown

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-) *Neal J. Smitheman and Tracy A. Pratt*, for
the Defendant by Counterclaim

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-) *Owen Young and Ria Tzimas* for the Third
Party
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)
-) **HEARD:** May 18, 2007 (Teleconference)

Mr. Justice G. P. Smith

Decision On Motion

[1] In paragraph 188 of my reasons released May 1, 2007, I ordered the parties to continue the process of consultation and negotiation to allow them the opportunity to implement a consultation protocol, timetable, and Memorandum of Understanding. My reasons expressly reserved for this Court the right to make whatever order(s) were required in the event that the parties could not come to an agreement.

[2] The parties were unable to reach an agreement, and requested the opportunity make submissions to the Court.

[3] On May 18, 2007, a teleconference took place, during which I heard further submissions from each of the parties. I also received written submissions from the parties.

General Remarks

[4] The underlying purpose of my May 1, 2007, order was to encourage the parties to continue a dialogue, with the hope that this would enhance mutual understanding and serve the principle of reconciliation.

[5] The recent submissions made to this court indicate that the parties have made good faith efforts to appreciate and accommodate the interests of the other. As I commented on May 18th, consultation and accommodation are ongoing processes, and may take several months.

[6] This Court will remain engaged to provide supervision and direction/orders whenever required, subject to the recognition that it is ultimately the responsibility of the parties to attempt

to reach their own agreement. In other words, success of the process ultimately rests with the parties themselves.

[7] Although this case involves the question of whether and to what extent an exploration company may undertake drilling on non-reserve land that is in traditional Aboriginal territory, there are much larger and broader issues at stake.

[8] In order to appreciate and comprehend the relative positions taken by the parties throughout the consultation process, it is crucial to summarize their unique perspectives.

[9] The focus of Platinex is fairly clear; the company wishes to proceed with the business of exploration.

[10] The perspective of the Aboriginal parties is more complex. KI fears that further encroachment on their traditional land, which in turn threatens their way of life and culture, ignores, diminishes, and disrespects them.

[11] Although interested in the possible commercial and economic opportunities, KI views the issues of sovereignty, and cultural and spiritual concerns, as being paramount.

[12] In my July 2006 reasons, I commented that the sovereignty and special status of First Nations were enshrined in the *Proclamation Act* of 1763, and later in sections 25 and 35 of the *Constitution Act, 1982*. These principles are also acknowledged in all the numbered treaties. Treaty 9, which forms a backdrop to this consultation process, is not merely another commercial contract; it is a special form of agreement between sovereign states. Although the facts of this

case are specific and unique and must form the basic fabric of any ruling or order, any decision must also be informed by the larger context in which these issues appear.

The Memorandum of Understanding (“MOU”) and Consultation Protocol (“CP”)

[13] Platinex circulated a draft MOU and CP prior to the meeting of the parties that took place on May 8, 2007, at Big Trout Lake.

[14] KI responded by sending a revised CP and a draft Memorandum of Agreement, in which it introduced new concepts, including a clause that requires Platinex to provide compensation; a clause that obliges Ontario to reimburse KI for all of its legal/consultation costs to date; and a clause requiring Platinex to abandon the damage portion of its lawsuit against KI.

[15] Various other draft MOUs were then exchanged between Ontario and Platinex, resulting in an agreement between these parties. I have considered the submissions of all parties, and have read the MOU, CP, and timetable negotiated between Ontario and Platinex. I accept these as appropriate to guide the ongoing relationship between the parties

[16] Subject to the following comments the following declaratory orders shall issue:

1. an order imposing a Consultation Protocol in accordance with Appendix “A” attached hereto;
2. an order imposing a Memorandum of Understanding in accordance with Appendix “B” attached hereto; and

3. an order imposing a Timetable in accordance with Appendix "C" attached hereto.

[17] Platinex is expressly given permission to begin Phase One of its drilling program on June 1, 2007.

[18] As set out in paragraphs 1(a)-(f) of Appendix "A", Platinex shall retain an archaeologist to consult with the KI community to identify burial or other archaeologically significant sites within the proposed drilling area. Such sites are to be identified as areas of no disturbance, with reasonable buffer zones around these sites. In the event that KI is not satisfied with either the designation of a site or the size or location of a buffer zone, it may make further submissions to this Court by way of teleconference.

