

Federal Court of Appeal



Cour d'appel fédérale

Date: 20260223

Docket: A-62-25

Citation: 2026 FCA 37

**CORAM: LOCKE J.A.
LEBLANC J.A.
WALKER J.A.**

BETWEEN:

LISA SPECK

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on February 23, 2026.
Judgment delivered from the Bench at Toronto, Ontario, on February 23, 2026.

REASONS FOR JUDGMENT OF THE COURT BY:

LOCKE J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on February 23, 2026).

LOCKE J.A.

[1] Lisa Speck appeals a decision of the Federal Court (2024 FC 2046) that dismissed her application for judicial review of a decision of the Canadian Nuclear Safety Commission (CNSC). The CNSC's decision (by letter dated June 20, 2023) refused a request by Ms. Speck and others to have their residential properties tested for the source of radon gas, and to remove that source.

[2] The focus of Ms. Speck's request was waste rock from a uranium mine that had been used on her property for construction purposes. The CNSC found that the waste rock in question fell outside its regulatory authority due to the following exemption provided for in section 10 of the *General Nuclear Safety and Control Regulations*, S.O.R./2000-202 (*General Regulations*), under the *Nuclear Safety and Control Act*, S.C. 1997, c. 9 (NSCA):

Exemption of Naturally Occurring Nuclear Substances

10 Naturally occurring nuclear substances, other than those that are or have been associated with the development, production or use of nuclear energy, are exempt from the application of all provisions of the Act and the regulations made under the Act except the following:

- a) the provisions that govern the transport of nuclear substances;
- b) in the case of a nuclear substance listed in the schedule to the *Nuclear Non-proliferation Import and Export Control Regulations*, the provisions that govern the import and export of nuclear substances.

Exemption des substances nucléaires naturelles

10 Les substances nucléaires naturelles, autres que celles qui ont été ou sont associées au développement, à la production ou à l'utilisation de l'énergie nucléaire, sont exemptées de l'application de la Loi et de ses règlements à l'exception :

- a) des dispositions régissant le transport des substances nucléaires;
- b) des dispositions régissant l'importation et l'exportation des substances nucléaires, dans le cas des substances nucléaires qui figurent à l'annexe du *Règlement sur le contrôle de l'importation et de l'exportation aux fins de la non-prolifération nucléaire*.

[3] The CNSC found that the exceptions contemplated in paragraphs (a) and (b) did not apply. Ms. Speck acknowledges this. The CNSC also concluded that the waste rock in question was a naturally occurring nuclear substance as contemplated in section 10, and that it was not "associated with the development, production or use of nuclear energy". The CNSC based this conclusion on its observations that the waste rock was (i) never chemically processed, but simply

broken up and moved a short distance, (ii) naturally radioactive at levels consistent with the region, and (iii) not subjected to any of the processes of the nuclear fuel cycle.

[4] Ms. Speck argues that the CNSC's conclusion that waste rock removed from a uranium mine as part of efforts to reach uranium ore was not "associated with the development, production or use of nuclear energy" undermines the broad remedial purpose of the NSCA, which in her view is to address radioactive contamination.

[5] The parties acknowledge that, on appeal of a Federal Court decision on an application for judicial review, this Court is to determine whether the Federal Court selected the correct standard of review and, if so, whether it correctly applied that standard of review: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559 at para. 45. Effectively, this Court steps into the shoes of the Federal Court and focuses on the administrative decision.

[6] Ms. Speck acknowledges that the Federal Court correctly selected reasonableness as the standard of review of the CNSC's decision. Ms. Speck's argument is that the CNSC's interpretation of section 10 of the *General Regulations* was unreasonable.

[7] Ms. Speck argues that uranium ore in the ground cannot be accessed without generating waste rock, and it was the removal of this waste rock, later used on her property, that provides the nexus between the mine and her property. Ms. Speck argues that excluding the waste rock in question from substances that "are or have been associated with the development, production or

use of nuclear energy” leaves no meaning for the term “associated with” and effectively adds a requirement that the naturally occurring nuclear substance be chemically treated before CNSC will exercise its regulatory authority.

[8] While Ms. Speck asserts what may be a reasonable interpretation of section 10 of the *General Regulations*, our focus is on whether the CNSC’s interpretation was unreasonable. Ms. Speck has not convinced us that it was. The CNSC focused on the facts that the waste rock in question was (i) no more radioactive than other rocks in the region, and (ii) was simply in the way of the uranium ore that was to be extracted and was intended to be subject to its regulatory authority. In our view, it was not unreasonable for the CNSC to conclude that its authority did not extend to normal rocks simply because they had once been located in a uranium mine. We see no inconsistency between the purposes of the NSCA and the CNSC’s focus on rocks that have elevated radioactivity or that have been chemically processed as part of the nuclear fuel cycle. The CNSC’s decision not to regulate the waste rock in issue in this case is not inconsistent with its regulation of mine tailings and contaminated rock. It reached a reasonable interpretation of the term “associated with the development, production or use of nuclear energy” contained in section 10 of the *General Regulations*.

[9] Ms. Speck also argues that the Federal Court made a palpable and overriding error of fact in concluding that the radiation on Ms. Speck’s property was due to high background radiation. She argues that there was no evidence to support this conclusion. The respondent, the Attorney General of Canada, responds that Ms. Speck mischaracterizes the Federal Court’s conclusion. Regardless of what the Federal Court said, it is important to recall that our focus is on the

CNSC's conclusions rather than those of the Federal Court. As indicated above, the CNSC concluded that the levels of radioactivity in the waste rock on Ms. Speck's property were consistent with levels in the region. We are not convinced that this conclusion was not reasonably open to the CNSC. The Federal Court noted evidence from Patrick Burton to the effect that the Elliot Lake region where Ms. Speck's property is located has high background radiation from uranium deposits in the ground.

[10] Before concluding, we wish to note that an issue before the Federal Court was whether the CNSC's decision was even justiciable. The Federal Court concluded that it was. The Attorney General argues that the Federal Court's conclusion in this regard was erroneous, and that we should dismiss this appeal on the basis that the CNSC's decision was not susceptible to judicial review. In view of our conclusion that the CNSC's decision was reasonable, it is not necessary for us to consider the issue of justiciability. However, our silence in this regard should not be understood as agreement with the Federal Court.

[11] For the foregoing reasons, and despite able submissions from Ms. Speck's counsel, the appeal will be dismissed. Since the parties have agreed that there should be no costs, none will be awarded.

"George R. Locke"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-62-25

STYLE OF CAUSE: LISA SPECK v. ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 23, 2026

REASONS FOR JUDGMENT OF THE COURT BY: LOCKE J.A.
LEBLANC J.A.
WALKER J.A.

DELIVERED FROM THE BENCH BY: LOCKE J.A.

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