

## **MP Dennis Bevington`s speech on Bill S-6 Yukon and Nunavut Regulatory Improvement Act**

**December 1, 2014**

Mr. Speaker, I rise today to speak to the bill in front of us, which has found its way here through the Senate, a completely inappropriate way to bring forward legislation. It should have come here first and should be a government bill, but the government chose that pathway. That way it can move things through the House in a fashion and build a case using its witnesses in the Senate, which it controls, and take away the real responsibility for debate in this place.

This bill deals with northerners' rights and First Nations' rights. First Nations' rights are constitutionally protected, and northerners' rights have constitutional issues attached to them as well, which I will go into as I go forward. Bill S-6 would amend the Yukon Environmental and Socio-Economic Assessment Act, known as YESAA, and the Nunavut Waters and Nunavut Surface Rights Tribunal Act. I will deal mostly with the changes to the Yukon Environmental and Socio-Economic Assessment Act. The changes to the Nunavut Waters and Nunavut Surface Rights Tribunal Act are much less profound and not as controversial.

There is a high level of opposition to these changes. In September, I was in Whitehorse and conducted a public hearing on these bills, with the assistance of the Yukon NDP. There was standing room only in that meeting room. People wanted to understand the bills and were concerned about their impact. Yukoners are sophisticated in their knowledge and understanding of legislative changes. They have been through it to a greater extent than perhaps the other territories. It is a territory that has achieved the highest level of devolution prior to this bill. People are on track in understanding what their rights are and what they see as their future.

However, of course, the Conservative MP, the Conservative senator, and the right-wing Yukon Party government are not listening to the people, not conducting public hearings, and not allowing the people of Yukon to have a say on this bill. They are doing their stakeholder consultation and fulfilling their obligations to first nations for consultations, but where are the public hearings? Where is the engagement of the public at large? They will not do that because they know very well that if they did, the real opposition to this bill would coalesce with the first nations and say no to the bill and the changes.

Why would people in Yukon who are concerned about their livelihoods and futures be concerned about these changes that the minister has presented as simply ways of increasing economic activity in Yukon and making things work a little better? There are four changes that really upset Yukoners. One of them is providing the [Minister of](#)

[Aboriginal Affairs](#) and [Northern Development](#) the authority to provide binding policy direction to the Yukon Environmental and Socio-economic Assessment Board. This is something that was established in the NWT and there were real concerns with it there. The Yukon, which has been dealing with a different system for the past 10 years, is looking at anything like this as an abrogation of its rights and hard-fought authority over the lands and resources.

The second change is the introduction of legislative time limits for assessments. That is another issue that I will bring up a bit later.

The third change is allowing the [Minister of Aboriginal Affairs](#) and [Northern Development](#) to delegate any or all responsibilities to the Yukon government. That is an issue of huge concern to first nations, and Yukoners as well. Yukon has worked out an arrangement between first nations and public government that is critical to the future of the Yukon territory. I do not think anyone would deny that. That relationship is one that the provinces are having more and more trouble with every day. The failure to deal on a nation-to-nation basis at the provincial level is causing all kinds of grief in all kinds of projects right across this country. Therefore, there is concern about how the delegation takes place.

Then there is the question of creating broad exemptions from YESAA for renewals and amendments of permits and authorizations. People look at that and ask what is going on and wonder how they we make sure it is correct.

Additionally, these amendments favour the Yukon government over Yukon First Nations, the other partner in the YESAA process. The Council of Yukon First Nations has threatened legal action should the bill become law.

YESAA was established in 2003 in fulfilment of an obligation in the Yukon Umbrella Final Agreement, which has settled many First Nations land claims in that territory. In October, 2007, the five-year review of YESAA was initiated and then completed in 2012. The findings of the review were never made public.

Unlike the provinces, the legislative powers of the territories are determined through federal statute rather than through the Constitution. What we have in the Northwest Territories, Yukon, and Nunavut is what Parliament gives us. While section 3 of the charter of rights, which is part of the Constitution, guarantees that every citizen in Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein, the remainder of the Constitution describes the territories as lesser partners in Canada than the provinces.