[19] In its draft CP, KI expressed concern that Platinex's proposed activity on the land could have a negative impact on the KI community's "spiritual practices". The Court requires further and better particulars of these concerns in order to address them, and reserves the right to make amendments to the orders issued herein once those submissions are received. Submissions may be made in writing within 14 days of the release of these reasons. Platinex, IFNA, and Ontario shall have the right of written reply within 14 days thereafter.

[20] Near or at the end of the completion of Phase One of the drilling program, and prior to an Extended Program and/or any further drilling being undertaken, the parties shall make further submissions to this Court. Counsel should speak to the Trial Coordinator as soon as possible to secure a date for these submissions.

Monetary Issues

The Issue of Legal Costs

[21] In my reasons released May 1, 2007, I stated that the issue of legal costs would be addressed at a later date. I do not intend to deal with this issue at this time. Counsel shall contact the Trial Coordinator to schedule a date and time to argue this issue or to provide this court with written argument should there be a consensus to do so.

Funding

[22] My May 1st reasons also reserved the right to make further declaratory orders regarding the issue of funding.

[23] Attached as an Appendix to the Consultation Protocol is a Schedule of Eligible Costs. This schedule sets out general principle and guidelines that “relate to KI’s reasonable cost of consultation among KI, Ontario and Platinex Inc.”

[24] Ontario has offered to fund KI’s reasonable costs for consultations respecting Phase One, and any for further consultations if drilling is extended. Ontario has set a target for funding consultation costs at \$150,000, and proposes that costs be based upon the timetables and workplan(s) as agreed to by the parties. The quantum of funding and the timing of the payments are to be set out in a Contribution Agreement, to be entered into between KI and Ontario.

[25] KI has rejected Ontario’s funding proposal as being seriously inadequate in view of the financial impoverishment of the community. KI proposes payment of an up front sum of \$600,000, and seeks assurance from Ontario that it will cover all of KI’s consultation and litigation costs.

[26] KI's submits that the serious imbalance between the financial positions of the parties renders the consultation process unfair.

[27] The issue of appropriate funding is essential to a fair and balanced consultation process, to ensure a "level playing field". There is insufficient material before the court at present for it to make an informed decision as to what level of funding would be reasonable.

[28] I recognize that there may not have been sufficient time since May 1, 2007, in which to address the funding issue and implement a Contribution Agreement. For that reason, additional time in which to develop a funding agreement is granted. In the event that agreement is not reached by June 15, 2007, further submissions on this issue alone may be made by written argument, followed by oral argument via teleconference. The parties are advised to secure a date for the oral portion of those submissions now.

A Community Benefit Fund

[29] The shortness of time may have also prevented the parties from completing discussions regarding the establishment of a community benefit fund.

[30] KI has proposed that Platinex establish an Exploration Benefit Fund in the amount of \$1,000,000; \$500,000 to be paid prior to the commencement of Phase One, and the balance of \$500,000 to be paid by July 1, 2008.

[31] Platinex's response to this proposal is to commit 2% of all monies spent in connection with Phase One, and any extended drilling, to a fund for the benefit for the KI community. Platinex indicates that it is not financially able to provide KI with a fund of the size requested

and that, in any event, funding is the responsibility of Ontario, since the duty to consult rests with the Crown whenever Aboriginal interests are affected by Crown-sanctioned activity.

[32] I set out the positions of the parties for clarification purposes only, and make no order regarding this issue at this time. In the event that the parties are unable to reach agreement on a Community Benefit Fund, counsel shall schedule a time with the Trial Coordinator to make further submissions on this point.

[33] These reasons should not be read as purporting to foreclose or in any way limit discussion and consultation regarding issues such as funding; payment of legal costs; the establishment of a community benefit fund; KI's request that Ontario re-examine its position on its TLE claim; or any other concerns that may have been raised by a party but not resolved to date.

[34] I expressly encourage the parties to continue to engage in meaningful, good faith discussions with a view to gaining an appreciation of the perspective of the other and achieving a long-term relationship based upon trust, respect, and understanding.

"original signed by"
The Hon. Mr. Justice G. P. Smith

Released: May 22, 2007

APPENDIX "A"

FORM OF CONSULTATION PROTOCOL **(Schedule "A" to the Order of May 22, 2007)**

On May 1, 2007 the Court made certain declarations as to the rights of the parties.

