

3.0 Building a Development Assessment Process for Yukoners -- The Importance of Socio-economic Effects Assessment - Grand Chief Ed Schultz

LINDSAY STAPLES: With that, Kirk also talked about the vision that went into the negotiation of Chapter 12, and it was 20 years-plus in the making, and there's perhaps no better person in the room to assist us in going over what it took to get to the place where we are today largely as a consequence of many, many years of negotiations, and in particular, the interests that First Nations brought to the negotiating table to achieve the development assessment framework that we have today, and that's Grand Chief Ed Schultz of the Council of Yukon First Nations. If you'd please welcome Ed Schultz.

GRAND CHIEF ED SCHULTZ: Good morning, everybody. My good friend, Kirk, has left me 10 minutes of my original time; but with all of your indulgence I will try to keep my comments poignant, but at least brief. I believe if I may take a second here, I've always wanted to meet this man.

[Shakes Hands with Mr. Berger]

He may not know it, but I know it: On my desk there's an oil and gas magazine, and he's on the cover, and I'm the centrefold. It's true. I have it on my desk. I mean, I'm talking about oil and gas, right?

I'm very honoured to meet you, sir.

Mr. Berger, of course, is a critical individual in the history of the advancement of my people and of Yukoners in general. His inquiry, which I had the opportunity to look at many years ago when I started working in this business with Kwanlin Dun, I was afforded an opportunity to do some research and to try to help that community, as well as First Nations in general. From that body of work, in addition to the other drafts that were on the table at the time — and this was just before the '88 AIP, or agreement in principle, for those who aren't used to that type of terminology — embedded in me a deep conviction that we were on the right path, and not just us by ourselves, as aboriginal people in the territory, but Yukoners in general, and for some Yukoners, admittedly, reluctantly so, but, nonetheless, I think that we have come to a time where we recognize the value in what originally started as a bilateral negotiation between the Crown and the indigenous population.

Let me give you a little backdrop, if I may briefly for our purposes. I think this is about my fourth or fifth speech this week, and I see a lot of you — some of you must just go from conference to conference to conference. You know, the problem with giving speeches in a small jurisdiction when you have similar subject matter, and I was talking to one of my staff members that I kind of have a template in my head, and then, depending on who I'm talking to, I kind of adjust it; but the problem for the person delivering it, at least for me, is that you even get bored with your own speeches. You're kind of going, "Geez, I'm saying the same old thing." But I'll try to envision that you are an entirely new audience and total novice in the history of our Territory.

In any event, as I was saying, when we look at the history of the Territory and all the major developments in its past, and we can go all the way back, as I've said in many circumstances, to the early fur trade, the impact of the Goldrush, the impact of World War II and the construction of the

Alaska Highway, the base metal boom in the '70s and the proposition, at around that time as well, for an oil pipeline. You look at the wealth that has been generated by the Territory for Canada, for the Territory and for certain individuals and certainly for industry and business; but when you look at the indigenous population, and one of the things Mr. Berger had identified was the fact that here in the north, the indigenous population wasn't deriving much wealth from all this activity. He called it for what it was, that it was unfair and it was un-Canadian. He may not have said those exact words, but at least that's what I took from it. I commend him for that body of work, because that fundamentally changed the north. That was something that provided our people, people like Elijah Smith and other leaders of that day, with an affirmation of what they already held to be true, that there had to be an arrangement between the First Nations people of this Territory and other Canadians; one framed in partnership, one that was orientated to the task of decentralizing authority out of Ottawa and putting it in the hands of the people who actually live here, and when you look at the *Umbrella Final Agreement* and all its related chapters, obviously that has prevailed. That is debatable, in certain circles, that it went to the degree that we wanted or they wanted, or this, that, or the other thing, but it is a document of compromise and I'm very satisfied with the end result. It is a document that is highly community-orientated, orientated to constituent residents, by and large, aboriginal and non-aboriginal. It is orientated to the task of decentralizing or devolving authority from centralized agencies or government bodies and placing, to the greatest extent possible, the decision-making in the hands of the people who live here.

So, as a vision, if I can put it like that, at least that is what I've always construed YESAA to be and in the backdrop of trying to achieve that, from my own personal history, I was involved in environmental assessments for quite some time. Some of the people in the room knew me when I was just starting, and I was a little bit of a rabble-rouser, I think, in many ways, both on the job and off the job, but nonetheless age does creep up on you, so you try to settle down.