We in the three territories have a problem in that we would remain without the authority of this body, the House of Commons, giving us our full due under Confederation. We would not have those powers under the Constitution.

Because of this reliance on the federal government to devolve the legislative powers and authorities that the provinces take for granted, it is really unfortunate and duplicitous that the Conservatives are taking away powers through these amendments to the act 11 years after they were granted.

**Some hon. members:** Oh, oh!

**Mr. Dennis Bevington:** Some might find it amusing that there are noises in the House, Mr. Speaker, but that is something we all have to live with. The rumbling of discontent in the country toward the Conservative government far exceeds any noise I have heard here in the House.

Yukoners are also angry about the lack of public involvement as Bill S-6 was developed. As I said, I held a public meeting in September. It was a full house. There was another public meeting held later on in the fall in the Kwanlin Dün Cultural Centre, where there was standing room only. A few hundred people showed up.

Why would people come out to a very dry discussion of environmental assessment? It is because they care. They understand and care about how their laws are being developed. If we went into the province of Alberta and said that we were going to change its laws about environment assessment, that this is the way things are going to go from now on, would the people of Alberta not come out and protest? If we did that in Quebec what would happen?

Why are we treated in this cavalier fashion where the federal government can come into a territory, hold hearings with stakeholders only, take the opinion of the people it considers important and not have any public meetings with the people of the territory about what is going on in their own territory?

When the original YESAA was developed, the department released drafts of the legislation in 1998 and 2001 for public review. It also undertook two separate tours of Yukon to meet with Yukon first nations and other residents to review and discuss these drafts. A little different pattern emerges here. Back then, one of the discussion tours lasted for 90 days and went to every community throughout Yukon. Every First Nations community not only had an opportunity to send in written submissions on the first draft, but each community also had an opportunity to have an open public hearing. The way that Bill S-6 has been developed is so different. Listening to the Conservatives one would think this has been a multi-year program with incredible input. The reality is much different.

The parties discussed the YESAA process for many hours between 2008 and 2011 as part of the YESAA five-year review. That review is required under the Umbrella Final Agreement, and not a discussion of a new draft bill.

The amendments to YESAA under Bill S-6 that are of concern were never discussed and never raised by the Conservatives during the five-year review. These new amendments were introduced with little opportunity to ensure there was adequate consultation and accommodation.

On February 26, 2014, as I said earlier to the minister, Canada arrived at a meeting with Yukon first nations and provided paper copies to those in attendance and would not even give electronic copies to those participating by telephone, despite the changes to first nations' relationship with the Crown and the Yukon territorial government. We had meeting where they could not even be there in person and they could not even have copies of the amendments.

What is going on there? They had less than two months to respond to these changes. This was hardly adequate.

Consultation means providing the necessary information to the parties, which the Conservatives did not do. They failed to meet the test of the treaty and common-law duty to consult and accommodate. So there was inadequate consultation with first nations, despite it being required by law. Democracy also requires the participation of the public. On that score, the Conservatives and their elected representatives did very little, and perhaps even nothing.

When I conducted a public hearing there, knowing that as critic I would be responsible for speaking on behalf of Yukoners here in the House, I met with many of the public afterward and the chiefs of the grand council. What did I hear? They questioned the constitutionality of the unilateral changes proposed in Bill S-6, which were not discussed during the five-year review or during the McCrank report.

The government has had plenty of opportunities to discuss changes like these, but did not take those opportunities.

They say that the 16-month timeline is out of touch with the reality on the ground, particularly further north where, depending upon the timing of the review, the project may have only one summer to conduct any necessary environmental work.

When it comes to the timelines, Yukoners, who live there and understand the place, say there are problems with the 16-month timeline, that it may not give them adequate time to provide the information to the board so that the project can be assessed properly.

Also, Yukoners fear that the first nations do not have the financial and person resources to adequately assess proposals and that a timeline like this would artificially strain the few resources they have. This is a common problem across the north, when it comes to environmental assessment.

Companies have adequate resources generally. They do not go into the process unless they do have those resources. Many times large multinational corporations can bring more to bear on the subject than a first nation community that might be the most affected by it.

