

# Solid Gold, Wahgoshig Nation clash

## Junior miner takes on injunction against exploration

By Krystyna Lagowski

Toronto-based Solid Gold Resources filed a notice for leave to appeal an Ontario Supreme Court injunction that ordered them to stop drilling for 120 days on territory claimed by Wahgoshig First Nation (WFN). The company has also sued the Ontario government for \$100 million in damages.

The disputed area is 200 square kilometres near Matheson, Ontario, which is adjacent to the Wahgoshig reserve. The First Nation says the site contains burial grounds and is frequented by the community for hunting, trapping, fishing, medicine gathering and ceremonial purposes.

WFN first discovered Solid Gold's drilling crew on Treaty 9 land in the spring of 2011. According to the court decision, the crew did not say who they were working for, and the First Nation was only able to ask for consultation after research and enquiry revealed Solid Gold's identity. After WFN tried and failed to contact the company, the provincial government wrote Solid Gold in early November to let them know about their duty to consult.

Darryl Stretch, president of Solid Gold, said that he is not obligated by law to consult with First Nations. "That's the responsibility of the Crown," he said. "This is Crown land. First Nations cannot have a veto to control what goes on regarding Crown land. I have an obligation, a fiduciary responsibility, to look after the shareholders of this company," Stretch added. "I don't have a responsibility to First Nations; the government of Canada has that responsibility."

Nevertheless, the January 3rd decision ordered Solid Gold to enter into "meaningful consultation" with the Wahgoshig community. According to the court's decision, the province can delegate operational aspects of the duty to consult, although it retains the responsibility of making sure consultation occurs. Since consultation was not going forward, the court decided to grant the injunction in order to uphold that responsibility.

Garry Clark, executive director of the Ontario Prospectors Association, said his group is watching this case very closely, and trying to get the story from both sides. "We see that the government is downloading government consultation on us, and there are no real signposts for us, as explorers, to know what we have to do for consultation," he said. "In the past, we've found that letters to the First Nation community don't necessarily get read by anyone. We're trying, but the industry needs to know what consultation is and how much consultation is enough."

When asked to define "meaningful consultation," Michael McClurg, from Olthius Kleer Townshend, lawyers for Wahgoshig, replied, "It is case-specific and fact-specific. The court will decide. In the case of Solid Gold, there was no consultation. In some cases, it is the rights that are at issue, how strong those rights are, what kind of drilling is being proposed. But it really depends on the case."

The importance of consultation in the development of a resource is only likely to grow in the future. "We're in


the process of developing regulation amendments to the Mining Act, and within those amendments there will be a framework for consultation with Aboriginal communities and the duty to consult process," said Kathleen Wynne, Ontario Minister of Aboriginal Affairs. "But even in the development of those amendments, we will be doing that in consultation. We really believe the best way is to have a consultation process that includes everyone who is affected."

Wynne added that the Ministry views consultation as not only statutory, but economical. "It's not like this is something that is not practical," she said. "Since 1999, there have been more than 90 mineral development agreements."

WFN Chief David Babin said Solid Gold has not acted in good faith. "We have to try to work things out down the line; this puts more pressure on everyone as to how things are going to be done with First Nations."

Babin added that he is not against development, and wants to move forward, but he does not want to be disrespected either. "If there's disrespect for First Nations, we're going to end up in court," he said.

He also noted that his band has had successful dealings in similar situations, such as the exploration carried out by Apollo Gold, and wants First Nations values to be considered by the industry and reflected in the Mining Act.

Clark said that even with changes to the Mining Act, he suspects there will continue to be conflict. "We need regulations to show us how to consult." 

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