

Federal Court



Cour fédérale

Date: 20230316

Docket: T-1683-22

Citation: 2023 FC 358

Ottawa, Ontario, March 16, 2023

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

CANADIAN INSPECTION LTD.

Applicant

and

**CANADIAN NUCLEAR SAFETY
COMMISSION AND ATTORNEY
GENERAL OF
CANADA**

Respondents

JUDGMENT AND REASONS

[1] The Applicant, Canadian Inspection Ltd [CIL], filed a Notice of Application for judicial review concerning a dispute between CIL and the Canadian Nuclear Safety Commission [Commission]. In essence, CIL takes issue with the licensing fees charged by the Commission.

Background

[2] CIL describes itself as a non-destructive testing company, situated in Edmonton, Alberta, that provides radiographic testing services. Mr. Donald Lucic is the Chief Executive Officer and President of CIL and has filed an affidavit, sworn on September 14, 2022, in support of this application [Lucic Affidavit]. By Order dated November 16, 2022, Justice Rochester granted leave to Mr. Lucic to represent CIL in this application, with specified conditions.

[3] The Commission is established by way of s 8 of the *Nuclear Safety and Control Act*, SC 1997, c 9 [Act] and is responsible for regulating the development, production and use of nuclear energy and the production, possession and use of nuclear substances, prescribed equipment and information (Act, s 9). The Commission may establish classes of licenses authorizing the licensee to carry on any activity described in s 26(a) to (f) of the Act, as specified in the licences (Act, s 24(1)). And, pursuant to s 44 of the Act, the Commission may, with the approval of the Governor in Council, make regulations pertaining to the subject areas specified therein. This includes prescribing the fees or the method of calculating the fees that may be charged for a licence or class of licence (s 44(1)(j)). In that regard, the *Canadian Nuclear Safety Commission Cost Recovery Fees Regulations*, SOR/2003-212, [Regulations], which govern the recovery of fees related to the Commission's regulatory activities, have been established. Part 3 of the *Regulations*, Formula Fees, applies to applicants and licensees in respect of the facilities, equipment, services and devices as set out in that section.

[4] CIL is the holder of a Nuclear Substance and Radiation Device License, issued by the Directorate of Nuclear Substance Regulations, pursuant to s 24 of the Act. This licence authorizes CIL to possess, transfer, use and store the nuclear substances and the prescribed equipment listed in the Appendix of the licence: Nuclear Substances and Radiation Devices. The license is issued for industrial radiography (812).

[5] Pursuant to s 9(d) of the Regulations, Part 3, Formula Fees, applies to nuclear substances and radiation devices to which the *Nuclear Substances and Radiation Devices Regulations*, SOR/2000-207 [*Nuclear Substances and Radiation Devices Regulations*], apply. Pursuant to the Regulations, Schedule 1, Part 1, Fee Formula Numbers, “Industrial Radiography” is listed as an “activity facility device or substance”, attracting formula number 8 for assessment of fees and formula number 7 for annual fees. These formulas are set out in Schedule 1, Part 2, Fee Formulas.

[6] For a number of years, CIL has taken issue with the annual license fees charged by the Commission. In that regard, attached as exhibits to the Lucic Affidavit are various communications between Mr. Lucic and the Commission. Some of these are described below to provide context to the dispute.

[7] By email of December 5, 2019, Mr. Lucic wrote to the Commission indicating that for budgeting purposes he would like to know what CIL could expect to be billed for 2019-20 licencing fees. He also stated his view that the \$270 per hour fee was not realistic or fair compared to what industry charges for such services and that the 32-hour annual base rate was

not appropriate for small businesses such as his. He asked that the Commission have the system re-evaluated.

[8] By email dated January 14, 2020, Ms. Nancy Sigouin responded. She advised, with respect to the hourly rate, that the Commission calculates this on an annual basis pursuant to the Regulations. As set out therein, the hourly rate is the full cost of operating the Commission divided by the total number of hours spent on direct regulatory activities. This meant that the \$270 hourly rate charged for 2019-2020 annual included both expenditures for direct and indirect costs. Further, that the Commission regulates the nuclear industry on a fully cost recoverable basis. Each year, the specific formulas related to various categories/use-types come under review to assess costs against fees. Ms. Sigouin provided a table to illustrate this. She advised that all organizations holding an Industrial Radiography licence pay an annual fee based on the formula, which includes a variable component relating to the number of locations and devices. Therefore, larger organizations with a greater number of locations and/or devices would pay a higher fee compared to smaller organizations with fewer locations and/or devices. A similar letter had previously been provided by Ms. Sigouin on April 5, 2018 in response to a March 2, 2018 inquiry from Mr. Lucic.

[9] On February 18, 2020, Mr. Lucic, on behalf of CIL, wrote to the President, Vice President and Director General of the Commission, submitting a formal dispute. In that letter, Mr. Lucic referred to past emails and again raised his concern that licensee fees are too high as the \$270 per hour fee was not realistic or fair compared to what industry charges for such services and, that the 32-hour annual base rate was not appropriate for small businesses such as

his. He requested that the “system be re-evaluated” based on corporate size, revenue and employees.

[10] On February 26, 2020, Mr. André Bouchard, Director, Nuclear Substances and Radiation Devices, wrote to Mr. Lucic to follow-up on a discussion held on February 21, 2020. Mr. Bouchard noted that the options for the licence were limited but addressed the previously discussed potential of a storage licence. He indicated that this could provide financial relief for CIL, but would also potentially limit its ability to quickly apply for a contract involving industrial radiography work. The letter also provided information with respect to the Commission’s Cost Recovery Advisory Group [CRAG].

[11] On March 4, 2020, Mr. Lucic responded to the Commission’s February 26, 2020 communication and again indicated his desire that the Commission come up with a solution to address his concerns about what he viewed to be unbalanced fees. Mr. Lucic asserted that the Commission was overcharging hours and that its hourly rate was too high. And, having reviewed the composition of CRAG, Mr. Lucic was of the view that there was insufficient representation from CIL’s sector, industrial radiography.

[12] On June 4, 2020, Mr. Lucic again wrote to the Commission, he identified this as his second formal dispute. He described prior communications, complained that the base rate should be 3 hours and not 33.5 hours, asserted that the base hours charged should be based on CIL’s licence compliance with the regulatory requirements, and suggested various ways in which the calculation of fees pursuant to the Regulations could be changed.

[13] On June 12, 2020, Mr. Bouchard wrote to Mr. Lucic responding to his June 4, 2020 letter and prior correspondence. Mr. Bouchard explained that the number of base hours charged is based on an average for comparable types of licences (usetype) and also includes time spent on the development of regulatory documents. It is not limited to hours relating to licensing and compliance work spent on CIL's specific licence. Mr. Bouchard also explained that the Regulations for formula fees limit the flexibility of Commission staff to adapt licensees' fees to the extent that CIL sought. The possibility of a storage license was again noted, along with its potential disadvantages. By email of June 15, 2020, Mr. Bouchard referred to a telephone call with Mr. Lucic and provided him with a breakdown of the fees for CIL's current usage licence and for a storage licence as well as the cost for the application in both instances, referencing formulas 8, 7 and 5.

