

Request for Ruling

**In the Matter of the Canadian Nuclear Laboratories' (CNL) Nuclear Research and Test Establishment Decommissioning Licence Renewal Application for Whiteshell Laboratories
October 2, 2019**

THE UNDERSIGNED registered oral intervenor, the Canadian Environmental Law Association, hereby requests a ruling pursuant to Rule 20(1) of the *Canadian Nuclear Safety Commission (CNSC) Rules of Procedure*, SOR/2000-211 with respect to the Winnipeg Nuclear Declaration 2018's establishment of 13 pillars in respect of the Right to Nuclear Peace and Freedom from Nuclear Fear (**Appendix 1**).

WHEREAS the Winnipeg Nuclear Declaration 2018 was agreed to at the "Conference on Regional Nuclear Non-Proliferation and Disarmament: Controls, Defence and Diplomacy" held on the United Nations' International Day of Peace, September 20-21, 2018, at the Canadian Museum for Human Rights in Winnipeg, Manitoba;¹

AND WHEREAS it was unanimously consented to by the legal scholars, academics and presenters on the motion of Dr. Jonathan Black-Branch, Dean of Robson Hall Faculty of Law at the University of Manitoba at the "Conference for Harnessing the Winds of Change in a Shifting Nuclear World" held at the Canadian Museum for Human Rights on September 30, 2019 that this declaration be brought to the attention of the Commission for adoption in regard to the above-referenced licensing matter (**Appendix 2**);

AND WHEREAS the Winnipeg Nuclear Declaration 2018 establishes and endorses 13 pillars, consisting of 6 premises and 7 principles, central to the Right to Nuclear Peace and Freedom from Nuclear Fear (RNP-FNF), corresponding to the thirteen phases of the moon as described in a blessing given by an Indigenous Elder at the outset of the 2018 Conference;

AND WHEREAS the Winnipeg Nuclear Declaration 2018 states:

- First Pillar Emphasizing the human rights and fundamental freedoms of all individuals,
- Second Pillar Reaffirming the dignity and worth of all individuals and Peoples,
- Third Pillar Considering increasing non-proliferation, disarmament and security challenges,
- Fourth Pillar Concerned about nuclear safety and security from nuclear weapons and materials, including environmental and health effects,

¹ University of Manitoba, "News from the Faculty of Law - Faculty of Law co-hosts International Nuclear Non-Proliferation & Disarmament Conference," (12 September 2018) online: <https://news.umanitoba.ca/faculty-of-law-co-hosts-international-nuclear-non-proliferation-disarmament-conference/>

Fifth Pillar Exploring options for preventing the development and spread of nuclear weapons and the means of their delivery,

Sixth Pillar Recognizing the role that countries and regions can individually and collectively play in steps leading to nuclear disarmament as called for in the Nuclear Non-Proliferation Treaty 1968,

Declare that,

Seventh Pillar Every individual has the right to nuclear peace and freedom from the fear, and threat, of nuclear weapons and nuclear warfare.

Eighth Pillar Individuals shall participate in discussions and the development of nuclear disarmament policies, and they should accept this challenge.

Ninth Pillar National governments, regions and cooperative arrangements must take decisive steps to adopt measurable and enforceable actions, in an open and transparent manner, regarding non-proliferation and disarmament along with confidence-building and the peaceful settlement of disputes.

Tenth Pillar Nuclear defence policies and actions must not adversely affect civilian populations.

Eleventh Pillar Environmental and health effects of uranium mining, peaceful nuclear activities and radioactive waste management require stringent independent regulatory oversight, impact monitoring and remediation.

Twelfth Pillar Support and care must be provided to all individuals suffering the ill-effects of nuclear detonation, testing and damage from accidents or disasters.

AND WHEREAS the Pillars are within the Canadian Nuclear Safety Commissions legislated mandated per the *Nuclear Safety and Control Act* to prevent unreasonable risk to the environment and the health and safety of persons in a manner consistent with Canada's international obligations;

WE THEREFORE REQUEST THAT the Commission in its Record of Decision actively support, advance and implement the Winnipeg Nuclear Declaration 2018 in respect to the Right to Nuclear Peace and Freedom from Nuclear Fear.

