Practical Law of Architecture, Engineering, and Geoscience

Third Canadian Edition

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Pearson Canada
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With love to our families
ABOUT THE AUTHORS

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Brian Samuels is the principal of Samuels & Co., a Vancouver construction law firm, which is a member of the Construction Law Group and of Construlegal, an international alliance of construction law firms focused on construction projects in the Americas.

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Mr. Sanders is also a volunteer with provincial and national engineering organizations. He is a past board member of the Canadian Engineering Qualifications Board and the Canadian Engineering International Board. He is past chair of the Association of Professional Engineers and Geoscientists of Saskatchewan (APEGS) Registration Committee, a past member of the Association of Professional Engineers and Geoscientists of British Columbia (APEGBC) Registration Task Force, and a past member of the APEGBC Software Engineering Task Force. He originated the Law and Ethics seminars in Saskatchewan and British Columbia and has been an instructor for both seminars. In 2000, APEGS presented him with the McCannel Award for exemplary service to the engineering profession. He is also a long-time member of Construction Specifications Canada.
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<tbody>
<tr>
<td>AAA</td>
<td>American Arbitration Association</td>
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<tr>
<td>ACEC</td>
<td>Association of Consulting Engineering Companies</td>
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<tr>
<td>ACEC 31</td>
<td>ACEC Prime Agreement between Client and Engineer</td>
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<tr>
<td>AIA</td>
<td>American Institute of Architects Agreement on Internal Trade</td>
</tr>
<tr>
<td>AIT</td>
<td>Agreement on Internal Trade</td>
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<tr>
<td>AOD</td>
<td>Association of Owners and Developers</td>
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<tr>
<td>APEGBC</td>
<td>Association of Professional Engineers and Geoscientists of British Columbia</td>
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<tr>
<td>APEGA</td>
<td>Association of Professional Engineers and Geoscientists of Alberta</td>
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<tr>
<td>APEGS</td>
<td>Association of Professional Engineers and Geoscientists of Saskatchewan</td>
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<tr>
<td>ASCE</td>
<td>American Society of Civil Engineers</td>
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<td>BCCA</td>
<td>British Columbia Construction Association</td>
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<td>BCCA 200</td>
<td>BCCA Subcontract</td>
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<tr>
<td>CCA</td>
<td>Canadian Construction Association</td>
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<td>CCDC</td>
<td>Canadian Construction Documents Committee</td>
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<tr>
<td>CCDC 2</td>
<td>CCDC Stipulated Price Contract for Trade Contractors on Construction Management Projects</td>
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<tr>
<td>CCDC 23</td>
<td>CCDC Guide to Calling Bids and Awarding Contracts</td>
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<td>CCDC 220</td>
<td>CCDC Performance Bond</td>
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<tr>
<td>CCDC 221</td>
<td>CCDC Bid Bond</td>
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<tr>
<td>CCDC 222</td>
<td>CCDC Labour and Material Payment Bond</td>
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<tr>
<td>CCDC 3</td>
<td>CCDC Cost-Plus Contract</td>
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<td>CCDC 4</td>
<td>CCDC Unit Price Contract</td>
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<td>CCDC 5A</td>
<td>CCDC Construction Management Contract</td>
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<tr>
<td>CCDC 5B</td>
<td>CCDC At-Risk Construction Management Contract</td>
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<tr>
<td>CCDC 14</td>
<td>CCDC Design-Build Stipulated Price Contract</td>
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<tr>
<td>CGL Insurance</td>
<td>Commercial General Liability Insurance</td>
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<td>CGL Insurance</td>
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<tr>
<td>CGS</td>
<td>The Canadian Geotechnical Society</td>
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<td>CHSR</td>
<td>Canada Health and Safety Regulations</td>
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<td>CIM</td>
<td>Canadian Institute of Mining Development</td>
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<td>CIS</td>
<td>Canadian Standards Association Administrators</td>
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<td>CLC</td>
<td>Canada Labour Code</td>
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<tr>
<td>CM</td>
<td>Construction Management</td>
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<tr>
<td>CPM</td>
<td>Critical Path Method</td>
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<td>CSA</td>
<td>Canadian Securities Administrators</td>
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<tr>
<td>CSCE</td>
<td>Canadian Society for Civil Engineering</td>
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<td>CSME</td>
<td>Canadian Society of Mechanical Engineering</td>
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<td>CSC</td>
<td>Construction Specifications Canada</td>
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<td>CSC</td>
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<tr>
<td>DMCA</td>
<td>Digital Millennium Copyright Act (US)</td>
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<td>DBIA</td>
<td>Design-Build Institute of America</td>
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<tr>
<td>DRP</td>
<td>Dispute Resolution Process</td>
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<tr>
<td>E&amp;O</td>
<td>Errors and Omissions Insurance</td>
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<td>EIT</td>
<td>Engineer-in-Training</td>
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<td>EPA</td>
<td>Environmental Site Assessment</td>
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<tr>
<td>FIDIC</td>
<td>International Federation of Consulting Engineers</td>
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<tr>
<td>Abbreviation</td>
<td>Description</td>
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<tr>
<td>GC</td>
<td>General Condition</td>
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<tr>
<td>GMP</td>
<td>Guaranteed Maximum Price</td>
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<tr>
<td>GST</td>
<td>Goods and Services Tax</td>
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<tr>
<td>ICE</td>
<td>Institute of Civil Engineers</td>
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<tr>
<td>IEEE</td>
<td>Institute of Electrical and Electronics Engineers</td>
</tr>
<tr>
<td>ISO</td>
<td>International Organization for Standardization</td>
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<tr>
<td>ISP</td>
<td>Internet Service Provider</td>
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<tr>
<td>L&amp;M Bond</td>
<td>Labour and Material Payment Bond</td>
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<tr>
<td>NAFTA</td>
<td>North American Free Trade Agreement</td>
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<tr>
<td>NCARB</td>
<td>National Council of Architectural Registration Boards (US)</td>
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<tr>
<td>NCEES</td>
<td>National Council of Examiners for Engineering and Surveying (US)</td>
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<tr>
<td>NI</td>
<td>National Instrument</td>
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<tr>
<td>OH&amp;S</td>
<td>Occupational Health and Safety</td>
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<tr>
<td>P.Eng.</td>
<td>Professional Engineer</td>
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<tr>
<td>PFI</td>
<td>Privately Financed Initiative</td>
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<tr>
<td>PFI</td>
<td>Privately Financed Initiative</td>
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New to This Edition
This third Canadian edition has been updated and enhanced in the following respects:

