Mining and Aboriginal Rights in Ontario
First

• A real estate tour of the GTA
Queen’s Quay W, Toronto
Sorauren Ave, Toronto
Humbercrest Blvd, Toronto
A question

- What do these Toronto area homes have to do with Aboriginal land rights in Northern Ontario?
- The homes of directors in an Ontario junior mining company currently active in the North – and “controversial” on the Aboriginal land rights issue
Toronto

- Raises 50-70% of the money invested in global mining
- TSX and TSX-V home to 57% of the world’s publicly traded mining companies
- Raised US$45 billion for mining 2004-9
Toronto

- Is HQ to several of the world’s major mining companies
- Has the world’s largest community of mineral resource analysts
- Important to the exploitation of the mining wealth of northern Canada
Natural Resources in Canadian History

• Canada was a resource-rich periphery for European colonialism/empire
• Exported raw material “staples” to Europe, and US
  – Furs, fish, lumber, minerals
• Ontario passes a mining act in 1873 to facilitate orderly, industrial resource exploitation
Fordism

• Economic paradigm which prevailed 1910s-1970s
• Mass production, mass consumption
• Social stability: high industrial wages, generous benefits
• Industrial stability: economies of scale, stable product lines, long-term employment
• Government regulation
To-day is the day of the North.

Until quite recently only traversed by trappers and Indians, it is now the area of a development that has captured the imagination of the World.

For in the North lies one of the world’s great treasure houses—gold, silver, copper, nickel.

In the North are an abundance of the raw materials upon which a huge pulp and paper industry is being built.

In the North is a fertile clay belt, already the home of an important and increasing agricultural community. Fortunately, too, the North contains a myriad of turbulent, surging rivers, many of which have now been tamed to turn great turbines and so generate electricity—the force that enables man to wrest from the hills the mineral wealth locked within and to convert the forest into a rich asset.

With the aid of developed water power the pioneers are moulding the destiny of the North to the needs of the nation. For water power is the vital factor of all Northern development; it is the “key resource,” the one upon which the economic development of all other Northern resources depends.

NESBITT THOMSON
and Company Limited
Royal Bank Building, TORONTO
MONTREAL   HAMILTON   WINNIPEG   QUEBEC   LONDON, ONT.
South Porcupine 1912
Sparwood BC
Temiscaming QC
Post-Fordism

- Economic paradigm since 1970
- Mass production, mass consumption continue but
- Just-in-time market-driven production chains are global, including labour
- Capital is fluid, mobile
- No stability for places, people, corporations
Post-Fordist Fluidity

- **Sudbury ON**
  - Mining and smelting industry now controlled by Vale, a Brazilian multinational

- **Hamilton**
  - Steel industry acquired by foreign ownership
  - Then shut down

- **But Toronto remains an important control point for the global mining industry**
Post-Fordism

• Accompanied by changing cultural & political values
  – Emergence of environmental concerns
  – Assertion of aboriginal rights
• The assumptions of old-style Fordist resource exploitation no longer valid
• But capital remains powerful
Welcome to Big Trout Lake Airport
(Kitchenuhmaykoosib Inninuwug)
Elevation 729 Ft.
Big Trout Lake, ON

- An aboriginal community 580 km NW of Thunder Bay
- Recently renamed Kitchenuhmaykoosib Inninuwug or “KI” for short
- Treaty signed in 1929 but band feels they agreed to share the land, not surrender it.
• Big Trout c. 1900
John Cutfeet portaging July 1952
1955
Mineral Resources

• Large platinum ore body discovered
  – Fordist mining company in 1980s abandons drill cores & rubbish damaging hunting & sturgeon fishing
  – Environment Canada abandons PCB-laden transformers at the KI weather station

• KI Band declares a moratorium on further mining activity in 1998
Demand for Platinum Group Metals (PGM)

- 50% of PGM demand for auto emissions controls
  - Catalytic converters
- Also for industrial catalysts
- 25% for jewellery
- Rising trend in prices over the past 20 years
  - Prices have recovered from 2008 recession
20 year trend
Demand for Platinum Group Ores

- US imports 97% of its PGM
- South Africa dominates global supply, but Canada, Russia, important
- Demand rapidly growing in China
  - Autos, jewellery
- China represents 35% of global PGM demand
- China has the worlds’ largest auto industry
Toronto’s Platinex Inc

- In 2005 acquired 81 mineral interests at KI
- Staked a mining claim in 2005
- Intended a $1.2M exploratory drilling programme in 2006
- Brings in subcontractors to do exploratory drilling
LEAVE OUR LAND ALONE!!
‘No mining permitted here’: Chief Donny Morris

Grand Chief Stan Beardy urging other communities to follow suit

by Joyce Hunter

Four First Nations declared a moratorium on mining exploration and forestry in their traditional territories. Kitchenuhmaykoosib, Muskrat Dam, Wapekeka and Wawakapewin issued the moratorium after meeting to discuss a diamond mining company’s request to access their traditional lands for mining exploration.

