LAW
for PROFESSIONAL ENGINEERS
Second Edition

D.L.Marston

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D. L. Marston, B.Sc., P.Eng., LL.B.

of Osler, Hoskin & Harcourt
Barristers & Solicitors
Toronto
and
Special Lecturer in Engineering Law
Faculty of Applied Science and Engineering
University of Toronto

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PREFACE

As stated in the first edition, the purpose of this book is to provide a current common-law text to serve the engineering profession in Canada, the practice of professional engineering having been complicated by the number and complexities of applicable statutes and court decisions and the aggressive pursuit of claims against professionals. Every professional engineer needs to be aware of the law relevant to his or her practice for the protection of both the engineer's interests and those of the client or employer. The professional engineer should also be aware of the importance of seeking legal advice when appropriate, both in anticipation of problems and after problems arise.

Important developments in the law since the first edition in 1980 have made this second edition necessary, particularly the enactment in Ontario of the new Professional Engineers Act, 1984, and the Construction Lien Act, 1983. Selected case law developments of significance are also reported, especially those dealing with limitation periods and professional liability for negligence. In response to requests and enquiries from engineers, descriptive summaries have been added relating to bonding, to letters of credit, and to certain aspects of land law, particularly subdivision control and Planning Act considerations.

Additional commentary has also been provided on the advisability of careful construction project structuring and early attention to contract documentation, especially in circumstances such as those involving construction managers, design-builders or multiple prime contractors where projects proceed otherwise than on traditional contractual arrangements.

Comments have been added on the Canadian Charter of Rights and Freedoms, part of the Constitution Act of 1982, a major development since the first edition.

For ease of reference, a Table of Cases has also been included. Statute citations throughout the text have been updated.

The approach taken throughout the text has been to summarize and simplify the subject matter. The book focuses on fundamentals and areas of business law of relevance and interest to engineers. Recognizing traditional problems with legal terminology, the use of technical legal terms has been minimized, as have references to extensive procedural details and complex legal arguments that are more appropriately the concern of lawyers. The analytical nature of our legal system is illustrated by emphasizing the courts' application of established legal principles in deciding cases. The analytical nature of the law usually makes it particularly appealing to the engineer.

Although broad in scope, this is not an exhaustive law text; it deals with selected areas of the law, and it is for engineers practising within the common-law jurisdictions of Canada. Certain statutory examples place emphasis on Ontario legislation, but similar statutes of other provinces are generally referenced. The scope of this text does not extend to civil-law matters of the Province of Quebec.

I am grateful for the many positive comments received on the first edition of this text and, in embarking upon this second edition, for the encouragement of Professor A.H. H. Corrie, P. Eng. and other representatives of The Association of Professional Engineers of the Province of Ontario. I also wish to thank those of my partners who assisted with comments on certain aspects of the second edition. I am particularly grateful for the assistance of Terence S. Dobbin who, during his articling year with my firm, contributed enthusiastically to the preparation of this second edition.

Don Marston
October, 1984

TABLE OF CASES

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CHAPTER ONE

THE CANADIAN LEGAL SYSTEM

HISTORICAL BASIS

The legal system of the nine common-law provinces and the territories of Canada is based upon the English common-law system. It is important to understand something of the evolution of the English system in order to appreciate how the Canadian system operates.

At one of its early stages of development, the English legal system was very rigid. Certain specific remedies were available in only certain circumstances. This system of specific remedies was called the "common law." As time passed, it became evident that the specific remedies provided by the common-law courts were not sufficient. Where relief beyond the scope of the common law was sought, special appeals were made to the English Monarch; if the Monarch saw fit to exercise his or her discretion, a remedy more "equitable" than that provided by the common law was declared. Eventually, the English "courts of equity" were developed as a separate court system, providing more reasonable remedies as circumstances required. As pointed out in Black's Law Dictionary, the term "equity," in its broadest and most general sense, denotes a spirit of fairness, justness and right dealing . . . grounded in the precepts of conscience.

Eventually, the two systems — the old common-law system and the courts of equity — were combined, and an improved system was developed to provide remedies premised on both common-law precedents and on equitable principles. This improved system continued to be called the "common law," and is the system from which the present Canadian common-law system evolved.