



**Supplementary Information  
Oral presentation**

**Presentation from the  
Canadian Environmental  
Law Association**

In the Matter of the

**Canadian Nuclear Laboratories**

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Application for the renewal of the Nuclear  
Research and Test Establishment Operating  
Licence for the Chalk River Laboratories

**Commission Public Hearing**

**January 23-25, 2018**

**Renseignement supplémentaires  
Exposé oral**

**Présentation de  
l'Association canadienne du droit de  
l'environnement**

À l'égard des

**Les Laboratoires Nucléaires Canadiens**

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Demande de renouvellement du permis  
d'exploitation d'établissement de recherche  
et d'essais nucléaires pour les Laboratoires  
de Chalk River

**Audience publique de la Commission**

**23-25 janvier 2018**

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# CNL Site Licence Renewal: Selected Legal Issues

Presentation to the CNSC

- Ref. 2018-H-01 -

January 23-25, 2018

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# Introduction

- ◆ CELA and CCRCA drafted companion submissions on CNL site licence renewal application
- ◆ CCRCA identified as a key issue proposed changes to CNL licence and licence condition handbook (LCH)
- ◆ CELA submission addresses legal implications of the changes



# CCRCA Findings

- ◆ Opinion that sweeping changes to licence and LCH would reduce regulatory oversight due to:
  - Half the current 56 licence conditions being deleted
  - Proposed licence conditions often lack details found in existing licence conditions eliminated
  - Vast majority of LCH compliance verification criteria being replaced by CSA standards for which substantive & procedural concerns exist



# Legal Implications of CCRCA

## Findings: Overview

- ◆ Compliance and enforcement difficulties due to vague language in licence & LCH
- ◆ Doubt that CNSC Inspection Program can compensate for licence & LCH gaps & deficiencies
- ◆ Doubt that CNSC can rely on Complaints from public as a substitute for lack of robust licence, LCH, and inspection program



# Legal Implications of Vague Licence & LCH


- ◆ If language in law/legal instrument vague (i.e. gives insufficient guidance) its legal effect may be void (i.e. of no legal force or effect) as a matter of constitutional law
- ◆ Law will be unconstitutionally vague if drafted with such lack of precision that it:  
(1) fails to provide fair notice to regulatee that certain conduct prohibited; & (2) does not limit enforcement discretion



# Legal Implications of Vagueness: Continued

- ◆ “Impermissibly vague laws mock the rule of law and scorn an ancient and well-established principle of fundamental justice: no one may be convicted or punished for an act or omission that is not clearly prohibited by a valid law...” (R. v. Levkovic – SCC 2013)





# Legal Implications of Vagueness: Conclusions

- ◆ Level of generality and vagueness in new CNL licence & LCH an open invitation for non-compliance, as well as non-, under, or challenged enforcement of applicable licence & LCH provisions



# Adequacy of CNSC Inspection Program

- ◆ Doubt that CNSC can compensate for licence/LCH vagueness because 2016 CESD audit of CNSC nuclear power plant inspection program found: “CNSC could not show ...it had adequately managed its site inspections of nuclear power plants...could not demonstrate that its inspection plans included...appropriate number and types of inspections and that it had...staff needed to verify...nuclear power plants ...complying with all...requirements or that site inspections...carried out according to CNSC’s procedures”.



# Adequacy of CNSC Inspection Program: Continued

- ◆ Is the CNSC inspection program at Chalk River the same, better, or worse than what CESD audit found at 4 nuclear reactors across country?
- ◆ If the same or worse, then watering down CNL licence conditions will not help
- ◆ Even if better, watering down CNL licence conditions could undermine inspections as well as compliance & enforcement at site



# Reliance on Public Complaints

- ◆ CNSC external complaints process might be partial substitute for licensing & inspection program gaps for obvious types of environmental problems (e.g. odour, smoke)
- ◆ But doubtful that complaints from the public effective in helping CNSC learn of or address far more serious but less obvious problems at Chalk River, particularly if licensing regime less robust and inspection program not improved



# Conclusions

- ◆ Doubtful that CNSC will be able to:
  - Verify whether licence conditions are achieving objectives of Act & regulations
  - Verify whether compliance is occurring with licence requirements (or CNSC intentions) as drafted; or
  - Enforce, as a matter of law, compliance where it is not occurring, due to the level of vagueness introduced into proposed licence & LCH



# Recommendations

- ◆ Reject CNL site licence renewal application
- ◆ Alternatively, only approve it after enhancing the licence & LCH as recommended by CCRCA (pages 40-42), and CELA Attachment “A” (pages 11-12) and “B” (page 26)