[14] On July 7, 2020, Mr. Ramzi Jammal, Executive Vice President and Chief Regulatory Officer, Regulatory Operations Branch, wrote to Mr. Lucic. In this letter, Mr. Jammal indicated that the Regulations came into force in 2003 and fees remained unchanged for over 10 years. During this period, the time spent by the Commission in regulating licences increased significantly due to an evolving regulatory environment, without the fees being increased. This resulted in an increasing gap in the cost of regulating the formula fees sectors and the revenue generated by the licensees in that sector. Because the Commission is mandated to recover the cost of its regulatory activities, licensing fees began increasing in 2014-15 to close that gap, as communicated to all licensees. The letter pointed out, as had been previously communicated to Mr. Lucic, that Commission staff have limited flexibility to vary licensee's fees under the Regulations. The possibility of a storage licence had previously been discussed, along with its

potential limitations, and the Commission had provided a cost estimate comparison between that option and CIL's current fees. The letter acknowledged CIL's concern about its licensing fees given that the company had limited activities involving the use of nuclear substances over the last few years – and therefore less regulatory oversight – but stated that this does not translate into lower annual fees. The number of base and variable hours vary depending on the type of use specified on the licence, and the formula used to calculate the licensing fees is representative of the average time spent annually on licences for that type of licence. Fees are not based on the amount of time spent on one specific licence. Among other things, the letter went on to indicate that some of the CIL's concerns relate to requirements embedded in regulations and encouraged CIL to provide comments on the Regulations and on the *Nuclear Substances and Radiation Devices Regulations* when they went out for public consultation.

[15] On April 8, 2022, the Commission issued to CIL its 2022-23 invoice for annual fees, citing an hourly rate of \$270, total hours of 38.70, a compliance coefficient of 1.00, leading to a total amount due of \$10,449.00.

[16] On May 2, 2022, Mr. Lucic, on behalf of CIL, wrote to the Commission requesting that IDL Inspection/CIL be found to be exempt from the Regulations, on the premise that CIL could be categorized as a post-secondary institution to which the Regulations do not apply, and that its fees be retroactively adjusted accordingly.

[17] On May 3, 2022, Ms. Isabelle Ricard, Director, Finance Management and Internal Control Division, responded, advising that as CIL was not on the approved list of designated specified educational institutions, it did not qualify for exemption under s 2 of the Regulations.

[18] On May 9, 2022, Mr. Lucic wrote two emails to the Commission. In one, he communicated with Ms. Ricard as the Director, Finance Management and Internal Control Division and advised that he was attaching his “Dispute Resolution Mechanism for Fee Administration”. This email shows as an attachment a document entitled “Canadian Inspection – CNSC dispute May 8 2022 R1 – FA”. In the other email, Mr. Lucic communicated with Ms. Karen Owen-Whitred, Director General, Directorate of Nuclear Substances Regulation, advising that he was attaching his “Dispute Resolution Mechanism for Regulatory Assignments”. This email shows as an attachment a document entitled “Canadian Inspection – CNSC Dispute May 8 2022 R1 RA”. The attachments, CIL’s disputes, are not found in the Applicant’s record.

[19] Mr. Stéphane Cyr, Vice-President, Corporate Services Branch and Chief Financial Officer responded on May 27, 2022. He states that he had reviewed the notice of dispute sent to Ms. Owen-Whitred, as well as one addressed to Ms. Ricard and himself, along with all previous correspondence and discussions between Mr. Lucic and the Commission concerning CIL’s licencing fees. Mr. Cyr noted that Mr. Lucic had indicated that he now disputed his April 8, 2022 invoice, in the same way as his prior disputes, and also raised questions about exemptions from the Regulations.

[20] Mr. Cyr noted that the elements of the formal dispute included fee increases over the last years for formula fees (including a request of a refund and a retroactive adjustment), the number of hours and the hourly rates used in the formula fees (especially for Industrial Radiography UT812), the Commission not applying the Regulations properly, an option to reduce CIL's annual fees and, the CRAG representatives.

[21] Mr. Cyr noted that the documentation provided in support of the request indicated that Commission staff had made a great effort to provide Mr. Lucic with answers to his questions and that the responses from the Senior Executive Vice President and Chief Regulatory Operations Officer contain all of the answers to Mr. Lucic's fee concerns. As previously indicated, the number of base and variable hours specified in the formula for calculating the annual fees are applicable to all licences within the same use type (i.e. industrial radiography) and are reflective of the time spent by the Commission staff in regulating the industry. Accordingly, Mr. Cyr maintained the previous responses provided in the attached correspondence and determined that the regulatory fees were lawfully charged and calculated in a valid way in accordance with Part 3 of the Regulations. As to s 2(a) of the Regulations, as CIL is not listed as a designated learning institute for the province of Alberta, such an exemption could not be granted.

[22] On June 27, 2022, Mr. Lucic wrote to Commission, Mr. Jammal, Ms. Owen-Whitred, Mr. Cyr, and Ms. Ricard concerning his 2022 formal dispute of the Commission's invoice for CIL's 2022 annual fees. Mr. Lucic states that "the specific issue is the high fee cost and over charging of hours that were not accumulated or reasonable for the service required and/or inappropriate

regulation”. He sought a refund retroactive to 2015. He also took issue with the Commission’s finding that CIL does not qualify as an exempt facility pursuant to s 2 of the Regulations.

[23] On July 15, 2022, Mr. Jammal wrote to Mr. Lucic acknowledging receipt of his June 27, 2022 letter constituting his second notice of formal dispute for 2022 and noting that the second notice did not contain any new facts or arguments. Mr. Jammal reiterated the response made on May 27, 2022 by Mr. Cyr. He also confirmed and maintained the Commission’s responses previously provided in attached correspondence, that the regulatory fees charged to CIL were lawfully charged and calculated in a valid way in accordance with Part 3 of the Regulations. Further, after a thorough and extensive analysis of Mr. Lucic’s requests and complaint, Mr. Jammal reiterated that the Commission correctly determined that CIL is not exempt from the Regulations.

[24] On August 16, 2022, CIL filed its Notice of Application for judicial review. CIL does not identify a specific decision which is the subject of its application for judicial review.

[25] By letter dated September 6, 2022, the Respondent advised that it objected to CIL’s request for material not in its possession but in the possession of the Commission. That request is found in the Notice of Application and states that CIL requested the Commission to send a certified copy of “the following material that is not in the possession of the Applicant but is in the possession of the (CNSC) to the Applicant and to the Registry: All materials that were before the present tribunal that are not in possession of the Applicant”.

[26] The Respondent assumed that this request was made pursuant to Rule 317 of the *Federal Courts Rules*, SOR/98-106 [Rules]. It notes that pursuant to Rules 318(2), where a party objects to a Rule 317 request, it is required to inform all parties and the Administrator, in writing, of the reason for the objection. The Respondent stated that CIL “is already in possession of all relevant material necessary to pursue the judicial review”. Further, that the request for material was too broad, vague or general to permit a focused search for records potentially relevant to the decision under review. Should it prove necessary for the Court to make a determination as to the objection, that the Respondent sought an opportunity to make submissions.