The May 1 decision included the Court's declaration that the continuing right of Kitchenuhmaykoosib Inninuwug First Nation to be consulted in respect of an exploratory drilling program proposed by Platinex Inc. near Big Trout Lake may be met through the making and honouring of a Consultation Protocol, Memorandum of Understanding, appropriate timetables and other agreements or instruments as described in the Court's decision.

The Court's May 1, 2007 decision also included provision for the making of such further and other orders or declarations as the court might consider to be just and appropriate in the circumstances.

On May 18, 2007, the Court heard the submissions of the parties and of the intervenors as to the form and content of a Consultation Protocol, a Memorandum of Understanding and Timetables that would be sufficient to comply with the Court's declaratory orders of May 1, 2007 and would be otherwise appropriate in the circumstances;

On May 22, 2007 the Court granted a further declaratory order that the form of "Consultation Protocol" set out in this Schedule "A" is appropriate and sufficient to comply with the Court's declaratory orders of May 1, 2007 in that regard.

CONSULTATION PROTOCOL

BETWEEN:

Kitchenuhmaykoosib Inninuwug First Nation ("KI")

-and-

Platinex Inc. ("Platinex")

-and-

Her Majesty the Queen in Right of Ontario
as represented by the
Minister of Northern Development and Mines ("Ontario")

The Parties are entering into this Consultation Protocol in order to effect a cooperative and mutually respectful relationship and to describe the process and scope of consultation to implement the order of Justice G.P. Smith of the Superior Court of Justice made May 1, 2007 in litigation between Platinex and KI in which the Minister and IFNA were

granted leave to intervene.

THE PARTIES AGREE to the following Consultation Protocol:

1. The Parties agree to consult with the objective of coming to agreement in respect of the subjects or matters described in this Protocol, including the manner by which Platinex may conduct its test drilling program in the vicinity of Big Trout Lake as contemplated by the decision of Justice G.P. Smith of the Superior Court of Justice made May 1, 2007 with Phase One, consisting of 24 test holes, to commence on and after June 1, 2007.

Nature and scope of consultation

2. The Parties have identified the scope of consultation addressed by this Protocol to be:

- (a) consultation and, where appropriate, accommodation with respect to Phase One of the Platinex Drilling Program (test holes 1 to 24);
- (b) consultation and, where appropriate, accommodation with respect to the proposed further Phase or Phases of the Platinex Drilling Program (test holes 25 to 80),

with consultation in respect of (a) and (b), above, to include the following particular subjects:

- i. potential burial sites in the vicinity of the Platinex claims and leased sites
- ii. environmental impact of the proposed drilling
- iii. impact on the harvesting and other treaty rights of the people of KI
- iv. participation in decision making
- v. the use of KI supplies and services
- vi. employment of people of the KI community
- vii. compensation and, if appropriate, other methods or means of accommodation, and
- viii. funding;

- (c) the identification of lands that KI, from its perspective, would prefer to have designated as reserve lands should its Treaty Land Entitlement ("TLE") claim be established; and
- (d) the development of a subsequent protocol among KI, Ontario and other interested or affected First Nations for broader discussions concerning mineral exploration and mining development in traditional land use areas.

3. The Parties contemplate that agreements with respect to the nature and scope of consultation and, where appropriate, accommodation will be recorded and provided for in:

- (a) this Consultation Protocol;
- (b) a Memorandum of Understanding as described in the Superior Court decision

of May 1, 2007 and executed together with this Protocol;

- (c) such timetables and work plans as may be developed, expanded or modified from time to time as consultation progresses;
- (d) a Contribution Agreement between KI and Ontario as described below; and
- (e) such further or final minutes, memoranda, agreements or instruments as the parties may choose to reflect and record any interim, final or comprehensive understandings they may reach as a result of their consultation.

Timetables

4. The Parties agree that the first priority of consultation will be to work co-operatively to finalize a timetable for meetings and continued consultation that will permit Platinex to undertake Phase One of its exploratory drilling program, consisting of the drilling of 24 test holes, commencing on and after June 1, 2007.

5. As part of this Protocol, the parties agree to a preliminary timetable for teleconference meetings to be held no later than during the week of May 29, 2007 to consult and reach agreement with respect to proposed locations for Phase One drilling and to negotiate terms of reference for experts and associated funding considerations.

