



Canadian Nuclear
Safety Commission

Commission canadienne
de sûreté nucléaire



The Financial Liability of Industry as Part of the Legal Framework

A Canadian Case Study

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Outline



The *Nuclear Liability and Compensation Act* (NLCA)

- Principles of the NLCA
- Overview of the legislation

Financial guarantees under the *Nuclear Safety and Control Act* (NSCA)

- Statutory authority
- Guiding principles

Strengthening Canada's Nuclear Liability Regime: Nuclear Liability and Compensation Act



On January 1st, 2017 the NLCA replaced the *Nuclear Liability Act* and

- Establishes the compensation and civil liability regime to address damages resulting from radiation in the unlikely event of a radioactive release from a Canadian nuclear installation
- Deals with liability and compensation for a nuclear accident within Canada
- Supports Canadian membership in the *Convention on Supplementary Compensation for Nuclear Damage*
- Ensures a compensation scheme is in place for claimants and continues to support nuclear development by channelling civil liability to operators

Principles of the NLCA



Nuclear operators are absolutely and exclusively liable for nuclear damage

- No need to prove negligence
- Suppliers, contractors, others are indemnified

Operators must carry financial security to address liability

Liability is limited in \$ and time

- \$1 billion liability limit, phased in over 4 years from \$650 million at proclamation, \$750 million, \$850 million, \$1 billion
- 30-year claims limitation period for bodily injury and loss of life; 10-year limitation period for other damage claims

Alignment with other international instruments

Overview of the Legislation: Absolute Liability



Operator absolutely and exclusively liable for damages within Canada or its exclusive economic zone, or within a Contracting State and its exclusive economic zone, caused by ionizing radiation emitted

- From operator's nuclear installation, or
- From nuclear material being transported to or from operator's nuclear installation

Operator liable for nuclear damage caused by natural disasters

Legislation does not apply to any incident that results from act of war, hostilities, civil war or insurrection, other than terrorist activity

- Operator not liable for damage suffered by person who intentionally causes nuclear incident or causes nuclear incident through gross negligence
- Operator has no right of recourse against any person other than individual who intentionally caused the nuclear incident by an act or omission

Overview of the Legislation: Financial Provisions



Liability limit for nuclear operators increased to \$1 billion from \$75 million under the former *Nuclear Liability Act*

- Minister must review limit regularly and it may be increased by regulation
- Rationale for liability amount
 - sufficient to deal with consequences of controlled releases of radiation
 - within capacity of insurers to provide insurance at reasonable costs
 - brings Canada more in line with liability limits in other countries
- Form of financial security
 - operators cover liability amount with insurance from approved insurer
 - subject to Minister's approval, operators permitted to cover up to 50% of their liability with other forms of financial security

Overview of the Legislation: Compensable Damages and Claims Period



- Bodily injury, loss of life and property damage
- Psychological trauma resulting from bodily injury
- Economic loss arising from aforementioned damages
- Costs incurred from loss of use of property, wage losses of employees
- Reasonable costs of remedial measures taken to repair, reduce or mitigate environmental damage if measures are ordered by an authority
- Reasonable costs of preventive measures and the costs and economic loss – including lost wages – arising from loss of use of property as a result of those measures, if measures recommended by an authority
 - costs incurred by authorities, such as for evacuation centres, will not be eligible
- Claims limitation period for bodily injury and loss of life with Government covering claims made between 20 and 30 years
 - 10-year limitation period to apply to other damage claims

Overview of the Legislation: Indemnity Agreements



Government covers certain risks under the legislation

- Risks that insurers unable to cover
- Difference between liability limits for low-risk installations prescribed in regulations and \$1 billion
- Coverage is provided through indemnity agreement with the operator
- Operators pay an appropriate fee to Government for coverage

Overview of the Legislation: Dual System for Compensation of Claims



Special compensation regime may be established to replace courts

Legislation elaborates features and process of quasi-judicial tribunal

- Claims to be heard by panels of tribunal consisting of one or more members
- Tribunal may establish classes of claims
- Claimant or operator dissatisfied with claims officer's decision may apply for rehearing by a panel
- Claims heard by panels of fewer than three members, may be brought for hearing by panel of three other members

Overview of the Legislation: Role of the Canadian Nuclear Safety Commission (CNSC)



- Previously, the CNSC determined which nuclear installations were covered and the amount of insurance coverage
- Under the new legislation, the amount of insurance is set out and nuclear installations are designated by regulation
- The CNSC acts in an advisory role to the Minister

Financial Guarantees



Broad authority under section 24 of the NSCA

Terms and conditions of licences

24 (5) A licence may contain any term or condition that the Commission considers necessary for the purposes of this Act, including a condition that the applicant provide a financial guarantee in a form that is acceptable to the Commission.

Forms of Financial Guarantees



- Cash funds
- Letters of credit
- Bonds
- Insurance
- Expressed commitments from a government
- Other?

Decommissioning



- Policy-based decision to impose financial guarantee licence requirement to pay for decommissioning – nuclear facilities and mines and mills
- Generally, financial guarantees are intended to ensure sufficient financial resources will be available for decommissioning
- Regulating the full lifecycle and ensuring sustainable development

Preliminary Decommissioning Plans



Flexible / non-prescriptive approach

- Applicants and licensees are expected to provide preliminary decommissioning plans that adequately contemplate end of life and site remediation from the beginning
- Staff typically work with applicants and licensees prior to hearings to ensure decommissioning plans are realistic

Considerations



- Preliminary decommissioning plans are expected to demonstrate that the planned decommissioning activities will remediate all significant impacts and hazards to persons and the environment in a technically feasible fashion
- Assure compliance with all applicable requirements under law
- Enable credible estimates of the dollar amount of financial guarantees

Periodic Review



How long is too long; how short is too short?

➤ Various factors

- changing circumstances
- regulatory burden
- other costs

➤ At the CNSC and generally, a five-year review period is used

Financial Guarantees for Other Activities



The CNSC relies on insurance with individual licensees paying their share of costs



Public Institutions



- Licensed public institutions such as hospitals, universities and government departments must formally acknowledge their financial liability
- These institutions do not have to set aside any specific funds or have a financial instrument in place to meet their financial guarantee obligations
- This is in recognition of the fact they are supported by federal, provincial or municipal governments, which are expected to assume the cost of safe termination of licensed activities

Conclusion



A sound legal framework in regards to financial liability should

- Ensure that liability rests with the person primarily responsible for safety which is, in every case, the operator
- Ensure that compensation, if needed, is adequate
- Respect the principle of sustainable development



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