[27] Based on the record before me, it does not appear that CIL responded to the objection. Mr. Lucic confirmed this when appearing before me.

[28] The result is that there is no certified tribunal record before the Court.

[29] While the Respondent asserts that CIL is already in possession of all relevant material necessary to pursue the judicial review, the question is whether all of the documents that were before a tribunal when it made a decision under review, and which are not in the possession of the applicant, are before the Court. In this case, that is unclear.

[30] Nor did the Commission file an affidavit to provide background information describing the regulatory process, or otherwise.

Regulatory Framework

[31] As indicated above, the Act establishes the Commission, sets out its objectives and addresses licencing and the making of regulations including for prescribing fees or the method of calculating licence fees (s 8(1), s 9, s 24(1), 44(1)(j)).

[32] Part 3 of the Regulations sets out the application of that Part and how fees are calculated:

PART 3

Formula Fees

Application

9 This Part applies to applicants and licensees in respect of

- (a) Class II nuclear facilities;
- (b) Class II prescribed equipment;
- (c) dosimetry services; and
- (d) nuclear substances and radiation devices to which the Nuclear Substances and Radiation Devices Regulations apply, except with respect to applications and licences for waste nuclear substance activities.

Formulas

10 (1) Fees under this Part shall be calculated using the formulas set out in Part 2 of Schedule 1.

(2) The formulas comprise

- (a) base hours as described in section 11;
- (b) variable hours as described in section 12;
- (c) a compliance coefficient as described in section 13; and
- (d) an hourly rate as described in section 14.

Base Hours

11 For each type of application or licence, the base hours are the number of hours spent by the Commission

(a) for the assessment of applications; and

(b) to verify the licensee's compliance with regulatory requirements.

Variable Hours

12 For each type of application or licence, the variable hours are the additional number of hours of direct regulatory activities as a result of the number of

(a) treatment rooms, bunkers, laboratories and locations with separate postal addresses;

(b) devices;

(c) device manufacturers; and

(d) types of Class II prescribed equipment as defined in the *Class II Nuclear Facilities and Prescribed Equipment Regulations*.

Compliance Coefficient

13 For each type of licence, the compliance coefficient is derived from the additional number of hours of direct regulatory activities spent by the Commission as a result of non-compliance by a licensee with regulatory requirements.

Hourly Rate

14 The hourly rate is the full cost divided by the total number of hours spent by the Commission on its direct regulatory activities.

Publication

15 Before the beginning of each fiscal year, the Commission shall publish, by electronic or other means likely to reach applicants and licensees, for each type of application or licence for a facility or activity set out in Part 1 of Schedule 1, the base hours, variable hours, compliance coefficient and hourly rate.

Payment of Fees

16 (1) On an initial application for a licence in respect of an activity or a facility listed in Part 1 of Schedule 1, the applicant shall pay to the Commission the assessment fee and the annual fee in accordance with subsections (2) and (3).

(2) The assessment fee payable for a licence in respect of an activity or a facility listed in column 1 of Part 1 of Schedule 1 shall be calculated using the applicable fee formula set out in Part 2 of that Schedule, which is determined by the applicable formula number set out in column 2 of Part 1 of that Schedule.

(3) The annual fee payable for a licence in respect of an activity or a facility listed in column 1 of Part 1 of Schedule 1 shall be calculated using the applicable fee formula set out in Part 2 of that Schedule, which is determined by the applicable formula number set out in column 3 of Part 1 of that Schedule.

(4) On an initial application for a licence for an activity or a facility that is not listed in Part 1 of Schedule 1, the applicant shall pay the deposit and fees in accordance with Part 5.

(5) If an initial application is withdrawn by the applicant before the assessment of the application by the Commission has begun, the assessment fee and annual fee paid shall be refunded to the applicant.

(6) If an initial application is withdrawn by the applicant or rejected by the Commission after the assessment of the application by the Commission has begun, the assessment fee paid shall not be refunded and the annual fee paid shall be refunded to the applicant.

(7) A re-application after withdrawal by the applicant or rejection by the Commission shall be treated as a new initial application.

Invoicing

17 (1) Every year before the licence anniversary date, the Commission shall issue to the licensee an invoice for the annual fee payable.

(2) The licensee shall pay the fee to the Commission by the later of 30 days after the date of the invoice and the licence anniversary date.

[33] Schedule 1, Part 1, Fee Formula Numbers, identifies Formula 8 (fee assessment) and Formula 7 (annual fee) as applying to industrial radiography. Part 2, Fee Formulas, sets out those formulas, as follows:

Formula 7 [base hours + (variable hours per location x number of locations) + (variable hours per device x number of devices)] x hourly rate x compliance coefficient

Formula 8 [base hours + (variable hours per device manufacturer x number of device manufacturers) + (variable hours per bunker x number of bunkers)] x hourly rate x compliance coefficient

[34] Section 1 of the *Regulations* defines “full cost”:

full cost means the sum of the costs of the Commission’s direct regulatory activities and indirect regulatory activities, including salaries and benefits, rental of office accommodation, supplies and equipment, professional services, communications, travel and training.

Issues

[35] In its written submissions, CIL does not explicitly identify the decision under review or identify the issues arising from that decision.

[36] The Respondent identifies the issues in this matter as follows:

- i. Is the Court able to grant an award of damages in this application for judicial review?
- ii. Is there a reviewable matter before the Court?
- iii. Was this application brought in time?
- iv. Assuming the matter is reviewable, what is the applicable standard of review?
- v. Assuming the matter is reviewable, was it reasonable?

[37] In my view, there are three preliminary issues to be addressed, being whether there is a reviewable matter before the Court, whether the application was brought in time and whether damages are available on judicial review.

[38] And, as I understand CIL's Notice of Application and written submissions, in essence, CIL raises two issues on the merits:

- i. Was the decision under review reasonable?
- ii. Was the decision rendered in breach of a duty of procedural fairness?

Standard of Review

[39] CIL does not address the applicable standard of review.

[40] The Respondent submits that, subject to its position that this application does not raise a justiciable issue, the standard of review in respect of any decision raised in this application is reasonableness, citing *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at para 10 [*Vavilov*].

[41] In assessing the merits of the Commission's decision, there is a presumption that, as the reviewing court, this Court will apply the standard of review of reasonableness (*Vavilov* at paras 23, 25). There are no circumstances in this matter that would warrant a departure from that presumption. On judicial review on the reasonableness standard, the Court "must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether

the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at para 99).

[42] To the extent that CIL challenges the procedural fairness of a decision subject to review by this Court, issues of procedural fairness are to be reviewed on a correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79 and in *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43). In *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [CPR] the Federal Court of Appeal held that although the required reviewing exercise may be best – albeit imperfectly – reflected in the correctness standard, issues of procedural fairness do not necessarily lend themselves to a standard of review analysis. Rather, the Court is to determine whether the proceedings were fair in all of the circumstances. That is, “the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond” (CPR at paras 54-56; see also *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35; *Ahousaht First Nation v Canada (Indian Affairs and Northern Development)*, 2021 FCA 135 at para 31).

