

YFN Presentations for House of Commons Standing Committee
March 30, 2015

Part 1: TTC – Context

On behalf of my Elders Council & people I thank the Ta'an Kwach'an and the Kwanlin Dun First Nations for hosting this important meeting in their traditional territory.

Chief Sidney to introduce himself and details as he sees fit.

The Teslin Tlingit Council signed its Final and Self Government Agreements with Canada and Yukon in 1993. We joined with other First Nations in implementing our agreements starting in February of 1995 and have recently celebrated 20 years of government to government relations guided by our agreements.

Gunalcheesh to the Committee for coming north and for providing us the opportunity to share our thoughts on Bill S-6. There are many written reports and documents filed with you by the Teslin Tlingit Council and other First Nation governments. I am not repeating those details. It is important for your committee to consider those submissions.

Let me bring you a personal & grass roots perspective.

Our First Nations people have long being Stewards of the land, air and water. A respected Teslin Tlingit Elder, Virginia Smarch, described First Nations people as being "Part of the Land Part of the Water". It is this ancient belief that has formed the core of who we are as Tlingit people and defines our relationship with Mother Earth. YESAA is connected to those beliefs and values through our Agreements and should not be amended without our consent.

We entered into our Agreements as a way forward, as an expression of who we are as a people. An essential part of that vision was recognition of and respect for our land, our water and the air we breathe. They are part of us and we are a part of our environment for all time. It is our collective responsibility as treaty parties to ensure these unique relationships will be part of our future.

In 2005 I was appointed to the YESAA Board as a founding member. Together the Board spent much energy in the implementation of YESAA by involving the citizens of Yukon at every stage. It is this kind of cooperation among

Yukoners, led by an independent Board comprised of Yukoners, that was the way YESAA was put into effect and how it should continue to evolve as we Yukoners require. The amendments in Bill S-6 imposed by Canada at the last minute undermines what we have created together. It is critical to success that we continue to work together as was the vision under our Agreements.

Canada's stated intention in entering into the Final Agreements was to create certainty about the use and ownership of Yukon land and natural resources. Substantial Aboriginal Rights, including Title, were exchanged for constitutionally protected Treaty rights. That was a very high price to pay to achieve certainty for all Canadians, and the Yukon First Nations who have signed Agreements have paid it in full. In the face of the violations of our Final Agreements through these amendments, we must protect the spirit, letter and intent of those Agreements.

The Yukon First Nations and their citizens understand that they are a dynamic part of Yukon society and economy. It was and is our vision to play a leading role in our collective Yukon future. Together we represent directly and indirectly through our investments in excess of a billion dollars in worth and annual revenues in excess of 300 million dollars. We are definitely involved in and concerned with Yukon's future and its economy.

Local and global investors are already diverting investments away from Yukon due to the uncertainty of litigation and the questionable laws and policy decisions of Canada and the Yukon. A range of legal options will be open to First Nations if these amendments are passed as proposed. Litigation will take place over a number of years undermining Yukon's economy as Yukon is seen as too risky and too uncertain.

We anticipate that individual projects and proponents will be challenged when projects are being assessed inadequately. Industry and their investors will be bystanders waiting for the results of legal disputes to be worked out in the courts, as the governments of Canada and Yukon have invited.

We are aware of and share in the risks and uncertainty of resorting to the courts. However, the breaches of the current Conservative Government in Ottawa supported by the Yukon Party Government in the Yukon are so severe we fear that we will have no other option.

We and other Yukon First Nations continue to strive for respectful, effective relationships with industry throughout the Territory, and encourage sustainable development and positive growth for our Citizens and all Yukoners. But to achieve our vision and respect our beliefs and values, we must ensure that our Agreements are fully understood and recognized.

Teslin Tlingit Council urges this Committee to take the steps available to it to recommend removal of the offending amendments. We further call upon all Members of Parliament to take the steps available to you to avoid this increase in uncertainty and related harm to Yukon's and Canada's economy. Teslin Tlingit Council remains willing and available to work with Canada's representatives to prepare improvements to the YESAA – in accordance with the process set out in our Final Agreements. We call on you, as representative of the Crown, to act honourably, as the law and our treaties require.

Part 2: CYFN – Overview of Concerns

Personal introduction

Good morning. My name is Ruth Massie. I am the Grand Chief of the Council of Yukon First Nations (CYFN) and will begin the Yukon First Nations' presentations.

Thank you for the opportunity to present our views about Bill S-6 to the Standing Committee, and thank you for your willingness to travel to Whitehorse to hear the views of Yukoners about the proposed changes.

