

**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

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

Third Party

**THIRD PARTY CLAIM**

TO THE THIRD PARTY

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by way of a third party claim in an action in this court.

The action was commenced by the plaintiff against the defendants for the relief claimed in the statement of claim served with this third party claim. The defendants have defended the action on the grounds set out in the statement of defence served with this third party claim. The defendants' claim against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS THIRD PARTY CLAIM, you or an Ontario lawyer acting for you must prepare a third party defence in Form 29B prescribed by the Rules of Civil Procedure, serve it on the lawyers for the other parties or, where a party does not have a lawyer, serve it on the party, and file it, with proof of service, WITHIN TWENTY DAYS after this third party claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your third party defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a third party defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your third party defence.

YOU MAY ALSO DEFEND the action by the plaintiff against the defendants by serving and filing a statement of defence within the time for serving and filing your third party defence.

IF YOU FAIL TO DEFEND THIS THIRD PARTY CLAIM, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date:

Issued by \_\_\_\_\_

Local Registrar

Address of  
court office:

TO: CROWN LAW OFFICE – CIVIL  
Ministry of the Attorney General  
8th Floor, 720 Bay Street  
Toronto, ON M5G 2K1

Tel: 416-326-4008  
Fax: 416-326-4181

### CLAIM

1. The Defendants claim against the Third Party:
  - (a) General damages in the amount of \$10,000,000.
  - (b) Special damages the amount of which is not yet known but which will be made available at or before trial.
  - (c) 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*.

- (d) An order quashing the claims and extension orders in respect of these claims, leases and other forms of permission granted by the Third Party to the Plaintiff, or a declaration of invalidity of same, due to the unconstitutionality of the *Mining Act* regime or the failure of the Third Party to consult with and accommodate the Defendants in respect of these claims and extension orders, leases and other forms of permission granted by the Third Party to the Plaintiff.
- (e) An order transferring this matter from the dispute resolution process within the *Mining Act*, R.S.O. 1990, c. M.14, including before the Commissioner therein, to the jurisdiction of this Court, if necessary.
- (f) Costs of this third party claim on a substantial indemnity basis, including GST.
- (g) Such further and other relief as this Honourable Court deems just.

## **THE PARTIES**

2. The Defendant Kitchenuhmaykoosib Inninuwug First Nation (“KI”, which includes its members for the purposes of this third party claim), formerly known as Big Trout Lake First Nation, is an indigenous Oji-Cree First Nation, and is a Band under the Indian Act, with a reserve on Big Trout Lake in northwestern Ontario. KI’s reserve is situated within its traditional

territory, where KI has lived in a special stewardship relationship with the lands for thousands of years. KI is a signatory to the 1929 Adhesion to Treaty 9.

3. The other named Defendants (not Jane Doe, John Doe or Persons Unknown) are members or citizens of KI holding either elected or appointed official positions in KI (“KI officials”). All named Defendants together are “KI and its officials”, which are the only Defendants represented in this Third Party claim.

4. KI and its officials have constitutionally-protected treaty and aboriginal rights, including harvesting rights, rights to a traditional way of life, and rights to select lands for KI’s Treaty Land Entitlement (“TLE”) claim. All of these rights are in respect of Treaty 9 lands, including and especially KI’s traditional territory, which itself includes what the Plaintiff Platinex Inc. (“Platinex”) refers to in its Statement of Claim as the Big Trout Lake Property (hereinafter the “Platinex mining claim area”).

5. KI and its officials have the constitutionally-protected right to freedom of expression, including in regard to uses to which their traditional territory – which includes the Platinex mining claim area -- may be put.

6. The Platinex mining claim area is within the lands from which KI, in its TLE claim, wishes to select additional reserve lands for exclusive use and occupation.

7. Platinex has staked and recorded 221 mining claims, sought and received several “exclusion of time” or “extension” orders (extending the time in which a certain dollar amount of “assessment work” or exploration work must be completed), holds 81 mining leases, set out to engage in exploratory drilling, and intends to engage in mining of platinum-group elements – all in KI’s traditional territory (“Platinex’s activities”).

8. The Third Party (“Ontario”) is responsible for the *Mining Act* regime and its administration, and has a constitutionally-mandated duty to act with honour toward aboriginal peoples and persons, including KI and its officials, and to ensure that their treaty and aboriginal rights are respected, not infringing any such right unless the infringement is legally justified.

### ***MINING ACT REGIME***

9. Platinex’s activities constitute an infringement of or serious adverse impact on the aboriginal and treaty rights of KI and its officials. Ontario has granted permission, including through claims, leases, and extension orders, to Platinex, to engage in Platinex’s activities on the Platinex mining claim area, where KI and its officials exercise their treaty and aboriginal rights.

10. The *Mining Act* regime unjustifiably infringes the constitutionally-enshrined aboriginal and treaty rights of KI and its officials, as it subjugates their rights (and those of other aboriginal peoples in Ontario) to the unilateral actions of private parties like Platinex, and is *in toto* unconstitutional, as follows:

- total failure to consider, let alone give priority to, treaty and aboriginal rights over private interests, through a “free entry” mining system in which anyone (after paying a fee and meeting certain minor administrative requirements) can virtually automatically gain significant rights or interests (including prospector’s licences, mining claims, mining leases, patents) to or in respect of lands to which treaty and aboriginal rights are held; and
- failure to require consultation with aboriginal parties who would be affected by permission or authorization granted or actions taken pursuant to the *Mining Act* regime, and total failure to require accommodation of affected aboriginal parties’ rights and interests.

11. KI and its officials plead and rely on section 35 of the *Constitution Act, 1982*, and state that the claims and extension orders in respect of these, leases and other forms of permission granted by Ontario to Platinex are invalid, as the *Mining Act* regime is unconstitutional as above.

12. Ontario failed to adequately consult with KI in respect of:

- at the strategic planning level, potential and proposed mining interests and mining and related activities in KI's traditional territory;
- the acquisition by Platinex or the CEO and President of Platinex, of the 221 claims in the Platinex mining claim area, from a company that previously held these claims;
- the acquisition by Platinex of the 81 leases in the Platinex mining claim area from a company that previously held these leases; and
- the several "exclusion of time" or "extension" orders granted to various sets of mining claims.

13. These types of authorizations granted by Ontario 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 claim extension orders) rights to select lands for the TLE claim of which Ontario has been on notice since January 1999.

14. KI and its officials plead and rely on section 35 of *the Constitution Act, 1982*, and on law in respect of the Honour of the Crown, and state that the claims and extension orders in respect

of these claims, leases and other forms of permission granted by Ontario to Platinex, are invalid, due to the failure of Ontario to consult with and accommodate KI in respect of same.

15. KI and its officials propose that this action be tried together with the main action and counterclaim, at the same time and place.

Date:

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

PLATINEX INC. and KITCHENUHMAYKOOSIB et al.  
Plaintiff Defendant

Court File No: 06-0271

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE**

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

**THIRD PARTY CLAIM**

**Olthuis, Kleer, Townshend**  
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