

STRENGTHENING CANADA'S NUCLEAR LIABILITY REGIME

By Dave McCauley¹ & Jacques Hénault²

Abstract

On January 30, 2014, a Bill entitled the *Energy Safety and Security Act*, was introduced in Canada's Parliament that, among other things, would strengthen Canada's nuclear civil liability legislation by replacing the current *Nuclear Liability Act*. The proposed legislation also includes implementing provisions that would permit Canada to join the International Atomic Energy Agency's *Convention on Supplementary Compensation for Nuclear Damage*. This paper will discuss the importance of a comprehensive civil liability regime for nuclear damage to a country's legislative framework for nuclear development and will present the key elements of Canada's new legislation and the policy considerations behind them.

Introduction

In Canada, the federal Parliament has legislative competence over the development, application and use of nuclear energy. This responsibility was re-affirmed in a 1994 ruling by the Ontario Court (General Division), in response to litigation that claimed that Canada's *Nuclear Liability Act* (NLA) infringed certain sections of the *Canadian Charter of Rights and Freedoms* and elements of constitutional law. The Court ruled that Parliament's legislative competence in regard to nuclear energy was based on sections 91, 91(29) and 92(10)(c) of the *Constitution Act, 1867*. As such, the Government of Canada is responsible for the nuclear civil liability and compensation regime that

¹ Director, Uranium and Radioactive Waste Division, Natural Resources Canada.

² Advisor, Nuclear Liability, Natural Resources Canada.

would address civil liability and compensation for injury and damage arising from nuclear incidents occurring at certain nuclear facilities³.

The NLA is legislation that dates back to 1970, but came into force in 1976. Since that time, major developments have taken place in the area of tort law, and vast improvements have been made in legislation and international conventions governing nuclear civil liability. Thus, the NLA needed to be replaced with a modern statute that would impose increased liability on operators of nuclear facilities subject to the Act and that would improve and clarify civil compensation.

Natural Resources Canada, which has responsibility for federal nuclear policy development, conducted a comprehensive review of the NLA which resulted in recommendations to the Government and the introduction, on four separate occasions, of proposed legislation to replace the NLA. Each of the bills died on the Order Paper. In 2012, Natural Resources Canada re-examined previous proposals to replace the legislation, focusing particularly on the key areas of liability limits, nuclear damage definitions, claim limitation periods, and the scope of the legislation. It also considered the matter of Canadian membership in one or more of the international nuclear civil liability conventions to bolster Canada's nuclear civil liability regime and to address liability and compensation for trans-boundary and transportation nuclear incidents. Consultations were conducted among nuclear operators whose facilities are covered by the legislation, nuclear insurers, and provinces with nuclear power facilities.

On January 30, 2014, the Minister of Natural Resources introduced Bill C-22, *An Act respecting Canada's offshore oil and gas operations, enacting the Nuclear Liability and Compensation Act, repealing the Nuclear Liability Act and making consequential amendments to other Acts (Energy Safety and Security Act)*, in the House of Commons and it was given first reading.

The *Nuclear Liability and Compensation Act* (NLCA) component of the Bill would replace Canada's current legislation, the NLA, and strengthen Canada's regime for civil nuclear liability by updating and clarifying the elements of Canada's nuclear liability regime and by including provisions that would permit Canada to join the International Atomic Energy Agency's *Convention on Supplementary Compensation for Nuclear Damage*.

The nuclear fuel cycle and major nuclear facilities in Canada

The history of nuclear energy in Canada dates back some 75 years, with the design of one of the world's first nuclear reactors at the National Research Council (NRC) laboratories in Ottawa. Today, nuclear energy represents an important component of Canada's electricity sources. Nuclear energy is a significant contributor to Canada's ability to meeting its total electricity needs, providing around 15% of Canada's total electricity needs (over 50% in the province of Ontario) and contributing meaningfully to climate change and other atmospheric emissions objectives, since it is virtually emissions free.

³ Energy Probe v. Canada (Attorney General), 1994 7247 (ON SC).