All Yukoners and interested parties should have the opportunity to make submissions to this Committee. This Committee owes it to Yukoners given the importance of this proposed legislation.

You will hear from a number of Yukon First Nations today, including many self-governing First Nations with constitutionally protected land claim and self-government agreements. These agreements recognize their authority as governments.

CYFN and all eleven self-governing Yukon First Nations are unanimously opposed to four provisions that are part of Bill S-6.

We also unanimously recognize the importance of having a YESAA process that will promote sustainable economic and community development. As part of that we also need certainty that projects will not compromise our rights and interests. As currently drafted, Bill S-6 does not achieve this balance. In fact, the discussion and concerns about these amendments has already brought a level of uncertainty within industry that never arose during the YESAA Five-Year Review. During this Review all levels of government – federal, First Nation and Yukon – worked together in accordance with our treaties to improve YESAA.

Bill S-6 has two types of amendments. Those that came from the Five-Year Review, and those that Canada introduced unilaterally.

The changes that come from the Five-Year Review represent a compromise that was developed through many hours of discussion. In some cases the changes do not represent our preferred approach, but we continue to support the amendments because we reached a common understanding with Canada and Yukon and we honour that agreement.

The amendments we oppose were introduced unilaterally by Canada after the federal Minister terminated the Five-Year Review discussions. Some of these were proposed to Canada by Yukon Government. Neither Canada or Yukon ever raised these issues for discussion during the Five-year Review. If they were so important, why were they not raised?

I am going to summarize our opposition to the 4 proposed amendments and describe the changes we are requesting that the Committee recommend and the House of Commons approve.

Because the Government failed to meet its Constitutional and common law duties to consult and accommodate, and to date have not met the requirements of the honour of the Crown, we strongly urge this Committee to address our requests in your report, to the House of Commons to implement those recommendations.

Policy Direction

We oppose giving the Minister full power to issue binding policy direction to the YESA Board, as proposed in Clause 34 of Bill S-6. We request that the Committee recommend Clause 34 be removed.

Delegation of Powers

Secondly, we oppose giving the Minister the power to delegate his powers, duties or functions to the Yukon Minister, as proposed in Clause 2 of Bill S-6. We request that the Committee recommend Clause 2 be amended by deleting the proposed 6.1 wording.

Time Lines

Thirdly, we oppose the establishment of beginning-to-end timelines for assessments conducted under YESAA, as proposed in Clauses 16, 17, 21 and 23(2) of Bill S-6.

As such:

- a. We request the Committee recommend Clause 16 be amended by deleting the phrase “within nine months after the day on which a proposal is submitted to it under paragraph 50(1)(b)” and deleting the wording for “1.1”, “1.2” and “1.3”.
- b. We request the Committee recommend Clause 17 be amended by deleting the phrase “within 16 months after the day on which a proposal is submitted to it under paragraph 56(1)(d)” and deleting the wording for “1.1”, “1.2” and “1.3”.
- c. We request the Committee recommend Clauses 21 and 23(2) not be approved.

Exemption from Assessment for project renewals and amendments

Fourthly, we oppose the proposed exemption from assessment for renewals and amendments of licences and permits, as proposed in Clause 14 of Bill S-6. We request the Committee recommend Clause 14 not be approved.

Closing

CYFN and Yukon First Nations spent 20 years negotiating our agreements that achieve the objective of collaboration and partnership, and we will not stand by while Canada chips away at these agreements.

On December 1 in the House of Commons Minister Valcourt encouraged us to use the courts to address our concerns, stating: *“If the first nations claim that we have failed in our duty to consult, the court will determine the issue, and they are welcome to use the courts.”*

It is not our preference to commence court action to address our concerns. In addition to being costly and protracted, court action would damage

relationships amongst parties and damage economic development in the Yukon. Our preference is reconciliation.

The federal government's approach on Bill S-6 is a roadblock to reconciliation. Participants in mining, tourism and other industries are concerned about how Bill S-6 might adversely affect the future for resource development in Yukon. They have echoed our call for the federal government to work with us to find solutions to the concerns we have raised.

Thank you for the opportunity to speak to the Committee.

Part 3: TH – How YESAA Was Developed

TH...

[Personal introduction]

I want to spend some time talking with you about the process Canada, Yukon and First Nations used to develop YESAA, and how that differs from the process we have seen for Bill S-6. I want you to understand that things have been done differently in the past, and they can be done differently now. We think they must be done differently to honour what we all agreed to in our treaties.