While his community declared a moratorium several years ago, Chief Donny Morris said the meeting reaffirmed his community’s position. The four chiefs also discussed the province’s plan to spend $15 million on a three-year geological mapping initiative. Once completed, the mapping will show the region’s geology and mineral resource potential. During the program, Ontario Geological Survey (OGS) will collect, compile and analyze data and then publicly post the results for resource companies and other interested parties to access.

The province is now holding public consultations on its mineral development strategy.

With more development pressures being added on Far North communities, the chiefs feel obligated to protect their land.

"Unfortunately, they hold their consultations in urban settings," Morris said of resource-based companies and organizations. "It would cost my people about $800 each to arrange a return flight, hotel stay, meals and other ground transportation just to listen to their presentation. Because my people can’t afford to travel because of the high rate of unemployment in my community, the government will take it to mean that we are simply not showing any interest. That is not the case."

Because First Nation communities in the North will be directly affected by the outcome of the mapping initiative, Morris said the provincial government should arrange to hold consultations in Far North communities.

"Then they will know that we have different ideas about how the land should be managed," Morris said.

The moratorium will send a strong message to the government that the time has come for a new dialogue on revenue sharing, consultation and an end to the "free entry" system currently being used in mineral exploration.

He also said the rules for resource development on First Nation lands need to be changed.

"What is contained in my land is a non-renewable resource," he said. "Once it is taken out, it is gone forever."

Morris will not accept legislation from an outside lawmaker when it comes to deciding the fate of his people’s lands.

"You are who you are as an Aboriginal," he said. "As an Aboriginal, my relationship with the land I live on does not come from (government). If I go through their legislations or rules, I am accepting outside law. That won’t work for us."

Grand Chief Stan Beardy is also urging other Nishnawbe Aski Nation communities to follow Kitchenuhmaykoosib’s lead. In a Nov. 4 letter Beardy states "if you support the moratorium, please indicate your support by faxing the endorsement on your community’s BCR (band council resolution) or letterhead back."

"We cannot relinquish the natural wealth on the land and in waters under our jurisdiction until fundamental issues regarding the poverty and living conditions of our communities are addressed," Beardy wrote.
SIoux Lookout Zone Chiefs Meeting

Resolution 06/03

Support for Kitchenuhmaykoosib Inninuwug

WHEREAS the Kitchenuhmaykoosib Inninuwug occupied their traditional territory since time immemorial;

WHEREAS the junior mining company Platinex is planning a winter exploration program within traditional territory of Kitchenuhmaykoosib Inninuwug on Nemeigusabins Lake;

WHEREAS Platinex is proceeding to drill in direct opposition of a Kitchenuhmaykoosib Inninuwug community moratorium on mining exploration;

WHEREAS there are particular specific uses essential to the maintenance of the distinctive culture of the Kitchenuhmaykoosib Inninuwug that can be associated with specific sites on or near mining claims;

WHEREAS such sites used for those purposes prior to the time of first contact;

WHEREAS there is critical and inseparable link between the lands issue and the particular uses that constitute the distinctive aboriginal culture of the Kitchenuhmaykoosib Inninuwug;

WHEREAS the proposed Platinex exploration program would, if carried into execution, reduce the territory over which the Kitchenuhmaykoosib Inninuwug would be entitled to exercise their Treaty rights;

WHEREAS the Crown has failed to fulfill its constitutional obligation to consult and accommodate the Kitchenuhmaykoosib Inninuwug;

WHEREAS the honour of the Crown is at stake;

WHEREAS the OPP are misusing the Nishnawbe Aski Nation winter roads resolution to justify their increased presence in the territory;
THEREFORE BE IT RESOLVED that the Sioux Lookout District Chiefs in Assembly support the Kitchenuhmaykoosib Inninuwug call to withdraw the additional police officers from the community;

THEREFORE BE IT RESOLVED that Platinex cease and desist their winter drilling program on Kitchenuhmaykoosib Inninuwug lands (Big Trout Lake Lands);

THEREFORE BE IT RESOLVED that the Crown assume its obligation under the recent Mikisew and many other Supreme Court decisions to consult and accommodate the Kitchenuhmaykoosib Inninuwug and protect Indians and Indian lands;

FINALLY BE IT RESOLVED that the Sioux Lookout District Chiefs stand with us and assist us in asserting our aboriginal and treaty rights and protecting our lands.

