Court File Nos. T-361-11 and T-363-11

FEDERAL COURT

BETWEEN:

CANADIAN ENVIRONMENTAL LAW ASSOCIATION
and SIERRA CLUB OF CANADA

Applicants

and

ATTORNEY GENERAL OF CANADA
MINISTER OF TRANSPORT
and BRUCE POWER INC.

Respondents

APPLICANTS' MEMORANDUM OF FACT AND LAW

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APPLICANTS' MEMORANDUM OF FACT AND LAW

PART I – CONCISE STATEMENT OF FACTS

A. Overview

1. These are applications for judicial review of the decisions of the Canadian Nuclear Safety Commission ("CNSC") to issue licences to Bruce Power Inc. ("BP") under the *Nuclear Safety and Control Act* ("NSCA") to authorize the transport and export of 1,600 tonnes of radioactive waste through the Great Lakes, the St. Lawrence Seaway, and the Atlantic Ocean to Sweden.

2. The applicants' overall position is that the CNSC contravened the applicable provisions of the *Canadian Environmental Assessment Act* ("CEAA") by purporting to issue the NSCA licences to BP without first conducting an environmental assessment ("EA") under the CEAA. The applicants further submit that the CNSC breached its common law duty of procedural fairness by issuing the export licence to BP without providing any public notice or comment opportunities.

3. The central issue in this case is the legal definition of the term "project" under the CEAA, and focuses on whether the CNSC was correct in holding that BP's proposal to transport and export radioactive waste does not constitute a "project" within the meaning of CEAA. Thus, this case raises important questions of statutory interpretation with ramifications for the wide range of environmentally significant proposals which are to be assessed in a robust, traceable and public manner under the CEAA. If left intact, the CNSC's decision to issue NSCA licences without conducting an EA effectively

eviscerates the purposes and provisions of the CEAA, and improperly deprives Canadians of their entrenched right to participate in meaningful EAs of projects which may have significant adverse environmental effects.

4. If the CEAA is to have its desired effect – to serve as an information-gathering and decision-making tool that integrates environmental considerations and achieves sustainable development – then the Act must be strictly applied to projects (or modifications and/or undertakings in relation to projects) which require licences prescribed by the *Law List Regulations* under the CEAA, such as those issued by the CNSC under the NSCA in the instant case.

B. Background

5. The Bruce Power nuclear generating station, located near Kincardine, Ontario, is owned by Ontario Power Generation ("OPG"), but has been operated since 2001 by BP under a long-term lease.

Applicants' Record, Vol. 2, Tab 8, Affidavit of John Bennett, paras. 8, 10

6. In 2004, BP proposed to return Bruce A reactors (Units 1 & 2) back to service through a series of refurbishments, upgrades and enhancements, including replacement of 16 steam generators which were decommissioned by OPG in the mid-1990s. Steam generators are integral reactor components that transfer thermal energy from the primary heat transport system to the secondary heat transport system to produce steam used to drive the steam turbine/generator in order to create electricity.

Applicants' Record, Vol. 1, Tab 3, *CNSC Decision and Reasons for Decision*, paras.9, 11, 13

7. Each steam generator weighs approximately 100 tonnes, measures approximately 11.7 metres in length by 2.5 metres in diameter, and consists of a steel exterior shell containing 4,200 metal tubes. After 20 years of service, various radioactive materials (including plutonium isotopes) were deposited within the inner surface of the tubes. Most of the radioactive materials are affixed as metal oxides within the tubes, but up to 13% of these materials are loose or non-fixed. The steam generators are classified as low-level radioactive waste.

Applicants' Record, Vol. 1, Tab 3, *CNSC Decision and Reasons for Decision*, paras.3, 13-14, 17

C. Bruce Power Refurbishment Project EA

8. In December 2004, BP initiated EA work in relation to its proposal to refurbish the Bruce A station. In its project description, BP stated that the project was comprised of various activities, including "steam generator replacement", which would generate low-level radioactive wastes. BP further stated that the steam generators, "which penetrate the reactor vault, will be removed intact," and "will be processed and prepared to meet OPG's requirements for acceptance at the WWMF [Western Waste Management Facility]" situated at the Bruce site. In its EA consultation materials, BP similarly stated that since "much of the waste, and particularly low and intermediate waste containing radioactivity, cannot be recycled for safety and environmental reasons," these wastes would therefore be processed and transferred to the WWMF for storage.

Applicants' Record, Vol. 2, Tab 8, Affidavit of John Bennett, paras.12-17; Exhibit C, *Bruce A Refurbishment for Life Extension and Continued Operations Project: Project Description*, pp.10, 13-14, 20, 22; and Exhibit D, *Bruce A Refurbishment for Life Extension and Continued Operations Project: Presentation to the Joint Council of the Saugeen Ojibway Nations*, pp.2, 4

9. Since the Bruce A refurbishment project required licencing approval under the NSCA, the CNSC was a Responsible Authority ("RA") for the purposes of the CEAA,

and was therefore obliged to carry out a screening EA under the CEAA prior to issuing the licence. In July 2005, the CNSC staff proposed – and the CNSC approved – EA guidelines for the screening report to be prepared under the CEAA. These EA guidelines confirmed that the scope of the project included "on-site physical systems" such as "the nuclear steam supply system" and "transportation of refurbishment and other radioactive wastes… to their destination at the Western Waste Management Facility."

> **Applicants' Record, Vol. 2, Tab 8, Affidavit of John Bennett, paras.18-22; Exhibit E, *EA Guidelines (Scope of Project and Assessment): EA of a Proposal for the Refurbishment for Life Extension and Continued Operations of Bruce A Reactors at the Bruce A Nuclear Generating Station (Bruce A NGS)*, pp.4-5; and Exhibit F, *Reasons for Decision: EA Guidelines for Life Extension and Continued Operation of the Bruce A Nuclear Generating Station*, pp.1-2**

10. In December 2005, BP released a two-volume EA Study Report on the refurbishment project, and the Report stated repeatedly that the steam generators would be processed, sealed, transported and stored at OPG's WWMF.

> **Applicants' Record, Vol. 2, Tab 8, Affidavit of John Bennett, paras.23-28; Exhibit G, *Bruce A Refurbishment for Life Extension and Continued Operations Project EA – EA Study Report,* pp.3-17, 3-28 to 3-32, 11-21**

11. In March 2006, the CNSC staff prepared a screening report under the CEAA in relation to the refurbishment project. BP's EA Study Report was used by the CNSC staff to prepare the CEAA screening report, which described the project as including "steam generator replacement," and stated that the steam generators would be processed, sealed and transferred to the WWMF.

