



MAY 15 2019

MR. KEVIN O'REILLY
MLA, FRAME LAKE

Oral Question 570-18(3) Supreme Court of Canada Redwater Decision

This letter is in follow-up to the Oral Question you raised on February 14, 2019, regarding the Supreme Court of Canada's Redwater Decision.

On January 31, 2019, a Supreme Court of Canada decision, *Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5 (the Redwater decision) was released. This decision offers important considerations for regulators, financial institutions and many industries, particularly the oil and gas industry. The decision held that in the case of a bankruptcy proceeding, that abandonment and reclamation responsibilities are binding on the trustee and that reclamation obligations are separate from, and have priority over, provable claims in bankruptcy.

The facts in the Redwater case are very specific to the situation, bankruptcy law, and the regulatory regime that applies in Alberta. Though there are lessons in the Redwater decision that must be considered, there are also many differences between the Alberta and NWT regulatory regimes that may impact the application of the decision in the NWT. With this context, I offer the following response.

First, you asked if the definitions in our legislation include a "trustee" in definition of "operator", as is in Alberta's *Oil and Gas Conservation Act* and *Pipelines Act*. The Department of Lands has reviewed this question with Department of Justice colleagues and noted that the majority of NWT natural resource management legislation does not explicitly address trustees, or other terms for those who may take on responsibilities through a bankruptcy or restructuring process. Although federal legislation has released trustees in bankruptcy and receivers of personal financial liability for carrying out environmental duties, Canadian case law has made it clear that trustees in bankruptcy and receivers are obligated to carry out environmental duties and responsibilities relating to the properties they control using funds from the estate. The Redwater decision has reinforced the obligation of trustees and receivers to abide by environmental laws and orders while managing a debtor's property.

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Secondly, you asked if any changes to our legislation should be made as a result of this decision. At this time, I can state that we are continuing our review of the case with the specific legislative authorities of the GNWT in mind. It is important to note that in the NWT much of the authority over reclamation obligations in the Mackenzie Valley derives from authorizations issued by the Land and Water Boards established under the *Mackenzie Valley Resource Management Act*. This legislation is federal law and is not currently within our authority to amend.

The GNWT recognizes that it is important to stay informed of the results of cases like this one.

Thank you for raising this important issue.



Louis Sebert
Minister of Lands

- c. Clerk of the Legislative Assembly
Legislative Coordinator