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CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

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CELA PUBLICATIONS:
Canadian Environmental Law Association.
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CELA Brief no. 368; Re: CNSC draft rules of
procedure - section 12 - "confidentiality

RN 24099

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Re: CNSC DRAFT RULES OF PROCEDURE - Section 12 - "Confidentiality Provisions"

Comments Due: April 1, 1999

The Canadian Environmental Law Association (CELA) is a public interest group founded in 1970 for the purpose of using and improving laws to protect the environment and conserve natural resources. Funded as a community legal clinic specializing in environmental law, CELA represents individuals and citizens' groups before trial and appellate courts and administrative tribunals on a wide variety of environmental issues. In addition to environmental litigation, CELA undertakes public education, community organization, and law reform activities.

We write to express our concern in particular with respect to section 12 of the proposed Rules of Procedure of the Canadian Nuclear Safety Commission.

We are particularly concerned that the measures that the Commission or designated officer may take pursuant to section 12 include requiring that

- (a) the proceedings or part of the proceedings take place in private, to the exclusion of members of the public, other than the parties [generally the licensees] and their counsel or agent;
- (b) the publication of information given to the Commission or designated officer be restricted or prohibited; and
- (c) the disclosure of information given or received by the Commission or designated officer be prohibited or restricted to some or all of the parties and intervenors, or their counsel or agent, if any.

We would point out that existing access to information legislation already protects commercial information.

We would suggest that the proposed section 12 be removed entirely from the proposed Rules of Procedure.

Access to information with respect to nuclear licencing decisions is essential for public accountability and public confidence in the licencing and safety system. Secrecy provisions are contradictory to the type of safety culture that is essential for safer operations. Furthermore, the public has a direct interest in the technical safety and operations information of the nuclear power plants and other nuclear and atomic energy licensees for public safety, environmental, emergency planning and financial accountability reasons.

In David Mosey's book, Reactor Accidents, Nuclear Safety and the Role of Institutional Failure, (Butterworth Scientific Ltd. 1990), the author reported "institutional failure" as a significant causative factor in severe nuclear accidents worldwide, and defined "institutional failure" as:

"the impairment or absence of a corporate function which is necessary for the safety of an installation. Such a failure is the result of human error in activities which may not be acknowledged as important to safety and may occur far from the man-machine interface".
(p. 3)

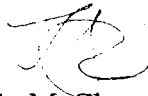
He went on to state that "Review of a number of nuclear and non-nuclear accidents seems to reveal this class of failure as a significant causative factor". (p. 3)


The importance of public access to information and public oversight cannot be over emphasized in this regard. Indeed, licencing hearings and proceedings that are allowed to proceed with the proposed secrecy provisions could not be considered to be appropriate public hearings. The regulatory system in Canada relies on many sources of information and concern, including the interest, comments and expertise of many individuals and organizations who scrutinize the performance and risks of the nuclear operations.

The proposed Rule 12 moves nuclear safety culture in the opposite direction. There is no acceptable reason to perpetuate an unaccountable, secrecy oriented nuclear culture in Canada.

Yours very truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

per 
Theresa A. McClenaghan
Counsel


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Researcher