Preliminary Matters

i. Justiciable Matter

[43] The Respondent submits that not every decision or action by a federal authority is subject to judicial review. Where an authority’s conduct does not affect legal rights or obligations or

cause prejudicial effects, there is no right to seek judicial review (citing *Air Canada v Toronto Port Authority*, 2011 FCA 347 at paras 26-32).

[44] The Respondent assumes that CIL wishes to challenge the July 15, 2022 letter from Mr. Jammal [July 15, 2022 Letter] and asserts that this letter did not affect any legal rights or obligations, or cause prejudicial effects. The Respondent submits that the July 15, 2022 Letter did not give rise to CIL being responsible for its licensing fees as an industrial radiography licensee. Instead, it was by virtue of it becoming a licensee that obligations to pay fees were imposed on CIL. In accordance with s 23(2.1) of the *Financial Administration Act*, RSC 1985, c F-11, only the Governor in Council may, on the recommendation of Treasury Board remit regulatory fees that constitute debt of the Crown. At most, the July 15, 2022 Letter simply reiterated that the regulatory fees were lawfully charged and that CIL was not exempt from the Regulations. As such, the July 15, 2022 Letter does not raise a justiciable matter.

Analysis

[45] In my view, the Respondent's submission ignores that CIL was following a dispute mechanism implemented by the Commission and that CIL was, in essence, challenging the interpretation and application of s 11 of the *Regulations* by the Commission with respect to the invoice it issued to CIL for its 2022-23 annual fees.

[46] As set out in CIL's Notice of Application and in its written representations, the Commission published two dispute resolution mechanisms – one pertaining to fee administration and another pertaining to regulatory activity assignments.

[47] The Dispute Resolution Mechanism for Fees Administration [Fees Administration DRM]

states:

This dispute resolution mechanism addresses complaints regarding the administration of fees. For instance, it would cover disputes over administrative matters such as fee or hourly rate values, hours or number of variable units (i.e., number of gauges, devices, locations, rooms, etc.) found on licensees' invoices from the CNSC.

- Any licensee wishing to dispute the fees levied under the *Canadian Nuclear Safety Commission Cost Recovery Fees Regulations* should contact, orally or in writing:

Isabelle Ricard
isabelle.ricard@cnsccsn.gc.ca
Director, Financial Management and
Internal Controls Division

- If the issue is not resolved to the licensee's satisfaction by the appropriate director, the licensee will be asked to document the issue and submit it for consideration to:

Stéphane Cyr
stephane.cyr@cnsccsn.gc.ca
Vice-President and Chief Financial Officer,
Corporate Services Branch

The Vice-President, Corporate Services Branch (VP CSB), will investigate the issue and give the licensee an opportunity to present its case in person or in writing. Following this, the VP CSB will respond in writing to the licensee.

This process only applies to complaints regarding the administration of fees. A separate dispute resolution mechanism addresses disputes over regulatory activity assignments (dispute resolution mechanism for regulatory activity assignments).

.....

[Emphasis added.]

[48] The Dispute Resolution Mechanism Regulatory Activity Assignment [Regulatory Activity Assignment DRM] states:

This dispute resolution mechanism addresses complaints regarding regulatory activity assignments through the line management in the CNSC Operations Branch. For instance, it would include disputes over the assignment of CNSC resources and the base and variable hour values in formula fee calculations.

- Any licensee wishing to dispute the regulatory activities assigned to them by CNSC staff under the *Canadian Nuclear Safety Commission Cost Recovery Fees Regulations* should contact the director general responsible for their licensed facility or activity, orally or in writing, to discuss the issue.

CNSC directors general are responsible for licensed facilities/activities as follows:

Facility or activity	Director General
Bruce Nuclear Generating Stations Darlington Nuclear Generating Station Gentilly-2 nuclear facility Pickering Nuclear Generating Station Point Lepreau Nuclear Generating Station	Alexandre Viktorov alexandre.viktorov@cnsccsn.gc.ca
Nuclear substances and radiation devices Class 1B particle accelerators (CLS and TRIUMF) Class II nuclear facilities	Karen Owen-Whitred karen.owen-whitred@cnsccsn.gc.ca

Facility or activity	Director General
Packaging and transport Certification and prescribed equipment	
Dosimetry services	Haidy Tadros haidy.tadros@cnsccsn.gc.ca
Uranium mines and mills Nuclear research and test establishments (e.g., Canadian Nuclear Laboratories – Chalk River Laboratories and Whiteshell facilities) Non-power reactors (e.g., SLOWPOKEs and sub-critical facilities) Nuclear processing facilities (all licensed facilities in Port Hope, SRBT, Nordion, GE-Hitachi) Waste and decommissioning	Kavita Murthy kavita.murthy@cnsccsn.gc.ca

- If the issue is not resolved to the licensee's satisfaction by the appropriate director general, the licensee will be asked to document the issue and submit it for consideration to:

Ramzi Jammal,
 Executive Vice-President and Chief Regulatory
 Operations Officer
 ramzi.jammal@cnsccsn.gc.ca

The Executive Vice-President (EVP), Regulatory
 Operations Branch, will investigate the issue and give the

licensee an opportunity to present its case in person or in writing. Following this, the EVP will respond in writing to the licensee.

This process only applies to the assignment of regulatory activities, not to the administration of fees (dispute resolution mechanism for fee administration).

....

[Emphasis added]

[49] As indicated above, on May 9, 2022, Mr. Lucic sent two emails to the Commission. One was to Ms. Ricard (and Mr. Cyr) which stated that it attached Mr. Lucic's "Dispute Resolution Mechanism for Fee Administration" and indicated that it attached a document entitled "Canadian Inspection – CNSC dispute May 8 2022 R1 FA". The second email was to Ms. Owen-Whitred, which stated that it attached Mr. Lucic's "Dispute Resolution Mechanism for Regulatory Assignments" and that it attached a document entitled "Canadian Inspection – CNSC Dispute May 8 2022 R1 RA".

[50] On May 27, 2022, Mr. Cyr responded, referencing both of the May 9, 2022 submissions. However, Mr. Cyr is designated as the next level investigator, who is required to respond in writing to the licensee, only under the Fees Administration DRM. Mr. Jammal, the designated next level investigator under the Regulatory Activity Assignments DRM was not copied on that letter.

[51] Mr. Jammal did not respond to the May 9, 2022 Regulatory Activity Assignment DRM.

[52] In Mr. Lucic's June 27, 2022 letter to Mr. Jammal, Ms. Owen-Whitred, Mr. Cyr and Ms. Ricard, he pointed out that he had received the May 27, 2022 response from Mr. Cyr but that Mr. Cyr had not stated if he was responding on behalf of Ms. Owen-Whitred (who had not provided a response) and Mr. Jammal (who had not been copied on that letter). Mr. Lucic stated that he needed replies from both branches and "would like it if you guys can coalesce your response and address all of my concerns and possible resolutions to my dispute".