> **Applicants' Record, Vol. 2, Tab 8, Affidavit of John Bennett, paras.29-31; and Exhibit I, *Screening Report on EA of of the Bruce A Refurbishment for Life Extension and Continued Operations Project – Bruce A Nuclear Generating Station,* pp. 22, 25**

12. In May 2006, the CNSC considered and accepted the CEAA screening report in relation to the refurbishment project. In doing so, the CNSC solicited and relied upon the

assurances of CNSC staff that the scope of the EA "included all activities associated with the management of the waste generated by the proposed project and the transportation of waste to the Western Waste Management Facility." The CNSC refused to refer the project to the Minister of the Environment for referral to a review panel under the CEAA, and the CNSC found, *inter alia*, that the project (including steam generator replacement and transfer to the WWMF), was not likely to cause significant adverse environmental effects. On this basis, the CNSC then proceeded to consider and approve the refurbishment and restart of the Bruce A station under the NSCA.

> **Applicants' Record, Vol. 2, Tab 8, Affidavit of John Bennett, paras.32-34; and Exhibit J, *Reasons for Decision: EA Screening Report for Refurbishment for Life Extension and Continued Operations of the Bruce A Nuclear Generating Station,* paras.3-5, 9, 15, 17, 49, 80-84**

13. In 2007, the 16 steam generators were removed by BP from the Bruce A site and transferred to the WWMF, where they are still being managed and stored at the present time. In October 2009, however, BP and OPG agreed to transfer title and possession of the steam generators from OPG to BP.

> **Applicants' Record, Vol. 2, Tab 8, Affidavit of John Bennett, paras.35-38; Exhibit K: *Reasons for Decision: OPG Application to Construct Two Refurbishment Waste Storage Buildings and a Low-Level Waste Storage Building at the WWMF at the Bruce Nuclear Site,* para.59; Exhibit L: *Supplemental Agreement to Low and Intermediate Waste Agreement;* and Exhibit M: *OPG Status Report to the Ontario Energy Board re Bruce Lease Transaction Agreements***

D. Issuance of the Transport Licence and Certificate

14. The above-noted EA documentation prepared by BP and the CNSC made no reference to the possibility of transporting or exporting the steam generators to any other location or jurisdiction. However, in April 2010, BP applied to the CNSC for a "special arrangement" licence under the NSCA to package and transport the 16 steam generators by truck and an ocean-going ship from the Bruce site through the Great Lakes and St.

Lawrence Seaway to Sweden. In August 2010, BP filed a Summary Report describing its application, and the CNSC released its staff review of the BP application.

> **Applicants' Record, Vol. 2, Tab 8, Affidavit of John Bennett, paras.39-42; Exhibit O: *Summary Report of the Bruce Power Application for a Licence to Package or Transport Steam Generators under Special Arrangement for the CNSC;* Exhibit P: *CMD 10-H19: CNSC Staff Report – Bruce Power***

15. Once in Sweden, the steam generators would be subjected to a recycling process intended to separate the contaminated metals within the nuclear equipment and melt the less contaminated steel into ingots. These ingots would then be sent to foundries for re-melting with other scrap metal to produce steel for release into the recycled metals market. After completion of the recycling process, approximately 400 tonnes of residual radioactive waste would be packaged, shipped and imported back to Canada via the port of Halifax, and then transported by truck to the WWMF for management and storage.

> **Applicants' Record, Vol. 2, Tab 8, Affidavit of John Bennett, paras.42, 44**

16. Pursuant to section 22 of the NSCA, CNSC established a panel to hold a one-day public hearing on the BP application on September 29, 2010 in Ottawa. In accordance with the CNSC panel's pre-hearing directions, both applicants filed written submissions which, *inter alia*, addressed the applicability of the CEAA to the BP proposal, and noted that the transport of the steam generators to Sweden constituted a significance change from the previous EA-approved plan to transfer and store them at the WWMF.

> **Applicants' Record, Vol. 2, Tab 8, Affidavit of John Bennett, paras.39, 45; Exhibit B: *Submissions of Sierra Club Canada to the CNSC;* and Exhibit R: *Submissions of Sierra Club Canada to the CNSC***
> **Applicants' Record, Vol. 1, Tab 6, Affidavit of Sarah Miller, paras.41, 44; and Exhibit A: *Submissions of CELA to the CNSC***

17. Since 78 interveners appeared at the CNSC public hearing, the proceedings lasted two days. Most interveners raised legal, factual, technical or scientific concerns about various environmental health risks posed by the proposed shipment of steam generators. However, the interveners were limited to making 10 minute oral presentations, and were not permitted to cross-examine BP or CNSC staff on their oral or written presentations, which were received by the CNSC panel as unsworn evidence or information.

> **Applicants' Record, Vol. 1, Tab 6, Affidavit of Sarah Miller, paras.42-43**
> **Applicants' Record, Vol. 4, Tab 10C, *Excerpts of Transcript of Proceedings before the CNSC***

18. At the CNSC hearing, both applicants again addressed the applicability of the CEAA to the BP proposal, and submitted that there was a need for a new or updated EA on the grounds that transporting the steam generators to Sweden had not been contemplated or approved during the BP refurbishment project EA.

> **Applicants' Record, Vol. 4, Tab 10A, *Transcript of Oral Submissions by Sierra Club Canada to the CNSC***
> **Applicants' Record, Vol. 4, Tab 10B, *Transcript of Oral Submissions by CELA to the CNSC***

19. After the public hearing concluded, the CNSC panel solicited additional information from its staff, and one of the applicants (CELA) filed a supplementary submission which again stated that the CEAA required an EA prior to the CNSC's licencing decision.

> **Applicants' Record, Vol. 1, Tab 6, Affidavit of Sarah Miller, paras.45-46; and Exhibit B: *Submissions of CELA to the CNSC***

20. In February 2011, the CNSC panel released its decision to grant BP a transport licence and certificate of transport under section 24 of the NSCA to allow the shipment of steam generators to Sweden. No EA was conducted under the CEAA by the CNSC prior to this licencing decision under the NSCA.

Applicants' Record, Vol. 1, Tab 3: ***CNSC Decision and Reasons for Decision,*** **para.9**
Applicants' Record, Vol. 1, Tab 4: ***Licence to Transport to Transport – Licence No. TL-SX-40039.01.00/2011;*** **and** ***Certificate for Special Arrangement – Certificate No. CDN/5255/X-96***

21. On the legal issue of CEAA's applicability, the CNSC panel held that an EA was not required under CEAA on the grounds that the BP proposal was not a "project" within the meaning of CEAA. The CNSC panel further held that the proposed shipment was "an entirely different proposal" from that assessed in the BP refurbishment project EA, but did not constitute a "modification" of the prior EA. Despite not conducting an EA, the CNSC panel went on to conclude that "the requirements of the CEAA have been met" since the licencing review under the NSCA "provides sufficient treatment of the potential adverse environmental impacts of the conduct of the proposed activities."