Information sharing

6. To facilitate consultation and, where appropriate, accommodation and to promote open communication, the Parties agree to exchange information as described below even though to do so may, in some respects, go beyond the scope of what is required to fulfill the Crown's duty to consult in respect of the Platinex Drilling Program:

(a) Information sharing by KI

KI will provide Platinex and Ontario with:

- A provisional description of its traditional territory;
- Information relating to the concerns of the community with respect to the Platinex Drilling Project
- Information relating to the community's perspective with respect to its treaty rights;
- Relevant information in KPs possession pertaining to:
 - o approximate location of trap lines, burial sites or any other cultural features, including camps, cabins, paths and trails, winter roads, roads and planned roads, if known
 - o the nature and timing of trapping and hunting activities of KI members, if known

(b) Information sharing by Ontario

Subject to applicable privacy laws, Ontario will provide KI and Platinex with:

- Relevant information with respect to development activities permitted by Ontario within the area described by KI as its traditional land use area, and
- Relevant information with respect to the anticipated impact of the Platinex Drilling Program on KI's treaty rights and on the environment, and any relevant information relating to the cumulative impact or effects of the Platinex Drilling Program and other projects or activities that have been or will be carried out on the land and of which Ontario is aware.

(c) Information sharing by Platinex

Platinex will provide KI and Ontario with:

- Relevant information in its possession pertaining to its proposed Drilling Program, and other exploration activity planned by Platinex on the Big Trout Lake property, including:
 - to the extent possible, approximate location of drill holes and description of drilling and related activity at drill hole sites;
 - approximate location and composition of camps and activity in and around camps;
 - if known, routes and flight times of any helicopters and other air transport in respect of the Drilling Program;
 - if known, routes and transport times of any land transport in respect of Drilling Program;
 - all information that allows an assessment of the anticipated environmental impacts pertaining to the Drilling Program including impacts to air (including noise), land, water, plants, animals, humans, ecosystems and all feasible mitigation measures that could be taken to prevent or minimize such impacts (description of these, including costs and effects);
 - information pertaining to viability of ore deposits and related matters, subject to a confidentiality agreement;
 - copies of any press releases and public filings, which Platinex may issue from time to time with respect to its exploration activity.

7. Platinex and Ontario have provided to KI with information pursuant to clause 6(b) and (c) above. To the extent that there is additional relevant information in their possession, Platinex and Ontario will provide it as fully and expeditiously as possible subject to necessary and applicable privacy protection requirements. KI will provide information in clause 6(a) to Platinex and Ontario as fully and expeditiously as possible subject to necessary and applicable privacy protection requirements. KI's Consultation Committee may enter into a separate confidentiality agreement if that is deemed appropriate or necessary.

Contribution Agreement

8. Ontario will cover KI's reasonable costs in respect of the herein consultation, which reasonable costs shall be based upon the timetables and work plan or plans as agreed to by the parties and the schedule of eligible costs approved by Ontario as set out in the Appendix to this Protocol or as otherwise agreed to by KI and Ontario. The amounts to be paid and the timing of the payments shall be in accordance with a Contribution Agreement to be entered into between KI and Ontario or as otherwise ordered by the court.

Meetings

9. Meetings under this Protocol may be held in person, by teleconference, or in such other manner as the Parties may from time to time agree.

10. Meetings under this Protocol that are held in person will take place at KI unless otherwise agreed.

11. Chairing of meetings under this Protocol will rotate amongst each of the three Parties. Whoever chairs a meeting shall ensure that draft minutes of the meeting are recorded and distributed to the other members, and the other members shall either approve the minutes or comment on them with revisions. All members shall retain all minutes, including comments and revisions, of every meeting.

Facilitator or Mediator

12. The Parties agree that if they are not making meaningful progress in the consultation process, or if they agree that it would be otherwise beneficial, they will retain the services of a facilitator or mediator, with the reasonable costs of the facilitator or mediator to be paid by Ontario.

Court supervision

13. Nothing in this Protocol prevents any Party from seeking the assistance of the Superior Court as contemplated by the May 1, 2007 decision of Justice G.P. Smith.

Non-derogation

14. This Consultation Protocol is not to be interpreted as altering the nature or content of the Crown's duty to consult.

