

INDIGENOUS LEGAL TRADITIONS PRACTICE QUESTION FOR THE TALKING CIRCLE ASSIGNMENT

You have been retained by the Animikii-wiikwedong First Nation, which is an Anishinaabe community whose traditional territory is located in northern Ontario.

A substantial deposit of chromite has been discovered within Animikii-wiikwedong's traditional territory, but outside of its reserve. A mining company called Rocky Bay Mining Inc. (Rocky Bay) has staked a number of claims in this area, and now it wants to start the extraction process.

According to the case law that has developed on section 35(1) of the *Constitution Act, 1982*, the Crown has a duty to consult with Aboriginal peoples whenever it contemplates action that will have an adverse impact on Aboriginal or treaty rights, and also provide accommodation in some circumstances. The case law also establishes that Indigenous laws should inform the interpretation of section 35(1). Ontario tells Rocky Bay that Rocky Bay must fulfill the duty to consult before Ontario will grant it an extraction permit.

Rocky Bay held a consultation session at Animikii-wiikwedong's community centre on August 9, 2016. The session was conducted by some of their senior executives. These executives started the session by introducing themselves; in so doing, they discussed their job titles, job descriptions, and the mining projects they had worked on in the past. One of the executives spent ten minutes describing how she had been profiled in a mining magazine as one of the "Top 40 under 40" mining executives in Canada. They did not say anything at the start of the meeting about the territory they were in, and they did not ask anyone to open the meeting with a smudge or a prayer.

The Rocky Bay executives then gave a PowerPoint presentation outlining their proposed extraction plan, including the effects it would have on the land. They explained that Rocky Bay plans to use an open-pit mining system that will cover an area of approximately three square kilometers. Using the open-pit system means that everything in those three square kilometers, including animals, trees, shrubs, rocks, earth and of course chromite, will be removed. The mine is expected to operate for eighty years, after which Rocky Bay will remediate the site. Rocky Bay also proposes to build a road to access the open pit.

Afterwards, Rocky Bay representatives took questions from the audience. Of the approximately 50 people who were in the audience, 4 or 5 asked questions. These seemed to be the 4 or 5 most outspoken members of the community.

After the presentation, Rocky Bay asked Animikii-wiikwedong for feedback by September 20, 2016 so that it could address any concerns and get government

approval by the end of the year. Rocky Bay needs to start construction on the mine by January 2017 in order to make the operation economically viable.

The next month, Animikii-wiikwedong sent a letter to Rocky Bay in response to its presentation. About the access road, Animikii-wiikwedong explained that the proposed route goes directly through a patch of wild strawberries, but that if the road were moved about 200 metres so that it avoids the wild strawberries, it would be fine. About the mine itself, representatives of Animikii-wiikwedong stated that they have a number of concerns. They asked why the pit needs to be so large, and whether it could be reduced to 1/5 of the proposed size. Animikii-wiikwedong also explained that they need more time before they can articulate their full response. The proposed area of the pit is the traditional hunting grounds of the crane dodem. Many members of the crane dodem live off of the reserve, in various towns and cities throughout Canada. Most members of the crane dodem, though, return to the reserve in early summer, and so Animikii-wiikwedong proposes that it can respond to Rocky Bay's proposals by the end of the summer of 2017.

Animikii-wiikwedong received the following response from Rocky Bay:

**ROCKY BAY MINING INC.
124 MAIN STREET
THUNDER BAY, ON P8W 0K3**

October 1, 2016

Animikii-wiikwedong First Nation
P.O. Box 132
P3E 6A5

Dear Chief and Council,

We thank you for your correspondence dated September 20, 2016. We believe that we can fully accommodate all of your concerns.

First, we understand your concerns about the destruction of the strawberries. Unfortunately, though, it will not be practical to re-route the access road. Our feasibility study showed that the only viable route for the access road is the one proposed and outlined during our presentation. Moving the route, even by 200 metres, would mean having to blast through the Canadian shield, which would add several hundreds of thousands of dollars to the cost of our project. However, we are very pleased to offer you another solution: we will agree to ship 50 pounds of strawberries from the Metro grocery store in Thunder Bay to your community each year during the eighty year life of the mine. This solution has the benefit of both ensuring an adequate supply of strawberries and also being cost-efficient.

Second, we would like to address your concerns about the size of the pit. This size was chosen because a pit of this size will provide the maximum profits in the light of the expenses required to operate the pit. This was our criterion when determining the size of the pit because we are obligated to uphold our duty to our shareholders to maximize profits.

Third, we appreciate your desire to consult with members of the crane dodem, but we regret that it would not be feasible for us to wait until the end of next summer for a full response from you. We would lose tens of thousands of dollars for each day that this project is delayed beyond January 2017. Fortunately, we have a solution: we have been advised that this type of decision is within the jurisdiction of Chief and Council under the *Indian Act*. It is not necessary to put this to a vote of the entire community; Chief and Council has the authority to approve our project and enter into a Memorandum of Understanding with us.

We hope that we have satisfactorily addressed your concerns and that we can now move on to negotiating the terms of a Memorandum of Understanding with you. We look forward to hearing from you at your earliest convenience.

Yours truly,
Rocky Bay Mining Inc.

What Anishinaabe legal issues are raised by this situation? According to Anishinaabe law, how should these issues be resolved? Use the Anishinaabe legal principles we have discussed so far, including the principles we have drawn out from the stories and various readings we've discussed.

Remember that you are only being asked to apply Anishinaabe law, not non-Indigenous Canadian law.