Applicants' Record, Vol. 1, Tab 3: ***CNSC Decision and Reasons for Decision,*** **paras.112-117, 123**

E. Issuance of the Export Licence

22. During the course of the CNSC public hearing, the applicants discovered that a designated officer of the CNSC had previously issued BP a separate licence under section 24(2) of the NSCA to authorize the export of the steam generators to Sweden. No public notice or opportunity to be heard was provided by the designated officer in relation to the export licence, and no EA was conducted under the CEAA prior to its issuance.

Applicants' Record, Vol. 1, Tab 7, Affidavit of Sarah Miller, para.49; and Exhibit F: ***Export Licence No.EL-A1&A2-20018/2011***

23. This export licence stipulated that it would expire on January 26, 2011. Approximately a week after this date expired (and while its decision on the transport licence was under reserve), the CNSC's designated officer amended and reissued the export licence with a new expiry date (January 30, 2012). Although 78 interveners had

participated in the CNSC public hearing on the transport licence, no public notice or opportunity to be heard was provided by designated officer in relation to the amended export licence, and no EA was conducted under the CEAA prior to its issuance.

Applicants' Record, Vol. 1, Tab 7, Affidavit of Sarah Miller, para.50
Applicants' Record, Vol. 1, Tab 5: *Export Licence No.EL-A1&A2-20018.1/2012*
Applicants' Record, Vol. 4, Tab 10D: *Record of CNSC Designated Officer – Export Licence*

24. On March 4, 2011, the applicants commenced the within applications for judicial review of the CNSC decisions to grant the transport and export licences.

Applicants' Record, Vol. 1, Tab 1, Notice of Application for Judicial Review (T-361-11)
Applicants' Record, Vol. 1, Tab 2, Notice of Application for Judicial Review (T-363-11)

PART II – POINTS IN ISSUE

25. The material facts are not in dispute among the parties. Accordingly, the applicants submit that the main points in issue in these proceedings are as follows:

(a) do the applicants have standing to seek judicial review in this case?

(b) what is the applicable standard of review?

(c) did the CNSC contravene the CEAA by issuing the transport and export licences without conducting an EA?

(d) did the CNSC contravene its duty of procedural fairness by issuing the export licence without undertaking any public consultation?

(e) what is the appropriate remedy?

PART III – CONCISE STATEMENT OF SUBMISSIONS

A. The Applicants have Standing to Seek Judicial Review

(i) The Standing Test

26. The leading Supreme Court of Canada judgments on public interest standing establish a three-part test for persons or groups seeking judicial review of administrative

decisions: (i) the judicial review application must raise a serious issue; (ii) the applicant must have a genuine interest in the matter; and (iii) there is no other reasonable and effective manner for bringing the issue to court.

> ***Borowski v. Canada,*** **[1981] 2 S.C.R. 575 at paras.54-56 [Book of Authorities ("BOA") Tab 1]**
> ***Canadian Council of Churches v. R.,*** **[1992] 1 S.C.R. 236 at paras.37-42 [BOA Tab 2]**

27. In the environmental context, this Honourable Court has often held that judicial review applicants who satisfy the public interest standing test at common law can seek relief under section 18.1 of the *Federal Courts Act*, even if the applicants are not directly affected by the administrative decision in question.

> ***MiningWatch Canada v. Canada,*** **2007 FC 955 at paras.160-86; rev. on other grounds 2008 FCA 209; rev. 2010 SCC 2 [BOA Tabs 3A, 3B and 3C]**
> ***Citizens Mining Council of Newfoundland & Labrador v. Canada,*** **[1999] F.C.J. No.273 at paras.29-37 [BOA Tab 4]**
> ***Sierra Club of Canada v. Canada,*** **[1999] 2 F.C. 211 at paras. 27-90 [BOA Tab 5]**
> ***Sunshine Village Corporation v. Superintendant of Banff National Park,*** **(1996), 20 C.E.L.R. (N.S.) 171 (FCA) at paras.65-71 [BOA Tab 6]**
> ***Friends of the Island Inc. v. Canada,*** **(1993), 10 C.E.L.R. (NS) 204 (FC) at paras. 75-81 [BOA Tab 7]**

(ii) Applying the Standing Test in the Instant Case

28. Both applicants satisfy the test for public interest standing. First, the applications for judicial review raise serious issues of statutory interpretation under CEAA. In particular, this case involves the rule of law and focuses on the proper construction of the CEAA's public interest purposes, environmental protection provisions, and public participation rights, as described below. In *MiningWatch*, this Honourable Court held that "compliance with the CEAA raises a serious and justiciable question of law."

> ***MiningWatch Canada v. Canada,*** **2007 FC 955 at para.178; rev. on other grounds 2008 FCA 209; rev. 2010 SCC 2 [BOA Tabs 3A, 3B, 3C]**
> ***Sierra Club of Canada v. Canada,*** **[1999] 2 F.C. 211 at paras. 72-73 [BOA Tab 5]**

29. Second, as well-established and federally incorporated non-profit organizations, both applicants have a lengthy history of involvement and ongoing interest in all aspects of the subject-matter in these proceedings, including federal EA legislation, nuclear energy, Great Lakes water quality, and environmental protection. Over the past few decades, the applicants' significant work in these areas has included law reform activities, public education/outreach, and involvement in public interest litigation. In addition, both applicants participated in the public hearing held by the CNSC in relation to the transport licence, and they specifically raised the need for an EA under the CEAA before issuance of the transport licence under NSCA. Thus, the applicants' interest, experience and expertise are more extensive than that possessed by a member of the general public.

Applicants' Record, Vol. 1, Tab 7, Affidavit of Sarah Miller, paras. 2-41, 53, 58-63
Applicants' Record, Vol. 2, Tab 8, Affidavit of John Bennett, paras.4, 7-8, 54-57

30. Third, there is no other reasonable and effective manner of bringing the legal issues in dispute to this Honourable Court. In particular, there is no evidence that there are other persons who are more directly affected by the CNSC's licencing decisions than the applicants, or who have the means or interest to seek judicial review. Neither BP nor CNSC are likely to legally challenge the non-application of CEAA in the instant case. There are no other persons who have commenced – or are likely to commence – a legal challenge against the licencing decisions, especially since the 30 day timeframe for doing so has now expired. The mere fact that some private citizens, municipalities, or First Nation communities may be geographically proximate to the proposed steam generator shipping route does not bar the applicants from seeking judicial review of the CNSC's licencing decisions on rule of law grounds (i.e. non-compliance with the CEAA). As

noted by this Honourable Court in *Friends*, "a party should not be denied standing merely because *theoretically* there are other ways of getting the issue before the Court."

