

Law for Professional Engineers and Professional Geoscientists

OH&S, Environmental and Criminal Law Issues

Law and Ethics Seminar
Spring 2018

Overview

- Health and safety law is made up of common law tort principles in combination with provincial and federal legislation
- Occupational health and safety (OH&S) and workers' compensation legislation is designed to protect workers from injury and to compensate those that are injured – in Saskatchewan, it is *The Saskatchewan Employment Act* and Regulations and *The Workers' Compensation Act, 2013*
- In exchange for compensation under this legislation, workers give up their right to sue their employers for personal injury

(Continued)

Overview (Continued)

- OH&S legislation is based on three fundamental rights of workers:
 - the right to be informed of hazards;
 - the right to participate in accident prevention; and
 - the right to refuse to do dangerous work
- OH&S regulations are enforced by site visits by government enforcement officials
- **Everyone** is responsible for safety

Occupational Health and Safety

- OH&S legislation improves working conditions through mandatory safety requirements, enforceable by fines imposed on employers and their officers, directors and supervisors
- Harassment is also included in OH&S legislation
- When incidents do occur, employers are required to follow strict documentary procedures
- Engineers and geoscientists may have responsibility in a number of ways – personally, as a manager, as an employer, as an owner, as an agent for an owner, as a contractor, or as an agent for a contractor

Environmental Law

Ensuring public safety



A P E G S

*Association of Professional Engineers
& Geoscientists of Saskatchewan*

Overview

- Modern environmental law is mix of common law and statutory regulation
- The principles of trespass, nuisance, negligence, misrepresentation, and strict liability are commonly used in environmental claims
- A broad range of provincial and federal statutes create funds to clean up environmental contamination and impose criminal and quasi-criminal penalties for environmental breaches

(Continued)

Overview (Continued)

- Environmental contamination is usually discovered and remediated through a three stage environmental site assessment (ESA)
- Environmental audits are distinct from ESAs, and assess corporate environmental liability based on compliance
- Environmental legislation contains proactive measures to prevent future contamination and aims to balance the need for environmental protection with the desire for economic development

Environmental Impact Assessments

- Environmental impact assessments may be required for new projects, or for modifications to existing projects
- Depending on the nature of the project and the sensitivity of the location, one of four levels of environmental impact assessment will be appropriate:
 - screening
 - comprehensive study
 - mediation
 - panel review

Environmental Site Assessments

- ESAs are divided into three stages:
 1. Information gathering
 2. Site investigation and assessment of contamination
 3. Detailed description of contamination and formulation of remediation options
- Surrounding properties are often included in ESAs because pollution often migrates

Environmental Audits

- Audits involve objectively assessing environmental contamination, compliance, and risks - independently
- Audits may be statutorily required, but may also be done to:
 - provide defences against environmental claims or prosecutions
 - protect the health and welfare of outside persons
 - reduce remediation expenses
 - due diligence for stakeholders
- The Canadian Standards Association and ISO set guidelines for environmental audits

Environmental Offences

- The federal and provincial statutes combined create a large number of environmental offences
- The offences cover a variety of behaviour including discharging contaminants, failing to report, failing to keep proper records, failing to assist in investigations
- Both corporations and their employees may be liable to prosecution, and imprisonment is possible for serious offences
- Most offences are strict liability: the only defence is for the defendant to show that it was duly diligent

Criminal Law

Bill C-45 Criminal Liability of Organizations

- Reaction to the Westray Mine Disaster
 - Explosion in Westray Mine in Plymouth, Nova Scotia on May 9, 1992
 - 26 miners killed; 11 miners remain in mine
 - Anecdotal evidence of unsafe practices and safety infractions
 - RCMP opened a criminal investigation
 - 52 charges of non-safe practice against Curragh (mine owner), but dropped to facilitate criminal investigation
 - Criminal charges of manslaughter and criminal negligence laid against Curragh and two managers, but later stayed due to uncertainty over the precise cause of the explosion

Government Reaction – Bill C-45

- An Act to Amend the Criminal Code (**Criminal Liability of Organizations**)
- Criminal responsibility in addition to Occupational Health and Safety regulation
- It is not just health and safety – it provides a legal duty for all persons directing work
- It sets out sentencing factors, including probation orders
- Effective March 31, 2004

Adds s. 217.1 & 22.1 to *Criminal Code of Canada*

- “Every one who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task.”
- This section imposes a “duty” within the meaning of s. 219 CCC
- Section 22.1 outlines requirements for imposing criminal liability on an organization for negligence

Charges under Bill C-45

- To date, the courts have dealt with several cases of criminal charges laid under Bill C-45
- In some cases, there is a trade-off between OH&S offences and criminal charges (ex. Fantini)
- Convictions have been obtained against both corporations and individuals

Case Law

- There are several cases of note:
 - Transpave - manufacturing
 - Metron Construction – scaffold collapse
 - Kazenelson – project manager
 - Hritchuk – fuel pump
 - Scrocca – backhoe maintenance
 - Williams Engineering – agent
- The defence to these charges is due diligence

Questions

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

APEGS

(306) 525-9547

1-800-500-9547

www.apegs.ca