

Proposal to Amend Use of Seal Regulations – Public Consultation

Introduction

The Professional Standards Committee (PSC) at PEO was directed by Council to propose amendments to the Use of Seal regulations in O. Reg. 941 of the *Professional Engineers Act*, as per the Reasons for Amending Use of Seal Regulations section in this document. This document was prepared by the PSC Use of Seal subcommittee.

Instructions for Participants of this Public Consultation

This document is divided into the following sections:

- Background Information
 - Current Use of Seal Regulation (pages 2)
 - Relevant Seal Case Law Used in Considering Amendments to the Regulations (pages 2-3)
 - Reasons for Amending Use of Seal Regulations (pages 3-4)
 - Key Conclusions from Jurisdictional Scan of Use of Seal Regulations (page 4)
- Text of Proposed Amendments to Use of Seal Regulations (pages 5-6)

The PSC would like your input to understand if you agree with the Reasons for Amending Use of Seal Regulations (pages 3-4).

Furthermore, the PSC welcomes questions you may have on any part of this document.

Finally, the Text of Proposed Amendments to Use of Seal Regulations (pages 5-6) underwent an external legal review. Consequently, the PSC welcomes substantive comments on the proposed amendments, not on the legislative drafting.

Background Information

Current Use of Seal Regulation

The use of the professional engineer's seal is governed by section 53 of Regulation 941/90, made under the *Professional Engineers Act (the Act)*:

"53. Every holder of a licence, temporary licence, provisional licence or limited licence who provides to the public a service that is within the practice of professional engineering shall sign, date and affix the holder's seal to every final drawing, specification, plan, report or other document prepared or checked by the holder as part of the service before it is issued. R.R.O. 1990, Reg. 941, s. 53; O. Reg. 13/03, s. 16."

Further, in section 72(2)(e) of the same regulation:

"professional misconduct" means, ... (e) signing or sealing a final drawing, specification, plan, report or other document not actually prepared or checked by the practitioner,"

Relevant Seal Case Law Used in Considering Amendments to the Regulations

Edgeworth Construction Ltd. v. N. D. Lea & Associates Ltd.

From page 212: *"The situation of the individual engineers is quite different. While they may, in one sense, have expected that persons in the position of the appellant would rely on their work, they would expect that the appellant would place reliance on their firm's pocketbook and not theirs for indemnification; see London Drugs, supra, at pp. 386-87. Looked at the other way, the appellant could not reasonably rely for indemnification on the individual engineers. It would have to show that it was relying on the particular expertise of an individual engineer without regard to the corporate character of the engineering firm. It would seem quite unrealistic, as my colleague observes, to hold that the mere presence of an individual engineer's seal was sufficient indication of personal reliance (or for that matter voluntary assumption of risk)."*

From page 222: *"The seal attests that a qualified engineer prepared the drawing. It is not a guarantee of accuracy. The affixation of a seal, without more, is insufficient to found liability for negligent misrepresentation."*

Hilton Canada Inc. v. Magil Construction Ltd.

From page 18: *“It is generally agreed that the stamp and seal of an engineer communicates to the building official and to the public that the contents of the document sealed reflected professional knowledge and care; and that applicable statutes, standards, codes and regulations have been followed.”*

From page 24: *“Section 2.5.1 of the Code mandates that the design and general review of buildings be undertaken by an architect and professional engineer. It is not unreasonable for the City to adopt a policy in reliance upon their expertise. The policy adopted, the cursory review, reflected a true policy decision based upon a consideration of economic factors, being the allocation of resources - both human and financial. The policy was implemented in a consistent and reasonable manner.”*

Key conclusions from case law:

- Parties place reliance on an engineering firm’s pocketbook not on individual engineers for indemnification;
- The seal attests that a qualified engineer prepared an engineering document. It is not a guarantee of accuracy;
- The seal of an engineer communicates to authorities and to the public that the contents of sealed documents reflect professional knowledge and care, and that responsible provision has been made in the preparation of those document for complying with applicable statutes, standards, codes, and regulations;
- It is not unreasonable for authorities or other parties to adopt a policy in reliance upon the expertise of engineers; and
- However, such a policy of reliance upon engineering expertise would have to be implemented in a consistent and reasonable manner.

