

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

PLATINEX INC.

Plaintiff

- and -

**KITCHENUHMAYKOOSIB 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

NOTICE OF MOTION

THE DEFENDANTS will make a motion to a judge on June 21 and 22, 2006, at 10 a.m. or as soon after that time as the motion can be heard, at 227 Camelot Street, Thunder Bay, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An interlocutory injunction enjoining the Plaintiff and its directors, officers, employees, contractors and agents, from engaging in its contemplated two-phase exploration program as described in paragraphs 23 to 25 of the Affidavit of James Trusler in the Plaintiff's Motion Record dated April 18, 2006, and any other activities preceding, incident or related thereto, on what the Plaintiff describes in paragraph 5 of this Affidavit as the "Big Trout Lake Property" (all of which is the "proposed exploration").
2. Costs on a substantial indemnity basis, plus GST.

3. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Serious Issues to be Tried

1. The Defendants (for purposes of this Notice of Motion, being Kitchenuhmaykoosib Inninuwug First Nation and its officials, or “KI and its officials”) have filed and served their Counterclaim against the Plaintiff (“Platinex”). On May 23, 2006, KI and its officials gave notice to the Her Majesty the Queen in right of Ontario (“Ontario”) that they are bringing a Third Party Claim against the Ontario Crown, which claim will be issued and served when the 60-day notice period pursuant to the *Proceedings Against the Crown Act*, R.S.O. 1990. c. P.27, expires.

2. The authorizations granted by Ontario to Platinex did or will have an adverse effect on the treaty and aboriginal rights of KI and its officials, including harvesting rights, rights to a traditional way of life, and (at least in respect of the lease acquisitions and several extension orders for mining claims) rights to select lands for KI’s Treaty Land Entitlement claim.

3. KI and its officials are claiming against Ontario for a declaration that the *Mining Act*, R.S.O. 1990, c. M.14, and regulations thereunder (“*Mining Act* regime”) is unconstitutional, for failure to provide priority to the exercise of aboriginal and treaty rights by subjugating such rights to the unilateral actions of private parties, or for failure to provide -- at virtually all stages of the mining process -- for consultation with aboriginal parties and accommodation of their rights and interests, all contrary to section 35 of the *Constitution Act, 1982*.

4. Due to the above, Platinex has no legal authority to engage in mining exploration activities, as it has planned and still plans to do.

5. KI and its officials are claiming against both Platinex and Ontario for an order quashing the authorizations granted by Ontario to Platinex, or a declaration of invalidity of same, due to the unconstitutionality of the *Mining Act* regime or the failure of Ontario to consult with and accommodate KI in respect of these authorizations.

Irreparable Harm

6. Respect for and interwovenness with the land is a defining feature of KI's culture, way of life, worldview and spirituality. It is part of KI's indigenous law. Due to largely imposed introductions of other ways of life, regimes, industry, development, populations, and worldviews, KI is struggling to maintain this relationship and this defining feature of who they are as a people. The disruption that would be caused by the proposed exploration – heaped on top of all other impositions to date – would cause irreparable harm to the Defendants, including to their laws, culture, way of life, spirituality, their self-identity and ability to survive as a people.

7. KI's community suffers from severe symptoms of decades of neglect and discrimination, and severe socio-cultural fragility has resulted. They are hanging on by a thread. The proposed exploration – heaped on top of all the other impositions and disrespect – threatens to snap the thread and would cause irreparable harm to KI.

8. The proposed exploration would infringe KI and its official's harvesting rights, rights to a traditional way of life, and rights to select land for their Treaty Land Entitlement claim, and thus would cause irreparable harm.

Balance of Convenience

9. The balance of convenience favours granting the injunction as sought by KI and its officials.

Undertaking

10. KI and its officials are entitled to an exemption from the undertaking as to damages, as they are impecunious and are acting in the public interest.

General

11. Section 35 of the *Constitution Act, 1982*.
12. Section 2(b) of the Canadian Charter of Rights and Freedoms.
13. Section 101 of the *Courts of Justice Act, R.S.O. 1990, c. C.43*.
14. Rule 40 of the *Rules of Civil Procedure*.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. Motion Record of the Respondents (being the Defendants) to the injunction motion brought by the Plaintiff, which includes:
 - a. Affidavit of Tracy McKenna
 - b. Affidavit of Chief Donald Morris, and exhibits
 - c. Affidavit of John Cutfeet, and exhibits
 - d. Affidavit of Eno Chapman, and exhibits
 - e. Affidavit of Evelyn Quequish.

2. Supplementary Motion Record of the Respondents (being the Defendants) to the injunction motion brought by the Plaintiff, which includes:

- a. Affidavit of Sarah Jane Mckay
- b. Affidavit of Clem Anderson
- c. Affidavit of Elsie Fox
- d. Affidavit of Martine Hartley
- e. Affidavit of Allen Hartley
- f. Affidavit of Sona Sainnawap
- g. Affidavit of Mary Hudson
- h. Affidavit of Katy Mckay
- i. Affidavit of Justina C. Ray, PhD, and exhibits
- j. Affidavit of Martin Cooper, and exhibits
- k. Affidavit of Tracy McKenna
- l. Affidavit of Levius Morris
- m. Affidavit of Sarah Jane Mckay, and exhibit
- n. Affidavit of Mary Jane Moonias
- o. Affidavit of Mary Childforever, and exhibits

3. Motion Record for the herein Motion of the Defendants:

a. Affidavit of Philip Rouse, and exhibits

Date: May 23, 2006

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PLATINEX INC. and KITCHENUHMAYKOOSIB et al.
Plaintiff Defendant

Court File No: 06-060

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at [Kenora](#) under file 06-060, and transferred to Thunder Bay

**NOTION OF MOTION OF
KITCHENUHMAYKOOSIB INNINUWUG
FIRST NATION**

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