[53] On July 15, 2022, Mr. Jammal responded to the June 27, 2020 letter. He stated that Mr. Cyr's May 27, 2022 response "was intended as the CNSC's response to your first notice of dispute for 2022 and, although signed by one signatory, it constituted the CNSC's response to your notice sent to multiple recipients". Mr. Jammal did not specify that his response pertained to the Regulatory Activity Assignment DRM.

[54] In my view, the Commission did not follow its own dispute mechanism processes which required a specific response to each dispute. However, given that on June 27, 2022, Mr. Lucic requested a coalesced response and that the July 15, 2022 responded to that request, I accept that the July 15, 2022 Letter is, ultimately, the decision under review.

[55] However, I do not agree with the Respondent that there is no justiciable matter before the Court.

[56] The Commission has effected dispute resolution mechanisms, by way of the Fee Administration DRM and Regulatory Activity Assignment DRM, to address disputes such as

those raised by CIL. The July 15, 2022 Letter was issued in response to those processes and finally determined CIL's submitted disputes. It explicitly determined that the fees charged to CIL were lawfully charged and calculated in a valid way in accordance with the Regulations and that the Commission correctly determined that CIL is not exempt from the Regulations. Accordingly, in my view, the July 15, 2022 Letter is an administrative decision subject to judicial review.

ii. The Application is Not Out of Time

[57] The Respondent submits that where a party seeks judicial review of a matter, pursuant to s 18.1(2) of the *Federal Courts Act*, RSC 1985, c F-7 [*Federal Courts Act*], it must bring an application within 30 days of receiving the challenged decision under review. Further, that a refusal to consider a previous decision does not operate to extend the time for filing (citing *Pomfret v Canada (Attorney General)*, 2008 FC 1219 at para 9). Only a new exercise of discretion to reconsider the previous decision starts the timeline to bring an application (citing *Teletech Canada, Inc. v Canada (National Revenue)*, 2013 FC 572 at para 50). And, as held in *McLaughlin v Canada (Attorney General)*, 2022 FC 1466 at para 22:

Correspondence that simply shows persistent attempts to reverse a negative decision and a continuing commitment to the original decision by the respondent does not constitute a new decision or a course of conduct.

[58] The Respondent submits that the July 15, 2022 Letter is not a fresh exercise of the Commission's discretion. Rather, it is a courtesy letter responding to CIL's second 2022 notice of dispute of 2022, requesting a further response, and is not subject to review (citing *Phipps v Librarian and Archivist of Canada*, 2006 FC 1378 at para 32). The Respondent submits that there was no fresh reconsideration of the licensing fees or their applicability to CIL. Nothing new

was decided in the July 15, 2022 Letter. Accordingly, an application in respect of the licensing fees is well out of time.

[59] I do not agree with the Respondent. As indicated above, CIL made two submissions in two dispute resolution mechanisms which were implemented by the Commission and which were clearly described by the Commission itself as being distinct. Pursuant to that process, CIL had a legitimate expectation that it would receive responses from both Mr. Cyr and Mr. Jammal (*Mavi v Canada*, 2011 SCC 30 at para 68). In his May 27, 2022 letter, Mr. Lucic pointed this out and sought a coalesced response. The result was the July 15, 2022 Letter.

[60] This is not a situation where a courtesy letter was written in reply to a request that a prior decision be reconsidered (*Hughes v Canada (Customs and Revenue Agency)*, 2004 FC 1055 at para 6; *Brar v Canada (Minister of Citizenship and Immigration)*, [1997] FCJ No 1527, 140 FTR 163, paras 7-9). And, while in the July 15, 2022 Letter Mr. Jammal states that he reiterated and maintained prior responses, given the outstanding reply required from Mr. Jammal pursuant the Regulatory Activity Assignment DRM, and the fact that he was responding to Mr. Lucic's May 27, 2022 letter pointing this out, Mr. Jammal's letter was effectively the final response and decision. It was not a courtesy letter.

iii. Damages Are Not an Available Remedy

[61] The Respondent submits that CIL seeks an award of damages. However, it is well established that this Court does not have jurisdiction to award damages in an application for

judicial review. The Respondent submits that because damages appear to be the only award sought by CIL, its application for judicial review should be dismissed.

[62] The Respondent is correct that, pursuant to s 18 and 18.2 of the *Federal Courts Act*, on judicial review this Court may provide the traditional administrative law remedies of injunction, writs of *certiorari*, *prohibition* or *quo warranto* or grant declaratory relief against any federal board, commission or other tribunal. However, damages are not available (*Canada (Attorney General) v Telezone Inc*, 2010 SCC 62 at paras 26, 52; *Lessard-Gauvin v Canada (Attorney General)*, 2016 FCA 172 at para 8; *Anani v Royal Bank of Canada*, 2020 FC 870 at para 34). Here, CIL has not consolidated the application for judicial review with an action for damages (*Brake v Canada (Attorney General)*, 2019 FCA 274 at paras 27, 30) so damages are not available to it.

[63] In its Notice of Application, CIL asserts that the relief it seeks is to have its annual fees returned for the last seven years plus interest and for the Commission to “correct its process” for calculating and keeping track of time for all licences. CIL also asserts that the Commission has committed a tort and created a toxic work environment for Mr. Lucic and did not follow its own regulations or ethical obligations. In CIL’s written submissions it seeks to have the Commission “held liable and accountable for damages” to CIL for the overcharging of annual license fee (said to be \$100,568) and includes allegations of abuse of power, harassment, “committing torts” and other allegations. CIL also asserts that the Commission committed torts “both negligent and intentional and caused damages financially and they should be held accountable”.

[64] To the extent that CIL is seeking damages with respect to any of these assertions, that remedy is not available to it on judicial review. Nor can allegations of torts be pursued by way of judicial review.

[65] In my view, the issues that CIL raises that can be dealt with by the Court are whether the Commission's decision was reasonable and whether in making that decision, the Commission breached the duty of procedural fairness. The remedy available if the decision was not reasonable or the Commission breached procedural fairness, is to remit the matter back to the Commission to render a new decision taking into consideration any reasons provided by this Court.

The Decision was Reasonable

Preliminary issue – use of telephone transcripts

[66] The Respondent raises, as a preliminary matter, an objection to the use of telephone transcripts which CIL has included as an exhibit to the Lucic Affidavit. Specifically, transcripts of a telephone call held on February 21, 2020 between Mr. Lucic and Mr. Bouchard and Mr. Sylvain Faille and a second call on June 12, 2020 between Mr. Lucic and Mr. Bouchard. The Respondent submits that these conversations were recorded and transcribed without the knowledge and consent of the Commission members and objects to the admission of the transcripts into this evidence. The Respondent points to no jurisprudence in support of its objection and provides no supporting legal analysis.

[67] Mr. Lucic does not deny that he recorded the conversions without the Commission members' knowledge or consent and, when appearing before me, submitted that this was permissible if the party being recorded was caught lying or making admissions.