When I started in EA stuff, we were still working under the old EARP, Environmental Assessment Review Process, right? The "EARP-Guidelines Order", I believe is what it was called. In the Yukon, our practical implementation of that, at least the precursor, was several steps; and one that sticks in my mind was this very large committee, slightly smaller than the audience held in this room, called the "Regional Environmental Review Committee". I don't know how many of you remember that committee but it was quite large and it could be, from time to time, if we could get everybody together; and at every meeting we didn't necessarily get everyone together, but it was quite large, and it would have all the various federal departments and territorial departments and agencies and First Nations and sometimes NGOs, like the Conservation Society, et cetera, et cetera, pretty much anybody who really had an interest in a project that was being proposed at the time. That was an attempt to try to bring all the people together who had a concern or an issue related to a project into one room to try to make some decisions.

Now, I recall my experience at the time because at that time, I was working for the Council of Yukon Indians, which, of course, was the precursor to CYFN today; and I remember sitting there trying to make interventions on behalf of local communities that could be far afield, they could be in Beaver Creek or Old Crow, or whatever, and sometimes they couldn't send their own representative, because it was very costly. And so, they would ask CYI, and they would ask me to go and make these interventions, either with them or on their behalf. I was amazed with the level of the discussions and it was a very rewarding experience, absolutely. It certainly opened my eyes to the

complexity of trying to assess projects, but it did kind of reaffirm one conviction that I did hold at the time, that although everybody was well-intentioned — I'm absolutely certain of that — a lot of the decision-making and the ultimate decisions still didn't rest with that particular body. The ultimate decisions eventually rested with the Crown, and/or, particularly on a lot of subject matter, and we were concerned about it, equally, with others. One of the things that I also took from that was that a lot of the local community issues didn't necessarily make it into some of the recommendations or were seriously considered, in my opinion. So, that reaffirmed a lot of the discussion we were having as communities, that we needed a new process, a made-in-Yukon process.

It wasn't just the aboriginal people who were voicing that concern — I'll be very blunt. We used to have a lot of people, and you may know it or not, that some of the people in this room used to come and visit us at CYI and equally share their concerns about government systems and saw that since we were actually getting a lot of attention and were able to command the attention of the Crown at the time, that they would like to have a partnership from time to time.

That being said, we also recognized that Canada, of course, was looking nationally to creating a new *Canadian Environmental Assessment Act* legislation, and that was as a result of a bunch of, I don't know, nasty things that were happening in Alberta, or something like that, I can't remember exactly. We were being told at the time that, "We're going to come up with a new piece of legislation that will replace EARP, and you don't have to worry about it." But as we started some of the early conceptual ideas, we realized, "Well, no, this does not really fit the spirit and intent of what our agreements are trying to achieve. We really don't want Canada in a strong position to have a whole lot of say, or almost exclusive say, over matters that pertain to our communities."

Why is it that, typically, and around that time — you know, one of the last people to know about a major project, or small project, generally the last people to know were the actual people who lived there. Someone here in Whitehorse or in Ottawa would find out first; because the proponent would come in, and for business reasons they would want to keep it secret, and I understand all that. It would be in the works for several weeks, and maybe months, before the local chief or the local mayor ever heard about it. I was going, "Wow, someone should have maybe told me a long time ago, because now I've got all these people who are a bit concerned and I'm the public official here; I'm the one who has to deal with all this kind of fervour and uproar while everyone else who is making the decision is somewhere tucked away in their offices."

So, we introduced to Canada and to the Territorial Government an idea that we want a made-in-Yukon environmental assessment process. We want one that's framed on a partnership, as was articulated by Kirk. We want one that is highly community-orientated. We want one that considers seriously the traditional knowledge and observations of our people, and this is long before the precedent-setting cases on traditional knowledge or oral histories in discoveries in law. So, we were really on the cutting edge at the time. There was some reluctance, but if nothing else, we're persistent, and we said that was what we wanted.