In 1998, Tr'ondëk Hwëch'in (TH) signed a modern land claim agreement after 25 years of negotiation. The Crown got what it wanted: clear title to over 95 percent of our traditional territory.

So why would the TH sign an agreement where we retained less than 5 percent of the lands in our traditional territory as settlement land? We relied on processes like YESAA and land use planning to guarantee participation in planning and management on non-Settlement Land where we exercise rights to hunt, fish and gather.

The Supreme Court of Canada recognized these processes as key features of our Final Agreement. In the Little Salmon Carmacks case, Justice Binnie (BINNY) noted that First Nations got '**a quantum of settlement land, access to Crown lands, fish and wildlife harvesting, heritage resources, financial compensation, and participation in the management of public resources.**'

Participation in management of public resources is critical. YESAA was a central part of that Final Agreement bargain, and so was being involved in its development. Section 12-3-2 of the Final Agreement directed the CYFN, Canada and Yukon to negotiate guidelines for drafting YESAA.

Because of the importance of the development assessment process, the Yukon First Nations, Canada and Yukon went beyond Section 12-3-2. The parties established a tripartite working group to develop YESAA and its regulations. We worked collaboratively with Canada and Yukon throughout the development of the legislation, right up to its approval in Parliament. Canada found ways to support collaboration, instead of putting up roadblocks to working together.

Collaboration continued after YESAA came into force in 2005. Section 12-19-3 directed the parties to the UFA to review YESAA after five years, and once again, Yukon First Nations were actively involved. Some of the amendments in Bill S-6 are reforms that we worked on during that Five-Year Review.

We are here today because that respect for our Final Agreement process is gone. The original YESAA was developed collaboratively over several years. The amendments from the Five-Year Review were negotiated. But when Canada introduced four surprise amendments at the last minute, there was no negotiation at all. Canada acted unilaterally.

Let's be clear. Collaboration between three orders of government was good enough when we created YESAA. Government-to-government negotiation was good enough during the Five-Year Review too. The parties reached consensus on 72 of 76 recommendations. We didn't agree on everything, but we followed the Final Agreement instructions and came up with reforms we could all live with. Most of those did not require changes to YESAA but have already been implemented through administrative changes and actions.

For the few recommendations that required amendments of YESAA, we expected Canada to respect its constitutional duties and the treaty requirements to collaborate with us developing legislation that addresses the requirements of Chapter 12. Instead, Canada unilaterally tacked on four substantive amendments: **delegation, policy direction, timelines and renewals.**

So Canada ignored its constitutional duties and the collaborative practices imposed by the treaties in Section 12-3-2 and hasn't given a good reason why. To protect Canada if there was no consensus, Section 12-3-3 provides a default: if the parties can't agree on drafting guidelines under Section 12-3-2, Canada can go ahead with drafting, but it has to consult with Yukon First Nations during the drafting.

In TH's opinion, the consultation under 12-3-3 is the second-best option. We would rather participate in instructing the drafters, but we at least have a Final Agreement right to proper consultation while the drafting is still going on. Of course, the Crown has a constitutional duty to consult with the TH and, where appropriate, accommodate our concerns when it amends the YESAA.

Even consultation didn't happen. Instead Canada went with a third option: surprising us with amendments in an already-drafted bill stamped secret. They wouldn't let us take copies out of the meeting room. If we weren't at the meeting in person, Canada never provided us with copies.

That's not participation under Section 12-3-2. It's not consultation under 12-3-3. It's just forcing it down our throats. It violates our Final Agreements and it's illegal under the common law.

Lots of Yukon officials have stood in front of this committee and talked about the thousands of hours of consultation that went into Bill S-6. Do not be misled.

It's true: we spent years participating in the Five-Year Review with federal and territorial officials. But as Minister Valcourt admitted in his testimony on March 24, the four amendments were never part of that discussion.

These amendments never should have been included in Bill S-6, and we join the other witnesses who are urging you to strip those changes out.

Thank you.

Part 4: LSCFN - LEGAL ISSUES

Personal introduction and recognition of other FN presentations etc.

LSCFN

...

The Yukon First Nations reiterate that the proposed amendments undermine the spirit and intent of Chapter 12 of the Final Agreements and its objectives. If the amendments proposed by Bill S-6 are proclaimed, the Crown will have breached its constitutional duties owed to Yukon First Nations.

The Yukon Senator and MP have pointed out that section 4 of the YESAA provides that in the event of an inconsistency or conflict between a final agreement and the YESAA, the final agreement would prevail to the extent of the inconsistency or conflict. Section 4 does not address our concerns about the potential breach of our rights.