Reasons in Support of Request

1. The request for ruling does not duplicate interventions

A request for ruling is distinct in procedure and substance from an intervention. CELA submits this request for ruling is distinct from our intervention for the following reasons.

First, the procedure required for the submission of request for rulings is distinct from interventions. For instance, interventions are submitted and approved pursuant to s 19 of the *Rules*. They require the intervenor have an interest in the matter being heard and provide expertise useful to the Commission in coming to a decision.² Request for rulings, conversely, are intended to assist during a public hearing, and may be made by “a participant...at any time”.³

Secondly, requests for rulings are distinct in substance from interventions. While intervenors may provide submissions on areas of concern or expertise, requests for rulings are issue specific and pertain to a matter requiring the Commission’s consideration per section 24(4) of the *NSCA*. As authorization to share the Winnipeg Nuclear Declaration 2018 was not obtained until September 30, 2019, at the third annual nuclear non-proliferation conference, “Harnessing the Winds of Change in a Shifting Nuclear World,” it was not possible for this material to be provided within CELA’s written intervention.

2. The content of the request for ruling could not have been included within CELA’s written intervention

During the University of Manitoba’s “Conference for Harnessing the Winds of Change in a Shifting Nuclear World” held at the Canadian Museum for Human Rights on September 30, 2019, it was unanimously consented to by the legal scholars, academics and presenters on the motion of Dr. Jonathan Black-Branch, Dean of Robson Hall Faculty of Law at the University of Manitoba, that the Winnipeg Nuclear Declaration 2018 be brought to the attention of the Commission for adoption in regard to the above-referenced licensing matter (see Appendix 2).

Therefore, as this is an annual conference and presenters lack the ability to discuss or make decisions external to the Conference, the content of this request for ruling could not have been raised in CELA’s intervention to the Commission.⁴ Further, while each year a peer-reviewed publication results from the conference, the Winnipeg Nuclear Declaration 2018 does not appear in the 2018 conference’s text (Volume V of the text, pending publication) as it was not finalized for release.⁵

² *Canadian Nuclear Safety Commission Rules of Procedure*, SOR/2000-211, s 19(1) [CNSC Rules]

³ *Ibid*, s 20(3)

⁴ CNSC “Record of Decision in the matter of OPG Application to Renew the Nuclear Power Reactor Operating Licence for the Pickering Nuclear Generating Station: (2 December 2018)Para 15

⁵ See for instance Jonathan Black-Branch & Dieter Fleck (eds), *Human Perspectives on the Development and Use of Nuclear Energy - Volume IV*, (2019)

3. Request for rulings are not limited to procedural considerations

In its Record of Proceeding for the licence renewal of the Pickering NGS in 2013, the Commission noted that while it chose to consider multiple request for rulings received, request for rulings “normally refer to procedural considerations” and “it could be disputed whether some of the requests fall within such an interpretation.”⁶ Based on the CNSC’s past acceptance of rulings which dealt with substantive matters, and an ordinary reading of the CNSC’s *Rules*, we submit requests for rulings are not limited to procedural matters.⁷

The *Rules* frame requests for rulings as a “ruling on a particular issue.” Neither the term ‘procedure’ nor ‘procedural’ appear in the text of Rule 20. Thus, to limit requests for rulings to procedural matters would be overly restrictive and contrary to the ordinary meaning of the regulation. The interpretation of statutory provisions properly begins with its ordinary meaning and if the Commission wishes to depart or modify the ordinary meaning, it must provide plausible reasons which are sufficiently justified.⁸

In the alternative, if the Commission remains of the view that request for rulings are limited to purely procedural matters, we note the Commission has previously accepted requests substantive in nature and therefore, the present request is not barred from review.⁹

4. The request for ruling is within the scope of the hearing

This request for ruling is within the scope of this hearing as it is directly related to the activities proposed by the licensee in its licence application. The consideration of international obligations, the adequate protection of human health and the environment are enumerated purpose of the Commission and its licensing process, per sections 3, 9 and 24(4) of the *NCSA*.