Reasons for Amending the Use of Seal Regulations

The following are key reasons for amending the Use of Seal Regulations:

1. The current regulation states that the seal is applied only on documents provided as part of a service to the public. A service to the public is generally interpreted as engineering work through a Certificate of Authorization holder for a client. However, sealing is an obligation on licence holders and not the C of A. Consequently, the Professional Standards Committee (PSC) recommends clarification on sealing. The PSC believes engineers should be informed to seal final engineering documents issued to any external entity such as a client, an authority or a manufacturer where the recipient is to rely on the document for professional engineering design, information or opinion. It is likely that the original wording was to exclude strictly internal engineering work from mandatory sealing.

2. The regulation has terms such as “checked by” and “final” that are interpreted in various ways. The *Use of the Professional Engineer’s Seal* practice guideline has sought to clarify the meaning of these terms; however, it would be clearer to have these terms defined in the regulation. Further, these definitions should be consistent with the relevant case law cited above. Finally, it was probably intended in the original wording that “checked by” meant “prepared under the practitioner’s personal supervision”.
3. The current regulation does not deal with use of electronic documents. As the *Use of the Professional Engineer’s Seal* practice guideline has been revised to allow the use of electronic documents, ergo the regulation should reflect this change.
4. The practice guideline *Professional Engineers Using Software-Based Engineering Tools* indicates that output data from software-based engineering tools should be sealed when issued outside the organization employing the engineer. For example, software and data that does not leave the engineer’s organization does not have to be sealed, such as internal 3D solid model files. On the other hand, the output of a finite element analysis sent to an external entity, for instance would have to be sealed. The regulations should reflect this requirement.

Key Conclusions from Jurisdictional Scan of Use of Seal Regulations

The Use of Seal subcommittee performed a jurisdictional scan of use of seal regulations in North America. Below are some key conclusions:

- The State of Texas explicitly has a “purpose of the seal”;
- Most jurisdictions refer to “supervision” except Ontario;
- The province of Alberta refers to a “thorough review” by the engineer;
- Only Ontario refers to “services to the public”; and
- No jurisdiction requires internal engineering work to be sealed.

Text of Proposed Amendments to Use of Seal Regulations

Add the following text to [Section 52 of Reg 941](#):

- (6) A Member may have an electronic seal with an electronic signature if its design is approved under this section.
- (7) For the purposes of subsection (6),
- a) “electronic seal” means an electronic representation of an engineer’s seal including, but not limited to, electronic scans of physical seals.
 - b) “electronic signature” means an electronic representation of an engineer’s signature including, but not limited to, electronic scans of physical signatures.

Replace [Section 53 of Reg 941](#) in its entirety with the following text:

(1) In this section,

“affix” means impose the image of the seal that the person creates or adopts in order to seal a document and that is in the document.

“document” means a drawing, specification, plan, report or other document whether in electronic, 3D, optical or any other medium.

“engineering document” means a document that expresses the practice of professional engineering.

“employer” means a person who employs the individual who seals a document.

“external party” means a person, other than the individual who seals a document or his or her employer, and includes a client.

“final” means a document ready for submission for an intended purpose and includes every final drawing, specification, plan, report or other engineering document.

“issued” includes a final document delivered or sent to an external party.

“person” includes an individual, body corporate or partnership.

“personal supervision” means assuming responsibility for and supervising the individual or individuals who prepared the engineering document.

“prepared”, with respect to an engineering document, means performing the engineering work that is reflected in the document’s content, and “prepare” and “preparation” have corresponding meanings.

- (2) Before it is issued to an external party, every practitioner who assumes responsibility for the engineering content of a final engineering document shall sign, date and affix his or her seal to the document.
- (3) To assume responsibility for the engineering content of a document, the practitioner must:
- (a) prepare the document;
 - (b) personally supervise the preparation of the document; or
 - (c) review the document with the intent of assuming professional responsibility for the document's content and in at least the same amount of detail as would be required had the practitioner prepared, or personally supervised, the preparation of the document.
- (4) The signature and date required by subsection (2) shall:
- a) not obscure the practitioner's name or, if applicable, licence number, limited licence number, provisional licence number or temporary licence number, as the case may be; and
 - b) be applied:
 - i) either within or immediately adjacent to the image of the seal in a legible manner; and
 - ii) at the same time or immediately after the document is sealed.
- (5) Final engineering documents not required to be sealed solely as a result of not being released to an external party may still be sealed.
- (6) When affixed to a final engineering document, the seal represents that the practice of professional engineering reflected in the document can be relied on for the document's intended purpose and that the practitioner whose seal is affixed to the document accepts professional responsibility for the document's engineering content.
- (7) Seals shall not be affixed to any document or other material except in accordance with this section.

Modify section [72\(2\)e of Reg 941](#):

"professional misconduct" means,...

- (e) sealing a document in a manner than contravenes Section 53.