Yukoners see these amendments as an attack on Yukoners' democratic rights and the constitutional rights of first nations. By ignoring first nations' rights, the bill would create uncertainty in the mining sector, as first nations would now resort to the courts to protect their interests.

We had a system in place that was working. There were some changes required. Those changes were discussed. There were 70 amendments to the act proposed, many of which could have been done in House. People agreed to them, according to the reports that we have heard of, although those reports were not made fully public. Instead, the Conservatives brought in these other measures that would have the ability to upset the operation of Yukon in the years to come, just as in the Northwest Territories they changed the environmental assessment legislation with devolution. We have two first nations now taking them to court over that.

Where is the certainty in the process? Where is the certainty to mining companies? They want to go ahead and do this kind of work, but they are not sure that everyone has come onside and they do not know whether they will end up in a situation where what they propose is in front of the courts?

“Social licence” is a phrase that members of the government need to understand. It should be branded on all their documents. They need social licence to move ahead these days. They cannot simply be the way they have been; that is not working. We can look at all the pipelines and all the proposed energy projects across the country, and we see that social licence has caused grief in almost every case.

We had a system in Yukon that was working. It needed some minor tweaking. What we have ended up with is a series of changes that take it far beyond the pale.

However, I have heard other voices in Yukon speaking against this bill. The proposed amendments in front of the Senate today were not discussed in the five-year process with Canada and the Yukon government.

This is the testimony of Ruth Massie, Grand Chief, Council of Yukon First Nations, before the Senate Energy, Environment and Natural Resources Committee. She said:

—it is our view that the YESAA has been operating effectively and efficiently since its enactment in 2003. The federal government now wants to unilaterally make additional amendments to the YESAA. We did not request these amendments, nor do support them. These amendments are not necessary.

This is the testimony of Mary Jane Jim, Councillor, Champagne and Aishihik First Nations, in front of that same committee. She said:

Eleven years ago, devolution gave the Yukon government province-like powers for land and resource management. This was an important step in Yukon's history and crucial in Yukon's ability to determine our own future, a future grounded in respectful relationships among Yukon First Nation governments and the Yukon government.

Yukon NDP leader, Liz Hanson, in the Yukon legislature, on October 23, said, "With these proposed amendments to what is a made-in-Yukon environmental assessment process, YESAA, it's no longer ours".

A Yukon News editorial, "Environmental assessment reform should be done in the open", on June 13, said:

A long list of people deserve raspberries for this needlessly shady behaviour. At the top of the naughty list are [the Yukon senator and the MP for the Yukon] who are supposed to ensure that the interests of Yukoners are represented in Ottawa. Instead, they've kept the public out of the loop, other than [MP] uttering vague generalities about the forthcoming changes without offering any meaningful specifics. Shame on them.

Here is the final one, and I know the Conservatives do not like to hear the real people talking. The Tourism Industry Association of the Yukon, in a November 21 letter to the Yukon MP., said:

We believe that these changes will have a negative impact on the tourism industry, and for Yukoners overall.

As YESAA is one of the cornerstones of the Yukon Umbrella Final Agreement, we are concerned with the Council of Yukon First Nations' grievance with the lack of

consultation regarding these proposed changes. Moreover, there was no opportunity for the Yukon public and the majority of stakeholders to provide their views through a transparent consultation process.

The members of the House are here to represent the people of their constituencies. The people of Yukon do not want this bill. They do not see the need for it. They do not understand why the federal government is taking things away from them that were well established in Yukon, that do not need to be changed. Why is this paternalistic attitude being foisted upon the people of Yukon?

Democracy is about serving the will of the people. If the Conservatives really cared about what is important for Yukon, they would listen very carefully to Yukoners. They are in an embryonic stage, creating their own society, their own way of life, their own relationships with first nations. This is what they are doing. If the Conservative people want to participate there, then they should go to Yukon and join with them there as citizens of Yukon.

The citizens of Yukon and the First Nations people in Yukon should have the absolute right to a final say about how their land is being managed. We have listened to the people of Yukon. We are ready to work to fight this bill.