The Canadian nuclear industry consists of a mixture of private sector firms and public sector organizations at both the federal and provincial levels and covers the entire nuclear energy fuel cycle from R&D, uranium mining, and fuel fabrication to nuclear reactor design, nuclear plant construction, maintenance, waste management and decommissioning. The Canadian nuclear energy industry is mainly concentrated in Ontario, but has a presence in many other provinces as well, particularly, Saskatchewan, Quebec and New Brunswick.

In 2013, Canada ranked second in world uranium production (supply), producing roughly 15% of the world's demand. Its remaining uranium resources (reserves) are among the largest in the world. All of Canada's operating uranium mines and mills are located in the province of Saskatchewan. The uranium concentrate (U_3O_8) product from the mills is shipped to customers abroad or shipped to a refinery in Blind River, Ontario to produce uranium trioxide (UO_3), an intermediate product. The UO_3 from Blind River is shipped to a conversion facility in Port Hope, Ontario, where it is converted to uranium dioxide (UO_2) for use in CANDU reactors or is converted to uranium hexafluoride (UF_6), which is shipped abroad and enriched for use in light-water reactors. Fuel bundle production for Canada's CANDU reactors takes place in Port Hope and Peterborough Ontario.

There are currently 19 operating power reactors in Canada located at five nuclear power stations, four in Ontario and one in New Brunswick. The Pickering power station, operated by Ontario Power Generation Inc. (OPG), has 6 reactors. The Darlington power station, also operated by OPG, has 4 reactors. Bruce A and Bruce B, both operated by Bruce Power, each have 4 reactors. Point Lepreau, operated by New Brunswick Power, has 1 reactor. In 2012, the Government of Quebec decided to end electricity production at the Gentilly-2 nuclear power station in Bécancour, Quebec.

In addition to Canada's existing fleet of power reactors, there exist six operating research reactors. These include four SLOWPOKE reactors (Saskatchewan Research Council, University of Alberta, École polytechnique, and Royal Military College), the McMaster research reactor at McMaster University, and Atomic Energy of Canada Limited's (AECL) NRU reactor at Chalk River Laboratories in Ontario.

Radioactive waste, including nuclear fuel waste, that is a by-product of nuclear power generation, is currently safely managed in facilities licensed for interim storage at nuclear reactor sites in Ontario, Quebec, New Brunswick and at AECL's nuclear research sites in Manitoba and Ontario. The waste will remain at these sites until appropriate long-term management facilities become operational.

Nuclear legislation

Nuclear energy in Canada falls constitutionally within the jurisdiction of the federal government, pursuant to the Government's declaratory pow-

ers, and the federal government has established a comprehensive legislative framework for nuclear activities. It consists of the following legislation:

- *Nuclear Safety and Control Act* (Overall Regulation);
- *Nuclear Fuel Waste Act* (Nuclear Fuel Waste);
- *Nuclear Liability Act* (Civil Liability); and
- *Nuclear Energy Act* (Nuclear Research and Development).

The *Nuclear Safety and Control Act* came into force on May 31, 2000 and replaced the *Atomic Energy Control Act*. The *Nuclear Fuel Waste Act* came into force on November 15, 2002 and established the responsibility and framework for managing nuclear fuel waste over the long term. These two Acts can be regarded as modern pieces of legislation, reflecting current norms of nuclear regulation and nuclear waste management. The *Nuclear Liability Act* (NLA), however, received Royal Assent in 1970 and came into force on December 11, 1976. It is in need of updating.

Existing nuclear liability regime

The chance of an accident occurring in a Canadian nuclear facility, which would result in harmful releases of radioactivity into the environment, is extremely remote. Nevertheless, it is prudent that Canada's legislative framework anticipates such a circumstance with an appropriate civil liability regime that will serve the public interest. The NLA responds to this requirement. Its purpose is to establish a compensation and liability regime in the event of a nuclear accident resulting in civil injury and damages.

The NLA is modelled on the provisions of the 1963 *Vienna Convention on Civil Liability for Nuclear Damage*. While the basic principles of the NLA remain current, it was important to conduct a comprehensive review of the legislation to ensure that the legislation was clear and that it continued to reflect modern legislation and practice as well as international norms in the field of nuclear civil liability. Some of the areas of the legislation requiring updating are outlined below.

