

Backgrounder

Kitchenuhmaykoosib Inninuwug's voice regarding our connection to the land has been heard by the Superior Court of Ontario

In his July 28, 2006 judgment of the case heard June 22 & 23 in Thunder Bay, Justice G. P. Smith stated

- “This case highlights the clash of two very different perspectives and cultures in a struggle over one of Canada’s last remaining frontiers. On the one hand, there is the desire for the economic development of the rich resources located on a vast tract of pristine land in a remote portion of Northwestern Ontario. Resisting this development is an Aboriginal community fighting to safeguard and preserve its traditional land, culture, way of life and core beliefs. Each party seeks to protect these interests through an order for injunctive relief.”
- “KI has a Resource Development Protocol developed by the community to describe the process for consultation with Kitchenuhmaykoosib Inninuwug prior to and during development activities on KI lands.
- “KI is not opposed to development on its traditional lands but wishes to be a full partner in any development and to fully consulted at all times. Whether any proposal for development would be accepted depends on the merits of each proposal, and whether the development respects KI’s special connection to the land and its duty, under its own law, to protect the land.”
- “The KI Development Protocol sets out the following steps required for Platinex to reach an agreement with KI: 1) initial discussion with Chief and Council; 2) discussions with the community; 3) consultation with individuals affected by the development; 4) follow-up discussion with the community; 5) referendum; and 6) approval in writing.”
- “Since 2001, Platinex has received several letters and notices that KI was not consenting to further exploration. It is inconceivable that Platinex did not know that KI was strongly opposing any further drilling on the property.”
- “Platinex decided to gamble that KI would not try to stop them and essentially decided to try to steamroll over the KI community by moving in a drilling crew without notice.”
- “While I accept the evidence of Platinex that it will face solvency if it cannot complete its drilling by the end of this year or shortly thereafter, Platinex is, to a large degree, the author if [sic] its own misfortune.”
- “Irreparable harm may be caused to KI not only because it may lose a valuable tract of land in the resolution of its TLE claim but also, and more importantly, because it may lose land that is important from a cultural and spiritual perspective. No award of damages could possible compensate KI for this loss.”
- “It is critical to consider the nature of the potential loss from an Aboriginal perspective. From that perspective, the relationship that aboriginal peoples have with the land cannot be understated. 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. Aboriginal identity, spirituality, laws, traditions, culture, and rights are connected to and arise from this relationship to the land. This is a perspective that is foreign to and often difficult to understand from a non-Aboriginal viewpoint.”

- “Because the Crown’s duty to consult engages the honour of the Crown and flows from its fiduciary relationship with First Nations peoples, McLachlin C.J. affirmed that it cannot be delegated to third parties.”
- “The objective of the consultation process is to foster negotiated settlements and avoid litigation. For this process to have any real meaning it must occur before any activity begins and not afterwards or at a stage where it is rendered meaningless.”
- “In this regard, I endorse the comments of the trial judge and the B. C. Court of Appeal in *Halfway River*. The Crown must first provide the First Nation with notice of and full information on the proposed activity; it must fully inform itself of the practices and views of the First Nation; and it must undertake meaningful and reasonable consultation with the First Nation.”
- “Although the Ontario government was not present during these proceedings, the evidentiary record indicates that it has been almost entirely absent from the consultation process with KI and has abdicated its responsibility and delegated its duty to consult to Platinex while, at the same time was making several decisions about the environmental impact of Platinex’s exploration programmes, the granting of mining leases and lease extensions. Both before and after receiving notice of KI’s TLE claim.”
- “A decision to grant an injunction to Platinex essentially would make the duties of [sic] owed by the Crown and third parties meaningless and send a message to other resource development companies that they can simply ignore Aboriginal concerns.”
- “The grant of an injunction enhances the public interest by making the consultation process meaningful and by compelling the Crown to accept its fiduciary obligations and to act honourably.”
- “I do not accept the argument that KI acted improperly or illegally and, as a result, has unclean hands. KI has repeatedly requested that it be consulted. It was Platinex that decided to terminate the consultative process and sent in its drilling crew.”
- “It is understandable why the members of KI believed that they had no other viable option but to confront Platinex in order to stop the drilling. Platinex’s decision to send a drilling crew into the site despite KI’s position failed when KI decided to make a last ditch stand.”
- “Platinex failed to respect KI’s moratorium, ignored its letters and notices, cancelled a meeting with the community and decided it was going to drill despite being clearly told that KI was not agreeing to any further activity on the land. In the background, while all of this was going on, the federal and provincial Crown were standing on the sidelines as passive observers.”

Kitchenuhmaykoosib Inninuwug, a signatory to the 1929 adhesion to the James Bay Treaty #9, is a fly-in community of over 1,500 members, located approximately 600 kilometres northwest of Thunder Bay, Ontario. It is accessible by road only for a few weeks in winter, depending on weather.