

BOOK REVIEW

Law for Professional Engineers: Canadian and Global Insights (5th Edition).
By Donald L Marston. Published by McGraw Hill Education (2019).
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Law for Professional Engineers: Canadian and Global Insights, now in its fifth edition, is a clear and concise exploration of construction and engineering law in Canada and internationally. Originally aimed at assisting candidates for Canadian professional engineering qualification in their required engineering law examinations, *Law for Professional Engineers* explains complex legal topics in a digestible and accessible manner. Although Donald L Marston, author of the work and Canadian Correspondent to the ICLR, intends for the book not “to make lawyers of engineers, but rather to provide engineers with insights into legal issues”, the book can equally benefit lawyers interested in construction law and its operation through a specific Canadian perspective.

Marston writes with extensive experience of construction law and engineering. He has admirably authored each edition of this text since its first in 1981, originally inspired by his 20-year career as an engineering law lecturer at the University of Toronto. His practical knowledge is evident when reading the book, especially by the inclusion of sample case studies and commentary focussing on the real-world issues under each legal topic.

The fifth edition includes a number of important updates on recent landmark Canadian Supreme Court decisions. Particularly in relation to public safety, there is discussion of the decisions of court following recent tragedies in both the 2013 *Metron Construction* decision (*R v Metron Construction Corporation* 2013 ONCA 541) and *R v Kazenelson* 2015 ONSC 3639. A notable chapter has also been added on the major reforms to Ontario’s construction lien laws in the Construction Lien Act 2017 (Ontario).

The book’s 35 chapters cover a wide range of topics, from the basic foundations of the common law to specific areas of Canadian construction and engineering law. The chapters are helpfully arranged so that readers unfamiliar with the law are eased into legal discussion, before progressing to analysis of more complex concepts. As a result, the book can be read logically and comprehensibly from cover to cover, although this does not detract from one’s ability to select specific topics for individual reference.

The opening chapters of the book serve as an introductory section to the Canadian legal system (Chapter 1); business organisations (Chapter 2); and international legal and commercial concepts (Chapter 3). Chapter 1 discusses a number of fundamental principles of the Canadian legal system, beginning with the historical division between common law and equity and moving to the federal and provincial powers of the Canadian legislature.

This first chapter is written in accessible terms and usefully includes a “Basic Terminology” definitions section. The second chapter covers the essentials of corporations’ law, including consideration of partnerships, directors’ duties and Canadian corporate income tax legislation. Notably, Chapter 2 ends with a hypothetical case study and accompanying commentary, to allow readers, particularly those using this book as an exam resource, to revise the concepts in the chapter and apply them in a practical fashion. This is a unique, and welcomed, feature of the book, with revision questions and practical case studies available in numerous chapters, ensuring that readers retain a good working knowledge of the concepts discussed.

Global project opportunities for engineers are rapidly growing in scale and number. Accordingly, Marston provides insights of global legal and business considerations in Chapter 3. The chapter touches upon topics as varied as political risk, licensing requirements, international dispute resolution and arbitration, the common and civil law divide and the United Nations Convention on Contracts for the International Sale of Goods. It will certainly be a useful background for those wishing to maintain a global business practice, particularly important in today’s globalised climate.

The next chapters consider the foundational principles of tort and contract law. Chapter 4 deals with tort liability and the principles of tort law, including engineers’ standard of care vicarious liability and economic loss. Chapters 5 and 6, respectively examine statutory limitation periods in Canada, with a particular focus on the amendments to the statutory regime in Ontario, and the burden of proof specific to engineers and expert witnesses.

It is trite to say that contracts are at the heart of any engineering or construction project. Marston accords this important area due consideration, with the topic ranging expansively from Chapters 7 to 21. Each chapter explores a different topic within contract law, from offer and acceptance (Chapter 8) to contractual interpretation (Chapter 17) to breach of contract (Chapter 19). In particular, I found the analysis in Chapter 16 of the “Contract A” principle in tendering arrangements, as propounded by the Canadian Supreme Court in *Ron Engineering et al v The Queen in right of Ontario et al* (1981) 119 DLR (3d) 267 to be especially insightful. Needless to say, practical knowledge in the area of tendering contracts is vital to engineers and contractors. Marston offers real-world guidance by providing summaries of the illustrative cases in respect of this principle, and their implications for engineers and contractors in practice.

Chapters 21 to 24 consider further applications of the basic contractual principles in context of engineering and construction practices. Chapter 21 delves into the client-engineer agreement, explaining the nature of the agency relationship and outlining the law on remuneration and fee charging. Of particular assistance to engineers are the sections regarding the specific statutory frameworks in Canada which govern the provision of engineering

services, and the workings of planning and zoning administrative bodies. Chapter 22 then examines the concurrent liability in tort and contract, and the simultaneous liability to which engineers can be subject due to the “overlap” between these two areas of law. Chapter 23 deals briefly with the duty of honesty, which is implied into an engineer’s duty of care, a breach of which can result in severe criminal consequences. Construction contracts overall are subsequently explored in Chapter 24. Even though engineers are not typically party to construction contracts, the separate contract between the engineer and the owner may give rise to rights and obligations of the engineer to administer the construction contract. It is therefore important that an engineer possesses a proper understanding of the types and forms of construction contracts, which this chapter capably covers.

The remaining chapters of the work cover a diverse range of topics, from risks in construction (Chapter 25) to Arbitration and ADR (Chapter 28) to Intellectual Property (Chapter 33). Particularly compelling are the chapters on lien legislation (Chapter 30) and the law in Quebec (Chapter 34), as they have been updated for the new edition of the book. Chapter 30, “Lien Legislation”, importantly, provides commentary on the new the Construction Lien Act enacted in Ontario in 2017. The new Act involved a major overhaul of the existing lien framework, introducing for the first time in Canada prompt payment provisions and statutory adjudication, bringing Ontario in line with the UK and East coast states of Australia. Marston’s commentary on the new legislation will be immensely helpful to engineers and legal practitioners alike to navigate this new legal terrain, including consideration of the practical effect of liens, rights against owners where no contract exists, and persons entitled to lien rights.

Chapter 34, on the laws of Quebec, has also been updated for the fifth edition, with the contributions of Olivier F Kott, a senior partner at Norton Rose Fulbright Canada and a respected writer on Quebecois law. It is indeed crucial that Canadian engineers and legal practitioners maintain a firm grasp on the unique civil-law system in Quebec. This chapter provides an overview on construction law provisions within the Civil Code of Quebec, including the interpretation of contracts, force majeure and remedy for non-performance. Once again, the chapter covers a wide scope while remaining coherent and comprehensible.

This book is not intended to be an exhaustive manual on contracts and international construction law. Instead, for engineers, it is a worthy reference book, and will also be of great practical assistance to lawyers who wish to further develop their knowledge of Canadian construction law in a comprehensive and accessible form. The scope of the book is its greatest asset and I would have no hesitation in recommending this book to engineers and lawyers alike.