Law for Professional Engineers and Professional Geoscientists

Introduction

Law and Ethics Seminar
Spring 2019
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)

Ensuring public safety

Association of Professional Engineers & Geoscientists of Saskatchewan
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 APEGSA
- 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