

# PROFESSIONAL NEGLIGENCE

Karen Martin and Geoff Bowman, Partners

UBC: APSC 450

Fall 2019

# Overview

- 1) Liability for Professional Engineers
- 2) Professional Negligence Req'mt #1: Duty of Care
- 3) Professional Negligence Req'mt #2: Breach of Duty
- 4) Negligent Misrepresentation
- 5) Examples of Professional Negligence by Engineers
- 6) Negligence of Others
- 7) Protecting Yourself

# Liability for Professional Engineers

- Types of law: public v. private; statutory v. common law
- Engineer may be liable to another person if he or she breached a legal obligation owed to that person
- Examples of legal obligations:
  - Contractual duties
  - Duties under tort law – i.e. assault, trespass, negligence
  - Statutory duties
- Negligence is private law, governed by common law, a tort
- A person will be liable in **negligence** if:
  - He owes a duty of care to another – “neighbor principle”
  - He breaches duty – standard of care - “reasonable person”
  - Damage is suffered

# Prof Negligence Req'mt #1 - Duty of Care

- Professionals owe duties of care to:
  - The person they contract with – i.e. clients
  - Persons they don't contract with, if they create a risk of causing injury to person or damage to property
    - Example: Winnipeg Condo, 1995 SCC – cladding at risk of falling
- Professionals don't owe a duty of care to persons they don't have a contract with if those persons suffer only an economic loss – with no risk of injury to person or damage to property

# Prof. Negligence Req'mt #2 – Breach of Duty

- Engineers must exercise the skill, care and diligence of a **reasonable and prudent** professional engineer in their area of expertise - in that location and at that time
- NO expectation of perfection - standard of an average eng. In similar circumstances
- BUT - if you hold yourself out to a higher standard, you will be held to that standard (i.e. the best, global expert, etc.)
- How is this proved? Often evidence of an expert engineer
- Case study – N.B. Telephone v. John Maryon Int'l, 1981  
NBQB: where engineer knows a project requires expertise he does not have, he has a legal duty to seek guidance and advice from knowledgeable experts

# Negligent Misrepresentation

- A type of negligence. Negligent advice
- Requirements:
  - Special relationship btw person making statement and person hearing or reading it (not the world)
  - Statement is untrue, inaccurate, or misleading
  - Person made statement negligently
  - Person receiving statement reasonably relied on it
  - Damage results from that reliance
- Case study: Edgeworth Construction v N.D. Lea, 1993 SCC – special relationship btw design engineer and bidding contractors

# Prof. Negligence for Engineers - Examples

- During Procurement of a Project:
  - Estimating costs for owners
  - Preparing and administering procurement – tenders, RFPs
- Case studies:
  - Saxby v Fowler, 1977 ABCA: it is negligent to prepare a construction cost estimate intending it be relied upon by a client without adequate factual information or by guesswork – it's not a guarantee that the estimate won't be exceeded; but actual cost must be within a reasonable range
  - Stanco Projects v British Columbia, 2006 BCCA: Engineer's errors in drafting tender documents. Negligent administration of procurement after bids were submitted – illegal bid shopping. Engineer found liable to owner/client

# Prof. Negligence for Engineers - Examples

- Design must be constructible, safe, effective
- Specification of materials - must be suitable
- Design must comply with codes, laws, bylaws, etc.
- Reasonable periodic field inspections must be completed
  - BC Building Code requires engineer's assurance of professional design (that design complies with code) and also a commitment for field review (to confirm construction is in general compliance with the design)
- Case study – Coast Hotels v Bruskiewich, 2001 BCSC: Eng. must apply prof. judgment to #/timing of reviews to be able to give assurance work done in accordance with design
  - No defence that contractor or owner limited scope



# Negligence of Others

- What if more than one person's negligence contributed to the loss?
  - Other engineers
  - Clients / owners
  - Contractors
- If damage is caused by 2 or more parties' negligence, the court will decide the proportion of responsibility that falls on each person and apportions damages
- Example: *Coast Hotels v Bruskiwich*, 2001 BCSC – *Engineer 20% liable and contractor 80% liable*

# Protecting Yourself

- Take care to meet the standard of care – be aware of good practices in your area of expertise - don't be pressured to cut corners
- You can reduce the risk with contract language
- Exclusion clauses in contracts – agree with client- no liability
- Limitation of liability clauses - limit liability to \$ amount, such as to your fees
- Should put disclaimers in your reports – protect against negligent misrepresentation claims by persons other than client – state in the report that it can't be relied upon except by your client
- Professional Liability Insurance – cover you for negligence

# Thank you

大成 DENTONS

Dentons Canada LLP  
250 Howe Street  
20th Floor  
Vancouver, British Columbia V6C 3R8  
Canada

[Karen.martin@dentons.com](mailto:Karen.martin@dentons.com)

[Geoff.bowman@dentons.com](mailto:Geoff.bowman@dentons.com)

---

Dentons is the world's largest law firm, delivering quality and value to clients around the globe. Dentons is a leader on the Acritas Global Elite Brand Index, a BTI Client Service 30 Award winner and recognized by prominent business and legal publications for its innovations in client service, including founding Nextlaw Labs and the Nextlaw Global Referral Network. Dentons' polycentric approach and world-class talent challenge the status quo to advance client interests in the communities in which we live and work. [www.dentons.com](http://www.dentons.com)

© 2019 Dentons. Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This document is not designed to provide legal or other advice and you should not take, or refrain from taking, action based on its content. We are providing information to you on the basis you agree to keep it confidential. If you give us confidential information but do not instruct or retain us, we may act for another client on any matter to which that confidential information may be relevant. Please see [dentons.com](http://dentons.com) for Legal Notices.