Nuclear facilities designated to be nuclear installations under the NLA are determined by the Canadian Nuclear Safety Commission (CNSC), and include nuclear power generating plants, research reactors, nuclear material processing plants, as well as facilities for managing used nuclear fuel. In order to be designated as a 'nuclear installation', the Act requires that a nuclear facility must contain 'nuclear material'. However, the term 'nuclear material' as defined in the current Act is somewhat ambiguous, and has been subject to differences in interpretation in the past, especially in relation to the liability related to the transport of radioactive material originating at a nuclear power plant.

While the NLA makes the nuclear operator absolutely liable for nuclear damage, the mechanism for defining that liability is somewhat indirect. The liability of the operator of a nuclear installation designated under the NLA is based on a duty of the operator to not cause injury or damage to other persons as a result of the fissionable or radioactive properties of nuclear material

in the operator's nuclear installation, nuclear material being transported from the operator's nuclear installation to another nuclear installation, or nuclear material being transported to the operator's nuclear installation from outside Canada. If the operator breaches that duty, the operator is liable. This is a rather circuitous approach to establishing liability: more direct approaches to defining the operator's liability have been established in modern nuclear civil liability legislation and international conventions.

The operator's liability is absolute, meaning that fault does not have to be proven. The claimant must only demonstrate that the damage incurred was caused by the nuclear operator, and must also establish the amount of compensation to which they are entitled.

The operator's liability is also exclusive, meaning that no other person can be held liable, even a supplier or contractor that contributed to the nuclear incident causing the damage through gross negligence. The operator's only right of recourse against another person for damages, is against a person who intentionally caused the nuclear incident.

The existing legislation limits the liability of the operator to \$75 million. This has been a key policy issue associated with the legislation. As there is no provision in the NLA to increase the liability limit by regulation, the legislation must be amended to change the liability limit.

Operators are required to maintain financial security in the form of insurance against their \$75 million liability. There are no other options than insurance to meet the financial security requirements of the legislation. The insurance itself consists of 'basic insurance' and 'supplementary insurance'. The CNSC sets the basic insurance requirements. Operators of nuclear power plants are required to carry the full \$75 million of liability in 'basic insurance' obtained from an insurer approved by the Minister of Natural Resources. Operators of low-risk nuclear installations are prescribed lower 'basic insurance' amounts by the CNSC, based on their respective risk, with the difference between the lower amount and the \$75 million reinsured by the Government of Canada through a reinsurance agreement with the insurers. Operators pay the Government a nominal amount for this reinsurance.

In terms of geographic scope, the operator's liability under the current Act is limited to damages in Canada, unless reciprocity arrangements are entered into by the Government with another country. Currently, the only reciprocity arrangements are with the United States (U.S.), whereby U.S. citizens would have access to compensation under the NLA for damages incurred in the U.S. from a nuclear incident in Canada, and reciprocally, Canadian citizens would have access to the U.S. regime for damages in Canada arising from a nuclear incident in that country.

Compensable damages under the Act are limited to injury, loss of or damage to property, including any damage arising out of or attributable to loss of or damage to that property. The fairly limited definition of compensable damages has given rise to questions as to what other forms of damage might be covered by the legislation and whether categories of damage relating to envi-

ronmental damage or preventive measures, in particular, might be covered. Those categories of damage that the insurers are unable to cover are included in the reinsurance coverage that the Government provides to the operators.

The Act provides for a ten-year limitation period for making claims. This means that a claimant has ten years from the date of the nuclear incident to make a claim for damage. After ten years from the nuclear incident, even if a person were to discover that they had suffered damage, all claims will be barred. The Act also imposes a three-year discovery period for making claims. This means that a claimant must make a claim within three years of having discovered the damage. For example, if a person has discovered that their land has been contaminated by radiation as a result of a nuclear incident, the claim for that damage must be made within three years of the date of the discovery, and cannot be postponed in anticipation of a possibly more favourable settlement. Similar limitation periods and discovery periods are found in provincial statutes.

