LEGISLATION IN CANADA RESPECTING CIVIL LIABILITY FOR NUCLEAR DAMAGES

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1. INTRODUCTION

I should commence by stating that Canada is not a party to any of the international Conventions on civil liability for nuclear damage. It does, however, recognise the desirability of world-wide harmonisation of laws relating to civil liability for nuclear damage, and played an active role in the conferences that led to the adoption of the Vienna Convention on Civil Liability for Nuclear Damage, the Brussels Convention on the Liability of Nuclear Ships, and the Convention on the Maritime Carriage of Nuclear Substances. Canada does support most features of these international Conventions and has in fact incorporated their basic principles into its national law. The legislation in Canada respecting civil liability for nuclear damage is a federal law entitled the "Nuclear Liability Act". The Nuclear Liability Act was enacted in June, 1970, and is to come into force on a day to be fixed by proclamation. Pending proclamation of the Act, all operators of nuclear reactors not owned by the Government of Canada, and contractors, sub-contractors and suppliers for such
reactors, are indemnified by the Government against legal liability to third parties arising from nuclear hazards.

2. OBJECTIVES OF LEGISLATION

The objectives of the Nuclear Liability Act, like the international Conventions, are to ensure that the public would be compensated for injury or damage to property if a nuclear incident did occur, and to encourage the private sector to participate in the development of nuclear energy.

3. HOW OBJECTIVES ACHIEVED

The Nuclear Liability Act meets these objectives by making the operator of a nuclear installation exclusively and absolutely liable for injury or damage caused by a nuclear incident at his installation, or from nuclear material that is being shipped to and from his installation, by limiting the liability of the operator to $75 million, by requiring the operator to maintain $75 million of insurance against his liability, by providing that no other person is liable, and by providing for the establishment of a Nuclear Damage Claims Commission to assess compensation and pay claims in the event of an accident where the damage is likely to exceed $75 million.
4. FEATURES OF CONVENTIONS ADOPTED

As just indicated, the Act has channelled liability to one person, the operator, and requires him to provide financial security by way of insurance. The Nuclear Liability Act, in accord with the Conventions, also:

(a) excludes the operator from liability for damage to the nuclear installation itself and property on the site which is used in connection with it. It also excludes the operator from liability for damage to the means of carriage;

(b) makes the Act inapplicable to radioactive isotopes in finished form and provides a procedure for excluding small quantities of nuclear material;

(c) excludes the operator from liability where the incident is due to an act of armed conflict;

(d) provides that the operator has no right of recourse against any person in respect of his liability under the Act;

(e) establishes a limitation period for bringing actions to three years from the date on which the claimant knew or ought to have known of the
injury or damage, with an overall proviso that no action shall be brought after ten years from the date the cause of action arose; and

(f) makes the operator liable for (i) nuclear material that leaves his installation until it reaches the installation of another operator, and (ii) nuclear material that is in the course of carriage from outside Canada to his installation.

5. UNIQUE FEATURES OF CANADIAN LEGISLATION

I should perhaps elaborate on some of the provisions of the Act respecting its application and financial protection which, as far as I am aware, are not to be found in the legislation adopted by any other country.

Application

It is the operator of a nuclear installation that the Act makes absolutely liable and who is required to provide financial security against this liability. The Atomic Energy Control Board under the authority of the Atomic Energy Control Act controls by a comprehensive licensing system all atomic energy activities in Canada. Under the Nuclear Liability Act the "operator" is the person licensed
by the Atomic Energy Control Board to operate a nuclear installation, and a "nuclear installation" is one designated by the AECB as a "nuclear installation" for the purposes of the Act. This "designation" by the Board after technical assessment of the activities of an installation is to ensure that the exceptional regime of nuclear third party liability is not extended to risks for which common law rules of liability are appropriate. This basic idea is reflected in the international Conventions which make it possible to exclude certain nuclear installations or nuclear substances from the application of the Conventions in view of the small extent of risks involved. In brief the AECB proposes to designate as nuclear installations all nuclear reactors and any licensed facility which uses in its operation special fissionable substance and for which the scope of the operation exceeds a certain critical index established by the AECB.

Financial Security

As stated previously the operator is required to insure for $75 million and there is provision for Government intervention by the establishment of a Claims Commission if the
damages exceed or are likely to exceed that amount. If a Claims Commission is established the operator's liability to third parties ceases, but the operator remains liable to the Government for payment of the $75 million insurance or an amount representing the aggregate of all claims paid by the Commission.

To ensure that $75 million of insurance is available to operators, the Act splits the required insurance into "basic" and "supplementary". The "basic" is the amount carried by the private industry. This amount will be fixed by the Atomic Energy Control Board for each nuclear installation having in mind its size, location and potential hazard. The amount will be the amount of coverage needed to meet any reasonable expectation of damage up to the maximum that can be carried by the private insurers. Earlier I referred to the assessment by the AECB to determine which particular installation should be designated as nuclear installations for the purpose of the Nuclear Liability Act. This assessment is expected to also assist the Board in determining the amount of "basic" insurance to be carried by the operators of installations it has designated as
"nuclear installations". This basic insurance should be quite small for say a small research reactor or a fuel fabrication plant, but in the case of a large nuclear power station will likely be the maximum capacity of the insurers. The difference between $75 million and the basic insurance will be supplementary and carried by the Government through a reinsurance agreement with the insurers.