Firstly, it is important to understand that Chapter 12 outlines the general structure of the YESAA and its functions and powers to guide the development of the YESAA by the Yukon First Nations, Canada and Yukon. This means Chapter 12 and its objectives informed the development of the YESAA. But Chapter 12 does not comprehensively define the structure, function and powers of the YESAA process. The parties defined the YESAA process in government-to-government negotiations during the development of the YESAA. The agreements reached in those discussions can't be changed unilaterally under the constitutional structure of Canada. We assert that the federal government does not have this legal authority.

Secondly, the YESAA originates from and is rooted in our land claim agreements. It manages the use and development of the lands, waters and resources in the Yukon. As a result, the implementation of YESAA may affect the exercise of aboriginal and treaty rights. In this case, the Crown has not acted in accordance with its constitutional duties owed to Yukon First Nations. The Crown has breached its duty to consult with Yukon First Nations and take steps to accommodate our concerns. The Crown has not acted honourably or fairly. It

has breached its constitutional duties to act in the honour of the Crown. The Crown's proposed amendments would serve to infringe our aboriginal and treaty rights including the right for independent assessments of certain projects or the right for comprehensive reviews of projects in accordance with the objectives of Chapter 12. Canada's proposed amendments would impact the integrity, independence and effectiveness of the YESAA process.

The amendments proposed by Bill S-6 would breach the Crown's **duty to consult and accommodate**. It is not enough for federal officials and representatives to say that they met with us from time to time.

Despite the concerns raised by the Yukon First Nations, the federal officials have not engaged in any discussions in good faith with the Yukon First Nations to address our concerns relating to the proposed amendments.

For example, in April 2014, Canada specifically requested our input about the suitability of proposed time lines. We provided written responses opposing the concept of beginning-to-end timelines and also providing rationale why the proposed time lines were too short. In May 2014, Canada decided to further shorten the time lines for all assessments, exactly the opposite of what First Nations had recommended. Canada was unable to provide a rationale for why it not only failed to accommodate our concerns, but in fact took action in the opposite direction.

The federal government would breach its constitutional duty to uphold the **honour of the Crown** if it proceeded unilaterally with the proposed four amendments that do not arise from the Five-year Review.

Setting the Record Straight

We have listened to the debate in the House of Commons; to the statements made by the Minister responsible; to our own Member of Parliament. We are frustrated by the lack of understanding and respect to our treaties and we want to correct some of that record.

Fact; Unlike the processes used for developing YESAA and completing the Five-year Review, the Government of Canada has not used a collaborative approach

to developing the proposed changes to YESAA. In fact, twice we were promised that a joint working group would be established to “provide departmental officials with the required information for the development of legislative drafting instructions.” It is a fact that a working group was never established and we were never asked to provide input on the development of drafting instructions.

Fact; The Courts have been clear; when consultation occurs under the framework of our Land Claim Agreements, the context of the treaty must be given large, liberal and contextual interpretation with the goal of reconciliation.

Fact; We actually support many of the amendments in Bill S-6 that clearly come from the Five-year Review. But we do not support Bill S-6 unless for the four problematic amendments introduced unilaterally by Canada are removed. In Committee discussions on March 24, Mr. Ryan Leef stated that when he met with First Nations directly, we stated that we support 98% of the legislation. We have never made such a statement.

Fact; Contrary to assertions from Aboriginal Affairs and Northern Development Canada, none of the four amendments were part of the original draft Bill that AANDC shared with First Nations in June 2013. We did not see these proposals until late February 2014.

Fact; Canada and Yukon had many opportunities to raise the concepts of policy direction, delegation of powers, time lines and exemptions for renewals and amendments during the Five Year Review, but they never raised the issues at all.

Fact; When YESAA was developed, it was supposed to replace the Canadian Environmental Assessment Act in Yukon, with a made-in-Yukon approach that addressed the treaty requirements. The objective of maintaining a distinct regime defined by our Treaty must be paramount over any unilateral objective to harmonize across the north and throughout Canada

Part 5: KDFN – Details of Policy Direction Concerns

Mr. Chairman and Members of the Committee: I appreciate your invitation to speak at today's public hearing regarding the proposed amendments to the *Yukon Environmental and Socio-economic Assessment Act*.

As the Chief of the Kwanlin Dun First Nation....I would like to extend a heartfelt welcome to our traditional territory...which we share with Ta'an Kwach'an Council...