[68] Generally speaking, courts in other contexts and jurisdictions have stressed that the making of surreptitious recordings should be discouraged. However, when their admissibility is in issue, this typically engages evidentiary rules that require the court to weigh the probative value of the evidence against the prejudicial effect arising from its admission on the proceeding (see, for example, *CC v SPR*, 2022 BCSC 1057 at paras 1-2, 28, 69; *Dlagic v Dlagic*, 2020 ONSC 7449 at paras 2-4, 13,15, 22, 28 (both in the family law context); *Rooney v GSL Chevrolet Cadillac Ltd*, 2022 ABKB 813 at paras 17-26 (in the employment law context)).

[69] In the absence of any substantive submission by the Respondent, I simply note that, having read both transcripts, even if they were admissible, they do not support CIL's assertion that the Commission members admitted that the Regulations were "not working and incorrect". Mr. Bouchard and Mr. Faille spoke at length with Mr. Lucic and, in the course of doing so, acknowledged his concerns but explained that the formulas are part of the cost recovery system and are set out in the Regulations. They explained that to make a change to the formulas requires regulatory change. Mr. Bouchard and Mr. Faille also explained the process of changing the Regulations and that industry feedback is a factor that could such promote change. They also explained that while the current cost recovery system provides predictability, it also lacks flexibility, meaning that Commission staff cannot change the way in which the program is applied to individual users, as Mr. Lucic would prefer, or employ a different form of cost

recovery. The only current option open to the Commission was a storage license. In the second conversation with Mr. Bouchard, Mr. Lucic asked why he could not be refunded money under s 6.1 of the Regulations. Mr. Bouchard explained that that provision is not found in Part 3, is not based on the formulas and is not applicable.

[70] In short, the conversations demonstrate that Mr. Lucic was afforded the opportunity to again explain his concerns, which were acknowledged and discussed. But, as was explained to him, without regulatory change, the cost recovery formulas applicable to CIL cannot be changed by the Commission staff. And, while regulatory change may be found to be warranted on a go forward basis, that does not change its current application to CIL.

Parties Positions on Reasonableness

[71] As to the reasonableness of the July 15, 2022 Letter, CIL submits, among other things, that “it has been established” that the Commission has been over charging CIL for the annual fees and has become very hostile and abusive when CIL raised its concerns and disputed the fees. CIL submits that the Commission has ignored other regulations or that they are over-regulated “to cause extra distress to the stakeholder in retaliation or torts”. Further, that the Commission has no valid technique for how hours or time are tracked and documented and that Mr. Jammal erred in stating that the base hours are the average time spent by the Commission. CIL also submits that the Commission has been incorrectly implementing the Regulations for the industrial radiography license invoices since 2015 when the Regulations were last amended.

[72] The Respondent's only written submission on this point is its brief statement that CIL has not met its burden of demonstrating that the July 15, 2022 Letter was unreasonable as the Commission was following the Regulations in assessing CIL's fees and in denying its request to be exempt from the Regulations.

Analysis

i. Interpretation and Application of the s 11 of the Regulations

[73] CIL is represented by Mr. Lucic. I appreciate that many of the submissions made by Mr. Lucic, who is not a lawyer, do not fall within the scope of judicial review. However, it is clear from the Notice of Application and the written submissions that – among other things – CIL disputed the base hours it was charged and submitted that the Commission had not calculated the base hours in accordance with s 11 of the Regulations. CIL was of the view that Mr. Jammal erred when he found that the regulatory fees charged to CIL were lawfully charged and calculated in a valid way in accordance with Part 3 of the Regulations. It is also apparent from the record that the Commission understood that this was the subject of CIL's dispute. For example, Mr. Cyr in his May 27, 2022 letter noted that the elements of CIL's formal dispute included "the number of hours and the hourly rate used in the formula fees (especially for Industrial Radiography UT 812)" and the Commission "not applying the [Regulations] correctly" and then addressed these concerns.

[74] Thus, while Mr. Lucic did not frame the issue in terms of the reasonableness of the Commission's statutory interpretation and application of s 11 of the Regulations, a fair reading identifies this as an issue arising in the context of judicial review.

[75] Regrettably, the counsel for Respondent did recognize or respond to this issue.

[76] Also regrettably, as indicated above, Mr. Lucic's letters by which he initiated the Fee Administration DRM and Regulatory Activity Assignment DRM are not included in his application record, nor has the Commission provided a certified tribunal record that might have included them. When appearing before me, Mr. Lucic confirmed that the two submissions were the same and, while not contained in his record, were essentially as set out in his June 27, 2022 letter. The Respondent did not dispute this.

[77] Mr. Lucic's June 27, 2022 letter addressed to Mr. Jammal, Ms. Owen-Whitred, Mr. Cyr and Ms. Ricard states that the specific issue was the high fee cost and over-charging of hours that were not accumulated or reasonable for the service required and/or inappropriate regulation. CIL asserts that the annual base hours (33.5 hours) were not accurate and do not reflect the actual time spent by the Commission audits and that the \$270 base rate per hour is too high.

[78] In its written submissions, CIL submits that pursuant to s 11(b) of the Regulations, the base hours are the number of hours spent by the Commission to verify each licensee's regulatory compliance. Based on his own analysis, Mr. Lucic asserts that far less time is required to assess compliance of CIL. He also asserts that the Commission does not have any system to track the

actual compliance time used and is therefore unable to verify the compliance hours for each licensee, contrary to the Regulations. Without this information, the Commission also cannot calculate the total compliance hours for all “812” license holders and then derive an average from this, as was suggested by Mr. Jammal in his July 7, 2020 letter. He also takes issue with the Commission’s finding that CIL does not qualify as an exempt facility pursuant to s 2 of the Regulations.

[79] Section 11(b) of the Regulations states:

- 11 For each type of application or licence, the base hours are the number of hours spent by the Commission
 - (a) for the assessment of applications; and
 - (b) to verify the licensee’s compliance with regulatory requirements

[80] CIL points out that in his July 7, 2020 letter, Mr. Jammal states that “[t]he number of base and variable hours vary depending on the type of use specified in the license, and the formula used to calculate licensing fees is representative of the average time spent annually on licenses for that type of license. Fees are not based on the amount of time spent on one specific licence”.

[81] It is true that s 11 of the Regulations does not explicitly refer to the use of an average number of base hours for each type of licence. And, s 11 (b) refers to the “licensee’s” and not to the “licensees”. However, like s 12 (variable hours) and s 13 (compliance coefficient), it refers to calculation of base hours for “each type” of licence or application. This would suggest that the base hours are calculated based on the hours in whole expended on each type of licence, such as

industrial radiography. Given this, I am not persuaded that when invoicing CIL's annual fees, the Commission was required to utilize a specific assessment of CIL's individual regulatory compliance in order to determine its base hours and to then use this as a component of the applicable formula.

[82] In this regard, I note that CIL includes in its application record the "CNSC Cost recovery Fees Schedule Formula and Fixed Fees 2020-21" (although it is challenging the 2022 annual fees).