> ***MiningWatch Canada v. Canada*, 2007 FC 955 at paras.183-85; rev. on other grounds 2008 FCA 209; rev. 2010 SCC 2 [BOA Tabs 3A, 3B and 3C]**
> ***Sierra Club of Canada v. Canada,* [1999] 2 F.C. 211 at paras. 73, 90 [BOA Tab 5]**
> ***Citizens Mining Council of Newfoundland & Labrador v. Canada*, [1999] F.C.J. No.273 at paras.35-37 [BOA Tab 4]**
> ***Friends of the Island Inc. v. Canada,* (1993), 10 C.E.L.R. (NS) 204 (FC) at para.81 [BOA Tab 7]**

B. The Standard of Review is Correctness

(i) The Dunsmuir Analysis

31. In the leading *Dunsmuir* case, the Supreme Court of Canada established a two-step process for determining whether decisions by administrative tribunals should be reviewed on a correctness or reasonableness standard. First, the reviewing court must ascertain whether the jurisprudence has already determined the degree of deference to be accorded to the tribunal decision. This analysis must take into account the nature of the question decided by the tribunal, and the relevant jurisprudence must have resolved the standard of review in a "satisfactory manner."

> ***New Brunswick v. Dunsmuir*, 2008 SCC 9 at paras. 57, 62 [BOA Tab 8]**

32. If this first step does not resolve the matter, then the reviewing court must move to the second step, which is to conduct a contextual analysis of various factors such as: (i) presence or absence of a privative clause; (ii) purpose of the tribunal as determined by interpreting the enabling legislation; (iii) the nature of the question at issue; and (iv) the expertise of the tribunal. The Supreme Court further held that tribunals "must also be correct in their determination of true questions of jurisdiction or *vires*", which includes situations where a tribunal explicitly determines it has jurisdiction to decide a particular

matter. In such cases, "the tribunal must interpret the grant of authority correctly or its action will be found to be *ultra vires.*"

***New Brunswick v. Dunsmuir,* 2008 SCC 9 at paras.55, 59, 64 [BOA Tab 8]**

(ii) Applying Dunsmuir in the Instant Case

33. Prior judicial review proceedings have sometimes applied a correctness standard of review to certain decisions of the CNSC (or its predecessor, the Atomic Energy Control Board), and have sometimes applied a reasonableness standard of review to such decisions. However, the applicants submit that this pre-existing caselaw does not satisfactorily resolve the standard of review question in the instant case, particularly since these previous cases did involve the issuance of transport or export licences under the NSCA, and did not raise the fundamental questions of statutory interpretation under the CEAA which are in dispute in the instant case.

***Fond du lac Denesuline First Nation v. Canada,* 2010 FC 948 at paras. 35-43 [BOA Tab 9]**
***Inter-Church Uranium Committee Educational Cooperative v. Canada,* 2004 FCA 218 at para.40 [BOA Tab 10]**
***Inverhuron & District Ratepayers' Association v. Canada,* 2001 FCA 203 at paras.31-39 [BOA Tab 11]**

34. Applying the *Dunsmuir* factors, the applicants note that the CEAA is a federal law of general application across Canada, and contains no privative clause. The Act is generally administered by the Minister of the Environment, and while federal authorities (such as the CNSC) occasionally serve as RAs under the CEAA, they have no particular expertise in interpreting the provisions of the Act. The CNSC's "home" statute is the NSCA, which also lacks a privative clause. The overarching question in the instant case is whether an EA was required as a matter of law under the CEAA prior to the issuance of the transport and export licences to BP. This constitutes a true question of jurisdiction, and does not involve the application of policy or discretion by the CNSC. Accordingly,

the applicants submit that the CNSC's interpretation of the CEAA in the instant case is reviewable on a correctness standard. This approach is consistent with previous judicial review cases involving the CEAA.

> ***Friends of the West Country Association v. Canada,*** **(1999), 31 C.E.L.R. (NS) 239 (FCA) at paras.9-10 [BOA Tab 12]**
> ***Prairie Acid Rain Coalition v. Canada,*** **2006 FCA 31 at paras.9-10 [BOA Tab 13]**
> ***MiningWatch Canada v. Canada,*** **2007 FC 955 at paras.135-37; rev. on other grounds 2008 FCA 209 at paras.34-35; rev. 2010 SCC 2 [BOA Tab 3A, 3B and 3C]**

35. In the alternative, if this Honourable Court finds that the standard of review is reasonableness, then it becomes necessary to consider whether the CNSC's licencing decisions "fit comfortably" with the principles of justification, transparency and intelligibility. In addition, this Honourable Court must consider whether the CNSC's interpretation of CEAA was a decision that is "rationally supported" and falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law." For the reasons set out below, the applicants submit that the CNSC's interpretation of CEAA is neither reasonable nor correct.

> ***New Brunswick v. Dunsmuir,*** **2008 SCC 9 at paras. 41, 47 [BOA Tab 8]**
> ***Canada v. Khosa,*** **2009 SCC 12 at para.54, 59 [BOA Tab 14]**

C. The CNSC Contravened the CEAA

(i) CEAA Purposes: Sustainable Development, Public Participation and Precaution

36. The overall aim of the CEAA is to achieve sustainable development by integrating environmental considerations into governmental decision-making at the federal level. "Sustainable development" is defined under the CEAA as "development that meets the needs of the present, without compromising the ability of future generations to meet their needs."

> **CEAA, preamble, subsections 2(1), 4(1)(b) and 4(2)**

B. Hobby et al., *Canadian Environmental Assessment Act: An Annotated Guide* (Aurora: Canada Law Book, 1997) at II-2 [BOA Tab 26]

37. In addition to its focus upon sustainable development, section 4 of the CEAA further endorses precaution and public participation in federal decision-making:

> 4(1) The purposes of the Act are
>
> (a) to ensure that projects are considered in a careful and precautionary manner before federal authorities take action in connection with them in order to ensure that such projects do not cause significant adverse environmental effects…
>
> (d) to ensure that there are opportunities for timely and meaningful public participation throughout the environmental assessment process.

CEAA, subsections 4(1)(a) and (d)

38. Similarly, subsection 4(2) of the CEAA imposes a positive legal duty upon "all bodies subject to the provisions of this Act," including federal authorities and RAs, to "exercise their powers in a manner that protects the environment and human health and applies the precautionary principle." This approach is consistent with the Supreme Court of Canada's recognition of governments' "all-important duty… to make full use of legislative provisions" intended to protect the environment.

