

## ORAL QUESTION—KEVIN O'REILLY, MLA FRAME LAKE

### QUESTION 570-18(3): SUPREME COURT OF CANADA REDWATER DECISION

February 14, 2019

**MR. O'REILLY:** Merci, Monsieur le President. Earlier today I discussed the Supreme Court of Canada Redwater decision. Can the Minister of Lands, who is responsible for managing financial security that should hopefully prevent further public liabilities, tell us whether his department has looked at the Redwater decision and what it may mean for the Northwest Territories? Mahsi, Mr. Speaker.

**MR. SPEAKER:** Masi. Minister of Lands.

**HON. LOUIS SEBERT:** Thank you, Mr. Speaker. Certainly, I have looked at some of the commentary on this very important case. As Members may know, this worked its way through the court system up to the Supreme Court of Canada and had to do with the obligations when a company goes bankrupt. In essence, they said, and I am quoting from a commentary, "After going bankrupt, an oil and gas company has to fulfill provincial environmental obligations before paying anyone it owes money to, the Supreme Court has ruled." This is an important case because it will affect all companies and also affect those that lend to companies.

The Department of Lands has a coordinating role across the GNWT and the boards to ensure that the GNWT holds full securities across various authorities for environmental liabilities. The department has looked at the Supreme Court of Canada decision and is working with the Department of Justice to develop a full analysis. This is an important case that likely will have ramifications all across Canada. We are looking at the case. The decision date on it was only January 31<sup>st</sup>, so further analysis is needed. Thank you.

**MR. O'REILLY:** Thanks to the Minister for that response. I hope that he can share some of that analysis with Members on this side of the House at the appropriate time. One of the key factors in the Redwater case was whether a trustee is liable for environmental requirements, as the Minister just said. The Alberta government has included "a trustee" in the definition of "operator" in its relevant legislation. Can the Minister of Lands, who is responsible for managing financial security, tell us whether the definitions in our legislation cover trustees and whether any changes should be made?

**HON. LOUIS SEBERT:** Frankly, I don't know whether our definitions would include trustee or whether there has been any case law that might assist. However, it is an important issue, and I will get back to the Member opposite on this important issue. I understand what he is asking, I think.

Yes, certainly that might make a major change in the law if they were included in the definition of operator. I think that is the question. I don't know whether the Member opposite is suggesting that the trustee would be personally liable for environmental obligations. All I can say is that I, myself, will read the case and perhaps see what effect it would have on our legislation, or should have on our legislation, and specifically on

the area of obligations and definitions of responsibility surrounding the trustees.

**MR. O'REILLY:** I'd like to thank the Minister again for that commitment to get back to me on this very important matter, and I look forward to his department doing some work on it. Cabinet committed to prevent public liabilities as part of our mandate. When I checked the very reliable and trustworthy Mandate Tracker website, the only activities that seem to have been undertaken are some sort of tracking system that is still in progress and an elusive contaminated sites policy and procedures manual. Can the Minister tell us what he is doing, along with his Cabinet colleagues, to fulfil this commitment to prevent public environmental liabilities?

**HON. LOUIS SEBERT:** We will be introducing a bill shortly which will include updated provisions related to security. This is a shared mandate commitment to develop an integrated comprehensive approach to the management of contaminated sites and develop a sound financial security system to prevent public liabilities. Lands has been supporting EIA and ENR's work on contaminated sites, and it is contemplating a securities tracking system for the GNWT, so we are making progress, I would suggest, in this area, and we will be introducing a bill shortly.

**MR. SPEAKER:** Masi. Oral questions. Member for Frame Lake.

**MR. O'REILLY:** Merci, Monsieur le President. I would like to thank the Minister for that. He was able to read the mandate item very well, and I look forward to hearing about the progress that is being made on that. The Redwater decision has helped to clarify responsibilities and liabilities during operation and even afterwards. Devolution was supposed to bring responsible resource development, but our government has, in my view, yet to deliver on that promise. What specific policy, regulatory, and legislative changes is the Minister contemplating as a result of the Redwater decision? Mahsi, Mr. Speaker.

**HON. LOUIS SEBERT:** When I first thought about the decision, I perhaps wasn't as aware as the Member opposite of the ramifications that it may have. I thought of it mostly in relation to the oil and gas industry, but it may have ramifications beyond that, possibly, although it is an oil and gas case. I'm not certain of the ambit or the effect of the case, and I'll have to look into that. That's why we're analyzing the case at this time. If it does point to the necessity of legislative change, we would certainly have to seriously consider that, as it is a Supreme Court of Canada case. Thank you.