
Who is liable for a nuclear accident?

A workshop in response to Canada's consultation on liability for nuclear power reactors

May 20, 2021



Canadian
Environmental Law
Association

EQUITY. JUSTICE. HEALTH.

Presented by

Theresa McClenaghan, Executive Director and Counsel, CELA

Kerrie Blaise, Northern Legal Counsel, CELA

M. V. Ramana, Professor and Simons Chair in Disarmament, Global and Human Security, University of British Columbia

About Us



Canadian
Environmental Law
Association
EQUITY. JUSTICE. HEALTH.

The Canadian Environmental Law Association (CELA) is a specialty community legal clinic providing services to low income individuals and disadvantaged communities across Ontario in environmental law matters.

CELA was established in 1970, funded as an Ontario specialty legal aid clinic by Legal Aid Ontario since 1978.

Ontario's only clinic providing environmental law legal aid services including representation in trial and appellate courts and before administrative tribunals; summary advice and brief services; public legal education and law reform

Workshop Outline

1. Context: Canada's consultation on 5-year review of nuclear liability law
2. Critiques: Canada's existing nuclear liability framework
Nuclear civil liability vs. other energy sectors
3. Concerns: SMRs and nuclear liability
4. Q&A Session with Theresa McClenaghan and Professor M. V. Ramana

The image shows the spines of several old, worn books. The spines are made of light-colored, possibly leather or cloth, material. There are red labels on the upper part of the spines with the text 'M.S.W. WEEKLY NOTES' in gold or yellow. Below these, there are black labels with white text indicating the year and volume, such as '1956 VOL. 73' and '1957 VOL. 74'. The books are arranged in a row, and the background is slightly blurred.

1. Canada's 5-year review of Nuclear Liability

Canada's nuclear liability law must be reviewed once every five years by the Minister of Natural Resources (NRCan).

Until [May 31, 2021](#), NRCan is asking for your views on:

- The existing C\$1 billion liability limit for power. Should the existing limit be changed based on the factors defined in the NLCA? What additional factors should be considered?
- Implications of an adjustment to the existing liability limit for power reactors. What, if any, additional measures should be contemplated if the existing liability limit were to be increased/decreased?



This Photo by Unknown Author is licensed under CC BY-NC

2. Canada's Nuclear Liability Framework

Nuclear Liability and Compensation Act (NLCA) came into force in 2017 and increased liability limit for nuclear operators from \$75 million to \$1 billion

Two central and problematic features remain:

1. Liability is channeled to the entity operating the plant meaning nuclear suppliers and vendors are exempt and shielded from liability
2. Liability is capped at \$1 billion, shielding operators from total liability

2. Canada's Nuclear Liability Framework (cont'd)

1. Liability is channeled to the entity operating the plant meaning nuclear suppliers and vendors are exempt and shielded from liability
 - Manufacturers of nuclear technologies are not held liable for accidents that result from design choices
 - Reduces incentives for care
 - Fukushima provides an unfortunate example - reactor supplier had knowledge of reactor's containment design flaws and risks decades prior to accident





2. Canada's Nuclear Liability Framework (cont'd)

2. Liability is capped at \$1 billion, shielding operators from total liability

- Caps on liability many magnitudes lower than actual cost of catastrophic accidents
 - Fukushima accident: \$200 - 600 billion
 - Chernobyl accident: ~ \$700 billion
- \$1 billion cap does not apply to operator if damage caused by an accident results from negligence (see section 12 of the [NLCA](#))

3. How does nuclear liability compare to other energy sectors?

	NUCLEAR	OIL & GAS
Absolute Liability Caps	\$1 billion	\$1 billion if no fault
		Unlimited if fault/negligence
Damages for Negligence	No claim for negligence permitted	Permitted; no upper limit on damage claim
Liability of supply chain (e.g. vendors, suppliers, contractors)	No – supply chain shielded	Yes – supply chain liable



4. The further weakening of nuclear liability

Vision for Small Modular Reactors set out in the industry-written [SMR Roadmap](#) from 2018. It recommended:

The federal government should review liability regulations ... to ensure that nuclear liability limits for SMRs are aligned with the risks they pose, using a graded scale based on risk informed criteria.

