



April 13, 2015

Blake Richards  
Chair, Standing Committee on Aboriginal Affairs and Northern Development  
Sixth Floor, 131 Queen Street  
House of Commons  
Ottawa, ON  
K1A 0A6

Dear Mr. Richards and Others It May Concern,

**RE: Bill S-6 – Yukon and Nunavut Regulatory Improvement Act**

The Standing Committee on Aboriginal Affairs and Northern Development recently travelled to Whitehorse to hold hearings on Bill S-6. During the proceedings, I joined several other chiefs in speaking out against four amendments to the *Yukon Environmental and Socio-economic Assessment Act* (YESAA) that Canada introduced at the last minute, without adequately consulting First Nations, and in defiance of the three-party legislative drafting procedures contained in Chapter 12 of the Tr'ondëk Hwëch'in Final Agreement.

I want to thank the Committee for the opportunity to speak. I also urge the Committee to reject the bill in its current form. Yukon's economic health depends as much on respectful intergovernmental relations as it does on the neutrality and effectiveness of the development assessment process. We view the four amendments as an attack on both.

If Canada's elected representatives pass Bill S-6 in its current form, Tr'ondëk Hwëch'in (TH) will do everything in its power to resist the unnecessary and problematic changes to the YESAA. We do prefer to work through a collaborative, tripartite process to resolve these issues.

Tr'ondëk Hwëch'in signed a modern land claim in 1998 after 25 years of negotiation. The Crown got clear title to over 95 percent of our traditional territory. Although we retained less than five percent of our traditional lands as Settlement Land, we signed and ratified the Agreement because we trusted that treaty-mandated processes like YESAA and regional land-use planning would protect our interests and enable us to meaningfully participate in the management of public resources on public land.

YESAA itself was developed in a collaborative process that involved Canada, Yukon, and Yukon First Nations. That process honoured the Final Agreements that took so long to negotiate. The Supreme Court of Canada recognized these processes as key features of our Yukon Final Agreements. In the recent *Little Salmon/Carmacks* case, Justice Binnie 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.'**" [emphasis added]

Without that meaningful participation, TH lacks confidence in Canada and Yukon's ability to be respectful stewards of the rich traditional territory where we live. The distant and not-so-distant past justifies our apprehension:

**DREDGE TAILINGS**

Early in the 20th century, large dredges turned over the Klondike River valley in search of gold. Massive tailings piles still snake across the landscape, and the valley that bears our name has never been remediated to its original condition. This river valley was a rich area full of fish, plants, and animals that provided sustenance to our people and others, but today it bears the scars of decades of exploitation—exploitation that was allowed and encouraged by the Government of Canada.



*Above: Google Earth image of Klondike Valley dredge tailings.*



*Above: Photo of a Klondike Valley Dredge Tailings area.*

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*Above: Worm castings-like tailings. Note the vehicle on the far left side, on the highway, for scale. The pullout on the lower right side of the image includes the "Welcome to Dawson" sign.*

### **CLINTON CREEK ASBESTOS MINE**

The Cassiar Asbestos Company owned and operated this open pit mine from 1966 to 1978 and were subject to federal regulations. In 1974, the company's waste rock pile slid and blocked off Clinton Creek, forming an unnatural and anaerobic lake that was later named Lake Hudgeon. The tailings pile also failed and impounded water upstream on Wolverine Creek.

Company officials ultimately took the money and ran. Since then, millions of taxpayer dollars have been spent, and Canada remains liable for millions more in remediation expenses under the Devolution Transfer Agreement. Meanwhile, the Yukon Government now bars public access to the site because of dangerous and deteriorating site conditions, and site features impede salmon passage. Back in the day, a thorough and neutrally conducted environmental and socio-economic assessment may have prevented this financial and ecological disaster.



