Law for Professional Engineers and Professional Geoscientists

OH&S, Environmental and Criminal Law Issues

Law and Ethics Seminar
Spring 2019
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.

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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

Ensuring public 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
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

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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

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