It would have been wonderful if you could have been here a few days ago.... to celebrate the 20th Anniversary of Self-Government for the first four First Nation governments. For my First Nation...2015 marks our 10th Anniversary. Instead days later we are here to defend the spirit and intent of those very agreements.

Yukon First Nations negotiated their agreements in good faith....and as part of those agreements....we established our right to be included in decisions that affect the Yukon...especially when it involves the land...water and our people.

As you have heard from others, one provision contained in our Final Agreement requires the establishment of an assessment process that addresses the unique circumstances of the Yukon according to principles which have been clearly defined in the Final Agreement.

While the Minister insists the YESAA amendments will bring YESAA in line with other northern jurisdictions, I would like to point out each territory is distinct in its own way. The Yukon is not the same as the Northwest Territories and Nunavut. Northerners know this very well and have continuously asked that Canada stop lumping us together.

I want to speak to you first in a bit more detail about our opposition to the establishment of authority for the federal Minister to issue binding policy direction to the YESA Board.

As you have heard, self-governing First Nations are concerned that providing the federal Minister with authority to unilaterally issue policy direction undermines the autonomy of the Board.

When we negotiated our final agreements, we ceded title to over 90% of our traditional territories. In exchange, our Agreements give us the opportunity to

be active participants in managing public resources. YESAA was a big part of that.

Our communities, elders and negotiators always envisioned an environmental and socio-economic assessment process that was independent of political interference from any government – federal, territorial or First Nation. We fought hard for that when we worked collaboratively with Canada and Yukon to develop YESAA. All three parties agreed to follow the principle of establishing an independent Board.

To get that independence, we agreed that the Board's role on assessments would be limited to recommendations, while governments would retain the ability to make decisions. That was the compromise that Canada and First Nations agreed to. We cannot let that bargain be eroded by Canada giving itself the authority to impose its policies on the Board.

Providing a single party with authority to direct the Board is fundamentally inconsistent with any legislation that is based in our tripartite treaties. While the treaties obligate Canada to enact YESAA, it does not own YESAA and cannot choose to dictate its own policies on the independent assessment bodies.

The treaties established a mechanism for the parties to collectively refine YESAA and provide guidance to the Board – that process was the Five-year Review – and it could be any subsequent reviews conducted by the three parties. That process was and is the right mechanism to provide policy direction because any guidance would come from all parties to the treaties. It has proven effective in implementing the of Five-year Review.

As you have heard, the Five-year Review included agreement on 72 of 76 recommendations. At least 42 of these recommendations relate to administrative and policy functions of the Board including changes to the Board's policies, rules, administration and activities. The Board has been actively working to address these recommendations. Negotiations of the Parties to address issues is a proven effective way to address policy matters for the Board.

The concept of the federal Minister issuing binding policy direction is particularly problematic when we consider that the direction would apply to projects and assessments on our Settlement Land. It is completely contrary to our treaties

that the federal government would have unilateral authority to impose policies that may affect land over which it has very limited authority.

In closing, our agreements are as much about building relationships as about the settlement of past injustices. When the federal government embarks on one-sided changes to legislation based in our constitutionally protected treaties.... without collaboration....or true consultation with First Nations...it makes one wonder how strong government to government partnerships really are.

To quote KDFN Elder Judy Gingell...who was a member of the delegation that travelled to Ottawa to deliver the document... “Together Today for Our Children Tomorrow...to then Prime Minister Trudeau...in 1973.

This was the document that motivated the negotiations process for the Yukon First Nation Umbrella Final Agreement.....and subsequent Final Agreements....with each First Nation government.

Elder Gingell told industry recently...and I quote, “Today development that does not include First Nations...and does not consider First Nations interests...means they will end up in court. We will defend what we have worked for.”

Would court action be our first choice....obviously not. Our preference is to use every avenue available to us, including mechanisms defined in our Final Agreements....and respectfully....this parliamentary hearing.

Yukon First Nations have negotiated their Final Agreements relying on a relationship based on respect, honesty and trust. Why is Bill S-6 being imposed outside of those principles. The approach creates and fuels animosity for all Yukoners. The exploration spending predictions for 2015 already reflects that uncertainty.

I thank you for this opportunity.....

Mahsi Cho!

Part 6: NND – Details of Time Lines Concerns

Good Morning, my name is Millie Olsen and I am the Deputy Chief of the First Nation of Na-Cho Nyak Dun. Our newly elected Chief, Simon Mervyn, was not able to attend today due to a scheduling conflict and has asked me to represent our First Nation at this hearing. As one of the first signatories of a First Nation Final Agreement, we have celebrated almost 22 years of self-government here in the Yukon.