DATED AT THUNDER BAY, ONTARIO, THIS 23RD DAY OF FEBRUARY, 2006

MOVED BY:  
Chief Connie Gray-McKay  
Mishkeegogamang First Nation

SECONDED BY:  
Chief Rusty Fiddler  
Sandy Lake First Nation

ABSTENTION:  
Proxy Harry Papah
February 24, 2006

Hon. Rick Bartolucci
Minister of Northern Development and Mines
Rm 5630, Whitney Block
99 Wellesley St W
Toronto, ON M7A 1W3
FAX: 416-327-0665

Premier Dalton McGuinty
Rm 281
Legislative Building
Queen’s Park
Toronto, ON M7A 1A1
FAX: 416-325-9895

Dear Premier and Minister Bartolucci,

You should be aware that First Nations have made it very clear that mineral exploration in or near their traditional lands will not take place without extensive consultation.

The Supreme Court of Canada have set out the rights of First Nations in regards to their traditional territories.

The Chief and Council and the community of Kitchenuhmaykoosib Inninuwig (Big Trout Lake First Nation) have asked a mineral exploration company to leave their traditional territory and cease exploration work. The mineral exploration company has ignored the will of the Chief and Council and is proceeding with exploration.

What is the Ontario government prepared to do to rectify this situation that you have allowed to happen?

Sincerely,

[Signature]
Globe & Mail Visits
A Dispute

• Ore body is within an active land claim
• Band concerned about environmental protection, economic spinoffs for KI
• “They think they can ride roughshod over us like in the old days”
  -- Chief Donny Morris KI First Nation Feb 2006
• But the company has complied with all applicable laws, regulations
The Mikisew Decision

• Nov 2005: Supreme Court of Canada decides that you can’t make alterations to traditional lands of First Nations without consulting them first
  – In this case, must consult Mikisew FN before building a winter road through their hunting grounds of Wood Buffalo National Park
Dispute

• Feb 2006: KI First Nation blockades the winter road, airstrip to prevent Platinex from bringing in equipment
• Platinex flies in a skeleton team on a bush plane
• KI First Nation tells the company to leave
• OPP boosts presence in KI
  – Claims of harassment of KI people
At issue

- Resource development in Ontario is based on outdated laws
  - Government permits mining on Crown Land
  - First Nations assumed to be passive
  - Industrial values had priority
- Bureaucrats unable to defuse the dispute
- Will be cited as a precedent in future cases
- An example of the ‘post-Fordist’ circumstances of Canadian resource development?
At Issue

• Some First Nations are open to mining and resource development
  – Prepared to trade resource access for economic benefits

• And some are not
  – KI
At issue

- Platinex Inc trying to operate in a global business environment
  - Created 1998
  - Began listing on TSX Venture exchange 4 Nov 2005
  - Game plan to raise $2.25M exploration capital and acquire INCO’s interests in the Big Trout ore body
  - Deals done by mid Dec 2005, moves to drill at Big Trout Feb 2006

- Company is in a hurry, the First Nation isn’t.
Christmas at KI
Spring 2006

- Platinex sues KI for $10 billion
- KI countersues Platinex for $10 million
- KI launches constitutional challenge of Ontario’s mining act
  - Citing the Mikisew decision
Natives carry a ceremonial drum during a protest at Queen’s Park.

PHOTO BY ALISHA HIYATE
From left: Nishnawbe Aski Nation Grand Chief Stan Beardy, Kitchenuhmaykoosib Innuvern Morris of the Muskrat Dam First Nation at Queen's Park on June 21, 2006, National Aboriginal Day. Anderson walked more than 2,000 km from Pickle Lake, Ont., to Queen's Park to bring attention to a $10-billion lawsuit against the community.
Nishnawbe Aski Nation Grand Chief Stan Beardy speaks at Queen’s Park in June of this year.
June 2006

- KI band members hike from Pickle Lake to Queen’s Park to publicise their cause
- Ontario Government orders extensive consultations to take place between KI and Platinex, seeking a resolution
- Judge issues injunction to KI band against mineral exploration
August 2006

• Platinex seeks injunction to prevent KI FN from blocking the drilling
• Ontario Superior Court denies the injunction
  – Citing Mikisew
• Cartwright Drilling Inc sues Platinex for $310,000 in damages arising from work stoppage
Nov-Dec 2006

• As Platinex shares hit a 52-week low
  – The company releases an upbeat report on the ore body
  – Stretches its finances a little by a $110,000 share placement

• Buys itself a little breathing room
Jan 2007

- Judge Smith extends the injunction on mineral exploration
- KI Band’s constitutional challenge of Ontario Mining Act continues
- The ‘extensive consultations’ ordered by Ontario are not happening
  - KI, Ontario, Platinex dispute who should pay for them.
Wildlands League

• “You can't just have business as usual development. It's failing communities and it's failing nature.”
  -- Anna Baggio, Wildlands League

