

## INTERNATIONAL COMITY

Comity is the legal principle by which one jurisdiction will extend the courtesy of recognition to the greatest extent possible of the validity and effect of its executive, legislative, and judicial acts to another jurisdiction of the same country or another. The underlying principle is *respect* expected of the courts for jurisdiction, laws, or judicial decisions of other jurisdictions. The fundamental moral principle of all systems of law, “Do unto others as you would have them do unto you”, presumes that other jurisdictions will reciprocate the courtesy shown to them. Many statutes relating to the enforcement of foreign judgments require that the judgments of a particular jurisdiction will be recognized and enforced by a forum only to the extent that the other jurisdiction would recognize and enforce the judgments rendered by that forum. “Comity, in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and goodwill, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international convenience and to the rights of its own citizens or of other persons who are under the protection of its laws.”<sup>i</sup>

### **The US follows International Comity and revises plans after Canada complains: The US Nuclear Waste Repository Program 1986**

In a statement dated Jan. 16, 1986, the Honorable Joe Clark, Canada’s then-secretary-of-state for external affairs, expressed opposition to the U.S. Nuclear Waste Repository Program regarding “any development that could present a transboundary threat to the welfare of Canadians or the integrity of the Canadian environment.”<sup>ii</sup>

By way of background, the US Nuclear Waste Policy Act of 1982 required the Department of Energy (DOE) to issue guidelines for the selection of sites for the construction of two deep geological repositories for high-level nuclear waste. The search for the second repository focused primarily on crystalline rock in the northeastern states, not far from the Canadian border but other sites under consideration were near the Great Lakes. According to Clark, “Other areas of potential concern to Canada, because they are in drainage basins that eventually flow into Canada, are in Minnesota and Wisconsin. The four potential areas of concern in Minnesota are in the Red River basin. Two areas in Wisconsin are at least partially in the Great Lakes basin.”<sup>iii</sup>

Concerns over the possibility that radioactive pollutants originating in the U.S. could be carried into

Canadian waters turned the search for a second repository into a contentious issue. Through the efforts of the premier of Quebec, Robert Bourassa, and Jean Charest, then Member of Parliament from Sherbrooke, Quebec this issue was subsequently addressed through the Canadian embassy in Washington, DC.

Heeding Canadian concerns about possible transboundary effects, and in the spirit of international comity, The U.S. decided to halt the siting project for the second repository.<sup>iv</sup>

### **CANADA fails to follow International Comity and, through an Ontario Crown Corporation and Federal Tribunal refuses to even answer, let alone accede to US request: The Kincardine DGR**

In September 2014 Sen. Phil Pavlov of the 25<sup>th</sup> Michigan state district addressed the Deep Geologic Repository Joint Review Panel about the dangers a nuclear waste dump would pose to the environmental and economic health of the Great Lakes Basin. He requested the panel adhere to the precedent set by Canadian opposition to a similar U.S. plan in the mid-1980s.

Citing Canadian opposition to the U. S. plan for a nuclear waste DGR in the 1980s, Pavlov asked the panel to adhere to the precedent their own government set for nuclear waste storage. He noted, “Canadian officials were troubled about possible nuclear waste 25 miles from their border or near a shared watershed. Today, they should be extremely disturbed that a Canadian company wants to bury 7 million cubic feet of radioactive waste less than one mile from the shore of Lake Huron—a decision that could devastate the largest supply of fresh water in the world. This plan cannot go forward.”