To address the large amount of claims that could be expected from a major nuclear incident, the NLA provides for a special compensation regime to be put into place when the Government of Canada determines that the extent and the estimated cost of the nuclear damage warrant the advantages of having claims dealt with by an administrative quasi-judicial claims tribunal. The Act, however, does not elaborate on the establishment of the administrative tribunal or the details of its functioning.

The Act provides for this dual system for the compensation of claims since it is recognized that both the judicial system and the administrative law system have their respective advantages depending on the nature of a nuclear incident. The judicial system functions well in many circumstances, and has numerous procedural requirements which operate to safeguard the rights and liberties of both the defendant and the plaintiff. For instance, in order not to be besieged by claims of unlikely damages in the event of a small accident, where little or no radiation is released, the operator may be better served by the full procedural protections and requirements of the judicial system than by the administrative law system.

The basic principles and features of Canada's nuclear liability regime, as established in the NLA, continue to be valid. The legislation is, however, almost forty years old and needs to reflect modern approaches to liability and, particularly the standards set out in revised international nuclear civil liability conventions.

Strengthening Canada's nuclear liability regime

On June 10, 2013, the Minister of Natural Resources announced his intention to table a new bill in Parliament to strengthen Canada's nuclear liability regime above most international standards. He also announced the Government's intention to join the International Atomic Energy Agency's *Convention on Supplementary Compensation for Nuclear Damage* (Convention).

Following the announcement in June, Canada signed the Convention on December 3, 2013, and it was tabled in Parliament on December 6.

On January 30, 2014, the Minister of Natural Resources introduced Bill C-22, *An Act respecting Canada's offshore oil and gas operations, enacting the Nuclear Liability and Compensation Act, repealing the Nuclear Liability Act and making consequential amendments to other Acts (Energy Safety and Security Act)*, in the House of Commons and it was given first reading.

The *Nuclear Liability and Compensation Act* (NLCA) portion of Bill C-22 will replace the NLA with stronger legislation to better deal with liability and compensation for a nuclear accident within Canada. It will increase the financial liability of nuclear operators for civil damages, improve the claims compensation process for victims, and provide greater certainty for the nuclear industry. It will also implement Canadian membership in the Convention to address liability and compensation for damage within member countries, and particularly, damage arising from nuclear trans-boundary and transportation accidents.

Overview of the proposed legislation

Domestic improvements – absolute liability

Under the NLCA, the liability provisions on the operator have been clarified. The nuclear operator will be 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 the operator's nuclear installation, or subject to certain criteria, from nuclear material being transported to or from the operator's nuclear installation.

In addition, the legislation will make it clear that the operator is liable for nuclear damage caused by natural disasters, including those of an exceptional nature.

The legislation does not apply to a nuclear incident that results from an act of war, hostilities, civil war or insurrection, however, the NLCA will clarify that the operator will be absolutely liable for nuclear damage resulting from acts of terrorism.

Under the proposed legislation, the operator would not be liable for damage that is suffered by a person who intentionally caused a nuclear incident or caused a nuclear incident through gross negligence, but the operator does remain liable to other persons for damage resulting from such nuclear incidents.

As a corollary to the principle of channeling of liability, the NLCA provides that the operator has no right of recourse against any other person in respect of compensation paid for damages, including a person who caused the incident through gross negligence. The only exception is that the operator would have a right of recourse against an individual who intentionally caused the nuclear incident by an act or omission. The right of recourse would be limited to a right against the individual; there is no right of recourse against the employer of the individual.

Domestic improvements – financial provisions

Under the new legislation, the absolute operator liability limit for nuclear power plant operators will be significantly increased from the \$75 million under the current NLA to \$1 billion. To allow for a transition period for operators and insurers, the new liability limit will be phased in over three years – \$650 million limit set at proclamation, \$750 million set one year after proclamation, \$850 million set two years after proclamation, and the full \$1 billion amount three years after proclamation.

