



The recent sentencing of KI's Chief and five Council members to six month jail terms for contempt of court has garnered extensive media coverage and related commentary regarding Aboriginal rights in Canada. The general theme of the media coverage has been that the KI community leaders received jail sentences for defending their Aboriginal lands in the circumstances where no, or inadequate, consultation respecting their Aboriginal rights had taken place. Regrettably, the media and other commentators have failed to examine critically the facts, and the court orders, which gave rise to the sentences on March 17, 2008.

The underlying and fundamental concern of the court in meting out the sentences was respect for the rule of law and the legal system. The court was strongly of the view that there can only be one system of law and that it must apply to Aboriginals and non-Aboriginals alike. Without adherence to the rule of law by all Canadians, chaos will ensue and all members of our society will suffer.

Although in its oral sentencing submissions to the court Platinex did not seek incarceration of the individuals found in contempt, it is the court's order that was breached and thus the court's responsibility to determine the appropriate sanction for contempt. The lack of respect for the integrity of the rule of law, and KI's inability to pay any fines, led to the custodial sentences.

Background Facts

The extensive media coverage and related editorials have failed to achieve any sense of perspective in the ongoing KI/Platinex/Ontario dispute. Platinex's extensive efforts to dialogue with, and

accommodate, KI in its quest to drill 24 to 80 two inch diameter holes on the lands covered by its mining claims and leases have been completely overlooked.

Platinex has also been portrayed as a large corporation instead of a small junior exploration company ostensibly working out of the basement of its geologist/president. Until very recently the Big Trout Lake Property was the only property and real asset held by the company. Without access to such property, Platinex was out of business.

(a) Scope of KI's Traditional Land

The area covered by Platinex's mining claims and leases is approximately 20 square miles. The KI traditional lands, according to KI, comprise approximately 23,000 square kilometres. Accordingly, Platinex's current exploration program will not deprive KI of the use and enjoyment of its traditional lands. The proposed exploration property relates to lands owned by Ontario that were ceded by KI and other signatories to James Bay Treaty No. 9. The court found in its May 8, 2007 ruling that KI was attempting to, but cannot, claw back rights that were ceded pursuant to the Treaty.

(b) Platinex Proposed Accommodation of KI

Platinex has been willing from the outset to seek input from KI respecting its Aboriginal values on the Platinex property and to engage in fair and reasonable accommodation of such values. In March, 2007, Platinex proposed a memorandum of understanding to KI (MOU). The MOU included the following features:

- adherence to the recommendations contained in the expert environmental report
- hiring of an environmental compliance monitor
- hiring of an archaeologist to prescreen drill hole sites
- payment of compensation to KI community members
- payment of 2% of exploration expenditures to KI for a community fund
- issuance of warrants to purchase 500,000 shares of Platinex to KI.
- offer of one board seat on the Platinex board
- acknowledgment that in the event mining development is ever to proceed, the requirement for impact benefits agreements to be entered into with KI similar to agreements entered into between private industry and other First Nations in other parts of Canada
- a commitment to on-going consultation respecting Aboriginal values such as hunting, trapping, archaeological sites etc.

This MOU was immediately rejected by KI. KI proposed a revised MOU that included a payment of \$1 million to KI and required KI's consent for future exploration. These terms were rejected by Platinex because a junior exploration company does not have such funds and the acceptance of such terms effectively would impede all mineral exploration on First Nations' traditional lands.

On May 22, 2007, *the court held that the matters proposed by Platinex in its MOU were a fair and responsible accommodation of all of KI's concerns* relating to mineral exploration on KI's traditional lands and imposed the MOU requirements on the parties.

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(c) Consultation

The various media reports and editorial comments adopt the position that continues to be asserted today by KI namely that it has not been adequately consulted by Ontario in connection with the current proposed Platinex exploratory work. Moreover, KI takes the position that, despite the court orders, no exploratory work can proceed while the KI treaty land entitlement claim (TLE) remains outstanding (KI claims that under Treaty 9 it is entitled to an additional 200 square miles).

The critical fact missing from media reports and other commentary is that *the court found that Ontario had satisfied its duty to consult KI respecting Platinex's phase one exploration and Platinex had accommodated KI adequately through the MOU.*

Additional points include:

- In 2001 KI filed a TLE claim.
- *In March, 2007, Ontario advised KI that in its view the TLE claim did not have merit and would not be accepted for negotiation.*
- In May, 2007, the court ruled that as a result of the discussions and information sharing that occurred between August, 2006, and

March, 2007, and the accommodations that were made by Platinex as outlined in the MOU, *there had been adequate consultation* for Platinex to proceed with Phase 1 (24 holes) of its exploratory drill program.

