

----- Forwarded message -----

From: **Scott Hamilton** <shamilto@lakeheadu.ca>

Date: Fri, Jan 6, 2012 at 5:17 PM

Subject: Wahgoshig FN injunction

To: Andrew Dean <apdean@lakeheadu.ca>, Matheson Carney <cmatheso@lakeheadu.ca>, Beverly Sabourin <bsabouri@lakeheadu.ca>, Annette Schroeter <acschroe@lakeheadu.ca>, Anne Klymenko <aklymenk@lakeheadu.ca>, Kamil Zaniewski <Kamil.Zaniewski@lakeheadu.ca>, Dr Pete Hollings <pnhollin@lakeheadu.ca>, Karen Peterson <karenpeterson@shaw.ca>, Peggy Smith <pasmith@lakeheadu.ca>, Rob Robson <robert.robson@lakeheadu.ca>, Michel Beaulieu <michel.beaulieu@lakeheadu.ca>, Dowsley Martha <mdowsley@lakeheadu.ca>, Harvey Lemelin <harvey.lemelin@lakeheadu.ca>

A recent court case might be of interest to those interested in development of aboriginal research and education programming at LU. It also has implications for academic units directly or indirectly involved in natural resource exploration, development, land use planning, infrastructure development, northern and aboriginal law etc. I propose that if LU wants to get involved in programming to address these northern issues, this is a very good time. More to the point, if we don't move soon, some other institution will beat us to the opportunity.

On Jan 3, a Superior Court Judge issued an injunction order against Solid Gold Resources in favour of Wahgoshig First Nation (WFN).

The judge ruled that the company had failed to act upon the responsibility delegated to it by the Crown to consult with WFN and accommodate their concerns regarding drilling on traditional lands along the south side of Lake Abitibi where the company has mining claims. The Crown offered the perspective in court that this duty had not been fulfilled, but that it had urged the company to undertake such consultation as far back as 2009. The company did not do this, asserting that the duty rested with the Crown. Essentially the crown is trying to offload that responsibility on proponents of development... but have not developed regulations specifying what and how it is to be done. This is obviously an issue of great frustration for those private companies... for that matter, the Crown has not really addressed the issue with First Nations- soliciting from them a perspective what consultation and accommodation should entail. The perspective has also been offered by Aboriginal leaders that this Duty cannot be delegated, and remains the responsibility of the Crown... obviously a big mess

The WFN injunction is for 120 days, during which time the Ont Gov and Solid Gold are instructed to engage in 'meaningful consultation and accommodation', and if at the end of that time WFN feels that the process is unsatisfactory, they are invited to apply to the court for an extension of the injunction... Essentially, in my view, the court has issued a firm rebuke of the Crown and reluctant proponents to address Section 35 constitutional requirements to consult and accommodate. Coupled with the Grassy Narrows decision of this past fall, the rule book is about to change significantly regarding Crown Land management and northern resource development.

A large part of the position argued in court by WFN was that it was not consulted and accommodated about the risk of impact of the current and future drilling on cultural values, and traditional socio-economic practises... This includes contemporary hunt/trap/fish rights deriving

from Treaty 9, but also impact upon other cultural practises, damage to burial places, sacred places and other more tangible archaeological values. I and my colleague (Dr. Linda Larcombe) were asked to offer affidavits on behalf of WFN about the cultural heritage potential of the mine claim area... There is some indication that we might be asked to undertake Traditional Land Use and Occupancy studies and Stage 1 Archaeological assessment in this area over the next few months.

Clearly, cultural values inventory construction and data management is an essential precondition for land use planning and avoidance of impacts in the event of development. Very little of this fundamental work has been done yet, and the requisite knowledge resides primarily in the collective memory of rapidly aging Elders. Over the past 30 years, traditional means of passing on Oral Tradition knowledge has been failing, without development of alternative strategies... This is a critically important issue for First Nations, Metis and other Aboriginal people as they seek to protect their interests, engage in sustainable economic development and undertake strategies for cultural survival.

In light of impending disputes between KI First Nation and a mineral exploration company in its territory, and with anticipated large-scale development of the Ring of Fire (without the outstanding concerns of the Matawa communities being addressed yet), this promises to be a very hot topic over the next few years. I have already been asked (with one of my grad students) to develop heritage training modules to be delivered this winter to 'lands and resources' staff of various First Nation governments located in the far provincial north.

There is a big demand for technical capacity building, but we need to develop programming that is sufficiently comprehensive- 2 day overview workshops are not sufficient. At this point, there is not a lot of people out there with training, and no well-developed 'best practise standards', nor a means of 'certification' of quality standards for such work. As you can imagine, there is a fair bit of variation in data quality being generated which will compound the problem. This is not my area of expertise, and there are very few (if any) LU faculty members who could claim it as their primary expertise. If Lakehead wants to move in this direction, we need to identify/develop capacity within our faculty complement. This would mean skills development among interested faculty, or more usefully, hiring new faculty and technicians with the requisite expertise.

This is consistent with the perspective I offered last year about the potential role that Lakehead U could play if we act on the opportunity to develop education (credit and non-credit) programming in Traditional Land Use and Occupancy data collection to a suitable 'best practise' level. Coupled with this is an opportunity to develop capacity to deliver applied research service in northern ontario to address the 'social justice' and 'aboriginal resource' themes of the strategic plan. But I reiterate, we have to act on this issue, or risk standing on the sidelines while other institutions fill the need.

Scott Hamilton