

# Law for Professional Engineers and Professional Geoscientists

## Labour and Employment

Law and Ethics Seminar  
Fall 2018

# Labour Law

- Labour law deals with two categories or relationships:
  - Union-management
  - Employee-union
- Most labour law is governed by provincial legislation; in Saskatchewan it is *The Saskatchewan Employment Act*
  - Federally regulated entities may be subject to Canada Labour Code
- Under labour legislation, unions are the sole bargaining representative for the employees they represent
- The Labour Relations Board has been established as a forum for labour law issues

# Employment Law

- Employment law deals with employer-employee relationships where there is no union representation of employees
- Employment is governed by the basic principles of contract law combined with provincial/federal employment legislation
  - For example, in Saskatchewan, *The Saskatchewan Employment Act*
- Employment contracts may be written, oral, or partly written and partly oral
- Issues which are not expressly dealt with by the parties in the employment contract will be read in as implied terms e.g. length of notice for termination

# Implied Terms in Common Law Employment Contract

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- Unless there are express terms to the contrary, certain terms are implied into every employment contract:
  - the obligation to mitigate after a breach has occurred
  - the employee's duty of loyalty
  - the employee's duty of competence
  - the employer's duty, upon termination, to give adequate notice or severance in lieu of notice

# Trade Secrets and Confidential Information

- The duty of fidelity (loyalty) which is imposed on all employees, regardless of whether there is an express term to that effect in the contract of employment, requires employees keep confidential information secret
- Non-disclosure of confidential information is often considered to be a fiduciary obligation
- Confidential information is data, industrial secrets or information obtained or learned through the employment relationship (ex. exploration libraries)
- Trade secret is information that is valuable because it is not widely known and which the company tries to maintain secret

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# Trade Secrets and Confidential Information

- If disclosure of information would be valuable to a competitor business, then that information is likely impressed with a duty of confidentiality
- Although the duty of confidentiality exists without them, confidentiality agreements help protect confidential information by making it clear what information is confidential
- The duty of confidentiality extends beyond the termination of employment, although an employee can rely on experience gained in a previous job when performing their new job
- The APEGS' Code of Ethics also contains an obligation to maintain confidentiality

# Restrictive Covenants

- Restrictive covenant is an agreement whereby the employee agrees that, for a specified period after the employment relationship ends, to not work:
  - for a competitor;
  - in a specified geographic area; and / or
  - in a particular business
- Courts interpret restrictive covenants restrictively and apply a test of reasonableness, particularly as to duration and geographic area

# Independent Contractor or Employee

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- Unlike employees, independent contractors do not have rights to reasonable notice, overtime compensation etc.
- The distinction is important in many areas including tax, vicarious liability, insurance, workers' compensation, and the duty of loyalty
- The test for distinguishing employees from independent contractors considers many factors, but focuses on the control the employer has over the worker (check CRA guidelines)



# Human Rights

- Every province and territory has human rights legislation that deals with human rights complaints both in the employment relationship and generally
- Tribunals are set up under the legislation to deal with complaints
- Not all discrimination is prohibited; the *Saskatchewan Human Rights Code* prohibits discrimination on the basis of: religion, creed, marital status, family status, sex, sexual orientation, disability, age, colour, ancestry, nationality, place of origin, race or perceived race and receipt of public assistance.

# Human Rights (Continued)

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- Human rights legislation also prohibits harassment
- Employers are required to promptly address all complaints of harassment and may be vicariously liable for the acts of the harassing employee

# Questions

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