15. Nothing in this Consultation Protocol, nor any consultation or negotiation thereto, shall be construed so as to abrogate or derogate from:

(a) the protection provided by any treaty or aboriginal rights of KI under Section 35 of the *Constitution Act, 1982*, or

(b) any legal rights of Platinex under the laws of the Province of Ontario and of Canada, or

(c) any rights or powers of Ontario including, to the extent permitted by law, any ability of the Province to act on rights under Treaty No. 9 or to infringe Section 35 rights.

Role of IFNA

16. The Independent First Nations Alliance ("IFNA") is not a signatory to this Protocol but, having been invited by the Parties to do so, may participate in the herein consultation on the understanding that the nature and scope of its role will come to be defined by agreement amongst the participants as the consultation process unfolds.

Representation

17. KI has selected a Consultation Committee for the purposes of the herein consultation. It is currently composed of the following KI members: David Sainnawap, Gordon McKay, Mark Anderson, Eleazor Anderson, Dorothy Mackay and Kevin Sainnawap. Members may change from time to time. KI agrees that the KI Consultation Committee is acting with the authority and guidance of the First Nation's Chief and Council as elected by the community.

18. Ontario appoints the following people to represent it in the herein consultation:

- Cameron Clark and Christine Kaszycki.

19. Platinex appoints the following people to represent it in the herein consultation:

- James Marrelli and James Trusler.

20. IFNA appoints the following people to represent it in the herein consultation:

- NAME and NAME.

21. Each Party agrees to designate an individual as a principal contact to whom correspondence and other communications may be directed and information provided.

22. The Parties may bring additional resource persons to the discussions and meetings, beyond those identified above, as they may consider to be appropriate.

IN WITNESS WHEREOF the Parties have signed this agreement on May , 2007.

Witness

Kitchenuhmaykoosib Inninuwug First Nation

"I have authority to bind Kitchenuhmaykoosib
Inninuwug First Nation"

Witness

Platinex Inc.

"I have authority to bind Platinex Inc."

Witness

Ontario

"I have authority to bind Her Majesty The Queen in Right of Ontario"

**APPENDIX "A – 1"
to Consultation Protocol**

Schedule of Eligible Costs (as referred to in Clause 7 of this Protocol)

Eligible Costs

Eligible costs are limited to those that relate to KI's reasonable costs of consultation among KI, Ontario and Platinex Inc. with respect to said consultation, and that fall within the following cost categories and are subject to the applicable maximum amounts payable out of the MNDM contribution set out below:

Administration* includes: salary and benefits for a Community Liaison worker to organize meetings, handle logistics and provide administrative support for KI Consultation Committee (KICC) members; office space, office supplies, telephone and fax charges and photocopies.

Honoraria will be paid to KICC members and Elders to provide guidance and participate in the Consultation. KICC members will be eligible for honoraria at a maximum rate of \$500/day/member.* Elders will be eligible to claim a maximum of \$200/day/member.*

Technical expertise / Professional services include fees and travel expenses, if required.

Legal Services includes fees and disbursements, including travel expenses, if any, of lawyers retained to provide legal support to KI in the Consultation.

Travel Expenses are those expenses incurred by KI's Consultation team to prepare for or attend Consultation sessions outside their home communities, including travel, meals and accommodation (not to exceed the prevailing provincial rates set out in Ontario's *Travel, Meal and Hospitality Expenses Directive*).

Tripartite Meetings and Internal Community Consultations - include the costs for facility rentals, catering, minute taking, transportation and outreach (website, radio).

Other Expenses - other expenses may be eligible; however, they must be submitted to Ontario for pre-approval prior to incurring the expense.

Rates provided by KI.

APPENDIX “B”

Schedule “B” to the Order of Mr. Justice Smith dated May 22, 2007

MEMORANDUM OF UNDERSTANDING

B E T W E E N:

KITCHENUHMAKOOOSIB INNINUWUG (“KI”)

- and -

PLATINEX INC. (“Platinex”)

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE
MINISTER OF NORTHERN DEVELOPMENT AND MINES (“Ontario”)

KI, Platinex and Ontario are entering into this Memorandum of Understanding (“MOU”) and a Consultation Protocol (“CP”) to promote a cooperative and mutually respectful relationship concerning Platinex’s exploration drilling program. Phase 1 of the Platinex drilling program will consist of 24 test holes (the “Phase 1”). The MOU and CP provide a framework for KI, Platinex and Ontario to engage fully in an on-going consultation process, with accommodation as necessary, during Platinex’s exploration drilling program.