I want to begin by thanking you all for taking the long trip to Whitehorse to host these presentations. I want to recognize that we are here today presenting on the traditional lands of the Ta'an Kwach'an and Kwanlin Dun First Nations. You have already witnessed a few presentations and I can ensure you that all the FN unanimously oppose certain provisions included in Bill S-6.

It is of major importance for us to leave future generations with agreements and processes that will ensure the protection of the water, lands, and wildlife while providing for economic opportunities in the Yukon. To achieve this goal, all three levels of government will have to work together and the base for this mutual trust needs to be improved moving forward.

I want to speak to you now in some more detail about our concerns about the proposed beginning-to-end time lines that are proposed for assessments.

There is no evidence that these proposed time lines will benefit assessments or proponents in Yukon. Unlike many assessment processes in Canada, YESAA has always had time lines. Canada and Yukon requested provisions for time lines when we worked together to develop YESAA, and First Nations agreed to this concept.

As required in the legislation, the Board established time lines for all steps in the assessment process before it began its first assessment. Almost all assessments have been completed within those established time lines.

Some mining proponents in our traditional territory have been vocal in promoting the need for time lines. As with most assessments, YESAA has met the existing time lines for conducting assessments on these projects, even though in some cases the proponents made substantial changes to their proposals part way through the assessment process. The assessments would have met the time lines proposed in

Bill S-6 too. The time line proposals in Bill S-6 would bring no benefit these companies. But they could harm the assessment process.

Beginning-to-end time lines as proposed in Bill S-6 threaten to interfere with a process that works. Most risky is the application of these overarching time lines to the review of adequacy of applications.

Adequacy review often takes several iterations and the current time lines restrict the time available for assessors to review each iteration. YESAA currently has time lines for assessors to review each iteration. This approach encourages proponents to prepare comprehensive applications that minimize iterations.

Proponents that prepare adequate applications quickly are rewarded under the current process because they can proceed quickly.

On the other hand, the Bill S-6 approach of applying beginning-to-end time lines will reward proponents that prolong the adequacy review phase by using up time with multiple iterations. The approach will penalize assessors and reviewers like First Nations because it will shorten the more important public review phase, infringing on our right for comprehensive reviews of projects.

There are big risks for proponents too if the beginning-to-end time lines influence the ability of assessors to finish adequacy reviews. If assessors do not have adequate applications, they will more frequently be led to make recommendations that projects be rejected, or referred to higher levels of assessment.

During the engagement sessions, officials from the department of Aboriginal Affairs had assured us that they were not contemplating the inclusion of the adequacy stage in these maximum timelines but they changed this at the very last minute.

Finally, I want to highlight that the processes for seeking extensions of time lines, as proposed in Bill S-6, are cumbersome, and likely to create further delays in assessments. Extending timelines requires approval of the AANDC Minister or the federal Cabinet. Both will be time consuming processes that are.

Unlike many assessment processes, we have time lines in YESAA that work, and we should not interfere with those.

Before I conclude, I would encourage to read the 2013 report from the Yukon Minerals Advisory Board. This committee is made up of members who either represent or work for industry. This committee claims they are unique in the sense that they can communicate directly to cabinet ministers of the Yukon Government directly rather than sending information through departments. Within this report, you will find that the recommendations this committee puts forward are almost a carbon copy of the four contentious amendments that my colleagues have spoken to here today. They presented their recommendations that protect their interests in the industry. Why do we have a system in place where government acts on the requests of industry but cannot take the time to work with local governments to plan the future for our citizens and resident Yukoners?

With that I would like to express my appreciation to sit before you today and hope that the recommendations all FN collectively put forward will help you and your colleagues to make the right decision on Bill S-6.

Mussi-cho,

Part 7: VGG – Details of Delegation Concerns and Exemption Concerns

Opening remarks in Gwich'in

Drin gwiinzii...

Opening remarks in English

1. Good morning. My name is Stanley Njootli Sr., Deputy Chief of the Vuntut Gwitchin First Nation. Thank you for the invitation and opportunity to speak to the standing committee today.
2. The Vuntut Gwitchin Government supports the position expressed by other Yukon First Nations and CYFN at today's proceeding, but with limited time I will speak specifically about our collective concerns with amendments to YESAA that allow for the delegation of authority and the exemption from assessment.