CEAA, subsection 4(2)
***Canada (Procureur generale) v. Hydro-Quebec* [1997] 3 S.C.R. 213 at para.86 [BOA Tab 15]**
***114597 Canada Ltee (Spraytech, Societe d'arrosage) v. Hudson (Town)*, [2001] 2 S.C.R. 241 at para.31 [BOA Tab 16]**

39. The Federal Court of Appeal has held that "the precautionary principle states that a project should not be undertaken if it *may* have serious adverse ecological consequences, even if it is not possible to prove with any degree of certainty that these consequences will in fact materialize (original emphasis)."

***Canadian Parks & Wilderness Society v. Canada,* 2003 FCA 197 at para.24 [BOA Tab 17]**

40. In relation to participatory rights, the Supreme Court Canada has found that "openness and public participation are of fundamental importance under the CEAA", particularly in light of the public interest nature of environmental disputes.

***Sierra Club of Canada v. Canada,* 2002 SCC 41 at para. 84 [BOA Tab 18]**

(ii) The Statutory Scheme under CEAA

41. In essence, the CEAA establishes various types of EA processes (i.e. screening, comprehensive study, mediation, and panel review) which are intended to rigorously identify, evaluate and mitigate potential environmental effects of projects or prescribed activities subject to the Act. Unless a particular project has been expressly excluded from the Act's coverage (i.e. *Exclusion List Regulations*), there is nothing in the CEAA that relieves federal authorities from complying with the prescribed EA requirements, even if other statutory approval processes may be applicable to the project in question.

CEAA, section 14
***Moses c. Canada (Procureur general),* 2010 SCC 17 at paras. 40, 50, 53 [BOA Tab 19]**
***MiningWatch Canada v. Canada,* 2010 SCC 2 at paras. 1, 14-18, 42 [BOA Tab 3C]**

42. The Supreme Court of Canada has described EA "as a planning tool that is now generally regarded as an integral component of sound decision-making," and that "has both an information-gathering and decision-making component which provide the decision-maker with an objective basis for granting or denying approval for a proposed development."

***Friends of Oldman River Society v. Canada,* [1992] 1 S.C.R. 3 at para. 103 [BOA Tab 20]**

43. In order to trigger the application of the CEAA, there are three conditions precedent: (i) there must be a "federal authority" within the meaning of CEAA; (ii) the

federal authority must be engaged in one of the decision-making acts listed under section 5 of the CEAA; and (iii) the proponent must be proposing a "project" or prescribed activity that is subject to the CEAA.

M. Doelle, *The Federal Environmental Assessment Process: A Guide and Critique* (Markham: LexisNexis, 2008) at 87-91 [BOA Tab 27]

44. The EA requirements established by the CEAA are generally triggered under section 5 of the Act whenever a federal authority: (i) is the proponent of the project; (ii) provides funds, loan guarantees or other financial assistance to enable the project to be carried out; (iii) sells, leases or otherwise disposes of federal lands to enable the project to be carried out; or (iv) issues a prescribed permit, licence, or approval to enable a project to be carried out.

CEAA, subsection 5(1)(a) to (d)
***Bow Valley Naturalists Society v. Canada* (2001), 37 C.E.L.R. (NS) 1 (FCA) at paras.14-23 [BOA Tab 21]**

45. Whenever section 5 is triggered by a project, the relevant federal authority (then known as the RA) has two key legal duties under the CEAA: (i) to ensure that the EA "is conducted as early as possible in the planning stages of the project and before irrevocable decisions are made"; and (ii) to refrain from exercising "any power or perform any duty or function referred to in section 5 in relation to a project" unless the EA has been completed in accordance with section 16 of the CEAA, and unless the RA makes a "course of action" decision under section 20 or 37 of the CEAA. While judges should not generally decide which projects should be approved (or not) under the CEAA, they must nevertheless ensure that these prescribed EA steps and overall statutory process under the CEAA are followed.

CEAA, subsections 11(1) and (2), 16(1) and (2), 20(1) and 37(1)

Bow Valley Naturalists Society v. Canada **(2001), 37 C.E.L.R. (NS) 1 (FCA) at para.78 [BOA Tab 21]**

46. Where a project is not listed in the *Comprehensive Study List Regulations* or the *Exclusion List Regulations*, the RA "shall" ensure that a screening of the project is completed, and that a screening report is prepared. Public participation in the screening of a project is available where "appropriate in the circumstances" or required by regulation. The CEAA permits the consolidation of "closely related" projects into a single project for EA purposes, and further provides that all proposed undertakings related to a project shall be assessed in the screening.

CEAA, subsections 15(2) and (3), and section 18

47. Subsection 16(1) of the CEAA sets out the mandatory content requirements for screenings under the CEAA. For example, the Act stipulates that every screening "shall" include various considerations, such as: environmental effects and their significance; malfunctions or accidents; cumulative effects; public comments; mitigation measures; and other relevant matters, such as the need for, and the alternatives to, the project.

CEAA, subsection 16(1)(a) to (e)

48. Upon completion of the screening process, the RA must make a "course of action" decision under section 20 of the CEAA. In essence, the RA has three options: (i) if the RA finds that the project is not likely to cause significant adverse environmental effects if mitigation measures are implemented, then the RA "may" exercise any federal power, duty or function to enable the project to proceed; (ii) if the RA finds that the project is likely to cause significant adverse environmental effects that cannot be justified in the circumstances, then the RA "shall not" exercise any federal power, duty or function

that would enable the project to proceed; or (iii) if the RA finds: that there is uncertainty whether the project is likely to cause significant environmental effects; that the project is likely to cause significant adverse environmental effects which may be justifiable; or that there is "public concern" about the project or its impacts, then the RA "shall" refer the project to the Minister for a referral to a mediator or a review panel.

CEAA, subsection 20(1)

49. Section 24 of the CEAA provides, *inter alia*, that where a previously assessed project does not proceed as proposed, or the manner in which the project is to be carried out has changed, or a licence renewal or "other action" is sought under a prescribed provision, then the RA should utilize the previous EA, subject to any modifications or "adjustments" that are necessary to take into account "any significant changes in the environment and in the circumstances of the project and any significant new information relating to the environmental effects of the project."

CEAA, section 24

(iii) Meaning of "Project" under CEAA

50. The term "project" is central to the CEAA's statutory scheme, and has been defined under the Act as follows:

> "project" means
>
> (a) in relation to a physical work, any proposed construction, operation, modification, decommissioning, abandonment or other undertaking in relation to that physical work (emphasis added), or
>
> (b) any proposed physical activity not relating to a physical work that is prescribed or is within a class of physical activities that is prescribed pursuant to regulations made under paragraph 59(b).