Furthermore, given the timespan of the licence requested is for 10 years, there is no parallel nor alternative timely process which would allow for the adoption of the Winnipeg Nuclear Declaration 2018 as presented in this request for ruling. Due to the limited scope of potentially relevant CNSC annual regulatory oversight reports, CELA submits there is no alternative, appropriate nor adequate forum to raise this issue with the Commission.

⁶ CNSC, “Record of Proceedings, Including Reasons for Decision: Application to Renew the Nuclear Power Reactor Operating Licence for the Pickering Nuclear Generating Station” (9 August 2013), para 7 [**CNSC Pickering Decision**]

⁷ See *CNSC Rules*, *supra* note 2, s 20

⁸ Ruth Sullivan, “Sullivan on the Construction of Statutes,” 5th ed (Markham: LexisNexis, 2008), p 24

⁹ See for instance: Request for Ruling from CELA to CNSC (August 19, 2015), “File/dossier 6.01.02 – OPG application for 13 year licence renewal at Darlington Nuclear Generating Station”; CNSC Pickering Decision; CNSC, “Record of Proceedings, Including Reasons for Decision: Application to Renew the Nuclear Power Reactor Licence for the Darlington Nuclear Generating Station” (2 March 2016), para 210

5. The request for ruling is not time barred

We submit the request for ruling is not time barred as it has been submitted prior to the start of the hearing, as required by the *Rules*. Furthermore, CELA submits this request prior to the start of CNL Whiteshell licensing hearing to ensure it does not delay nor prejudice the hearing process.

All of which is respectfully submitted this 2nd day of October 2019.

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



Theresa McClenaghan
Executive Director and Counsel

Appendix 1

Winnipeg Nuclear Declaration 2018 **The Right to Nuclear Peace and Freedom from Nuclear Fear**

The Conference on Regional Nuclear Non-Proliferation and Disarmament: Controls, Defence and Diplomacy, held September 20th – 21st, 2018, organized by Dr. Jonathan L. Black-Branch at the Canadian Museum for Human Rights, Winnipeg, Manitoba, establishes and endorses 13 pillars, consisting of 6 premises and 7 principles, central to the Right to Peace and Freedom from Nuclear Fear, RNP-FNF. The pillars correspond to the thirteen phases of the moon as described in a blessing given by an Indigenous Elder at the outset of the Conference.

First Pillar *Emphasizing* the human rights and fundamental freedoms of all individuals,
Second Pillar *Reaffirming* the dignity and worth of all individuals and Peoples,
Third Pillar *Considering* increasing non-proliferation, disarmament and security challenges,
Fourth Pillar *Concerned* about nuclear safety and security from nuclear weapons and materials, including environmental and health effects,
Fifth Pillar *Exploring* options for preventing the development and spread of nuclear weapons and the means of their delivery,
Sixth Pillar *Recognizing* the role that countries and regions can individually and collectively play in steps leading to nuclear disarmament as called for in the Nuclear Non-Proliferation Treaty 1968,

Declare that,

Seventh Pillar Every individual has the right to nuclear peace and freedom from the fear, and threat, of nuclear weapons and nuclear warfare.
Eighth Pillar Individuals shall participate in discussions and the development of nuclear disarmament policies, and they should accept this challenge.
Ninth Pillar National governments, regions and cooperative arrangements must take decisive steps to adopt measurable and enforceable actions, in an open and transparent manner, regarding non-proliferation and disarmament along with confidence-building and the peaceful settlement of disputes.
Tenth Pillar Nuclear defence policies and actions must not adversely affect civilian populations.
Eleventh Pillar Environmental and health effects of uranium mining, peaceful nuclear activities and radioactive waste management require stringent independent regulatory oversight, impact monitoring and remediation.
Twelfth Pillar Support and care must be provided to all individuals suffering the ill-effects of nuclear detonation, testing and damage from accidents or disasters.
Thirteenth Pillar We call on governments to actively support, advance and implement these 13 Pillars in respect to the Right to Nuclear Peace and Freedom from Nuclear Fear.