Delegation of Authority

3. First, proposed changes to YESAA that would allow the Federal Minister to delegate authority to Yukon Government - this amendment would establish a bilateral, federal-territorial process for the distribution of responsibilities and powers under YESAA.
4. It excludes Yukon First Nations from that discussion - and is contrary to the nature of decision-making envisioned in our treaties.
5. Mechanisms that have been used in the past to define the distribution of powers include - our Final Agreements that were directly negotiated by the three parties. And - the Devolution Transfer Agreement, in which Canada, Yukon AND First Nations negotiated the Devolution Protocol Accord, to establish the negotiating principles.

6. The distribution of powers and responsibilities among governments – federal, territorial AND First Nation – can only be resolved through discussion among all the parties. It must not be delegated to a single party, and in this case a single person – the AANDC Minister.
7. It also must not be constrained to distribution among only two of the three parties that are involved.

Exemption from Assessment

8. Next, I want to provide some detail about our concern with the proposed section 14 in the Bill that provides a general exemption from assessment when authorizations are renewed or amended - unless, in the opinion of a decision body for the project, there is a significant change to the original project.
9. As stated in the Final Agreements, one objective of YESAA is to provide for “a comprehensive and timely review of the environmental and socio-economic effects of ANY project before the approval of the project.”
10. Achieving this objective is NOT RELATED to whether the authorization is a renewal or amendment. It is about the scope of the project and the effects that have been considered in previous assessments.
11. Governments – federal, Yukon and First Nation – are prohibited from issuing permits or licences to projects, unless they have been assessed under YESAA.

12. For renewals and amendments, if it is decided that the project has already been assessed, then no further assessment is required. These provisions already exist.
13. The Bill S-6 approach, on the other hand, proposes to create a general exemption that lacks the test of whether the scope of the project was considered in a previous assessment, and whether the effects have been previously assessed.
14. Under this general exemption, projects that will have significant adverse environmental or socio-economic effects - including effects on treaty rights - could proceed without assessment or appropriate mitigation.
15. Another major shortcoming of this proposal is the test to determine whether a renewal or amendment is required. The provision talks about 'significant change to the original project', and fails to consider a much broader requirement to assess changes in the environment, wildlife populations and socio-economic conditions; the results of monitoring; changing climate; changing technologies; improvements in the best-practices for mitigations; and alternative practices.
16. This provision will also create extremely challenging tasks for the assessors and proponents as it will force a requirement to consider project effects for very long-periods; for some projects this could be 100 + years.
17. Not only is this impractical and likely to lead in the failure to achieve the objectives of Chapter 12, but will have the unintended consequence

of delaying projects because of the increased likelihood of Designated Offices bumping assessments to the Executive Committee level - or could result in more determinations that the projects should not proceed due to significant adverse impacts.

18. To conclude my comments about the proposed exemptions from assessment, I want to highlight that Bill S-6 conflicts with the recommendation from the Five-Year Review that has already been implemented and is proving effective. The YESA Board made changes to its policies with respect to the scope of projects it considers in its assessments.
19. By unilaterally initiating this proposed amendment, Canada is reneging on the agreement we reached during the Five-year Review.

Concluding statements if time.

20. In conclusion, I would like to share my perspective on the importance of YESAA to the Vuntut Gwitchin First Nation.
21. The Vuntut Gwitchin First Nation was among the first Yukon First Nations to sign Final and Self-Governing Agreements with the Federal Government. From these agreements, the Vuntut Gwitchin Government was formed.
22. The Vuntut Gwitchin Traditional Territory shows promising oil and gas reserves. Oil and gas is a fledgling industry in the Yukon, and YESAB assessments are key to the development of strong and positive relationships between the Vuntut Gwitchin and industry.

23. The Yukon Environmental Socio-Economic Act and its Regulations apply equally to industry and to projects undertaken by VGFN citizens and businesses, by the Vuntut Gwitchin Government and by our development corporation.

24. YESAA was developed through our final agreements to serve as an impartial assessment tool; as a government we need to know it is working.

Mahsi' Choo

Part 8: CAFN - Closing and Overall Conclusion

Good Morning Mr. Chair and Committee members. My name is Steve Smith and I am the Chief of the Champagne and Aishihik First Nations.

My father was Elijah Smith who took a central role in taking our land claim issues to Ottawa more than 40 years ago. I wish to acknowledge my relations and other First Nations and non-First Nations people who dedicated their lives to negotiating this new relationship. And it is through this recognition that I stand here before you today in defense of our Treaties.

