

Submission to the Standing Committee on Environment and Sustainable Development Nuclear Waste Governance in Canada

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This brief draws upon my experience 1) as an Assistant Deputy Minister responsible for administration of the Canadian Environmental Protection Act (CEPA) from 2000 to 2006, and 2) during subsequent work at the University of Ottawa where I co-founded a Certificate Program in Regulatory Leadership for senior public servants.

There is a widely held view that the primary regulator of Canada's nuclear sector, the Canadian Nuclear Safety Commission (CNSC) is "captured" by the nuclear industry². Proud assertions of CNSC's independence by CNSC itself, the nuclear sector and its promoters usually fail to state whether this "independence" is from industry, in accordance with guidance from the International Atomic Energy Agency (IAEA)³, and/or from government – a complex topic⁴ that I suggest warrants a separate review.

I submit that complete independence from government is inappropriate for a parliamentary democracy in which our elected representatives should have the final word on decisions that require value-laden choices, often between economic benefits on the one hand and risks to environmental and/or public health on the other. I thus encourage your committee to carefully explore the nature of the current "independence" and ensure that major decisions requiring such difficult choices are ratified by elected members of cabinet who are accountable to Canadians. It is in my view not appropriate to base such decisions solely on value assumptions made by non-elected specialists⁵.

While releases of uranium and uranium compounds contained in effluent from uranium mines and mills were determined to be "toxic" as defined in section 64(a) of CEPA, no further action was taken by the Ministers of Environment or Health under CEPA to avoid regulatory duplication and because the Nuclear Safety and Control Act was at the time considered a more appropriate federal statute under which to manage the risks posed by uranium and uranium compounds^{6, 7, 8}.

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² Building Common Ground. A New Vision for Impact Assessment in Canada. The Final Report of the Expert Panel for the Review of Environmental Assessment Processes Page 49.

<https://www.canada.ca/en/services/environment/conservation/assessments/environmental-reviews/environmental-assessment-processes/building-common-ground.html>

³ https://www-pub.iaea.org/MTCD/Publications/PDF/Pub1172_web.pdf

⁴ https://nuclearsafety.gc.ca/eng/pdfs/Reading-Room/technical-papers-presentations-and-articles/Malaika_Bacon-Dussault_article_ENG.pdf

⁵ <https://49thshelf.com/Books/V/Value-Assumptions-in-Risk-Assessment>

⁶ <https://www.canada.ca/en/environment-climate-change/services/canadian-environmental-protection-act-registry/substances-list/toxic/meeting-criteria-schedule-1/releases-radionuclides-nuclear-facilities-impact.html>

⁷ <https://www.canada.ca/en/environment-climate-change/services/management-toxic-substances/list-canadian-environmental-protection-act/releases-radionuclides-nuclear-facilities.html>

⁸ <https://www.ec.gc.ca/lcpe-cepa/default.asp?lang=En&xml=33CF772A-7F68-C355-E3C2-721C28257E20&wbdisable=true>

Unfortunately, this approach has left CNSC to face serious ongoing concerns about regulatory capture. It also creates a conflict of interest for the Minister of Natural Resources Canada between responsibilities to develop and promote the sector (e.g., under section 10 of the Nuclear Energy Act), while also overseeing its regulation.

I concur with the Brief submitted to the Committee by the Canadian Environmental Law Association (CELA). The recommended actions would strengthen the credibility of, and trust in the regulation of the nuclear sector in Canada by having the CNSC report to a separate Minister, preferably the Minister of the Environment and Climate Change who is responsible for administering CEPA. In addition to its ability to address a wide range of radionuclides such as the effluent from uranium mines and mills mentioned above, CEPA sets out several important guiding principles including sustainable development, pollution prevention, virtual elimination, and the precautionary principle⁹.

As set out in the Brief by CELA, the separation of responsibility for regulation and promotion of the nuclear sector is possible within existing legislation and would address the conflict of interest that has been recognized repeatedly by Parliamentary Standing Committees, expert panels, civil society, and MPs with whom we have spoken.

In conclusion I recommend:

1. Separating Ministerial responsibilities for a) regulation of the nuclear sector – preferably to be overseen by the Minister of Environment and Climate Change in concert with CEPA, and b) the development and promotion of the sector as currently overseen by the Minister of Natural Resources Canada.
2. Ensuring independence of the CNSC from the nuclear sector and its promoters. This would include a Parliamentary review and/or an audit, perhaps by the Commissioner of the Environment and Sustainable Development, of CNSC's legal framework and the quality management of regulatory processes and activities as set out by the IAEA².
3. Reinstating authority for the federal cabinet to review major decisions regarding the management of nuclear waste in Canada that require difficult value-laden choices such as between economic development and the protection of public and/or environmental health.

⁹ <https://www.canada.ca/en/environment-climate-change/services/canadian-environmental-protection-act-registry/publications/guide-to-understanding/chapter-3.html>