1. Platinex agrees that in conducting Phase 1 and the Extended Program it will adhere to the recommendations set out in the report of AMEC Earth & Environmental dated June 1, 2006 (the “AMEC Report”) and further agrees, specifically, as follows:

A.

- (a) The burial site(s) identified by KI will be marked as an area for no disturbance and a buffer of 100 metres kept around the site(s);
- (b) Platinex will retain an archaeologist for the purpose of Phase 1 and the Extended Program;
- (c) The archaeologist will pre-screen any proposed holes;
- (d) The archaeologist’s findings will be shared with KI;
- (e) Subject to discussions and agreement otherwise with KI, Platinex will follow the recommendations of the archaeologist; and

- (f) Platinex will continue to seek KI local and traditional knowledge about potential burial or other archaeological-significant sites. The parties will agree upon a process by which such local and traditional knowledge may be shared.

B.

- (a) Platinex will implement the AMEC - recommended or equivalent mitigation measures as set out in table 1 of the AMEC Report;
- (b) Platinex will obtain any necessary governmental permission or approvals for the Phase 1 Program and, if it proceeds, the Extended Program;
- (c) Platinex will comply with its environmental policy;
- (d) Subject to B(a) above, Platinex will comply with the E3 environmental standards; and
- (e) Platinex is willing to retain from KI, or elsewhere, a qualified environmental monitor during the exploratory drilling. Platinex and KI will agree upon the monitor, and the cost for the monitor's services.

C.

- (a) Platinex will seek input from the KI community respecting the goose and moose hunts when determining the timing of the drilling and the routing of helicopter activity. KI, Platinex and Ontario will agree upon a process by which input will be provided by KI;
- (b) Platinex will seek input from Jacob Nanokeesic (who holds the only MNR-registered trapline on the lands of the Platinex mining claims and leases) respecting his trapping activities;
- (c) Platinex will implement the proposed mitigation measures respecting wildlife suggested by AMEC in the AMEC Report; and
- (d) Platinex will seek input from, and attempt to address the reasonable concerns raised by, other identified section 35 rights holders concerning hunting/trapping activities on the lands covered by the Platinex mining claims and leases. KI, Platinex and Ontario will agree upon a process by which input will be provided.

D.

- (a) To the extent that they are available and cost competitive, Platinex will use the services and supplies from the KI community during the proposed exploratory drilling;
- (b) Although employment opportunities are minimal at the early exploratory stage, where appropriate, Platinex will employ KI community members for transportation, food, catering and other similar requirements; and

- (c) There is a possibility that Platinex will request to establish a field office in the community during the exploration.

E.

- (a) Subject to the execution of confidentiality agreements, Platinex will share the results of its exploratory drilling with KI; and
- (b) KI, Platinex and Ontario are committed to on-going consultation and necessary accommodation concerning the Extended Program.

F.

- (a) Platinex will provide reasonable compensation to KI families and individuals for proven loss of revenue resulting directly from a disruption of trapping activities. KI, Platinex and Ontario will agree upon a process for determining what families/individuals are entitled to compensation and the quantum of that compensation.

2. **PAYMENT OF FUNDING TO KI**

Except as otherwise expressly provided in the CP or in this MOU, Ontario will cover KI's reasonable costs for the consultations respecting Phase 1 and the Extended Program (if it proceeds). KI's reasonable costs shall be based upon the timetables and workplan(s) as agreed to by the parties and the schedule of eligible costs approved by Ontario as set out in the Appendix to the CP or as otherwise agreed upon by KI and Ontario. The amounts to be paid and the timing of the payments shall be in accordance with a Contribution Agreement to be entered into between KI and Ontario or as otherwise ordered by this court..

