

January 2004

The Arctic and Energy: Exploration and Exploitation Issues; Indigenous Peoples; Industry

Joe Linklater

Follow this and additional works at: <https://scholarlycommons.law.case.edu/cuslj>

 Part of the [Transnational Law Commons](#)

Recommended Citation

Joe Linklater, *The Arctic and Energy: Exploration and Exploitation Issues; Indigenous Peoples; Industry*, 30 Can.-U.S. L.J. 301 (2004)

Available at: <https://scholarlycommons.law.case.edu/cuslj/vol30/iss/47>

This Speech is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Canada-United States Law Journal by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

THE ARCTIC AND ENERGY: EXPLORATION AND EXPLOITATION ISSUES; INDIGENOUS PEOPLES; INDUSTRY

Chief Joe Linklater[†]
Canadian Speaker

Well, first of all, I'd like to thank Dr. King and his staff and the students for inviting us to this conference. I'd also like to congratulate you on the success or what seems to be a very successful conference to date. In addition, I want to give further congratulations for getting so many lawyers here during prime billing hours. I have a girlfriend who is a lawyer. I can tell jokes like that all day long. She once called me a liar and I got upset at her. I told her I thought you called me a lawyer.

I would like to begin by saying I will be speaking mainly from the government's perspective, because we are a government in the North Yukon, Vuntut Gwitchin. We have a treaty with Canada. Thus, I will give you sort of a perspective of where we come at this issue from the Vuntut Gwitchin's perspective.

I will begin by discussing some features of our traditional territory in the North Yukon and I will take it from there, then Sandra will talk more specifically about the issue itself.

Old Crow is located here in North Yukon. As mentioned, I guess it is the most northerly and westerly community in Canada. North of Old Crow is Vuntut National Park. We've negotiated into our agreement to have this park established. Also to the north is Ivvavik National Park, which is part of the Inuvialuit traditional territory and to the west there is the calving grounds or the Arctic National Wildlife Refuge and calving grounds. There's the town of Kaktovik over here a Gwich'in Village, called Arctic Village, in Alaska. To the south, we have an area called Fishing Branch.

[†] Chief Joe Linklater is Vuntut Gwitchin from the community of Old Crow, Yukon. He is serving his third term as Chief of the Vuntut Gwitchin First Nation. Chief Linklater is one of the founding members of the Gwich'in Council International (GCI). He assumed Chairmanship of GCI in 2002 for a two-year term while the file was managed by the Vuntut Gwitchin First Nation. During this term, Chief Linklater provided leadership to GCI Directors in terms of full and active participation at the Arctic Council meetings. He is a spokesperson and lobbyist for the Gwich'in on a number of issues related to the environment, education, economic development, and capacity building.

Our traditional territory runs far to the south, so we have quite a large traditional territory within the Yukon. We also have nineteen communities within the Northwest Territories, the Yukon and Alaska.¹

Now, as I mentioned we have our Final and Self-Governance Agreements, which came into legal effect on February 14, 1995.² We have been implementing them ever since; and I guess the biggest task of that implementation is the establishment of our government. We are trying to create what is called good governance, and some of features of that final agreement are the transfer of government programs to First Nation control along with the resources. Therefore, we now run our own programs and services. One of the features that we just began about two weeks ago is exploratory discussions on administration of justice, so we are able to not only write legislation that will govern our 4,000 square miles of settlement land, but we will have the authority to act if laws are broken or to enable laws.

Another of the other features of the umbrella final agreement within the Yukon is the Yukon Environmental Socioeconomic Assessment Act,³ which replaces most of the current Canadian Environment Assessment Act.⁴ It allows us to do environmental assessments on our settlement land.⁵ Further, it allows us to make decisions and to impose fines of up to \$300,000 per offense.⁶ Finally, it allows us to impose jail time of up to six months per offense.

Now, when you look at our traditional territory, you will notice that we have a national park. We were mandated by our people to negotiate a national park as part of the final agreement; the land of that area is of a particular importance to us. We also have a territorial park, (Fishing Branch), which took us probably about 28 to 30 years to get full protection. That mandate has always been there to give that area full protection. What we had negotiated through our self-government agreement was habitat protection, which allows for development, but with higher environmental standards. Regardless, that was not good enough for our people. We were told not to give up the fight, to accept the environmental or the habitat protection designation, but also to keep pushing for higher protection. In 1997, we signed an intergovernmental accord with the territorial government, and through that accord, and a piece of territorial government legislation called Yukon Pro-

¹ See <http://www.oldcrow.yk.net/caribou.htm> (last visited Sept. 26, 2004).

² *Yukon First Nations Self-Government Act* (the Self-Government Act) (S.C. 1994, c. 35) was assented to on July 7, 1994 and came into force on February 14, 1995.

³ Yukon Environmental Socio-economic Assessment Act, S.C. 2003, c. 7, ss. 132(3), 133.

⁴ Canadian Environment and Socio-Economic Assessment Act, S.S. 1979-80, c. E-10.1.

⁵ Yukon Environmental and Socio-economic Assessment Act, S.C. 2003, c. 7, s. 5(2).

⁶ Yukon Environmental and Socio-economic Assessment Act, S.C. 2003, c. 7, s. 130.

tected Area Strategy,⁷ we managed to get full protection for Fishing Branch, surface and sub surface protection.⁸

We also managed to bring in a mining company that had claims in the area; they agreed to donate those claims to us, so we could turn that area into a territorial park.⁹ We also involved the Nature Conservancy of Canada in our agreement.¹⁰

As a government, our main job is to do what is best for our people. What is best for our people is the protection of our way of life. That is the only way of life we know.

