

**Natives must have a say in land development: judge: Native official calls ruling 'amazing'; mining firm fears broad implications**

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A recent court ruling has slapped a "de facto moratorium" on mining exploration across two-thirds of Ontario, observers say.

In what native advocates are calling a "pathbreaking" ruling, the Ontario Superior Court has ordered Aurora-based Platinex Inc. to suspend its exploration activities near Big Trout Lake, 600 kilometres north of Thunder Bay, for five months.

Platinex's fledgling drilling project falls within a 200-square-kilometre area to which the 900-strong Kitch-enuhmaykoosib Inninuwig First Nation laid claim in 2000 (the case is still pending).

The band has been pushing for a say in the project for the past eight years and last winter, a protest and roadblock forced the company out.

The clash rapidly escalated into a conflict that some believe could turn the mining industry in Ontario upside-down.

After the roadblock, the company launched a \$10-billion lawsuit against the band, based on lost potential income.

The band countersued and applied for an injunction.

The band also launched a constitutional challenge that could topple the province's Mining Act, arguing it runs roughshod over aboriginal rights.

Pending those decisions, Justice G. P. Smith has granted the injunction, stressing that indigenous people must be consulted and their views accommodated in any plans that could affect their land claims.

In a striking departure from conventional methods of assessing potential harm to a complainant, Judge Smith also ruled that the "aboriginal perspective" must be considered when evaluating the effects of development.

"The land is the very essence of their being. It is their very heart and soul. No amount of money can compensate for its loss."

"This is a totally amazing decision," says David Peerla, mining co-ordinator for the Nishnawbe Aski Nation.

Mr. Peerla says it has implications for all of the Treaty 9 area, which stretches north of highways 11 and 17 across the province from Manitoba to the Quebec border.

The area is inhabited by 49 indigenous communities, and accounts for about 40,000 people.

Neal Smitheman, lawyer and spokesman for Platinex, agrees the injunction has sweeping implications.

Every time a company applies for a government permit or lease, "if that ... decision can have an impact on treaty rights or land claims in the North, it appears, based on this decision, there is a need for consultation" mediated by the Crown.

In Ontario, the concept of "free entry" ordinarily entitles mining companies to lay claims and explore without a landowner's consent.

The implications of the Platinex case are especially important in northern Ontario, which is at the centre of the province's booming prospecting sector.

With mineral markets steadily rising, exploration spending in the province soared from

\$138 million in 2002 to about \$336 million in 2004 -- almost all of it in northern Ontario, says Philip Bousquet, of the Montreal-based Prospectors and Developers Association of Canada.

However, Mr. Bousquet disagrees that the ruling will bring exploration to a screeching halt, saying it is specific to this case.

"There are many other cases where communities and companies have reached agreement," and will continue to do so, he says.

Judge Smith stressed that his ruling did not amount to giving aboriginals a veto, and that they were obliged to negotiate in good faith.

All sides agree the Ontario government has played a dismal role in the debacle.

"The company has been caught in the middle of this dispute," said Mr. Smitheman, who says Platinex's pleas for the province to take a stronger role in negotiations were ignored.

He says the company's hands were tied, because by law, the Crown can't offload on a company or anyone else its duty to consult with natives.

However, Judge Smith had harsh words for Platinex, saying it "ignored (the band's) letters and notices, cancelled a meeting with the community and decided it was going to drill" despite strong area opposition.

He had equally tough words for the Ontario government, saying it "abdicated its responsibility" to consult with the band and stood "on the sidelines as a passive observer."

Laura Blondeau, spokeswoman for the Ministry of Northern Development and Mines, said the ministry "is reviewing the decision" and could not comment in detail.

She did say that the ruling is "based on the specific facts of this case" and will not "impact the legitimacy of other mine claims in the area."

Yesterday, Platinex requested a temporary cease trade order.