In June 2014, the Michigan Senate unanimously approved measures designed to halt construction of the Lake Huron facility while strengthening Michigan’s protection of natural resources against radioactive waste. At the time Senator Pavlov testified before the JRP, nearly 70 communities across Michigan’s Thumb region had passed official resolutions in support of this legislation.<sup>v</sup>

Pavlov to Canada: ‘Follow your own standard’<sup>vi</sup>

### **CANADA again breaches International Comity, this time by misinterpreting Michigan Environmental Protection Laws: The Kincardine DGR**

Michigan’s LOW-LEVEL RADIOACTIVE WASTE AUTHORITY ACT was incorrectly interpreted by OPG, the CNSC, and the JRP to mean that OPG’s proposed DGR would NOT be in violation of Michigan law and was therefore disregarded as relevant, because the repository could be sited next to the Bruce nuclear power plant as the Waste Act excludes a candidate site: “*located within 10 miles of Lake Michigan, Lake Superior, Lake Huron, Lake Erie, Saint Mary’s river, Detroit River, St. Clair river, or Lake St. Clair. This subdivision shall not apply to a site that is located at or adjacent to a nuclear power generating facility.*”<sup>vii</sup>

However, the Act also stipulates: “*Low-level radioactive waste*” or “*waste*” means radioactive material that consists of or contains class A, B, or C radioactive waste as defined by 10 C.F.R. 61.55, as in effect on January 26, 1983, but does not include waste or material that is any of the following: (vii) Contains greater than or equal to 100 nanocuries per gram of transuranic elements.<sup>viii</sup>

100 nanocuries per gram in metric units is equivalent to 3700 Becquerel per gram. Review of OPG’s proposed DGR waste includes pressure tube/calandria tube waste. This is transuranic (alpha-emitting) waste. Data on transuranics in CANDU pressure tubes includes information for curium-244. This is typically present at concentrations in the range 10,000 to 70,000 Becquerel/gram, well over Michigan’s limit of 3,700 Becquerel/ gram.

Therefore, regardless of whether an LLW DGR could be located next to a nuclear power generating facility in Michigan, OPG’s nuclear waste does not meet Michigan’s requirement for a low level repository. Michigan law prohibits burying ILW such as would be found in OPGS’s ILW.<sup>ix</sup>

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<sup>i</sup> <https://en.wikipedia.org/wiki/Comity>  
and <http://www.duhaime.org/LegalDictionary/C/Comity.aspx>

<sup>ii</sup> [http://dfait-aecei.canadiana.ca/view/ooe.sas\\_19860116BEST/3?r=0&s=1](http://dfait-aecei.canadiana.ca/view/ooe.sas_19860116BEST/3?r=0&s=1)

<sup>iii</sup> [http://dfait-aecei.canadiana.ca/view/ooe.sas\\_19860116BEST/3?r=0&s=1](http://dfait-aecei.canadiana.ca/view/ooe.sas_19860116BEST/3?r=0&s=1)

<sup>iv</sup> <http://crystalkidsradio.com/breaking-news/historical-statement-by-canada-in-1986-regarding-potential-transboundary-effects-of-nuclear-waste-from-the-usa/#sthash.AcRtBk6e>

<sup>v</sup> <http://www.senatorphilpavlov.com/pavlov-to-canada-follow-your-own-standard/>

<sup>vi</sup> <http://www.senatorphilpavlov.com/pavlov-to-canada-follow-your-own-standard/>

<sup>vii</sup> [http://www.legislature.mi.gov/\(S\(rg1pj345cmngls55tvv2kc55\)\)/documents/mcl/pdf/mcl-333-26217.pdf](http://www.legislature.mi.gov/(S(rg1pj345cmngls55tvv2kc55))/documents/mcl/pdf/mcl-333-26217.pdf)

<sup>viii</sup> [http://www.legislature.mi.gov/\(S\(rg1pj345cmngls55tvv2kc55\)\)/documents/mcl/pdf/mcl-333-26217.pdf](http://www.legislature.mi.gov/(S(rg1pj345cmngls55tvv2kc55))/documents/mcl/pdf/mcl-333-26217.pdf)

<sup>ix</sup> [http://www.legislature.mi.gov/\(S\(rg1pj345cmngls55tvv2kc55\)\)/documents/mcl/pdf/mcl-333-26217.pdf](http://www.legislature.mi.gov/(S(rg1pj345cmngls55tvv2kc55))/documents/mcl/pdf/mcl-333-26217.pdf)