

# If You Can't Beat Them... Join Them? The National Chief to "Indian Fighter" Pipeline

by Bruce Sakakeep with Hayden King

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**RECENTLY THE LAW FIRM** Fasken Martineau DuMoulin LLP (Fasken) **announced** that former Assembly of First Nations National Chief Perry Bellegarde would be joining the firm. Bellegarde's new role would be "to promote reconciliation by building bridges between businesses and Indigenous communities."

**This development is very concerning because Fasken is not just any law firm; they are one with a long reputation of battling against First Nations in court, my community among them. What are the implications of a former National Chief joining such a firm?**

Earlier this month I wrote to National Chief RoseAnne Archibald about these concerns and the need for policy governing the activities of National Chiefs when they leave office. I have decided to share that letter with Yellowhead Institute and make these concerns known more broadly.

It is my hope that this article generates discussion about the standards we set and expect from those who seek higher office and represent our people.

## Kitchenuhmaykoosib Inninuwug vs. Platinex

From 2006-2008, Fasken represented Platinex, a junior mining exploration company, who sued Kitchenuhmaykoosib Inninuwug (KI) for \$10 billion dollars when they couldn't run a drilling program on KI

traditional lands in an environmentally sensitive area (leadership at KI opposed the development). During the court process, Platinex through Fasken demanded that all monies coming into the community be set aside to pay this \$10 billion dollars.

But more, Fasken lawyers asked for the incarceration of the KI leadership (myself included, as Director for KI Lands and Environment Unit at that time), for not allowing Platinex to drill. Five members of the KI Chief and Council, and myself, were ultimately **sentenced to six months** for contempt of a court ruling that allowed Platinex access to our lands. We were in contempt because we sought to protect our lands and waters from contamination.

We served sixty-eight days in jail until our release through the Court of Appeal.

To add salt to an open wound, Fasken was able to secure \$5 million dollars for Platinex from the Ontario government in exchange for dropping their lawsuits against Ontario and KI. This included an **agreement** for Platinex where they abandon the land in question for 25 years but should another Company obtain rights and access, Platinex would receive 2.5% of royalties in any development. This agreement was negotiated without us.

**In the end, Platinex walked away with millions, Fasken received their legal fees, and KI was left on the brink of bankruptcy leaving nothing for the community other**

## than expenses and trauma from the continued colonial policies of removing people from the land and erasing Indigenous self-determination.

### Fasken's Reconciliation Record

Fasken representing Patinex is not their first, or last, conflict with communities. They tend to represent mining, oil and gas interests in Canada and around the world. The most notable example might be their defense of the Canadian mining firm, Hudbay Minerals, accused of significant human rights abuses in Guatemala, including being implicated in murder and sexual assault of Indigenous people standing in the way of development.

But in Canada this record is long, too.

They worked for BC Hydro when the utility sought to override Treaty 8 First Nations opposition to the development of the Site C Dam. They also count TC Energy among their clients, the proponent constructing the Coastal Gaslink Pipeline and bulldozing Wet'suwet'en rights and title via injunction. They even fight against First Nations opposing the widely criticized BC fish farming. Before this work, they represented intervenors aiming to limit the Duty to Consult in the Taku River and Haida Supreme Court of Canada cases, and also argued against the very notion of Aboriginal title in Delgamuukw.

Behind each of these cases are communities like KI.

Also, this list is from just one other province! In the world of law firms seeking to limit Aboriginal rights, there are few as prolific as Fasken.

### The Assembly of Indian Fighters?

What role does the Assembly of First Nations have to play in this state of affairs?

The Assembly of First Nations (AFN) is described as "a political organization representing approximately 900,000 First Nation citizens in Canada" and they "advocate on behalf of First Nations on issues such as treaties, Indigenous rights, and lands and resources."

Yet, as one of the 900,000 First Nation citizens claimed under the AFN, I, as part of the grassroots, have no say in how National Chiefs carry out their "advocacy" on my behalf. Nor does there seem to be any policy on their advocacy after they leave the role. In other contexts, elected officials are prevented from lobbying or consulting for five years where their previous position might disclose sensitive information. Does the AFN have policy here as well, and what is that policy? Because without it, real harm is possible.

Fasken managing partner, Peter Feldberg, suggests "Chief Bellegarde's deep experience and understanding and knowledge of Indigenous peoples, issues and opportunities will be invaluable to our clients and governments in advancing projects and business objectives, as well as to the firm in developing our own expertise and advancing our own reconciliation plans."

**In other words, Bellegarde is selling his knowledge and experience about Indigenous peoples; knowledge and experience gained while representing Indigenous peoples and earning an income paid for by our people. Now it is being sold to the highest bidder - in this case - a law firm known as "Indian Fighters" that focuses on the continued oppression of our people.**

It is worth noting that Fasken is retained by the AFN as well. They have defended the organization in two wrongful dismissal suits so far.

They also happen to be the firm representing the organization in the Child Welfare Final Settlement Agreement. These may be the very lawyers making arguments against the First Nation Caring Society and the Canadian Human Rights Tribunal, who have been pointing out the flaws in an agreement that excludes so many. So I have to ask, are lawyers and First Nation (former) politicians benefiting at the expense of First Nation children? And, what kind of legacy are we leaving, if that's the case?

Despite their new reconciliation advisor, it seems Fasken may still be fighting Indians.

**CITATION**

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