The Minister will have the authority to review the operator liability limit regularly and the amount could be increased by regulation. This is an important new element of the legislation as it permits the liability amount to be kept up-to-date without the legislation having to be re-opened and amended.

The \$1 billion is an appropriate amount. It is sufficient to deal with consequences of controlled releases of radiation. It is within the capacity of insurers to provide insurance at reasonable costs. It brings Canada more in line with liability limits in other countries and meets the financial security requirement for countries seeking membership to the Convention. Table 1 provides current and proposed operator liability limits and required financial security amounts under the respective nuclear civil liability laws of a representative range of countries.

As Table 1 indicates, certain countries (Finland, Germany, Japan and Switzerland) legally have unlimited liability. In practice, however, the capacity of operators to compensate for damages is limited to the amount of their financial security and any assets. In the event of a major nuclear incident, a government would be obliged to step in to provide support to the operator of the nuclear power plant, in order to allow it to continue to supply electricity to customers.

The new legislation will provide for lower liability limits to be established for operators of low-risk nuclear installations (e.g. research reactors), based on their respective risk. These lower limits would be set by the Government through regulations. In keeping with the provisions of the Convention, the Government would cover any damages exceeding the limit set for the low-risk nuclear installation up to the amount set for the operator of a nuclear power plant.

Under the proposed legislation, nuclear operators would be required to cover the full amount of their liability with insurance provided by an insurer approved by the Minister. The bill, however, proposes that, subject to the Minister's approval, operators would be permitted to cover up to 50% of their liability with other forms of financial security such as self-insurance or provincial guarantees.

In keeping with the provisions of the Convention, the operator's financial security would not be used to pay the operator's costs of administering claims, court costs, legal fees or interest on compensation. This provision is meant to ensure that the operator's financial security is reserved for the payment of civil damages.

Domestic improvements – compensable damages & claims period

The new legislation will also clarify compensable damages. Compensable damages under the NLCA will reflect the damages provided for in the Conven-

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tion where required and Canadian jurisprudence where the Convention provides the opportunity for the domestic courts to define compensable damages. Compensable damages will include: 1) bodily injury, loss of life and property damage; 2) psychological trauma resulting from bodily injury; 3) economic loss arising from the aforementioned damages; 4) costs incurred as a result of loss of use of property, including the wage loss of employees; 5) reasonable costs of remedial measures taken to repair, reduce or mitigate environmental damage if the measures are ordered by an authority acting under federal or provincial legislation relating to environmental protection.; 6) reasonable costs of preventive measures and the costs and economic loss—including lost wages—arising from the loss of use of property as a result of those measures, if the measures are recommended by an authority acting under a nuclear emergency scheme established under federal or provincial legislation.

The NLCA will also make it clear that costs incurred by authorities in exercising preventive measures during a nuclear incident will not be reimbursable. For example, the costs incurred for the administration of evacuation centres, salaries of emergency services personnel, and the cost of equipment will not be compensable under the legislation. This will ensure that compensation will be reserved exclusively for claimants who have suffered loss of life, injury or property damage from the nuclear incident.

The limitation period for making claims for bodily injury and death will be increased to 30 years from the current 10 years to address latent illnesses, such as certain forms of cancer detected more than 10 years after an incident. As the insurers will not provide coverage for claims beyond 10 years, however, the Government will cover claims from 10 to 30 years. The 10-year period will be maintained for all other forms of damage.

Operator Liability Limits and Operator Pool Funds – Nuclear Civil Liability Legislation – Internationally. Current and Proposed Amounts in Canadian\$ millions

Country	Current Operator Liability Limit and Financial Security Amount	Current Operator Pool Funds	Current Total Operator Funds	Proposed Operator Liability Limit and Financial Security Amount	Proposed Operator Pool Funds	Proposed Total Operator Funds
Canada	75		75	1,000		1,000
Norway	101		101	1,040		1,040
France	136		136	1,040		1,040
Spain	223		223	1,040		1,040