- First Nations rights do not, in and of themselves, trump all other rights. Under Supreme Court of Canada jurisprudence, while First Nations have the legal right to be consulted, they do not have a right to veto a project.

(d) What Led to the Litigation

Various organizations, both Aboriginal and non-Aboriginal, have issued public statements to the effect that matters between First Nation communities and industry must be resolved by dialogue and negotiation, not by litigation. Platinex could not agree more with these views. Unfortunately, in these circumstances, Platinex's options were to litigate or to lose its mining claims and leases.

All the claims, which were previously owned by other companies, were staked between 1973 and 1985. Eighty-six holes for 21,191m were drilled identifying one of the largest chromite deposits in the world containing significant indicated platinum group elements. Leasehold patents of mining and surface rights were issued in 1990.

Platinex acquired the mining claims and leases in 1999. Shortly thereafter, the company engaged in several years of meetings and discus-

sions with the KI leaders and community members in an effort to foster a mutually beneficial relationship. In 2000, KI informed Platinex that its exploratory work could proceed provided the affected trapper approved. This approval was granted. Chief Morris also supported the program. Ultimately, sometime later, KI took a directly contradictory position and purported to revoke whatever agreements or support had been previously given to the company.

What is not commonly known is that Platinex was advised in writing by Ontario in 2004, that it would not be allowed any further exclusion of time orders to keep the claims in good standing (regardless of the support or lack of support from KI). In February 2006, after almost six years of continuing dialogue with KI, Platinex attempted to commence its exploratory drill program but was blockaded and physically obstructed by KI. For several weeks thereafter Platinex attempted to contact KI leadership to resolve the conflict, but the calls were never returned. Prior to filing the legal action, Platinex revisited the possibility of an exclusion of time order with Ontario, but did not receive the necessary accommodations. In view of Ontario's stated position, Platinex would have lost the mining claims in June, 2006, had the litigation with KI not been initiated. Platinex had no recourse but to commence litigation in order to protect its mining claims and leases.

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(e) KI Contempt

The KI contempt arose out of the breach of Justice Smith's October 25, 2007 order that permitted Platinex access to the property to commence its phase one exploration program (24 holes) including the archaeological pre-screening and prevented KI from interfering with, or obstructing, Platinex. Platinex has been permitted on the property since June 1, 2007, and has three Court orders which confirm that the company's position has been fair and reasonable and that it has the right to proceed with the exploration program without interference.

From July, 2007 to September, 2007, Platinex contacted KI to arrange for input into, and completion of, the required archaeological work. Platinex was sternly advised that KI would not speak to Platinex until the issues as between KI/Ontario were resolved. Platinex representatives and the archaeologist traveled to Big Trout Lake in late September, 2007, to meet with KI. They were prevented from leaving the airport area and were threatened with arrest and imprisonment without trial under KI laws if they entered the Reserve or went on Company property.

In subsequent written correspondence in October and November, 2007, the KI leaders

informed Ontario and Platinex that any attempt by Platinex to carry out the exploratory work would be met with objection and that KI would deal with the dispute "on the ground". This position of defiance ultimately led to the October 25, 2007 order. In sworn evidence by Chief Morris, and adopted by the other KI leaders, Chief Morris stated emphatically that he would not obey any Court order allowing Platinex to access the property for phase one exploration work. The Court found that, in the circumstances, respect for the rule of law demanded incarceration.

(f) Other First Nation Issues

Platinex has publicly affirmed its respect for First Nation rights relating to activities on their traditional lands and supports the initiatives of the AFN to improve the living standards of all First Nations. It is incumbent on all parties to seize the moment to promote reconciliation, demonstration of mutual respect and reasonableness. Failure to act now in a purposeful and decisive manner may well set back Ontario and private industry relations with First Nations for years.

This is to be avoided as it is in everyone's interests to ensure that northern Aboriginal communities are able to secure a level of peace and prosperity that is equal to that enjoyed by others. There also are other reasons to promote these interests. It is good for business. If Ontario is to benefit from the natural abundances of the north, it will be necessary to attract considerable financial capital, both domestic and foreign. The continuation of conflicts with First Nations and the non-compliance with Court orders creates an environment of uncertainty. Reasonable people will not allocate capital to geographic regions where there is conflict and uncertainty.

Platinex hopes that these chronological statement of events helps to clarify the facts and issues giving rise to the Platinex/KI/Ontario dispute and that it may facilitate the way to a resolution that would be of benefit to all of the affected parties.