[83] This includes:

1. INTRODUCTION

The fees schedule provided in this document relates to the *Canadian Nuclear Safety Commission Cost Recovery Fees Regulations*.

The fees structure reflects the characteristics of the different types of licences issued, the regulations to which they are subject, and the CNSC cost of regulating the licences. The primary focus of the CNSC's fee-setting process and structure is to directly link the fees to be charged to the costs of regulatory activities required for the issuance and maintenance of licences and certificates and to recover the full costs of these activities.

The fees schedule outlines the following:

- Formula Fees.
- Fixed fees for certificates and transportation licences

2. FORMULA FEES

Formula fees apply to applicants and licensees in respect of:

- Class II Nuclear Facilities
- Class II Prescribed Equipment

- Dosimetry Services
- nuclear substances and radiation devices to which the *Nuclear Substances and Radiation Devices Regulations* apply, except with respect to and licences for waste nuclear substance activities

The structure for formula fee licences sets fees on a standard basis across all licences of that type. The generic structure of the fee formula uses a series of components that are multiplied to calculate the applicable fee.

$$\text{Fee} = [\text{base hours} + (\text{variable hours per unit} \times \text{number of units})] \times \text{hourly rate} \times \text{compliance coefficient}$$

Detailed fees schedules are indicated in the following pages.

....

Nuclear Substances & radiation Devices Hourly Rate = \$270

Compliance Coefficient = 1

.....

	Initial Application Fee		Annual Licence Fee	
	Hours	Fees Payable for 2020-2021	Hours	Fees Payable for 2020-2021
Base hours =	14.30	\$3,861.00	33.55	\$9,058.50
Hours per device manufacturer =	5.00	\$1,350.00		
Hours per location =			1.25	\$337.50
Hours per each of the first 16 devices =			0.65	\$175.50
Hours per each of the 17th+ devices =			2.15	\$580.50
Hours per bunker =	5.00	\$1,350.00		
Total Minimum =	19.30	\$5,211.00	35.45	\$9,571.50
Total Maximum =	unlimited	unlimited	225.50	\$60,885.00

Initial application fee = [base hours + (variable hours per device manufacturer × number of device manufacturers) + (variable hours per bunker × number of bunkers)] × hourly rate × compliance coefficient

Annual licence fee = [base hours + (variable hours per location × number of locations) + (variable hours per device × number of devices)] × hourly rate × compliance coefficient

[84] This too does not suggest that individual assessments of each licence holder’s base hours, and other components of the formula, is required by s 11 of the Regulations when the Commission is generating each invoice.

[85] I agree with the Applicant that the Commission does not explain in its responses to him how it collects, records and tabulates the information that underlies its base hour calculation for each licence type – which, once determined, is then plugged into the formulas and applied generally to holders of licences of that type. However, and while he may have made prior requests, there is no evidence to suggest that this was also requested as part of the 2022 disputes. Thus, the Commission did not err in failing to provide that information. That said, in order to calculate the base hours on a licence or use type average basis, the Commission must maintain some form of record keeping.

[86] In that regard, in answer to an Access to Information and Privacy [ATIP] request made by Mr. Lucic, which is included in CIL's application record, responses were provided to certain questions posed by Mr. Lucic. This includes that all 812 use type formula fee licences are charged an annual fee based on the same formula and that "[p]eriodic reviews are completed to assess the base and variable hours. These reviews establish a base line for going forward looking at the average of the time spent on licenses within the same user type (use-type)".

[87] The document also responds to a question by Mr. Lucic as to "the total the number of Commission employees, salaries for all staff members, commission and VP executives and break down of how many staff are working on each user type in each department for the numbers into each, and how the Nuclear substances and Prescribed equipment directors add up time for each user type related to base hours and variable hours". The request further states that "It is suspected that there is cross funding occurring between different user types, example nuclear medicine

department vs IR 812 or others this would be identified through proper time keeping while each staff member is working on each licencee”.

[88] The response to this question includes that the Commission “does not track time by use type”. Staff and management enter their time in the Commission’s time reporting system using cost codes. Cost codes can include a grouping of use types with similar activities. The ATIP response provided a table with the direct effort (Full Time Equivalents) for all formula fee licences from 2015-16 to 2020-21 and the use types included in the cost codes. Use type 812 is grouped together with 831, 839, 842, 843,853, 854, 974, 909 and 939. Under “Cost Code Description” is entered “...INDUSTRIAL RADIOGRAPGHY (USE TYPES 812, 831 839, 842, 843,853, 854, 974, 909 AND 939)” and the base hours for that group ranged from 1.77 to 1.10 from 2015-16 to 2020-21, respectively. The response notes, however, that this is direct actual time only and does not include any common licensee groups activities, administration, and training or internal support effort.

[89] CIL submits that the ATIP response indicating that the Commission “does not track time by use type” conflicts with the requirement of s 11(b) of the Regulations that for each type of licence, the base hours are determined by the number of hours spent by the Commission to verify the licensee’s compliance with regulatory requirements. Frankly, whether the use of “cost codes” that include a groupings of use types with similar activities is in conformity with s 11 simply cannot be ascertained on the record before me without any further information or explanations of “use type” as opposed to licence type or about how the Commission actually captures, records and assesses regulatory compliance time so as to plug it into “cost codes”.

[90] That said, the ATIP response is not the subject of this judicial review. The best that can be said about it is that the ATIP response does not support CIL's assertion that it has established "there is no valid technique for how the hours or time are being kept track of or documented in a logical form" or that "[t]he main reason or motive why the CNSC does not want to keep track of hours they work so they can charge more and abusing their power to manipulate the [Regulations] and stakeholder's *sic*".

[91] In sum, I do not think the Commission's interpretation of s 11 as not requiring that an individual verification of CIL's compliance hours be applied for purposes of generating CIL's individual base hours, to then be inputted into a designated formula, was unreasonable given that s 11 deals with licence types. Therefore, CIL has not established, as a result, that the Commission has been overcharging CIL.

[92] And, as CIL appears to rely on Mr. Lucic's interpretation of s 11 of the Regulations to also assert that the Commission has been incorrectly implementing that provision, I also do not agree with CIL on this point – to the extent that it is concerned with the individual assessment of base hours and other formula components.

[93] I make no finding on the validity of the Commission's collection and treatment of base hours for each type of licence, or user type, or the accuracy of its determination.

[94] Finally, although CIL also disputes the \$270 hourly rate as too high, as stated by s 14 of the Regulations, this hourly rate is the full cost divided by the total number of hours spent by the

Commission on its direct regulatory activities. Based on the record before me, I am not satisfied that CIL has met its burden of demonstrating that the Commission erred in calculating or applying this rate.

[95] Before leaving this portion of my analysis, I feel compelled to point out that my assessment of the reasonableness of the Commission's interpretation and application of s 11 was largely conducted in a vacuum in that counsel for the Respondent did engage with this issue.

ii. Exemption request – learning institution

[96] To the extent that CIL submits that the Commission unreasonably concluded that it is not exempt from the Regulations as a secondary school or specified educational institution, I disagree.