Country	Current Operator Liability Limit and Financial Security Amount	Current Operator Pool Funds	Current Total Operator Funds	Proposed Operator Liability Limit and Financial Security Amount	Proposed Operator Pool Funds	Proposed Total Operator Funds
United Kingdom	256		256	1,040		1,040
Romania	252		252	unchanged		unchanged
Ukraine	252		252	unchanged		unchanged
India *	268		268	unchanged		unchanged
South Africa	240		240	unchanged		unchanged
Belgium	442		442	1,040		1,060
Korea *	515 (52)		515 (52)	unchanged		unchanged
Sweden	504		504	1,040		1,040
Netherlands	506		506	1,040		1,040
US	409	12,685	13,094	unchanged	unchanged	unchanged
Japan	1,279		1,279	unchanged		unchanged
Switzerland	1,218		1,218	1,235		1,235
Finland	1,008		1,008	1,040		1,040
Germany	379	3,339	3,718	1,040	2,678	3,718

Amounts based on exchange rates on June 4, 2014

The nuclear civil legislation of Japan, Switzerland, Finland and Germany provide for unlimited liability.

** India's nuclear civil legislation does not provide channelling of liability to the operator, and allows for claims for civil damages under other Indian laws*

** Note that while the Korean operator liability limit is \$515M, the required financial security is only \$52M.*

Table 1

Domestic improvements – indemnity agreements

The Government will continue to cover certain risks under the legislation. These include risks that the insurers will not cover (e.g. claims for bodily inju-

ry 20 to 30 years after the nuclear incident), and the difference between the liability limits for low-risk installations prescribed in regulations and \$1 billion.

Under the current NLA this coverage is provided through a reinsurance agreement with the nuclear insurers, whereby the Government reimburses the insurer for claim payments for those risks covered by the Government. Under the NLCA, the coverage will be provided through an indemnity agreement with the operator. The Government will determine an appropriate fee to be charged operators for this coverage.

Domestic improvements – dual system for the compensation of claims

As under the current NLA, the NLCA will provide that a special compensation regime may be established to replace the courts in the event of a major nuclear incident when the Government determines that claims would be better dealt with by an administrative quasi-judicial tribunal to accelerate claims payments and provide an efficient and equitable forum.

Once the Government has declared that the claims resulting from a nuclear incident are to be dealt with by a tribunal, the regular routes of receiving compensation, whether directly from the insurers, or indirectly through the courts, are replaced by a nuclear claims tribunal. All court actions are halted and the operator ceases to be liable to the public for any damage caused by the incident. The operator becomes instead liable to the Crown in Right of Canada.

As there are very good reasons for providing for a dual system for the compensation of claims, the new legislation carries this forward from the current NLA, and further strengthens the provision by elaborating how the administrative quasi-judicial tribunal would operate.

It is recognized that both the judicial system and the administrative law system have their respective advantages depending on the nature of a nuclear incident. The judicial system functions well in many circumstances, and has numerous procedural requirements which operate to safeguard the rights and liberties of both the defendant and the plaintiff. For instance, in order not to be besieged by claims of unlikely damages in the event of a small incident, where little or no radiation is released, the operator may be better served by the full procedural protections and requirements of the judicial system than by the administrative law system. On the other hand, in the event of a large incident, the administrative quasi-judicial claims tribunal would be able to ensure that claims are handled quickly and fairly –with victims receiving at least a minimum of compensation– without the need to hire expensive legal counsel.

The proposed legislation will elaborate the features and process of this administrative quasi-judicial tribunal. The Tribunal is to be made up of a minimum of five members, the majority to be appointed by the Government to be judges or lawyers. Claims are to be heard by panels of the Tribunal consisting of one or more members. The Tribunal may, in order to process claims expeditiously, establish classes of claims that may be determined by a claims offi-

cer. A claimant or operator who is dissatisfied with a claims officer's decision may apply to the Tribunal for a rehearing by a panel. If a claim has been heard by a panel that consists of fewer than three members, the claimant or operator may bring an appeal to a panel consisting of three other members.