In the 2021 [SMR Action Plan](#), Canada “accepted” the Roadmap recommendation on nuclear liability

4. The further weakening of nuclear liability (cont'd)

- SMR proponents attempt to dispel concerns of accidents referencing “innovating passive safety features” and “inherent safety characteristics”
- SMR proponents are lobbying to lower a cap that is already too low
- All reactors are capable of severe accidents and with SMRs, there's the potential for multi-unit accidents

5. Key Messages

By May 31, 2021, email Canada and let them know:

- Shielding the nuclear supply chain from liability and claims of negligence is unjust
- Nuclear suppliers and vendors should also be subject to the *NLCA*
- There should be no reduction in the \$1billion liability cap – it should be unlimited
- Regardless of reactor design, unlimited liability is the only sufficient amount

Email your comments to: nrcan.nlca2021-lrimn2021.rncan@canada.ca

6. Next steps and Q&A

Share your views!

1. Participate in NRCan's nuclear liability consultation by **May 31, 2021**:
<https://www.nrcan.gc.ca/our-natural-resources/energy-sources-distribution/nuclear-energy-uranium/nuclear-liability-compensation-act/19224>
2. Sign on to CELA's letter to Canada, email kerrie@cela.ca
3. Visit cela.ca and subscribe to our monthly e-bulletin for updates:
<https://cela.ca/sign-up-stay-informed-cela-bulletin/>



Canadian Environmental Law Foundation

Reflecting and Cataloguing the Environmental History of Canada

[HOME](#)

[THE LIBRARY](#)

[SEARCH OUR CATALOGUE](#)

[ENVIRONMENTAL HISTORY PROGRAM](#)

Discover our Resources

Search our online catalogue for a vast collection on topics and subjects of interest. You can then view the material(s) in person. We are a free service, open to the public.



Canadian Environmental Law Association
EQUITY. JUSTICE. HEALTH.

[Our Legal Services](#)
How can we help?

[Public Legal Education](#)
Learn about the law

[Advancing Environmental Law](#)
Action on environmental justice

[Home](#)

[Who We Are](#)

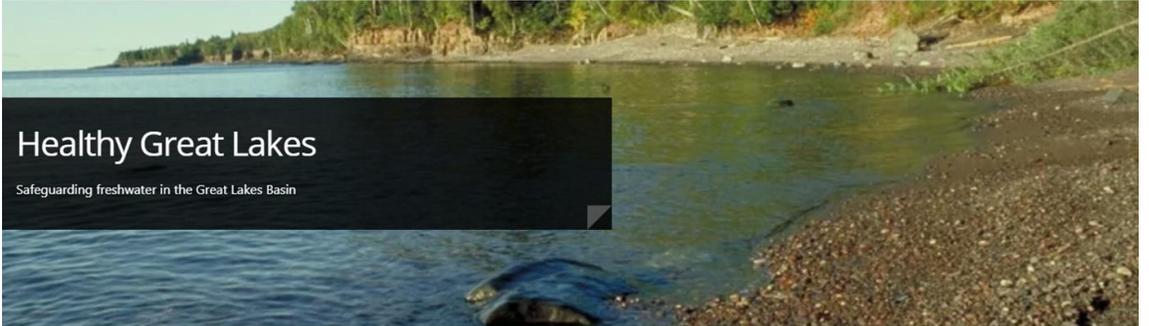
[Blogs](#)

[Media Releases](#)

[CELA News](#)

[CELA Says](#)

[Donate](#)



Healthy Great Lakes

Safeguarding freshwater in the Great Lakes Basin

CELA is a non-profit specialty legal aid clinic funded by Legal Aid Ontario. We work to protect

Contact Us

www.cela.ca

www.celafoundation.ca