Fortunately, as time moved on, we got more allies to think that way and particularly when we started looking at devolution and saying, "Well, you know, if we're really looking at a partnership," — and this still is a bit of a controversy for some circles in the First Nation communities, but it's no state secret that I support devolution. I've always been of the belief that, just like in the framework of our

agreements, that local people, to the greatest extent possible, should be making the decisions over their own resources, their own lands. So, with that, we recognized that if this thing moves forward in how we envision it, then the real orders of government of high power, or authority and jurisdiction, will be the Territorial Government and the First Nations.

We needed an instrument to make sure that we can do assessments. We already knew that, of course, we were a commodity-based economy, natural resources, and that we will be that for quite some time. But as we were getting involved in other discussions, particularly internationally and nationally, related to energy, climate change and so forth, and we started to determining, or at least in our analysis, that wow, pressures on the north are going to come back. They haven't gone away; they're actually going to come back, and they might come back with actually more zeal than they've ever had before.

I think that, as we can see in today's environment — you know, I've just had the pleasure of meeting with Ambassador Jack Anawak, our Canadian Ambassador to the Arctic Council, yesterday, with a couple of Consul Generals who are visiting and probably met a number of you in the last couple of days. There is a heightened level of interest in the Arctic, a renewed, heightened level of interest. They're particularly interested in our transportation corridors, both in airspace as well as over the seas, and on land. They're highly interested in the natural resources we have, particularly natural gas and oil, and getting access to it, as well as other traditional resources.

I suppose the difference between 1970 and now is some of the global strife that we're dealing with. The problem is that we have a lot of continental security issues that are far more important than they ever have been. September 11th fundamentally changed a lot of things and a lot of frames of minds of how things should be done. Certainly, the United States and Canada, in partnership, have continental security as a priority agenda item. To the greatest extent possible, the United States, we know, and I meet a lot with American representatives, but Canadian government officials as well, are highly interested in ensuring that we cultivate and develop, to the greatest extent possible, our own energy supplies, our own reserves. It only makes sense. As the world increasingly gets to be more complicated, and there's more and more potential for terrorist activities to harm our supply needs, our demand for energy, this obviously is very important.

So, what I'm getting at is that, as we were seeing all these things unfold, as a people we recognized that this had even more importance. It added to the value that we had already seen in it.

I've been asked to talk about the importance of socio-economic effects assessments; and I said to Lori, my staff member, who kindly gave me a ride over here, that, "Well, for me, giving speeches is, as I said, its templates in my head."

She said, "Oh, you hardly do any research."

I said, "Oh, believe me, if it's a new subject, I do research, but once I do it once, then it's kind of in there, and I adjust it."

So, what I'm going to do is dust off a speech I gave in Yellowknife about seven years ago. I was invited by Canadian Arctic Resource Committee, CARC. They were holding a conference in Yellowknife about socio-economic impact agreements. It's kind of like related stuff.

Now, there are a number of points I want to share with you. First is that at the time that I was giving that speech in Yellowknife, the common trend that was happening between indigenous populations and communities and businesses or industry for socio-economic agreements was that there was always certain benefits to be provided, or at least outlined to be provided, to a local population, in exchange for certain things, certain undertakings, et cetera, et cetera, which I really don't have a problem with that until they talk about rights. I've seen a number of socio-economic benefit agreements that had provisions in them that spoke to the rights or provisions that particularly state that in exchange for this agreement, that local population would somehow either put in abeyance or would not exercise, or et cetera, these rights that were recognized under Section 35(1) or other instruments like land claim agreements and so forth.

I can say this, and I'd like to say this very clearly: From that day, and to this day, and continuing forward, I will always champion that those should not be provisions in any socio-economic agreement. Socio-economic agreements aren't about rights. They're about a business arrangement, and asking any people, indigenous or otherwise, to put their rights, either as individuals or as a collective, aside for the interests of business is not in the best interests of those people. I think we should all be very careful to ensure that that does not occur. There are some real serious implications for those types of arrangements and I know that my legal people back where I work get all in a frenzy when they think about things like that, and I'm sure your respective legal people would, too. I would suggest to any of the people who give legal advice to the business and industry community that they should equally be concerned about those type of provisions.

