

Nuclear civil liability and compensation regime in Canada

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Canada's Nuclear Liability Act which sets out a compensation and civil liability regime, of strict operator liability, to protect the interest of the public in the event that civil injury and damages arises from a nuclear incident has been in effect since the 1970's. Under the current NLA, a limit of CAD \$75 million in liability has been set for operators of nuclear power generating facilities in Canada. Damages above and beyond CAD \$75 million are currently the responsibility of the Government of Canada. Like many other jurisdictions, the Canadian Government has been seeking to replace the current Nuclear Liability Act with a specific civil liability regime with respect to nuclear incidents. The new regime, if passed will increase the operator liability from the current CAD \$75 million to \$650 million or higher. This paper provides an outline of Canada's proposed establishment of a form of civil liability and of a requirement to pay compensation in respect of damage caused by a nuclear incident.

La Ley de Responsabilidad Civil Nuclear (NLA) de Canadá, donde se establece un régimen estricto de compensación y de responsabilidad civil del operador y cuyo objetivo es proteger los intereses del público en el caso de producirse daños y perjuicios civiles a causa de un incidente nuclear, ha estado en vigor desde la década de los 70. En la NLA actual, se fija un límite de 75 millones de dólares canadienses (CAD) para los operadores de las instalaciones de generación de energía nuclear en Canadá. En la actualidad, el Gobierno de Canadá es responsable de los daños que superen los 75 millones de CAD. Igual que otras muchas jurisdicciones, el Gobierno Canadiense ha intentado sustituir la actual Ley de Responsabilidad Civil por Daños Nucleares con un régimen específico de responsabilidad civil respecto a los incidentes nucleares. En el nuevo régimen, en caso de aprobarse, se aumentará la responsabilidad civil del operador desde la cifra actual de 75 millones de CAD hasta 650 millones de CAD, o incluso más. En este artículo, se hace un resumen de la propuesta de Canadá de establecer un marco para la responsabilidad civil y del requisito de pagar compensación por los daños provocados por un incidente nuclear.

Canada's Nuclear Liability Act ("NLA") came into effect in 1976 and reflects the principles of the international nuclear conventions. As such, the NLA sets out a compensation and civil liability regime, of strict operator liability, to protect the interest of the public in the event that civil injury and damages arises from a nuclear incident. Under the current NLA, a limit of CAD \$75 million in liability has been set for operators of nuclear power generating facilities in Canada. Damages above and beyond CAD \$75 million are the responsibility of the Government of Canada. The liability limit is a fixed amount and is not adjusted for inflation.

The Ministry of Natural Resources Canada ("NRCan") is responsible for reviewing and recommending any revisions to the NLA and like many other countries, Canada is in the

process of updating its nuclear civil liability regime which is more than 35 years old. Beginning in 2007, new legislation was proposed that would effectively repeal and replace the NLA. Since that time three separate parliamentary Bills (C-63, C-5, C-20, and C-15), each being essentially identical in substance, have been introduced. To date none of these bills have been passed. In 2011, two important events occurred that will likely result in the introduction of yet another Bill in the coming months; the earthquake and Tsunami in Japan which resulted in the Fukushima nuclear event, and a Canadian national election resulting in a majority government for the Conservative governing party. The Japanese natural disaster has heightened public interest in the safety of nuclear operating facilities, and it is believed the government's majority will now



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allow new legislation to pass with minimal opposition.

It is estimated that the chance of an incident occurring in a Canadian nuclear facility, which would result in harmful releases of radioactivity into the environment, is extremely remote. Nevertheless, NRCan together with the Canadian Nuclear Safety Commission ("CNSC"), who regulates and licences all nuclear activities and ensures the operators maintain an appropriate level of insurance, believes it is in the public interest to follow the principles of the new and amended international nuclear conventions that are being adopted by many countries.

Each of the Bills introduced to date included the financial requirement where nuclear operators would be required to maintain financial security of CAD \$650 million compared to the current CAD \$75 million. As a result of the Fukushima nuclear event, there have been indications that a revised Canadian Parliamentary Bill may impose a larger operator financial liability security in excess of CAD

\$650 million. Higher liability security limits are now being discussed in other International jurisdictions and this may have an impact on Canada's decision. The liability limits set will be subject to Minister review at least every five years, and if deemed necessary, the amount could be increased by regulation. Under the current NLA, the only form of acceptable security was insurance, but the proposed legislation would allow the operator to conclude a special agreement with the Minister for an alternative form of security which may include provincial guarantees, letters of credit, as well as a level of self-insurance. The introduction of the higher limits puts Canada on par with the liability limits which are being proposed or have already been implemented in many other countries, and it considers the available insurance capacity that can be obtained at a reasonable cost. Despite this, it will likely mean an operator's annual premium cost could increase by six-fold or more. Therefore to lessen the financial burden, the limit increase is expected to be phased in over five years to ensure the insurance market and the operators are able to plan for and manage the additional insurance capacity and cost. There is also a provision, subject to the Minister's agreement, for the risk insured by an approved insurer to be reinsured by the Canadian Government.

The proposed operator's liability cover has not been essentially chan-

ged from the current NLA but the definition of nuclear compensable damage has been extended under the proposed legislation to include bodily injury, damage to property, and psychological trauma resulting from such injury or damage.

The proposed legislation also allows a greater scope of application than the NLA. A nuclear installation for the purposes of the legislation will consist of any site that contains a facility or facilities authorized by licenses issued under the Nuclear Safety and Control Act to contain nuclear material capable of a nuclear chain reaction. Such facilities could include nuclear reactors and nuclear fuel waste facilities. While a designated site would need to contain at least one facility containing nuclear material, it could include other nuclear facilities (for example, a low- or intermediate-level radioactive waste management facility) in addition to the facility or facilities containing nuclear material.

The proposed legislation provides for any civil liability arising from any source of ionizing radiation emitted from the operator's nuclear installation site, and any source of ionizing radiation emitted from nuclear or radioactive material that is being transported from the nuclear installation. Liability arising from ionizing radiation emitted from nuclear material that is being transported to a nuclear installation from outside Canada, once the material enters Canada or its exclusive economic zone

will also be included in the cover. (Canada's exclusive economic zone is the area that extends 200 nautical miles from Canada's coast)

The proposed legislation will increase the claims limitation period to 30 years for bodily injury and death, while maintaining the 10-year claim period for property damage. The Canadian Government will re-insure claims between 10 and 30 years, as most insurers are not prepared to offer this extended discovery period. The Canadian Government will re-insure claims between 10 and 30 years. The 3-year limit for a claimant's right to bring an action or claim for compensation will be maintained.

Although operators would not be liable for damages outside Canada and its exclusive economic zone, the proposed legislation provides for the Government of Canada to enter into an agreement with another country, where each country would assure the other of access to the coverage provided by its nuclear civil liability legislation and of access to its courts.

In conclusion, it is expected that Canada will move forward with the implementation of a new nuclear civil liability regime that will be aligned with one or more of the international nuclear civil liability conventions. Although public sentiment for nuclear power remains generally positive in Canada, an update to the civil liability regime would respond to many concerns of the public impact of a nuclear incident.■