• Wildlands League wanted Ontario to update its “antiquated” mining act to spell out clear rules on aboriginal consultation and environmental protection.
December 2007

• Chief Donny Morris and 5 of the KI band council are convicted of contempt of court
  – They defied an injunction to cease obstructing Platinex’s explorations

• Similar case in eastern Ontario involving Ardoch FN vs Frontenac Ventures’ uranium explorations
Winter 2008

• Feb 2008: Robert Lovelace, former chief of Ardoch FN jailed for 6 months
• March 2008: Amid aboriginal protests, the KI six are jailed for contempt of court
• Aboriginal leaders demand the Mining Act be changed and the situation be resolved another way
May 2008

• KI six appeal to Ontario Court of Appeal
• Coincides with a big Aboriginal protest at Queen’s Park to demand revision of 1873 Mining Act
June 2008

• Ontario Government agrees to revise the Mining Act
  – Various stakeholders begin making their demands
July 2008

- Ontario Court of Appeal releases the KI six
  - Sentences too harsh for first-time offenders
  - Jailing should be a last resort in these cases
  - Ontario & Platinex required to pay $25,000 in legal bills for the KI six

- Platinex hires Chief Glen Nolan to advise them on cooperation with aboriginal people
October 2008

• Platinex arranges to raise another $1.4 million in private share placement on positive news about its Shining Tree & Muskox stakes
  – Shining Tree has gold (Ontario)
  – Muskox has platinum group minerals (NWT)
• Signs of a serious desire to co-operate with Mattagami FN at Shining Tree
Nov 2008

• Robert Lovelace of Ardoch FN released after a successful appeal to Supreme Court of Canada

• Ontario Government extends Mining Act consultations to Jan 2009
Jan 2009

• 26 Jan 2009 Platinex signs an Exploration Agreement with Mattagami FN over the Shining Tree claim
  – Mattagami FN to get preference for jobs and contracts
  – Platinex to benefit from Mattagami traditional knowledge
  – Both groups to minimise and mitigate environmental impact
Ontario Mining Act 2009

• 15 Jan 2009 consultations on the Mining Act wrap up.
  – Fairly positive experience for First Nations, talk of co-management schemes
  – Various stakeholders urge that legislation not be rushed

• 21 Oct 2009 new act passed
  – But still no aboriginal right to prevent mining, staking
December 2009

- Ontario settles with Platinex
- Platinex to get $5 million from Ontario in return for
  - giving up its mining permits, rights at Big Trout
  - Giving up its lawsuits against Ontario, KI band
  - Platinex to get a 25-year 2.5% smelter royalty if Big Trout ore is ever mined
- KI, Platinex pleased,
  - taxpayers bail out a private company
Platinex

• Has raised $2 million from private sale of 10 million shares at 20 cents each
  – And has invested it in its Shining Tree gold play
  – [Shares now trading at 7.5 cents each]
• Maintains development rights at 7 other platinum/copper/nickel mineral properties
Platinex

• About $4 million in paid up capital
• Directors live in the GTA
  – Toronto, Aurora, Elora, Janetville
• Corporate HQ was also the CEO’s house
  – 11 Algonquin Cres, Aurora ON
Sherman Lake Gold Project

- God’s Lake Resources Inc, another junior miner, acquires permits to explore 16 areas of promising gold-bearing ground near Sherman Lake
  - On KI traditional lands
Sherman Lake Gold Project

- Early 2009 GLR begins exploration of Sherman Lake
- KI holds a referendum and reaffirms a hard-line approach to mining on its lands
- GLR tries to negotiate with KI, KI does not cooperate
  - KI says graves, traplines and other cultural features are present in exploration area
Sherman Lake Gold Project

• GLR resumes exploration in Summer 2011
  – No drilling
  – Confrontation with KI canoe party Sep 2011 at Foster Lake
• KI issues an eviction notice to GLR
• GLR plans drilling to begin March-April 2012
• KI & friends plan a protest at the March 2012 prospector show in Toronto
Sherman Lake Gold Project

• To prevent a KI protest at the prospector show, Ontario Nat Resources minister, Rick Bartelucci announces Sunday 4 Mar 2012 that 23,000 km of KI traditional lands will be taken out of play for mining exploration
  – But leaves Sherman Lake site in play
KANAAWAYANDAN D’AAKI!
PROTECT THE KI INDIGENOUS HOMELAND

KiLands.org
Conclusions

• Old-style exploitation of northern resources damaged the land and ignored most aboriginal rights over it

• Did considerable damage to First Nations communities
  – They are now trying to assert their rights

• Renewed exploitation of resources has to be more effective at recognizing aboriginal rights
Conclusions

• Exploitation of Canadian natural resources has changed over time
  – Changing economic environment
  – Changing cultural & political environment

• A new economic paradigm is emerging?