That aside, socio-economic assessments and benefits — hmmm. Well, we certainly wanted to make sure that, in the framework of YESAA, there was a clear opportunity to do some good due diligence, a complete examination of the pros and cons of any proposed activity, one, to ensure that local communities got a direct benefit, to the greatest extent possible, from that activity, with the least amount of negative effects. We know that in the history of the territory, and I'll be very blunt again, and I have been that in the past, thanks to a number, and I might say a minority number in some respects, of bad practitioners in certain economic streams, it has caused problems for us in this Territory, problems that a number of our communities today have to deal with, and not just the communities but all of us as Yukoners and indeed Canadians. One of the things that the land claim agreement brings is that, for those who opt into it, which a majority have now, is that we're willing to be part of the tax stream for the Territory. You know, that's in exchange so that we have tax authority, too, but nonetheless. Now, as a taxpayer myself, I'm very concerned about the number of my tax dollars that go to deal with things that never should have occurred in the first place, or could have been avoided, or could have been planned for to not occur. When we have the public coffers being depended upon to fill a gap that was created by ourselves, then I don't necessarily blame anyone for taking advantage of that. If it's there, and that's one thing I know about business is that it's a "dog-eat-dog world", and if it's there to be used, I'm going to use it. If it saves my bottom line, if it makes my dividends higher, if it makes my profits higher, if it makes my shareholders have greater wealth, then that's what I'm charged to do. So, when we create opportunities for corporations or businesses to walk away from their responsibilities, then that is our own fault. I don't blame business

for that; I blame ourselves. I blame our orders of government, because we created that environment. We have allowed it to occur.

YESAA is designed, at least conceptualised, to be a mechanism whereby we can try to avoid that while, in the same breath, try to make sure that business activities remain a viable activity, that that CEO can still turn to his shareholders or that business leader can still say, "Yes, I'm turning a profit, my dividends are good, et cetera, et cetera, and I'm not going to have a whole bunch of residual liability when I'm done", because we've seen far too many people fold up shop in this Territory, and my people in the communities have seen it time and time again.

When we talk about socio-economic benefits, let's talk about some experiences, if I may, very briefly. I'm not going to say any names, because my legal people told me not to do that any more. Mine "X" is over here. It's a good proposition. It has found, through exploration activity, some very significant reserves of commodity "Y". So, Mine "X" wants to move forward. It goes through its regulatory processes, and after a couple of years, it's ready to get moving but it's developing a labour force in Community "Z"; and in Community "Z" there are 500 people, the good majority of the people who get trained and get a job with Mine "X". They take the job on the promise that, well, Mine "X" has got a life for 40 years. "We're going to be here for 40 years. We'll probably be here longer. Don't you worry about it." So, the people, the labour force from Community "Z", buy new cars, take out loans, mortgages, take on huge debt, just like many of us do in our normal course of activity, wanting, with a belief and a vision of their own, that "I'm going to be self-sufficient. This ain't gonna be a band house no more. I'm going to own my own house. I'm not going to live in this trailer park any more. I'm going to buy my own property." All of us have dreams like that. It doesn't matter who you are.

Well, unfortunately, the management at Mine "X" was not up to snuff. They didn't keep up with all the things that they were supposed to do, even as they were ordered to do. As a matter of fact, under the common law, they were allowed to just basically say, "Well, this is getting to cost too much. We've made a lot of money. Let's just fold up shop and walk away." And that's exactly what they do.

Now, that's fine for the shareholders of Company "X". It's fine for the CEO of Company "X", but it's not so fine for the community. It's not so fine for the citizens of that community, who are now abandoned, with huge personal debt, local contractors and businesses with huge debts owed to them; but the company has absolved itself and walked away. There's no one to grab. So, we have to turn to the Crown or to the Yukon Government, and we get the courts and everyone else involved; and eventually what happens to Community "Z" with that Mine "X" project is that we the taxpayer are paying increased social programs to help these people who are bankrupt. We're paying increased amounts of money to environmental protection programs, to mitigation initiatives so that we can deal with the hazards that have been left behind, and we find some way to help — not fully repay, but at least try to give some consideration to the poor smaller business owners who supported Company "X", who are also facing bankruptcy, which would have a catastrophic domino effect for our economy, so we had to do something. I'm pretty certain every one of you in this room know that this has happened on more than on several occasions in our history.

I'm not making this stuff up. I may not be saying any names, but I think everyone could draw their own correlation to what I'm talking about.