Agreed on the International Day of Peace in the year of the "Right to Peace" 2018.
Dr. Jonathan L. Black-Branch – Dean, Professor and Barrister-at-Law

Harnessing the Winds of Change in a Shifting Nuclear World

September 29 - 30, 2019

Canadian Museum for Human Rights
85 Israel Asper Way | Winnipeg, Manitoba, Canada



Conference Overview

"Problems regarding nuclear security and non-proliferation continue to raise important legal debates. The potentially harmful effect of weapons of mass destruction makes it imperative to consider further legal consequences. ... there is the need for a paradigm-shift in how we approach, interpret, and apply this area of law, [with] an ever-emerging body of nuclear law, consisting of common rights and obligations binding on all states comprised of the content, principles and political objectives of the Nuclear Non-Proliferation Treaty and includes legislation adopted pursuant to the NPT and the case law of the International Court of Justice."

- Jonathan Black-Branch, *Nuclear Terrorism by States and Non-State Actors: Global Responses to Threats to Military and Human Security in International Law*. *Journal of Conflict & Security Law* (2017) pp. 1-48. Oxford University Press.

The Faculty of Law at the University of Manitoba, together with the Committee on Nuclear Weapons, Non-Proliferation and Contemporary International Law of the International Law Association (ILA) and ISLAND – the International Society of Law and Nuclear Disarmament, is pleased to host this Research Conference regarding nuclear deterrence and security issues. Results will be published in the (peer-reviewed) book series Jonathan L. Black-Branch and Dieter Fleck (eds), *Nuclear Non-Proliferation in International Law* (Berlin/Heidelberg: Springer/Asser Press).

ROBSON HALL FACULTY OF LAW

PROGRAM

Day One – Sunday, September 29, 2019

Time	Presentation	Speaker
8:30 am	<i>Arrival - Registration - Coffee</i>	<i>MTS Classrooms</i>
9:00 - 9:15	Introduction & Welcome	Dr. Jonathan Black-Branch Dean of Law and Conference Convener
9:15 - 11:15	OPENING CEREMONY: A Presentation by Knowledge Keepers from the Turtle Lodge Central House of Knowledge	
	Opening Song	Walking Wolf Singers
	Introduction & Explanation of Ceremony	Nii Gaani Aki Inini (Leading Earth Man) Knowledge Keeper David Courchene, Hon. LL.D.
	Water Ceremony	Knowledge Keeper Florence Paynter
	Water Song	Ms. Sylvia Dueck
	Prophecy Song and Explanation	Knowledge Keeper Philip Paynter
	Spirit of Life Song	Ms. Sylvia Dueck
	Presentation	Knowledge Keeper David Courchene
	Presentation	Knowledge Keeper Harry Bone, C.M., Hon. LL.D.
	Closing Song	Walking Wolf Drum Group
11:15 - 11:30	<i>Morning Break</i>	<i>Classroom C</i>
11:30 - 1:00	Panel I: Indigenous Issues & Challenges	Chair: Dr. Jonathan Black-Branch
11:30 - 11:40	Dr. Jonathan Black-Branch	<i>Indigenous participation in the nuclear developments</i>
11:40 - 12:00	Dr. Daniel Rietiker	<i>Indigenous peoples in the nuclear age, in particular the human right to their traditionally owned land and the right to water</i>
12:00 - 12:20	Mr. Taymoor Pilehvar	<i>The Global Impact of Nuclear Activity on Indigenous Peoples and How International Law Falls Short in Protecting Them</i>
12:20 - 12:45	<i>Audience Discussion, Q & A</i>	
12:45 - 2:00	<i>Lunch: Catered by Museum</i>	<i>Classroom C</i>
2:00 - 3:30	Panel II: Evolving Nuclear Challenges	Chair: Dr. Daniel Rietiker
2:00 - 2:20	Jur. Lic. Dirk Roland Haupt	<i>Nuclear Nonproliferation Objectives of Permanence with Accountability at Stake</i>