CEAA, subsection 2(1)

51. The term "project" under CEAA must be given a "fair, large and liberal construction and interpretation as best ensures the attainment of its objects." Applying the modern purposive approach to statutory construction, "project" should be interpreted within the context of CEAA as a whole, in its grammatical and ordinary sense, harmoniously with the scheme and object of CEAA and Parliament's intent.

> ***Interpretation Act,*** **R.S.C. 1985, c.I-21, section 12**
> ***Rizzo & Rizzo Shoes Ltd. (Re),*** **[1998] 1 S.C.R. 27 at para.21 [BOA Tab 22]**

52. The phrase "physical work" in the first branch of the definition of "project" means the entire work that the proponent wishes to undertake. As noted by a leading commentator, "physical work" means physical activity by humans with concrete results.

> **B. Hobby et al.,** ***Canadian Environmental Assessment Act: An Annotated Guide*** **(Aurora: Canada Law Book, 1997) at II-19 [BOA Tab 26]**

53. The definition of "project" under the CEAA maintains, rather than displaces, the ordinary meaning of the word. Moreover, the "physical work" branch of the definition is intended to be as broad as possible in order to capture all environmentally significant proposals which are not otherwise specifically exempted from the CEAA. In this regard, "any" construction, operation, modification, decommissioning, abandonment or other undertaking should be interpreted as "any and all" such activities proposed in relation to the physical work.

> **R. Sullivan,** ***Sullivan and Driedger on the Construction of Statutes*** **(5th ed.) (Markham: LexisNexis, 2008) at 49-51, 61-66 [BOA Tab 28]**

54. The term "project" under the CEAA focuses on physical work being proposed by the proponent. However, it is not open to a proponent or an RA to mischaracterize a proposed project for the purposes of limiting or excluding the application of CEAA. An

RA has a duty under CEAA to consider all the circumstances and to closely examine the factual nature of what is being proposed by the proponent.

CEAA, section 2(3)

55. Similarly, it is not open to a proponent or RA to arbitrarily split, piecemeal, or "segment" a proposed project into smaller sub-components in order to limit or exclude the relevant EA "track" under the CEAA. "Project-splitting" has long been criticized by CEAA commentators, and has recently been disallowed by the Supreme Court of Canada in the *MiningWatch* case.

M. Doelle, *The Federal Environmental Assessment Process: A Guide and Critique* (Markham: LexisNexis, 2008) at 121-35 [BOA Tab 27]
***MiningWatch Canada v. Canada*, 2010 SCC 2 at paras. 1-2, 34, 39-40, 42 [BOA Tab 3C]**

56. In summary, the definition of "project" under the CEAA includes the entirety of the physical work that a proponent proposes to construct, operate, modify, decommission, or otherwise carry out. Put another way, "project" should be given the common sense meaning of all the physical work that a proponent is proposing, and all proposed undertakings in relation to that physical work.

(iv) Applying CEAA in the Instant Case

57. It is uncontroverted that the CNSC is a "federal authority" within the meaning of the CEAA, and is therefore duty-bound to ensure that EA is conducted whenever a "project" requires an CNSC approval that is prescribed for the purposes of section 5(1)(d) of the CEAA.

CEAA, section 2(1)
NSCA, section 8

58. Similarly, it is uncontroverted that BP's proposed shipment of the steam generators is not prescribed in the *Comprehensive Study List Regulations, Inclusion List Regulations,* or *Exclusion List Regulations* under the CEAA. However, the statutory authority under which the transport and export licences were issued by the CNSC in the instant case (i.e. section 24(2) of the NSCA) is duly prescribed by the *Law List Regulations* under the CEAA. As described above, this is a trigger under section 5(1)(d) under the CEAA.

***Law List Regulations* (SOR/94-636), Schedule I, section 12.1**

59. Accordingly, the fundamental issue in dispute focuses upon the CEAA's definition of "project." More specifically, the overarching question before this Honourable Court may be framed as follows: does BP's proposal in relation to the steam generators constitute a "project", or alternatively, does the proposal constitute a "modification" or "other undertaking" in relation to a "project" (physical work) that was previously subject to the CEAA?

60. For the reasons described below, the applicants submit that this question should be answered in the affirmative. Accordingly, this Honourable Court should find that all NSCA licences issued in relation to the proposed shipment are *ultra vires* because the CNSC failed or refused to comply with the statutory conditions precedent for issuing the licences, *viz.* completion of a screening EA (or screening EA addendum), and a "course of action" decision under section 20 of the CEAA.

(v) Steam Generator Shipment is a "Project"

61. The applicants submit that the starting point for this inquiry is the Bruce A refurbishment project. It is uncontroverted that the BP proposal to refurbish the Bruce A

station was physical work which constituted a "project" within the meaning of the CEAA. Thus, this project included any construction, operation, modification, decommissioning, abandonment or other undertaking in relation to the physical work proposed by the proponent at that time. Accordingly, a screening EA was conducted by the CNSC in 2005-06, and a "course of action" decision was made by the CNSC under section 20 of the CEAA in relation to this project.

> **Applicants' Record, Vol. 2, Tab 8, Affidavit of John Bennett, Exhibit J:** ***Reasons for Decision: EA Screening Report for Refurbishment for Life Extension and Continued Operations of the Bruce A Nuclear Generating Station***

62. As described above, the project description in the CNSC's screening report (and all other EA documentation) clearly specified that the project included removing the decommissioned steam generators from the Bruce A station, transferring them to the adjacent WWMF, and storing them at this location. No other methods or locations for managing and storing the steam generators were mentioned, examined or approved under the auspices of the CEAA or NSCA at that time.

63. Accordingly, the applicants submit that BP's current proposal to transport and export the steam generators to Sweden constitutes a significant departure from the project (physical work) described in the 2006 screening report accepted by the CNSC. Thus, section 24 of the CEAA is triggered by the new BP proposal because: (i) the waste management part of the refurbishment project (i.e. handling of steam generators) is now clearly "different from that proposed when the assessment was conducted"; (ii) the manner in which the project is to be undertaken "has subsequently changed"; and (iii) the shipment requires the issuance of NSCA licences prescribed by CEAA's *Law List Regulations*. This operational change in steam generator management also represents a

"modification" or "undertaking" in relation to the previously assessed project. The applicants therefore submit that before issuing the transport and export licences, the CNSC was legally obliged to conduct an update or addendum to the 2006 screening report in order to fully assess the new BP proposal in accordance with the procedural and substantive requirements under the CEAA.

