

MEMBER STATEMENT—KEVIN O'REILLY MLA FRAME LAKE

MINISTERIAL AUTHORITY ON WATER LICENCES

November 4, 2016

MR. O'REILLY: Merci, monsieur le President. The Minister of Environment and Natural Resources now has the authority to sign off water licences following devolution. When I raised issues around how this new authority is being exercised, the Minister tabled a response in this House on October 27th. The Minister said "when rendering a decision on a water licence, it is the responsibility of the Minister to ensure the quasi-judicial process administered by the board has been conducted in a fair and transparent manner. To this end, procedural fairness is a primary consideration."

This raises a number of significant public policy and legal issues. One of the first times the Minister exercised this discretion over procedural fairness it was done in favour of a mining company that had submitted additional information after the close of a public hearing, which, in itself, was procedurally unfair. Do we not trust our land and water boards to set up and run procedurally fair processes? This is exactly what they have done in designing a Made-in-the-North approach with clear rules of procedure, collaborative work plans developed with all interested parties, an open public registry, and detailed reasons for decision.

I'm not a lawyer, but, when I went through the *Waters Act*, there was no specific direction or requirement in there for the Minister to ensure procedural fairness. Section 56 does provide for an appeal of any decision or order of the board on a question of law or questions of jurisdiction. Where should that appeal go? The law says it goes to the Supreme Court of the Northwest Territories, not to the Minister of Environment and Natural Resources. This is the normal practice for questions around procedural fairness. The courts are the experts and final arbiters when it comes to procedural fairness.

If the Minister exercises any discretion in signing a water licence, it should be to make sure that Section 26 of the *Waters Act* has been complied with. This section sets out a number of requirements for a board issuing a licence, that compensation claims have been dealt with, that an applicant is financially responsible, and that water quality standards will be met. There are a number of contaminated sites around the Northwest Territories with very significant public liabilities, many of which have been raised in this House. I was surprised that the Minister would not make this issue of financial responsibility of licence applicants this government's primary consideration in signing off water licences. I will have questions for the Minister of Environment and Natural Resources later today. Mahsi, Mr. Speaker.