*Above: Clinton Creek valley and the waste-rock pile before failure.*

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*Above: Clinton Creek Valley and the Impounded Lake, in 2010.*



*Above: The failed asbestos tailings pile and Wolverine Creek.*

## **YUKON QUEEN II CATAMARAN**

Holland America Line operated this high-speed catamaran for over a decade on the Yukon River between Dawson City and Eagle, Alaska, despite evidence from Tr'ondëk Hwëch'in and local fishers that its wake wash was eroding shorelines and destroying fish and fish habitat. After YESAA's enactment, the company had to undergo an assessment to continue running the boat, and backed by flawed impact studies, it engaged in intense lobbying to get approval. It even attempted to economically blackmail Yukoners, threatening to pull out of the territory if it could not run the vessel. The Yukon and Canadian governments of the day both supported Holland America's position. In the end, however, Holland America pulled the boat from the river but stayed in the Yukon, and the local economy, the local airline Air North, and our Yukon River ecosystem have benefitted. If the federal government (or Yukon Government, under delegation of authority) had been able to issue preemptive binding policy direction to YESAB, or if the regulators had had the power to waive an assessment, it might still be churning up silt and helping to destroy the fishery.



*Above: The high-speed catamaran Yukon Queen II at dock in Dawson City, Yukon.*



*Above: The Yukon Queen II travelled to and from Eagle, Alaska, from Dawson City every day, from early Spring until the Fall.*

## The Promise of YESAA and our Treaty Bargain

YESAA was intended as a comprehensive and neutrally conducted development assessment process and is central to the Final Agreement bargain. Section 12.3.2 of the Final Agreement directed the Council of Yukon First Nations, Canada, and the Yukon to negotiate guidelines for drafting YESAA. These Parties ultimately went beyond Section 12.3.2, establishing a tripartite working group to develop YESAA and its regulations. Canada, Yukon, and First Nations collaborated right up to the approval of the legislation in Parliament. Canada and the Yukon found ways to support this collaboration.

Collaboration continued after the Act came into force in 2005. Section 12.19.3 directed the Umbrella Final Agreement parties to review YESAA after 5 years, and First Nations actively participated in this Five-Year Review. Some of the amendments in Bill S-6 are reforms that emerged from this collaborative review process.

However, Canada's insertion of the four surprise amendments has tossed collaboration out the window. The four problematic and substantive amendments—**delegation, policy direction, timelines, and no-assessment renewals**—give undue power to the federal and Yukon governments and upset the tripartite balance inherent in YESAA as currently written. In supporting these amendments, Canada and Yukon have put up roadblocks to meaningful collaboration, and these actions have strained intergovernmental relations to a degree rarely seen since the Final Agreements were signed.

Respectful government-to-government negotiation was good enough for YESAA's development and for the Five-Year Review, which produced reforms we could all live with. (Most of the recommendations from that Review have already been implemented through administrative and other changes that did not require legislative change.)

Under Sections 12.3.3 and 12.19.4 of the Final Agreement, the federal government is obligated, at a bare minimum, to do proper consultation while drafting changes to the legislation. Unfortunately, Canada has ignored its constitutional duties and tacked on the four substantive amendments without adequate consultation. The amendments erode the tripartite nature of the bill's initial development and subsequent implementation. TH officials participated in those supposed consultations, and statements from Canada's officials that "we will be going forward with those amendments" do not reflect true consultation. The Crown has a constitutional duty to consult with TH and, where appropriate, accommodate our concerns in amending YESAA. This is simply the bare minimum expected given the treaty bargain agreed to so many years ago.

To hand our officials secret copies of the bill and tell us these new amendments were non-negotiable is neither collaboration nor consultation. This attitude and action violates our Final Agreement and is illegal under common law. While it is true that many years and dollars were spent participating, the four surprise amendments were never part of the discussion, and Minister Valcourt admitted as such in his testimony on March 24, 2015.

The four amendments should never have been included in the bill. To protect the treaty relationship and the certainty that Final Agreements promised to all the parties, please remove them from the bill.

Finally, I want to recommend that the committee add a provision to Bill S-6 that mandates a future review of YESAA, particularly in light of the controversy that this legislation has generated. Parliament did just that in the case of Bill C-36, the *Protection of Communities and Exploited Persons Act*, by adding a statutory review provision (Section 45.1). A similar provision should be added to the YESAA legislation now being considered by the House of Commons.

Thank you for your time and consideration.

Sincerely,



Chief Roberta Joseph  
Tr'ondëk Hwëch'in

CC: Members of the House of Commons standing Committee on Aboriginal Affairs  
Yukon First Nation Chiefs  
Jean-Marie David, Clerk of the Committee  
Grand Chief Ruth Massie, Council of Yukon First Nations  
Ryan Leef, Yukon MP  
Premier Darrel Pasloski, Yukon Government  
Liz Hanson  
Sandy Silver