



Canadian Nuclear
Safety Commission

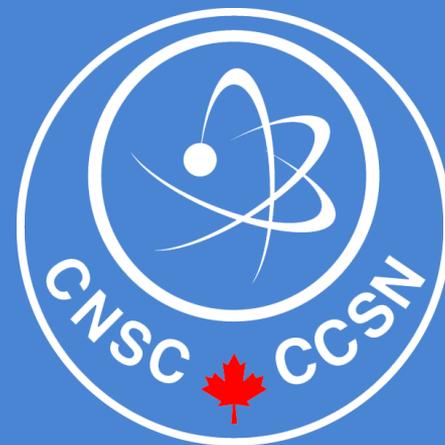
Commission canadienne
de sûreté nucléaire

Canada

Public Proceedings at a Science- Based Administrative Tribunal

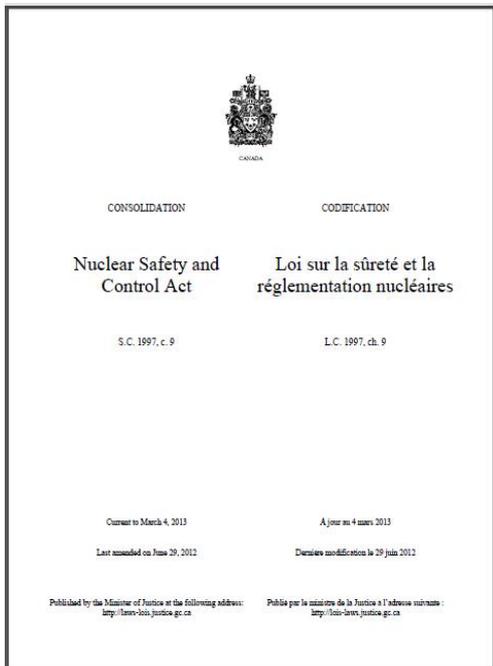
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AND JUSTICE CANADA



Canadian Nuclear Safety Commission (CNSC)

- Who we are
- Basics of CNSC proceeding process
- What does it mean to be a **science-based** tribunal, and what is the effect of this in practice?
- Challenges ahead?



Background on the CNSC

The Canadian Nuclear Safety Commission

- Is a quasi-judicial administrative tribunal
- Was established pursuant to the *Nuclear Safety and Control Act* (S.C. 1997, c. 9)
- Regulates the nuclear industry
- Has a licensing function: for example, nuclear power plants, possession and use of nuclear gauges, nuclear medicine



Unique Challenges as a Regulator

- Fear of radiation and nuclear proliferation
- Complex technology
- Regulator is often accused of pro-industry / pro-nuclear bias
- Alternatives to nuclear power comprise a policy issue, which is not the regulator's role
- Widespread misinformation about health and environmental impacts

“An accident anywhere is an accident everywhere”

The Commission



- The Commission consists of not more than 7 permanent members, appointed by the Governor in Council; one of the members serves as president
- both quasi-judicial and administrative decisions

Why a “Science-Based” Tribunal?

“Among the problems that are frequently pointed out, are the allegation that judges and adjudicators in tribunals are not trained in science, and therefore do not know how to draw appropriate conclusions from scientific evidence; that the standards of proof required by courts are not consistent with the standards of proof used in scientific methodology; and that the adversarial process used by courts and tribunals obscures rather than illuminates scientific facts. This last concern focusses on the fact that lawyers who may not be trained in science ask questions which at best may be confused or irrelevant and at worst may be designed to cast doubt and sow confusion.

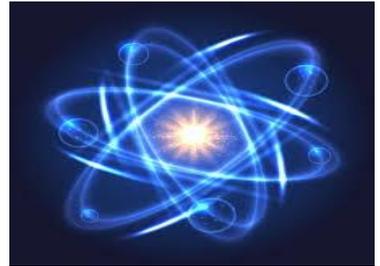
In particular, scientists — especially those unaccustomed to giving testimony — see cross-examination as a method of character assassination, designed to mislead and confuse the tribunal, while lawyers, on the other hand, see cross-examination as the most effective engine for finding truth ever designed.”

– John Swaigen and Alan D. Levy, “The Expert's Duty to the Tribunal: A Tool for Reducing Contradictions between Scientific Process and Legal Process”, 11 Can J Admin L & Prac 277 (1998).

Why a “Science-Based” Tribunal?

“Careful management of [certain] sectors often requires the use of experts who have accumulated years of experience and a specialized understanding of the activities they supervise.” –*National Corn Growers Assn. v Canada (Import tribunal)*, [1990] 2 SCR 1324

- Maximize the effectiveness of administrative tribunal when decision makers have expertise in the field
- The CNSC is composed of members with backgrounds in nuclear science and technology



Administrative Tribunals

“It is unrealistic to expect an administrative tribunal . . . to abide strictly by the rules applicable to courts of law.”

- IWA v. Consolidated-Bathurst Packaging Ltd., [1990] 1 S.C.R. 282

“Parliament has seen fit to give administrative tribunals very wide latitude when they are called on to hear and admit evidence so they will not be paralyzed by objections and procedural manoeuvres.”

- Rhéaume v. Canada (Attorney General), [2002] F.C.J. No. 128



Public Hearing Procedure

- Public hearings are required for licensing decisions of the Commission
- Not bound by the legal rules of evidence (section 20); however, the principles of natural justice and fairness apply
- “Informal and expeditious” (subsection 20(3))
- Control over the manner and extent of the participation of intervenors during public hearings (paragraph 20(4)(b))

Public Hearing Procedure

Public hearing practices of the CNSC

- Two-part hearings
- Must submit application to intervene
- Intervenors may submit written interventions only, or also request to intervene orally
- All intervenors are given 10 minutes to present, followed by an opportunity to answer questions from Commission Members

Procedure (Cont'd)

- Chair / Commission members direct questions to CNSC staff, applicants or intervenors, or redirects questions from one to another - **no cross examination or swearing in of witnesses**
- No qualification of experts
- The process is flexible and can be adapted to fit changing needs



Role of CNSC Staff

CNSC staff as scientific experts

- Analyze information provided by applicants and licensees
- Present conclusions and recommendations to the Commission in the public forum

Information provided in the context of a hearing by staff, along with the information provided by the applicant and intervenors, serves to inform the Commission in its decision-making function

Challenges Ahead

- Increase in public participation/
interventions
- Social acceptability
- Public confidence in regulatory processes

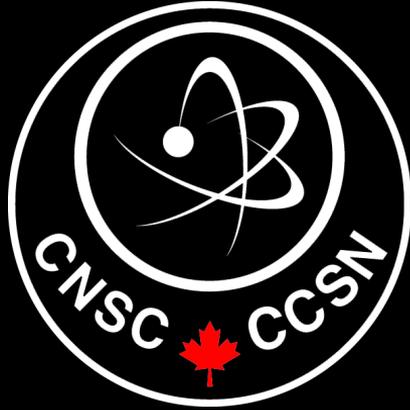


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