When people talk about the economics in the Arctic National Wildlife Refuge, we ask, "Well, what about our economics?" That herd has sustained us for thousands of years. That herd has provided us with food, with clothing, with tools for thousands of years. That has a value to us, not a monetary value, but in our world, to be considered rich, you have to have fresh water, fresh air, plenty of food. That is what we have, and we consider ourselves very fortunate to have the life that we have.

We have been relatively untouched by governments because of our isolation, but also because of that isolation, the resources in our areas are not economically viable at this point.

We question is whether the oil within the Arctic National Wildlife Refuge is worth the price that we will have to pay to get it. It is unfortunate that we do not have anybody from the Inupiat community of Kaktovik here, because, just recently, the governor of Alaska, Governor Murkowski announced he would be leasing lands offshore to drill diagonally under the Arctic National Wildlife Refuge to get at the oil.¹¹

I will not speak for the Inupiat but the North Slope Corporation has been a strong backer of developing in the Arctic National Wildlife Refuge.¹² I just wonder what they think of oil wells offshore in their traditional hunting grounds, which is from the sea, as they hunt seals, and they fish and they hunt whales, because they would find themselves in our position basically, to have their food source threatened. That is what we feel and we see from a

⁷ Available at: http://www.nrtee-trnee.ca/eng/programs/Current_Programs/Nature/Case-Studies/YPAS-Case-Study-Complete_e.htm (last visited Sept. 29, 2004).

⁸ *Id.*

⁹ Mathew Ingram, *Oil Firms Quietly Conserving Land*, GLOBE AND MAIL, June 02, 1998, at B2.

¹⁰ See http://www.natureconservancy.ca/pdf/looking%20north_final.pdf (last visited Sept. 24, 2004).

¹¹ *Alaska Solicits Interest in Test Near ANWR*, INSIDE ENERGY WITH/ FEDERAL LANDS (Aug. 18, 2003) at 14, 2003.

¹² Matt Volz, *Expanded Drilling in Alaska Proposed*, MONTEREY COUNTY HERALD, June 10, 2004.

government perspective, is a threat to our way of life. We have to do what we can to protect it.

I mentioned that we are in the process of developing our government and that takes a lot of work. I am not able to come to these conferences or speak on this issue very often because of all the work that needs to be done back home. However, from time to time, my people and my Council will tell me to go 'do your job.' This is one of the mandates that we have, to protect that calving ground. When we look at the potential destruction of that area, it will have a ripple effect into Canada. It will have an effect on the wolves, grizzly bear, moose, wolverine, and ultimately, it will have an effect on people.

I think for oil that is economically recoverable, from that area, it is not worth the price that we will have to pay; it is unfortunate that more politicians cannot visit.

There have been a few politicians invited by Senators Murkowski and Stevens in the past, but they brought them there in the middle of winter, when there is very little going on there. Subsequently, they have come back and reported that there is nothing to destroy up there. There is nothing there. Recently, however, Subhanakar Banerjee, a photographer, spent the winter in the Arctic Refuge and found birds, wolverine, moose. There was wildlife there; and he took photographs of this and got permission to set up a viewing of this at the Smithsonian in Washington.¹³

When the Republicans found out about it, they put pressure on the Smithsonian to move the exhibition to a downstairs area underneath the staircase in the basement or something.¹⁴ Thereafter, they even got him to change the captions on the photographs.¹⁵

Essentially, we are up against a campaign of misinformation. To a certain extent, there is misinformation from both sides, in a lot of cases. It is not a very easy argument, because you constantly try to correct somebody, when you should be trying to get your point across. Therefore, you have to be very careful on the information that you believe or that you take in. We try to be very respectful when we are in the United States to ensure that the information that we put across is accurate, and is up to date, we try not to use any outdated information.

I should mention also, we are not environmentalists. We have not objected to the development in Prudhoe Bay, nor have we objected to development in the McKenzie Delta. We have not objected to development anywhere else, with the exception of the calving grounds of the National Wildlife Refuge because we feel that is right thing to do for our people.

¹³ John Flinn, *Photos at Center of Fray*, SF. CHRONICLE (Feb 22, 2004) at C.8.

¹⁴ *Id.*

¹⁵ *Id.*

However, we do work closely with environmentalists, but our paths never cross. We work along side them. We always made it very clear that we are not environmentalists. We are not out to rid the world of any kind of development with the exception of the Arctic Wildlife Refuge, and I think because of that, we have been quite successful in getting our message across. We have not tried to fight too many battles at once.

I think that one of the most important elements in this whole discussion around whether or not development should or should not take place is the impact that this development will have on other indigenous people besides the Gwich'in. If this area is not worth protecting, what area is worth protecting?

It is very frightening for indigenous people around the world, certainly, the ones I have spoken, to see the sharp increases in the price of a barrel of oil, because that makes their backyards and our backyards very vulnerable to multinational corporations. It is selling out a way of life, so that countries like the United States, Canada, and China can profit really. We do not think that is the right way to go.

We look at the past 500 years how development has impacted First Nations across North America. We look today and say, "This is 2004, how can we still be destroying habitat that supports that way of life. What happened to our human rights? What happened to our right to exist in the way we want to? Why is that not being taken into consideration? Why aren't our economies being taken into consideration? Why isn't our wellbeing, and our health and our welfare being taken into consideration when these decisions have to be made?"

We have been very fortunate that we have great support in the United States from both the Senate and from the House, more from the Senate side lately, that has taken some of those factors into consideration. Therefore, we have been quite fortunate in that sense. This is a large area and I have just given you sort of a smattering of how we have developed this issue and what are some of the key points we examine. I will leave time for questions you may want to ask rather than trying to cover all of the issues here and now.