ROBSON HALL FACULTY OF LAW

PROGRAM

Day One - continued

Time	Presentation	Speaker
2:20 - 2:40	Professor Satoshi Hirose	<i>Denuclearization of the Korean Peninsula and Nuclear Weapon Free Zone in Northeast Asia</i>
2:40 - 3:00	Konstantinos D. Magliveras	<i>The MENWFZ Conference in November 2019: Will the Unthinkable be Finally Achieved?</i>
3:00 - 3:30	<i>Audience Discussion, Q & A</i>	
3:30 - 3:45	<i>Closing Remarks</i>	<i>Classroom C</i>
3:45 - 5:00	<i>Museum Tour</i>	
5:00 - 7:30	<i>Reception - End of Day One</i>	<i>6th Floor of the Museum</i>

Day Two – Monday, September 30, 2019

Time	Presentation	Speaker
8:30 am	<i>Arrival - Coffee</i>	<i>MTS Classrooms</i>
9:00 - 9:05	Welcome back	Dr. Jonathan Black-Branch
9:05 - 9:30	Elder Blessings	Elder Norman Meade, University of Manitoba
9:30 - 11:00	Panel III: Emerging Environmental Nuclear Issues	Chair: Dr. Black-Branch
9:30 - 9:50	Dr. Yolandi Meyer	<i>South Africa's approach to nuclear waste management: seeking long term solutions to the nuclear waste conundrum</i>
9:50 - 10:10	Ms. Kerrie Blaise (co-author Mr. Shawn Patrick Stensil)	<i>The Evolution of Decommissioning Planning: Tracing the Requirements to Consider Radioactive and Non-fuel Wastes & Social Risk</i>
10:10 - 11:00	<i>Audience Discussion, Q & A</i>	
11:00 - 11:15	<i>Morning Break</i>	<i>Classroom C</i>
11:15 - 12:45	Panel IV: Outstanding Global Nuclear Challenges	Chair: Dr. Black-Branch
11:15 - 11:35	Mr. Ulf Häußler	<i>Nuclear Activities in Outer Space</i>
11:35 - 11:55	Mr. Stephen Herzog	<i>Backchannel Non-proliferation: Non aligned States and Nuclear Diplomacy</i>
11:55 - 12:15	Dr. Henry Heller & Dr. Radhika Desai	<i>The Long Shadow of Hiroshima: Capitalism and Nuclear Weapons from the Cold War to Multipolarity</i>

ROBSON HALL FACULTY OF LAW

PROGRAM

Day Two - continued

Time	Presentation	Speaker
12:15 - 12:45	<i>Audience Discussion, Q & A</i>	
12:45 - 2:00	<i>Lunch: Catered by Museum</i>	<i>Classroom C</i>
2:00 - 3:45	Panel V: Logistical and Technological Nuclear Issues	Chair: Dr. Daniel Rietiker
2:00 - 2:20	Mr. Daniel Mekonnen	<i>The Potential Use of Artificial Intelligence in Nuclear Weapons and the Need to Advance a New Set of Norms</i>
2:20 - 2:40	Dr. Seth Hoedl	<i>Nuclear energy's social acceptance in a world free of nuclear weapons</i>
2:40 - 3:10	<i>Audience Discussion, Q&A</i>	
3:10 - 4:30	Panel VI: Emerging Treaty Implementation & Future Developments	Chair: Dr. Rietiker
3:10 - 3:30	Mr. Usman Jadoon	<i>The impact of the Treaty on the Prohibition of Nuclear Weapons (TPNW)</i>
3:30 - 3:50	Dr. Jonathan Black-Branch	<i>The Treaty on the Prohibition of Nuclear Weapons (TPNW): Universality & Emerging Disarmament in International Law</i>
3:50 - 4:00	<i>Audience Discussion, Q&A</i>	
4:00 - 4:45	Special Discussion: The Winnipeg Declaration 2018 Freedom from Nuclear Fear The Right to Nuclear Peace	Chair: Dr. Rietiker
4:45 - 5:00	CLOSING REMARKS	
5:30 - 9:30	Speaker's Reception & Dinner	The Manitoba Club

