

Law for Professional Engineers and Professional Geoscientists

Introduction

Law and Ethics Seminar
Fall 2018

Purpose

- Our purpose is to create an awareness of legal principles and issues that impact professional engineers and professional geoscientists
- We are **not** attempting to make lawyers out of engineers and geoscientists
- We will try to make the presentation relevant to all disciplines of engineering and geoscience (although we recognize the law text is heavily weighted towards construction law)

The Canadian Legal System

- Canada is a “Constitutional Monarchy” and the Constitution is the source of legal authority in Canada
- The Canadian Constitution is made up of statutes and conventions from both the British and Canadian Parliaments
- The Canadian Constitution has three primary features:
 - the division of powers between the federal and the provincial/territorial governments;
 - the creation of the Courts; and
 - the *Charter of Rights and Freedoms*

The Creation of Law

- Law is **dynamic**, leading to uncertainty
- Federal and provincial statutes and regulations:
 - must be constitutional
 - statutory authority can be delegated
 - ex. municipal governments (bylaws), professional regulation
- Common law: rules established by previous court decisions (precedent)
- As judges interpret and apply statutes and common law rules, more law is created

Common Law vs. Civil Code

- Most provinces and territories, and most states in the United States, use the British “common law” system
- Quebec and Louisiana have civil law systems based on the Napoleonic Code of France
 - civil law is codified, or statute-based, rather than common law based

Types of Law

- Private vs Public Law
 - Public law relates to the public as a whole, such as constitutional law, administrative law, criminal law and international law
 - Private law relates to definition, regulation and enforcement of rights among individuals
- Criminal Law – deals with crimes and penalties
- Civil Law – dual distinction
 - As distinguished from criminal law
 - As distinguished from common law
- Administrative Law – administrative agencies of government, including rulemaking, adjudication and enforcement (often boards and commissions)

Constitutional Framework

- The *British North America Act* – now the *Constitution Act, 1867* – provides for federal and provincial powers respectively:
 - s. 91 provides exclusive jurisdiction to the federal government
 - examples include criminal law, money and banking, international trade, interprovincial trade
 - s. 92 provides exclusive jurisdiction to the provincial governments
 - Matters of a provincial nature – property and civil rights in a province, including regulation of professions
- Private law is generally within provincial jurisdiction (exceptions include federal labour law, competition law)
- In cases of operational conflict, the federal statute prevails
- Law within provincial government jurisdiction may vary between provinces (examples: lien legislation, employment and labour legislation, professional regulation, consumer legislation)

Charter of Rights and Freedoms

- The *Canadian Charter of Rights and Freedoms* is part of the Canadian Constitution
- The *Charter* codifies individual rights as related to **government action**, including organizations such as APEGS
- The *Charter* does **not** apply to interactions between private parties

Court System

- The Supreme Court of Canada hears matters of national importance
 - Leave is required to appear at the SCC
- Federal Courts deal with matters in the federal realm (ex. national security, immigration, intellectual property)
 - Federal Court and Federal Court of Appeal
 - Tax Court of Canada deals with tax matters
- Each province has a superior trial level court and court of appeal
 - judges are federally appointed and paid
 - in Saskatchewan, it is the Court of Queen's Bench and the Court of Appeal
- Saskatchewan Provincial Court:
 - Small Claims Court – jurisdiction limited by subject matter and value of claim (e.g. Saskatchewan has claim value limit of \$30,000)
 - most criminal matters and some family law matters

Courts Bound / Persuaded by Precedent

- Courts are bound by precedent (decisions) set by a higher level court
 - All courts in all provinces/territories are bound by decisions of the Supreme Court of Canada
 - The Court of Queen's Bench in Saskatchewan and the Provincial Court of Saskatchewan are bound by decisions of the Saskatchewan Court of Appeal
 - The Provincial Court of Saskatchewan is bound by decisions of the Saskatchewan Court of Queen's Bench
- Decisions from other provinces/territories or countries may be persuasive but are not binding

Case Law

- As the law changes, past cases may become less applicable
- Beware of relying on cases currently being appealed
- All relevant cases must be considered
- Construction disputes are fact specific
- Case reports are available at www.canlii.org

International Law

- International treaties; must be ratified
- NAFTA (North America Free Trade Agreement)
- Regardless of treaties and agreements, professionals such as engineers must be licensed or authorized in each jurisdiction in which they work
 - ex. temporary licence for engineers wishing to work in Saskatchewan pursuant to NAFTA
- Tax treaties: minimize double taxation

Subject Areas and Principles

- Most legal disputes for engineers and geoscientists will result from either:
 - Contracts
 - Contracts are voluntary, often need not be in writing, define rights and responsibilities
 - Key area of law for construction disputes
 - Torts
 - Duty to not harm those in the community, intentionally or unintentionally
 - Negligence is just one type of tort, but is common in engineering and construction disputes

Questions

Bob McDonald, P.Eng., LL.B.
Executive Director & Registrar

APEGS

(306) 525-9547

1-800-500-9547

www.apegs.ca