So, we wanted to have a made-in-Yukon process that could try to avoid those pitfalls. Are we going to be absolutely successful? Goddamn, I hope so, I really do. When I look at the representation in this room, of First Nations and non-First Nations people, the different orders of government and the different interests of Yukoners, the people who live here, we who have the stake in everything that happens in and around us, we're finally on the verge of having a system where we have the say. We have the control. We put in the instruments and the control measures necessary to ensure those things don't happen again and that we can screen out bad practitioners. I work very closely with a lot of the mining sectors on some very good initiatives, and yes, it's just like any profession. Even in politics, we have some bad practitioners who tarnish all the rest of us who are really good; but that goes with every profession, doesn't it? It's not a unique circumstance to one industry or another. It's the same with the oil industry, forestry, any profession. You never heard so many lawyer jokes as you do around my building. But, you know, it all goes back to stereotyping things.

We believe that we've developed a system that's in real partnership, that provides an opportunity that allows local people to have enough to say, that gives them the comfort that when something moves forward, that they're not in the know at the tail end but at the front end, that they're part of the decision-making process. Yes, eventually, they are a decision body, but somebody has to make those choices, right? I think, and I honestly believe, that when we look at YESAA as the legislation in itself, and its related regulations, we can't look at that as being the sole intent, because we have to recognize that YESAA flows from a chapter of a final agreement on land claims. When you look at the spirit and the intent of that agreement, that spirit and intent says that we're going to do everything humanly possible to ensure first, we're going to help the indigenous peoples finally be real partners in all aspects of our society; second, once we have achieved that equitable standing, we're going to help all Yukoners move forward and derive full and real benefits from the major projects from hereon in.

I'm having discussions with people like Governor Murkowski, and others, on railroads and all kinds of stuff. We're talking about pipeline opportunities, as well as expanded opportunities for natural gas development. We're looking at the whole range; the field of issues is so large. Some of the largest manned projects in the history of the world are being proposed for here. The true test for this is when those occur, and they have already started.

In May, coming up here in May — and I'll close, because I think my time is up. I used up my 15 minutes, right? I'll just close on this: I enjoy the amount of respect I get from people in this Territory. As a matter of fact, I love it immensely. I must admit it's great, but I was giving a speech in Juneau last year or year-and-a-half ago — anyway, it was in front of Governor Murkowski and a bunch of the senators, congress people — a whole roomful, about as big as this. My friend, the Premier, was giving a speech, and Governor Murkowski gave a speech, and I gave a speech, and Larry gave a speech and a whole bunch of people. Anyway, I was talking about how our people, Yukoners and particularly Yukon First Nations, had to be a part of any major decisions about pipelines and railroads and even the governor's proposition for a water pipeline. Any major project of that kind has to have our full engagement and involvement. In its absence, you will have nothing. Anyways, I didn't say it quite like that, but I was just cutting it really short, okay? It was met with a lot of favour. I got a standing ovation and all that. Anyway, there was a fellow in the room, and I knew a lot of people in the room also didn't like it. They didn't want to hear that. "We've done things a certain way. Who in the hell are you coming around telling us that we're going to do it this way now?"

Well, as a result of that speech, I'm now going to be touring parts of the United States in May as a guest of the United States Government. Now, I recognize that, like I said, my work is important and so forth, but I think what this really symbolizes is an effort on their part to get me to see their great need. It doesn't escape me that the United States has a great need, and I'm very sympathetic to it. My father is an American and all my family on that side. Obviously, if they want to pluck a northern aboriginal leader out as a full guest for about two-to-three weeks, touring the United States to meet with oil people, the Senate Committees on Energy and the Environment, et cetera, et cetera, et cetera, then obviously they're trying to convey a message to me and trying to use me in some way to get us here in the north to understand what their great need is.

So, I only share that with you to emphasize in a real way that things are already happening. People are already being pressured. People are already being advocated and influenced. So, the important work that you do here over the next couple of days is to try to make sure that this gets home, that it gets done. The inner relationship between our orders of government, between our agencies, our institutions and our departments and our citizens at large is so critically important to make it work. You are the brightest and most intelligent people I've ever had the privilege to know or work with, and I have been around. We're very lucky, indeed. So, good luck, and for whatever it was worth, that's all I have to say. Thanks.