Bill S-6 is a roadblock to reconciliation. This unconstitutional bill demonstrates:

- a. The federal government's unilateralism and lack of respect for the Final Agreements;
- b. The federal government's failure to abide by the collaborative development assessment regime mandated by the Final Agreements;
and
- c. The federal government's indifference to fostering productive and collaborative treaty relations with Yukon First Nations.

This is fundamentally unacceptable.

Our Final Agreements entailed a promise. They are modern treaties, protected by section 35 of the Constitution. They are vehicles of reconciliation between First Nations, Yukon, and Canada.

The Final Agreements look backward to address historic grievances; and they look forward to the future, towards ever more cooperative and collaborative relationships between Yukon First Nations and the Yukon and federal governments.

The Final Agreements represent a significant compromise and they create a new constitutional arrangement in the Yukon.

Yukon First Nations abandoned their claim to Aboriginal title over 90% of their traditional territories—an area of almost 484,000 square kilometres (roughly the

size of Spain)—in exchange for the commitments made in the Final Agreements. That was an enormous compromise.

The establishment of an independent development assessment regime—created through negotiation and collaboration between the First Nations, Yukon and Canada—was one of the treaty commitments in the Final Agreements. YESAA was the means by which that commitment was fulfilled.

YESAA is mandated by and founded in the Final Agreements. It is not an ordinary piece of federal legislation. It emerged from the constitutional compromise that underpins the Final Agreements.

The Final Agreements required First Nations, Yukon, and Canada to negotiate guidelines for drafting YESAA. We did so. We crafted the legislation and regulations together. Establishing YESAA was a success and a demonstration of the cooperation and reconciliation that our Agreements demand.

YESAA is a “made-in-Yukon” law, designed to meet the needs of Yukon First Nations and Yukoners alike. It is unlike other assessment legislation in Canada because it is guided by specific Treaty obligations.

The federal government had an obligation to enact YESAA, but the federal government does not own YESAA. YESAA is not legislation that Canada may simply alter as it wishes. The federal government cannot unilaterally modify YESAA for its own benefit or to suit its own preferences.

As we have said, we do not oppose all of the provisions of Bill S-6. But, we oppose it unless the unilateral federal amendments to YESAA that undermine the spirit and intent of the Final Agreements are removed. The details of the changes we expect were identified in Chief Massie’s opening remarks today, and in our written submission.

By empowering itself to issue binding policy directions to the Board, Canada would overturn the careful balance struck during the treaty negotiations and the subsequent constitutionally-mandated negotiation of YESAA.

By appropriating powers that imperil the Board’s independence, Canada imperils reconciliation.

In the Final Agreements, the parties agreed on the constitutionally-protected framework for the creation of development assessment legislation in the Yukon. Such legislation is to be drafted based on guidelines negotiated by the parties or, failing agreement on guidelines, following consultations with First Nations. Canada has failed to do that.

In short, Bill S-6 demonstrates Canada's disregard for its treaty commitments.

For development in the Yukon to be successful, it must be sustainable. It must have a social license. It must have both Yukon First Nations and Yukoners' support.

The Final Agreements and YESAA are designed to ensure sustainable development by, among other things, ensuring trust in the assessment process that leads to development.

First Nations trust the YESAA regime because they are its co-creators and because they have confidence that the assessment process is independent.

By unilaterally amending YESAA in violation of its Treaty commitments, Canada undermines First Nations' trust in the YESAA process.

This will undermine the promise of the Agreements and threaten the ability of First Nations to support development in our traditional territories.

Recent court decisions such as the Peel Land Use Planning caseⁱ in the Yukon Supreme Court, the Tlicho injunction over changes to the land and water boards in the Northwest Territoriesⁱⁱ earlier this year, or the Mikisew Cree caseⁱⁱⁱ on the federal omnibus bills C38 and C45, demonstrate what happens when our treaties are threatened.

That serves no one's interests.

In conclusion, the Final Agreements will never fulfill their purpose of reconciliation if the federal government persists on its path of unilateralism and disregard for the views of its treaty partners.

Our treaty is as much about building relationships as it is about the settlement of past grievances. When Canada unilaterally undertakes major changes to treaty mandated legislation without collaborating, or even truly consulting with First Nations, it inflames grievances and strains relations.

By going it alone, Canada has left the honour of the Crown behind.

ⁱ First Nation of Nacho Nyak Dun v. Yukon, 2014 YKSC 69

ⁱⁱ Tlicho Government v. Canada (Attorney General), 2015 NWTSC 09

ⁱⁱⁱ Mikisew Cree v. Canada, 2014 FC 1244