

THE PURPOSE OF THE PROFESSIONAL ENGINEER'S SEAL

By José Vera, P.Eng., MEPP

The professional engineer's seal is the distinguished mark of the engineering profession and an indication that the content of sealed documents was prepared by or under the personal supervision of a professional engineer. Proper use of the seal is essential, not only for complying with the *Professional Engineers Act* but also for assuring the public that the seal represents the profession's commitment to standards of care and excellence. This article provides practitioners with background information on the purpose of the professional engineer's seal and the concept of reasonable reliance from the perspective of different jurisdictions.

THE PURPOSE OF THE PROFESSIONAL ENGINEER'S SEAL IN CANADA

Consider this example: The province of British Columbia hires contractor ABC and engineering firm XYZ to work on a highway extension project. After the project is completed, ABC alleges that they lost money due to engineering design errors found in the drawings produced by XYZ. Consequently, ABC decides to sue both XYZ and their employee engineers, who sealed these drawings, for negligent misrepresentation.

The case goes to the Supreme Court of Canada (SCC), which holds engineering firm XYZ liable. However, the SCC dismisses the case against the individual engineers, noting that the purpose of the seal is to indicate that a qualified professional engineer prepared a document, not to indicate that an engineering document is accurate.

This example is based on a well-known SCC decision that establishes the purpose of the seal in Canadian law. Below are two key paragraphs from the decision:

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 only basis upon which they (the individual engineers) are sued is the fact that each of them affixed his seal to the design documents. In my view, this is insufficient to establish a duty of care between the individual engineers and Edgeworth. 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. I agree with the courts below that the action against the individual defendants should be struck." (*Edgeworth Construction Ltd. v. N. D. Lea & Associates Ltd.*, [1993] 3 S.C.R. 206, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1046/index.do>)

THE PURPOSE OF THE PROFESSIONAL ENGINEER'S SEAL IN THE TEXAS ENGINEERING PRACTICE ACT AND RULES

PEO's Professional Standards Committee (PSC) is currently developing proposed amendments to add clarity to the use of seal regulations. As part of this project, the PSC sought to find out if the purpose of the seal appears codified in other acts from neighbouring jurisdictions and conducted a jurisdictional scan of use of seal regulations in North America. During their research, the PSC found that the *Texas Engineering Practice Act and Rules* contains a codified (i.e. statutorily legislated) purpose of the professional engineer's seal under Subchapter B: Sealing Requirements, as follows.

137.33 Sealing Procedures

- (a) The purpose of the engineer's seal is to assure the user of the engineering product that the work has been performed or directly supervised by the professional engineer named and to delineate the scope of the engineer's work.
- (b) Licence holders shall only seal work done by them, performed under their direct supervision as defined in §131.81 of this title, relating to Definitions, or shall be standards or general guideline specifications that they have reviewed and selected. Upon sealing, engineers take full professional responsibility for that work. (*Texas Engineering Practice Act and Rules*, <https://engineers.texas.gov/downloads/lawrules.pdf>)

Note that the above requirements found in the Texas engineering act are similar to those contained in PEO's practice guideline *Use of the Professional Engineer's Seal*, which states, "The engineer, by affixing the seal, assumes responsibility and is answerable for the quality of the work presented therein."

AFFIXING THE SEAL IS AKIN TO ASSUMING PROFESSIONAL RESPONSIBILITY

The information covered up to this point allows us to conclude the following:

1. The purpose of the professional engineer's seal is to identify that a professional engineer performed specific work; and
2. The purpose of the professional engineer's seal has no connection to civil liability;

3. Instead, affixing the professional engineer's seal is a proxy for assuming professional responsibility.

Consequently, the myth that professional engineers could be held personally liable in a civil lawsuit only because they sealed a document is, simply that—a myth. After all, as the SCC case above notes, parties place reliance on an engineering firm's pocketbook, not on individual engineers for indemnification. Rather, the use of seal emblemizes professional responsibility.

REASONABLE RELIANCE ON SEALED ENGINEERING DOCUMENTS IN ONTARIO

Consider this example: Major hotel chain DEF engages engineering firm GHI to design an addition to their airport hotel. After construction, during a site investigation, another engineering firm, JKL, discovers the addition has serious structural deficiencies; consequently, the hotel must be closed due to safety concerns. The original design engineers admit their design was negligent, and their employer, engineering firm GHI, settles the claims brought against it. Furthermore, DEF sues the municipality, MNO, claiming their building department should not have approved clearly deficient plans and, therefore, MNO is partly responsible for the damages. However, in the Ontario Court of Justice (OCJ), the action is dismissed because MNO was held to be immune to tort liability due to their policy of reasonable reliance on sealed engineering documents requiring only cursory reviews from their building department.

This example is based on an OCJ decision that establishes the concept of reasonable reliance by another regulator on sealed engineering documents in Ontario law. Below are two key paragraphs from the decision:

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 imple-

mented in a consistent and reasonable manner." (*Hilton Canada Inc. v. Magil Construction Ltd.*, [1998] O.J. No. 3069, www.peo.on.ca/index.php/ci_id/33416/la_id/1.htm)

Following are some conclusions relating to reasonable reliance on sealed engineering documents that we can draw from this OCJ case:

1. The seal of an engineer communicates to other regulatory authorities and to the public that the contents of sealed documents reflect professional knowledge and care and that responsible provisions have been made in the preparation of those documents to comply with applicable statutes, standards, codes and regulations;
2. Consequently, it is not unreasonable for regulatory authorities to adopt a policy of reliance upon the expertise of engineers;
3. However, such a policy of reliance by a regulatory authority upon engineering expertise would have to be implemented in a consistent and reasonable manner.

Based on the above, it follows that regulatory authorities can choose to adopt a policy of reasonable reliance on engineering documents bearing the seal of a professional engineer that will not attract liability in tort as long as it is applied consistently.

To gain a better understanding of the use of the professional engineer's seal, practitioners should:

- Read the *Use of the Professional Engineer's Seal* guideline (www.peo.on.ca/index.php/ci_id/22148/la_id/1.htm);
- Watch the *Use of the Professional Engineer's Seal* webinar (www.youtube.com/watch?v=5ZTXPaerulY); and
- Consider participating in the upcoming public consultation to revise the *Use of the Professional Engineer's Seal* guideline (likely to occur in 2020).

Finally, PEO's practice advisory team is available at practice-standards@peo.on.ca and is happy to hear from practitioners looking for general information on their professional obligations, such as the use of seal. However, practitioners looking for assistance on resolving legal or civil liability problems occurring in specific, concrete situations should always contact their lawyer, who can best address with the practitioner who is called to exercise his or her professional judgment in particular, factual circumstances and advise on the interplay between civil liability and regulatory facets of sealing. **e**

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GUIDELINE REMINDER Did you know? PEO offers useful guidelines for practitioners. For a complete list of resources, visit www.peo.on.ca/index.php/ci_id/1834/la_id/1.htm