3. **KI TECHNICAL EXPERTS**

KI will retain the appropriate technical expert to review the information produced by Ontario and Platinex during the consultations that have been completed with respect to Phase 1, including the AMEC Report, and to conduct a peer review or provide other appropriate advice respecting potential cumulative environmental impacts. This review also may include advice respecting ecological issues (not duplicative of the report of Justina Ray). As stipulated in the CP and clause 2 above, Ontario will fund KI's reasonable costs of the technical expert(s). The review by, and report of, KI's technical expert(s) will be completed concurrently with the conduct of Phase 1. The reports are to be circulated to all parties. Chief Morris and Council will, together with Mr. James Trusler and a representative of the Ministry of Northern Development and Mines, meet with the KI community in Big Trout Lake to discuss the reports of the independent technical expert(s) described in this Section within fifteen (15) days after receipt of the reports.

4. **KI INTERNAL REVIEW**

KI will conduct a review, the scope and method of which are to be agreed upon, to identify any other (currently unknown) KI member who may be affected directly by Phase 1 and, if it proceeds, the Extended Program. Ontario will fund the reasonable costs of this review. Platinex will contribute a reasonable sum. This review will be completed on an ongoing basis concurrently with the conduct of Phase 1.

5. **FUTURE CONSULTATIONS AND BENEFITS AGREEMENTS**

Platinex agrees that additional consultations will take place with KI in the event of any further exploration of the Platinex mining claims and leases beyond Phase 1 and the Extended Program. In such event, the parties will enter into good faith negotiations to conclude, in a timely manner, a renewed or extended MOU. If a favourable feasibility report is received with respect to the Platinex mining claims and leases and Platinex elects to proceed with mine construction and development, KI and Platinex will discuss and negotiate the execution of appropriate benefits agreements having regard to the scope, duration and estimated profitability of the mine and commensurate with similar agreements entered into in other parts of Canada between mining proponents and affected aboriginal communities.

6. **KI ASSISTANCE WITH OTHER AFFECTED PARTIES**

As between KI and Platinex, KI agrees that it will assist with, and facilitate, a resolution of any issues that may arise between Platinex and any other aboriginal group directly affected by the Platinex exploratory drilling in order to ensure that Phase 1 and, if it proceeds the Extended Program, will be unimpeded.

7. **KI PARTICIPATION IN PLATINEX**

Platinex agrees to have KI participate in the company by:

- (i) subject to shareholder and regulatory approval, investment in the company through the issuance of warrants (up to 500,000 warrants having an expiry date of two (2) years after the date of issuance and providing for a strike price of .40¢ per common share); and/or
- (ii) appointing one nominee to the Platinex board of directors.

The parties acknowledge that the provisions of Section 7(i) shall be implemented during Phase 1 and will not apply to the Extended Program.

8. **KI BENEFIT FUND**

Platinex will establish a fund to benefit the KI community. Platinex will contribute to the fund on a semi-annual basis 2% of all monies spent by Platinex in connection with Phase 1 during the previous six months. This contribution also will apply in respect of the Extended Program, if it proceeds.

9. **COMMENCEMENT OF PHASE 1**

KI agrees that Platinex can access the Big Trout Lake property upon which the mining claims and leases are located freely and without any interference and can conduct Phase 1 commencing on and after June 1, 2007.

10. **EACH PARTY TO BEAR OWN LEGAL COSTS**

As between KI and Platinex only, Platinex and KI agree that each will bear its own legal costs and expenses relating to the legal proceedings to date, including the June 2006, January 2007 and April 2007 motions and the May appearance before Mr. Justice Smith and will not seek reimbursements of any such costs from the other.

11. **MEDIATOR**

If the parties choose to retain a mediator to effect a final agreement or otherwise, Ontario agrees to pay the mediator's reasonable fees and disbursements. Any mediator will be agreed upon by KI, Platinex and Ontario.

12. **PRESS RELEASES**

KI, Platinex and Ontario will issue a joint press release upon execution of this MOU.

13. **TIME OF ESSENCE**

Time shall be of the essence of this MOU.

14. **ENTIRE AGREEMENT**

The provisions of this MOU and the CP (including workplans, timetables and contribution agreement referenced in the CP), collectively, represent the entire agreement of KI, Platinex and Ontario in respect of the carrying out by Platinex of Phase 1 and, if it proceeds, the Extended Program.

15. **ENUREMENT AND ASSIGNMENT**

This MOU shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and assigns, including any purchaser or assignee of all or any part of the mining claims or leases.