CEAA, section 24

64. Put another way, had BP proposed to transport and export the steam generators to Sweden as part of the refurbishment project, there can be no doubt that the proposed shipment would have been assessed within the screening report due to subsection 15(3) of the CEAA. If so, then there is no logical or legal reason why the very same shipment should not trigger at least an EA update or addendum, even if proposed subsequent to the original EA exercise. Any other interpretation of section 24 would render this provision nugatory, and may invite proponents to implement significant post-EA "bait and switch" changes to projects without conducting any further EA work under the CEAA.

65. In the alternative, if the proposed shipment is viewed as wholly unrelated to any aspect of the Bruce A refurbishment project, then the applicants submit that the proposed shipment is itself a stand-alone "project" that meets the CEAA definition. In particular, this proposal represents "physical work" involving various activities and "undertakings" in relation to sizeable (and contaminated) physical structures (i.e. the steam generators). On this point, the CNSC opined that the proposed shipment was "a separate matter meriting treatment on its own." If this view is accepted, then the applicants submit that it was incumbent upon the CNSC to conduct a fresh screening EA in relation to this new, controversial and environmentally significant project.

Applicants' Record, Vol. 1, Tab 3, *CNSC Decision and Reasons for Decision,* para.117

66. The CNSC's decision in relation to the CEAA definition of "project" is conclusory in nature and incorrect in law. Moreover, the CNSC's reasons for decision fail to provide a justifiable, transparent, or intelligible explanation of its interpretation of the CEAA. At best, it appears that the CNSC was "satisfied" with its internal staff's views on how to interpret the CEAA. However, as a court of record, the CNSC was obliged to provide adequate and defensible reasons for its decision on CEAA's applicability. Nevertheless, the CNSC did not direct its mind to section 24 of the CEAA, and the CNSC's interpretation of "project" has not been adequately explained or justified. Accordingly, if this Honourable Court applies the reasonableness standard of review, the applicants submit that no deference is owed to the CNSC's legal interpretation of CEAA, and further submit that the CNSC committed reviewable error by reaching a decision that was outside the range of reasonable, acceptable outcomes open to it in this case.

67. In its decision, the CNSC invoked the *Inter-Church* case to support its view that BP's changed approach to the steam generators did not trigger EA obligations under the CEAA. The applicants submit that *Inter-Church* is of no assistance to the CNSC since that judgment turns on the transitional provisions of the CEAA (and the previous federal EA regime), which are not applicable in the instant case. Similarly, the *Inter-Church* judgment involved a multi-stage uranium mining project, rather than the issuance of transport or export licences under the NSCA. More importantly, the impugned aspect of the uranium mining project at issue in *Inter-Church* was a tailings management facility, which had, in fact, been proposed and examined within the original EA process (panel review) for the project, although the specific design details evolved over time. This is

readily distinguishable from the instant case, where shipping the steam generators to Sweden had not been proposed or examined in the Bruce A refurbishment project EA. In any event, *Inter-Church* clearly recognizes that CEAA obligations may be still be triggered where a project has been previously EA-approved, but where there are significant post-EA changes in the manner in which the project is implemented.

Application Record, Vol. 1, Tab 3, *CNSC Decision and Reasons for Decision,* para.117
***Inter-Church Uranium Committee Educational Cooperative v. Canada (Attorney General),* 2004 FCA 218 at paras.23-26, 41-45, 47, 49 [BOA Tab 10]**

(vi) NSCA does not "Trump" or Displace CEAA

68. As a matter of law, compliance with the CEAA is mandatory, not optional. Thus, it was not open to the CNSC to rationalize its failure to conduct an EA in the instant case on the grounds that CEAA requirements "have been met" by applying the NSCA licencing process instead. Moreover, it is both incorrect and unreasonable for the CNSC to conclude that the NSCA regime is substantially equivalent to the CEAA regime. To the contrary, the CEAA establishes a comprehensive environmental planning process which is more effective, credible and equitable than the NSCA licencing regime.

69. For example, the NSCA simply requires the CNSC to consider, *inter alia*, whether BP "would make adequate provision" for protection of the environment and human health/safety, but does not define these terms. In contrast, the term "environment" is broadly defined in the CEAA, and the term "environmental effects" under the CEAA includes not only impacts upon human health, but also upon wildlife species at risk, socio-economic conditions, physical/cultural heritage, aboriginal land use, and matters of historical, archaeological, paleontological or architectural interest.

NSCA, subsection 24(4)
CEAA, subsection 2(1)

70. Similarly, the NSCA does not particularize the environmental issues which must be canvassed by the proponent in order to obtain a licence. In contrast, CEAA prescribes a detailed list of environmental matters that must be addressed, at an appropriate level of detail, in an EA under the CEAA. In addition, the NSCA does not require or even mention key environmental planning considerations, such as the precautionary principle, sustainable development, meaningful public/aboriginal participation, cumulative effects analysis, traditional aboriginal knowledge, need/alternatives analysis, mitigation measures, followup programs or other important matters. In contrast, these and other matters form the central purposes and features of EA processes under the CEAA. Finally, the NSCA does not make any reference to participant funding to facilitate public/aboriginal involvement in CNSC licencing processes. In contrast, CEAA makes participant funding programs mandatory for certain EA processes under the Act.

CEAA, preamble, sections 4, 16, 16.1, 58(1.1)

71. Accordingly, the applicants submit that it would be contrary to Parliament's intent – and the purposes of CEAA – to permit the CNSC to evade its mandatory duties under CEAA by claiming that EA requirements have been "met" through the NSCA licencing process. In short, the NSCA is not the equivalent of the CEAA, as the NSCA lacks the substantive provisions and procedural rights found within the CEAA. Moreover, if the federal government was of the view that the NSCA regime was as good as (or better) than the CEAA regime, then subsection 24(2) of the NSCA would not have been prescribed as a Law List trigger under the CEAA in the first place.

D. The CNSC Contravened Procedural Fairness

72. Aside from the CNSC's non-compliance with the CEAA, the applicants submit that the export licence should be quashed for the additional reason that the CNSC breached its duty of procedural fairness. It is well-established that "there is, as a general common law principle, a duty of procedural fairness lying on every public authority making an administrative decision which is not of a legislative nature and which affects the rights, privileges or interests of an individual."

***Cardinal v. Kent Institution,* [1985] 2 S.C.R. 643 at paras.14-15 [BOA Tab 23]**

73. In determining the scope and content of this common law duty in the instant case, this Honourable Court should consider a number of factors, including: (i) the nature of the decision being made and the process followed in making it; (ii) the nature of the statutory scheme and the terms of the relevant statute; (iii) the importance of the decision to the individual; (iv) the legitimate expectations of the person challenging the decision; and (v) the choices of procedure made by the agency itself.