- Case law has been updated to include recent leading case authority in several fields, including employment law, tendering, pure economic loss, contract enforceability, disclaimers, and other areas.
- Sections on international law have been added and enhanced.
- New scenarios and questions have been added.

About This Text
This text is intended to provide the following:

a) a broad overview of areas of the law relevant to the practice of architecture, engineering, and geoscience
b) practical, rather than theoretical, information
c) sufficient background to allow the reader to identify legal issues
d) simple, easy-to-follow language

This text is not intended to do the following:

a) make lawyers out of and thereby ruin perfectly good architects, engineers, and geoscientists
b) be a master’s level thesis on any of the subjects, since most if not all of the topics have multiple full-length texts written about them

c) eliminate the need to seek appropriate legal advice

The title of this text is Practical Law of Architecture, Engineering, and Geoscience. Since the publication of the first edition, this practical guide to the law for design professionals has been adopted as the primary text for the professional practice exams and the entrance exam for professional engineers and geoscientists in various provinces. However, the intended audience of this text is not limited to architects, engineers, and geoscientists. Contractors, technicians and technologists, lawyers, suppliers, project managers, construction managers, software professionals, and others also may benefit from reading it.

One of the risks of creating a text that provides a broad overview is that the explanations in most areas are necessarily brief and do not contain the level of detail that would be found in comprehensive legal texts. Therefore, readers must recognize that this text is not intended as a substitute for legal advice. Legal problems are fact specific, meaning that a slight change in the facts can often lead to a different conclusion. Furthermore, the law differs from one jurisdiction to another and changes over time. Non-lawyers should obtain specific advice for specific legal problems and should not attempt to act as their own counsel.

It has been said that ignorance of the law is no excuse. The time has passed when architects, engineers, and geoscientists could rely on technical competence in their fields and ignore the law. For these professionals, the likelihood of being involved in a lawsuit, whether as plaintiff or defendant, is
much greater now than in the past. Since the cost of prosecuting, defending, and settling claims can be high, recognizing and preventing potential legal problems early is important. Moreover, all professionals need to know the basics of contract law so that they can negotiate appropriate agreements.

Many chapters in this text apply equally to all professions. For example, the basic principles of contract law and negligence, and property law and business organizations are as applicable to architecture as they are to engineering and geoscience. However, other portions of the text will be more useful to some professions than to others. For example, geoscientists may want to pay particular attention to section 11.5 on geoscience agreements and to Chapter 25, which covers the disclosure requirements for professionals involved in mining and oil and gas exploration.

Supplements

Practical Law of Architecture, Engineering, and Geoscience, Third Canadian Edition, is accompanied by a complete supplements package:

- Instructor’s Manual: The Instructor’s Manual includes a sample course outline featuring notes on key concepts, teaching suggestions, and brief case summaries.
- Test Item File: A comprehensive testbank of various types of questions has been prepared in Word to accompany this Canadian edition.
- PowerPoint® Slides: Electronic slides are available in Microsoft PowerPoint. The slides illuminate and build on key concepts in the text.

The Instructor’s Manual, Test Item File, and PowerPoint® Slides can be downloaded from Pearson Canada’s online catalogue at http://catalogue.pearsoned.ca.

- Companion Website: Practical Law of Architecture, Engineering, and Geoscience, Third Canadian Edition, is supported by an excellent Companion Website that includes APEGA- and PEO-style examination questions, self-study questions, key terms and concepts, sample contracts, and links to relevant websites.
- CourseSmart: CourseSmart goes beyond traditional expectations—providing instant, online access to the textbooks and course materials you need at a lower cost for students. And even as students save money, you can save time and hassle with a digital eTextbook that allows you to search for the most relevant content at the very moment you need it. See how when you visit www.coursesmart.com/instructors.

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