[97] In his email dated May 2, 2022 (referenced in his June 27, 2022 letter), Mr. Lucic requested exemption from the Regulations for “IDL Inspection/Canada Inspection”.

[98] Ms. Ricard responded the following day indicating that a verification had been performed to assess if CIL could qualify as an exempt facility. She noted that under s 2(a) of the Regulations, the Regulations do not apply to a secondary school or a specified education institution as defined in s 2(1) of the *Canada Student Loans Act*, RSC, 1985, c S-23 [*Canada Student Loans Act*]. She included that definition, being that a:

specified education institution means an institution of learning, whether within or outside a province, that offers courses at a post-secondary school level and that is a designated by the lieutenant

governor in council of that province, either particularly or as a member of a class, as a specified educational institution within the meaning of this Act.

[99] She advised that the Commission had verified whether CIL was on the approved list of designated learning institutions for its province. As CIL was not listed, it did not qualify as an exempt faculty under s 2 of the Regulations.

[100] Mr. Lucic's response to this was that Ms. Ricard's reply was "one sided, biased and limited". He asserted that it did not address the "secondary school option" and provided a definition of secondary school from the Merriam-Webster Dictionary. Further, that "his company" is a Recognized Training Organisation through Natural Resources Canada and that this would make "his company" exempt from the Regulations.

[101] It is clear on its face that because CIL is not designated as a specified education institution, as that term is defined in the *Canada Student Loans Act*, that it is not exempt from the Regulations under s 2(a). CIL does not assert that the Commission erred in its verification process or submit that it is, in fact, designated as a specified educational institution. And, even if secondary schools are a separate category, CIL offered no evidence to suggest that it supplies courses to secondary schools.

[102] In his May 27, 2022 letter, Mr. Cyr restated Ms. Ricard's prior response that as CIL is not listed as a designated learning institution for the Province of Alberta, an exemption under s 2(a) could not be granted. He also noted CIL's request to have IDL Inspection Ltd and/or CIL found to be exempt from the Regulations. Mr. Cyr noted that IDL Inspection Ltd and CIL are distinct

legal entities and that only CIL is a licence holder. As such, only CIL is responsible for the regulatory fees payable pursuant to the Regulations. Or, put otherwise, IDL Inspection Ltd cannot be exempt from paying fees it is not required to pay. CIL does not submit that IDL Inspection Ltd is a licence holder and that this is in error.

[103] Instead, CIL complains that the Commission did not elaborate or advise about setting CIL up as a training school, just displayed “hostility towards our business”, and did not follow the Regulations in an ethical manner. There is no merit to this assertion and CIL has not established that the Commission unreasonably found that it was not exempt as a specified education facility under s 2(a) of the Regulations. The Commission was only considering whether the exemption applied in the situation actually before it, not hypothetical future circumstances.

iii. Refund

[104] To the extent that CIL is asserting that the Commission erred in not issuing it a refund under s 6(1) of the Regulations, I do not agree. Section 6 falls under Part 2, Regulatory Activity Plan Fees, not Part 3, Formula Fees. Part 2 applies only to applicants and licensees in respect of Class I nuclear facilities, mines and mills and waste nuclear substance activities (s 3). It has no application to CIL. Further, s 6 is not a general refund provision and no similar provision is found in Part 3. Accordingly, I do not agree that the Commission erred in refusing to issue a refund to CIL under s 6.

[105] As to s 21 of the Act, this sets out the Commission’s powers, including pursuant to s 21(1)(g), to charge any fees that may be prescribed for any information, product or service that

the Commission provides under the Act or for the participation funding program that it establishes and maintains under the Act. Section 21(2) states that the Commission may, under prescribed circumstances, refund all or part of an fee referred to in s 21(1)(g). CIL was unable to refer the Court to any prescribed circumstances pursuant to which annual fees payable under the Regulations will be refunded under s 22(2).

iv. Storage Licence

[106] To the extent that CIL submits that the Commission made a reviewable error when Mr. Bouchard suggested a storage licence to CIL, I would first note that neither the July 15, 2022 Letter, the decision under review, or the May 27, 2022 letter, address this issue. In any event, the prior communications that do discuss the storage licence option also expressly noted that it is the only available option and identified its drawbacks. The fact that CIL does not like this option does not mean that the Commission made a reviewable error by identifying it.

[107] In sum, CIL has not met its burden of demonstrating that the Commission acted unreasonably.

No breach of Procedural Fairness

[108] CIL does not explicitly assert a breach of procedural fairness.

[109] It does, however, make assertions including that: the Commission became very hostile and abusive towards CIL when CIL raised its concerns and brought its disputes; that Ms. Owen-

Whitred's failure to respond to CIL's dispute submission was a display of hostility intended to sabotage CIL and make it go in circles; that Mr. Jammal's statement in the July 15, 2022 Letter that Mr. Cyr's May 27, 2022 letter was intended as the Commission's response to both dispute submissions was an attempt to trick CIL out of its rights and to keep it from going to the Court for help; that the Commission's response to the training school exemption request was a further display of hostility and unethical behaviour; that the Commission is biased towards larger businesses and manipulated the fees and regulatory activities to not keep track of time properly; that the CRAG does not have a fair opportunity to represent stakeholders, and therefore never gave proper feedback to the Commission; the Commission bullies and intimidates licensees; and, abuses its power and steals millions of dollars from stakeholders and the public.

[110] Having reviewed the whole of CIL's application record, it is apparent that for many years now the Commission has been responding to, essentially, CIL's same complaint. However, nothing in that record supports the allegations of hostility and abuse. In fact, the record demonstrates the opposite. The Commission has afforded CIL much time and has acknowledged his concerns in telephone and written discussions and has endeavoured to explain why the Commission cannot alter CIL's annual licencing fees unless and until there is regulatory change. CIL simply refuses to accept this. Nor does the record include any evidence that would support any allegations of breach of procedural fairness, including allegations of bias or bad faith, or unethical behaviour.

Costs

[111] Both parties have requested costs and neither made submission as to the appropriate amount of costs.

[112] While in the normal course the successful party would be awarded costs, in this case, given the Respondent's summary and largely unresponsive submissions, I am declining to award costs in its favour.

JUDGMENT IN T-1683-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and
2. There is no order as to costs.

"Cecily Y. Strickland"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1683-22

STYLE OF CAUSE: CANADIAN INSPECTION LTD. v CANADIAN
NUCLEAR SAFETY COMMISSION AND
ATTORNEY GENERAL OF, CANADA

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: MARCH 7, 2023

JUDGMENT AND REASONS: STRICKLAND J.

DATED: MARCH 16, 2023

APPEARANCES:

Donald Lucic FOR THE APPLICANT

Alexander Brooker FOR THE RESPONDENTS
Daniel Vassberg

SOLICITORS OF RECORD:

Canadian Inspection Ltd. FOR THE APPLICANT
Edmonton, Alberta

Attorney General of Canada FOR THE RESPONDENTS
Edmonton, Alberta