The proposed legislation will provide that the Minister –without delay after the Government has made the declaration to deal with claims by a tribunal– report to Parliament on the estimated cost of the damage arising from the nuclear incident. The advantages of such a report would be to inform Parliament of the extent of the nuclear incident, to permit the Government to decide on next steps and whether additional funds would need to be appropriated for related compensation, and to inform the Government on the need for regulations relating to the payment of claims.

Membership in a convention

The Government of Canada recognizes the importance of joining an international nuclear civil liability convention to bolster its nuclear civil liability regime and to address liability and compensation for trans-boundary and transportation incidents. It has joined other countries, in fora such as the G8 Nuclear Safety Group (2012), the G20 (2013), and in the IAEA Action Plan on Nuclear Safety (2011), in calling on all countries to work towards establishing a global nuclear liability regime that addresses the concerns of all countries that might be affected by a nuclear accident with a view to providing appropriate compensation for nuclear damage.

Joining an international nuclear civil liability convention would provide more uniform protection for citizens by ensuring that adequate funds are in place for compensation for damages, that compensation is expeditious and fair, and that claimants are relieved of the burden of proving fault or negligence. It would establish common rules to address liability arising from trans-boundary and transportation nuclear incidents. It would provide for a single competent court to hear all claims in the country where the nuclear incident occurred, which avoids the potential of multiple lawsuits and uneven treatment of claims. It would encourage participation of suppliers and contractors in world-wide nuclear development, by removing uncertainty with respect to liability.

Of the existing conventions, the IAEA *Convention on Supplementary Compensation for Nuclear Damage* (Convention) is the most attractive for Canada as it is the only instrument available that could establish nuclear civil liability treaty relations with the United States (U.S.). It is the only international nuclear civil liability treaty that the U.S. has indicated it can belong to. Given that the U.S. is the country most likely to affect Canada, or be affected by Canada, in a nuclear accident, it is prudent that the two countries are members of the same nuclear civil liability convention.

The purpose of the Convention is to provide for a system of compensation to supplement what is provided under domestic law. Member countries have

access to a pool of supplementary damage funding, (\$125 million - \$500 million) to supplement domestic compensation. Canada would pay up to \$25 million in the event of an accident in a member country, which would be reimbursed by Canadian nuclear operators. The Convention also clarifies liability for operators, suppliers and contractors, and limits legal actions to the member country in which the accident occurs.

Joining the Convention would make available an additional assured and meaningful amount of compensation to claimants in Canada in the event that an incident in Canada, another Convention country, or a transportation incident between Convention countries caused damage in Canada.

It would provide legal certainty by providing rules on jurisdiction in the case of a nuclear incident in Canada or another Party to the Convention.

Upon entry into force of the *Nuclear Liability and Compensation Act*, Canada would be in a position to ratify the Convention. However, the Convention is not yet in force, and has been ratified by only the U.S., Romania, Argentina, and Morocco. It will enter into force following the ratification of at least five countries which together have a minimum of 400,000 MWth of installed nuclear capacity. Given the current status of Convention members, this would happen if –in addition to Canada– at least one more country with a minimum capacity of 38,300 MWth were to join, for example, Japan (131,000 MWth), South Korea (59,900 MWth) or the Ukraine (41,760 MWth).

Conclusion

The Parliamentary process for strengthening Canada's nuclear liability regime is currently underway. Bill C-22 received Second Reading in the House of Commons on May 29, 2014, and was referred to the House of Commons Standing Committee on Natural Resources for debate. It was adopted by the Committee on June 10, 2014 and reported back to the House on June 11, 2014 with a few technical amendments. It is expected that the bill will receive third reading soon after Parliament resumes in the fall and then proceed to the Senate for review. Royal Assent of the Bill could occur before the end of 2014.

Entry into Force of the NLCA will be dependent on critical regulations being in place, namely the regulation designating nuclear installations, and the regulation establishing classes of nuclear installations and their respective liability amounts. Entry into Force will also be dependent on an appropriate insurance policy –approved by the Minister– being in place.

Once the NLCA –with its provisions to implement the Convention– has entered into force, the Government will take the necessary steps to bind Canada to the treaty. This could occur in 2015.