***Baker v. Canada,* [1999] 2 S.C.R. 817 at paras. 21-28 [BOA Tab 24]**

74. The export licence was granted by a CNSC officer designated under section 37 of the NSCA. However, the NSCA and the CNSC *Rules of Procedure* do not establish any express notice/comment rights for third parties in licencing proceedings before a designated officer. Nevertheless, the applicants submit that the CNSC had a common law duty to provide a meaningful notice/comment opportunity to persons interested in, or potentially affected by, the export of radioactive steam generators through the Great Lakes and St. Lawrence Seaway to Sweden. Given the various risks, potential impacts, and environmental significance of BP's proposal, there are various public and private interests potentially affected by the export of steam generators. At a minimum, the range

of interested/affected persons includes: the applicants; other interveners in the CNSC hearing on the related transport licence; neighbouring or riparian landowners; and citizens, municipalities, First Nation communities, and other stakeholders who reside near, utilize, or draw drinking water from the watercourses to be used to facilitate the export of the steam generators.

NSCA, sections 37, 39
***CNSC Rules of Procedure* (SOR/2000-211), sections 26-27**
***Baker v. Canada,* [1999] 2 S.C.R. 817 at para.28 [BOA Tab 24]**

75. In these circumstances, the applicants submit that the common law duty of procedural fairness required the CNSC's designated officer to provide reasonable notice and comment opportunities to interested/affected persons. This is particularly true since the impugned export licence was amended and renewed in February 2011, when the CNSC knew, or reasonably ought to have known, that there was extensive interest in the BP proposal, as evidenced by the 78 interveners who participated in the September 2010 hearing. However, the duty to act fairly was breached as the CNSC's designated officer provided no notice/comment opportunity (and no reasons) before the export licence was issued, amended and renewed.

Application Record, Vol. 4, Tab 10D: *Record of CNSC Designated Officer – Export Licence*

E. The Appropriate Remedy is *Certiorari*

76. There are no factual, legal or practical reasons which disentitle the applicants to the prerogative remedies claimed in the applications for judicial review pursuant to section 18.1 of the *Federal Courts Act*. In this case, this Honourable Court should, in its discretion, fully grant the relief requested by the applicants, including an order in the nature of *certiorari* to quash or set aside both of the NSCA licencing decisions due to the CNSC's fundamental non-compliance with CEAA's requirements.

***Federal Courts Act,* subsections 18.1(3) and (4)**
***Alberta Wilderness Society v. Cardinal Rivers Coal Ltd,* (1999), 30 C.E.L.R. (NS) 175 (FC) at paras. 26, 87 [BOA Tab 25]**

77. Although the proposed shipment has not occurred to date, BP can undertake the shipment at any time, provided that all other necessary permits or approvals have been secured. Thus, this public interest dispute is not academic or hypothetical in nature, and it is essentially premised upon the rule of law. By quashing the unlawful NSCA licences in the instant case, this Honourable Court would send a strong and unmistakable signal to the CNSC and other RAs that compliance with the CEAA is both mandatory and legally enforceable. In the circumstances, simply remitting the licencing matters back to the CNSC for further consideration would serve no useful purpose since the CNSC still cannot re-issue the licences without first fulfilling its EA duties under the CEAA.

Applicants' Record, Vol. 2, Tab 8, Affidavit of John Bennett, paras.51-52

78. In addition, if this Honourable Court finds that the export licence was issued in contravention of procedural fairness, then the licence must be quashed accordingly.

***Cardinal v. Kent Institution,* [1985] 2 S.C.R. 643 at paras.23-24 [BOA Tab 23]**

PART IV – ORDER REQUESTED

79. For the foregoing reasons, the applicants respectfully request this Honourable Court to allow the applications with costs, and to grant the declaratory, prohibitory, and *certiorari* orders specified in the Notices of Application for Judicial Review in Court File Nos. T-361-11 and T-363-11.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

June 10, 2011

Theresa A. McClenaghan Counsel for the Applicants	Richard D. Lindgren Counsel for the Applicants

PART V – LIST OF AUTHORITIES

Cases

Borowski v. Canada, [1981] 2 S.C.R. 575

Canadian Council of Churches v. R., [1992] 1 S.C.R. 236

MiningWatch Canada v. Canada, 2007 FC 955; rev. 2008 FCA 209; rev.2010 SCC 2

Citizens Mining Council of Newfoundland & Labrador v. Canada, [1999] F.C.J. No.273

Sierra Club of Canada v. Canada, [1999] 2 F.C. 211

Sunshine Village Corporation v. Superintendant of Banff National Park, (1996), 20 C.E.L.R. (N.S.) 171 (FCA)

Friends of the Island Inc. v. Canada, (1993), 10 C.E.L.R. (NS) 204 (FC)

New Brunswick v. Dunsmuir, 2008 SCC 9

Fond du lac Denesuline First Nation v. Canada, 2010 FC 948

Inter-Church Uranium Committee Educational Cooperative v. Canada, 2004 FCA 218

Inverhuron & District Ratepayers' Association v. Canada, 2001 FCA 203

Friends of the West Country Association v. Canada, (1999), 31 C.E.L.R. (NS) 239 (FCA)

Prairie Acid Rain Coalition v. Canada, 2006 FCA 31

Canada v. Khosa, 2009 SCC 12

Canada (Procureur generale) v. Hydro-Quebec [1997] 3 S.C.R. 213

114597 Canada Ltee (Spraytech, Societe d'arrosage) v. Hudson (Town), [2001] 2 S.C.R. 241

Canadian Parks & Wilderness Society v. Canada, 2003 FCA 197

Sierra Club of Canada v. Canada, 2002 SCC 41

Moses c. Canada (Procureur general), 2010 SCC 17

Friends of Oldman River Society v. Canada, [1992] 1 S.C.R. 3

Bow Valley Naturalists Society v. Canada (2001), 37 C.E.L.R. (NS) 1 (FCA)

Rizzo & Rizzo Shoes Ltd. (Re), [1998] 1 S.C.R. 27

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Texts

B. Hobby et al., *Canadian Environmental Assessment Act: An Annotated Guide* (Aurora: Canada Law Book, 1997)

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R. Sullivan, *Sullivan and Driedger on the Construction of Statutes* (5th ed.) (Markham: LexisNexis, 2008)

APPENDIX A – LEGISLATIVE AND REGULATORY EXCERPTS

APPENDIX B – BOOK OF AUTHORITIES