16. **GOVERNING LAW**

This MOU shall, in all respects, be subject to, interpreted, construed and enforced in accordance with and under the laws of the Province of Ontario and the laws of Canada applicable therein and shall, in every regard, be treated as a contract made in the Province of Ontario. Subject to the *Proceedings Against the Crown Act*, KI, Platinex and Ontario irrevocably attorn and submit to the jurisdiction of the courts of the Province of Ontario and courts of appeal therefrom in respect of all matters arising out of this MOU.

17. **INVALIDITY OF PROVISIONS**

In case any of the provisions of this MOU should be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions contained herein shall not in any way be acted or impaired thereby.

18. **MUTUAL ASSURANCES**

KI, Platinex and Ontario will do such further acts and things as reasonably required to fulfill the terms and spirit of this MOU. The funding provisions of this MOU are to be read in conjunction with the Consultation Protocol agreed to by the parties or ordered by the court. Inconsistencies, if any, will be resolved in favour of the Consultation Protocol.

IN WITNESS WHEREOF the parties have executed this MOU as of the date first written above.

PLATINEX INC.

Per:

James R. Trusler

I have authority to bind Platinex Inc.

KITCHENUHMAKOOOSIB INNINUWUG

Per:

Chief Donny Morris

I have authority to bind

Kitchenuhmaykoosib Inninuwug

ONTARIO

Per:

I have authority to bind Her Majesty the Queen in Right of Ontario

APPENDIX “C”

Timetable for Substantive Consultations Between Kitchenuhmaykoosib Inninuwug (KI), Platinex Inc. (P) and Ontario (ON) for Exploratory Drill Program Phase 1¹

STAGE	AGENDA	TIMELINE
Meeting One: O-P-KI	P information sharing presentation, 24-hole exploration program ON information sharing presentation KI information sharing presentation respecting hunting seasons/trapping and burial sites in the area of the Platinex claims and leases	No later than May 31, 2007

¹ It is contemplated that IFNA will be invited to participate on the understanding that the nature and scope of its role will be defined by agreement amongst the participants as the consultation process unfolds.

STAGE	AGENDA	TIMELINE
Post-meeting	Determine terms of reference for technical expert review, experts to be retained and funding for experts. Determine scope and process of KI internal review.	No later than June 8, 2007
Meeting Two: O-P-KI	P information sharing, details of timing of drilling and timing and routing of helicopter activity <u>O information sharing presentation</u> Discussion concerning the process by which local and traditional knowledge will be shared with P and O	The later of June 15, 2007 and 3 weeks prior to mobilization.
Pre-Meeting	Delivery of results of internal review to P and O. Delivery of results of technical expert review to P and O. Internal community meetings and evaluation by KI of information	TBD
Meeting Three: O-P-KI	Discussion of review results	TBD
Meeting Four: O-KI	Discussions concerning TLE claim	TBD
Pre-Meeting	Delivery of results of drilling to KI and O.	TBD
Meeting Five: O-KI-P	Discussion of drilling results and timing of extended program (if applicable)	TBD

COURT FILE NO.: 06-0271 & 06-0271
DATE: 2007-05-22

**ONTARIO
SUPERIOR COURT OF JUSTICE
B E T W E E N:**

PLATINEX INC.

Plaintiff

- and -

KITCHENUHMAKOOSIB INNINUWUG
FIRST NATION, DONNY MORRIS, JACK
MCKAY, CECILIA BEGG, SAMUEL MCKAY,
JOHN CUTFEET, EVELYN QUEQUISH,
DARRYL SAINNAWAP, ENUS MCKAY, ENO
CHAPMAN, RANDY NANOKESIC, JANE
DOE, JOHN DOE and PERSONS UNKNOWN,

Defendants

**AND BY WAY OF COUNTERCLAIM:
Court File No: 06-0271A**

KITCHENUHMAKOOSIB INNINUWUG
FIRST NATION, DONNY MORRIS, JACK
MCKAY, CECILIA BEGG, SAMUEL MCKAY,
JOHN CUTFEET, EVELYN QUEQUISH,
DARRYL SAINNAWAP, ENUS MCKAY, ENO
CHAPMAN, RANDY NANOKESIC,

Plaintiffs by Counterclaim

- and -

PLATINEX INC.

Defendants by Counterclaim

- and -

HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO,

Third Party

**DECISION ON MOTION
(May 18 Conference Call)**

Patrick Smith S.C.J.

Released: May 22, 2007