

# RESOLVING DISAGREEMENTS INVOLVING THE USE OF THE PROFESSIONAL ENGINEER'S SEAL

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One of the most frequent questions that PEO's practice advisory team receives involves the appropriate use of the professional engineer's seal, specifically what documents need to be sealed and by whom. For example, in some complex engineering projects, due to division of labour and specialization, there may be several different engineering documents prepared by or checked by different engineers. Consequently, in order to avoid disagreements involving the use of the seal, practitioners need to plan early to determine what documents need to be sealed and which engineer or engineers will assume responsibility for which document.

## CONFLICTING OBLIGATIONS: CONTRACTUAL VERSUS STATUTORY

Under the *Professional Engineers Act* (the act), specifically section 53 of Regulation 941, practitioners have a statutory obligation to affix their seals on final engineering work that they either prepared or reviewed. However, sometimes practitioners are put in situations where their contractual obligations might conflict with their statutory obligation to seal. For example, some contracts might state that engineers must seal certain non-engineering documents or documents that they did not review.

In these situations, practitioners should note that sealing documents should never be a contractual obligation in the first place (see "How practitioners can prevent conflicting obligations," *Engineering Dimensions*, March/April 2018, p. 21). It is in the interest of practitioners to avoid being placed in a position where their contractual obligations are not consistent with their statutory ones. These situations can be prevented by having early discussions with clients and by drafting clearly worded agreements that are consistent with practitioners' statutory obligations.

## WHEN AUTHORITIES REQUEST SEALED ENGINEERING DOCUMENTS

It is not unreasonable for authorities to adopt a policy that relies on the expertise of professional engineers. Consequently, authorities, such as city building departments, often request that clients provide professional engineering drawings or reports before issuing a permit or an approval. However, requesting that a client provide a document sealed by a professional engineer is not the same thing as requesting that a practitioner seals a specific document, since the use of the seal is a statutory obligation for the practitioner, and therefore

it is the practitioner who should decide if a document must be sealed or not by referring to PEO's practice guideline *Use of the Professional Engineer's Seal* ([peo.on.ca/sites/default/files/2019-10/UseofProfessionalEngineerSeal.pdf](http://peo.on.ca/sites/default/files/2019-10/UseofProfessionalEngineerSeal.pdf)). Nonetheless, when an authority makes a request for sealed engineering documents, it is because the work likely falls within the practice of professional engineering, and therefore these documents must be approved and sealed by a practitioner as per the requirements of section 53 of O.Reg. 941.

For example, often structures such as modular greenhouses installed in Ontario are designed and manufactured elsewhere, such as the United States. While it could be argued that small residential design projects are exempt in the act, the act does not actually exempt structural condition assessment reports for these projects, so it is reasonable for a building official to request that a client provide a structural condition assessment report prepared and sealed by an Ontario engineer. The use of an engineer's seal is a matter of professionalism and not an independent source of civil liability. The failure to abide by section 53 of O.Reg. 941 constitutes professional misconduct under section 72(2)(g) of O.Reg. 941. Consequently, when in doubt, engineers are better off affixing the seal than withholding it.

## DISAGREEMENTS BETWEEN DESIGN ENGINEERS AND CHECKING ENGINEERS

There may be situations where there is a disagreement between the practitioner who is responsible for preparing a design and the practitioner responsible for checking the work: Which one should seal the drawing? For instance, Marcus, an experienced engineer in water resources, designs the flood maps for a project. Julia, a more senior engineer and an expert in water resources, is assigned to check the design and agrees with Marcus's proposed methodology. Julia informs Marcus that after completing the checking, she has no concerns but states that it is Marcus who should seal the flood maps, since it is his design. Marcus disagrees, noting that it is Julia who checked the maps, and so she should seal them since she is more senior.

Section 53 states: "Every holder...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." Therefore, it could be reasonably argued that both Julia and Marcus should seal the flood maps. For clarity purposes, Marcus could write a note next to his seal that he is assuming responsibility for the design, while Julia could write a note next to her seal that she is assuming responsibility for checking the design.

To avoid disagreements of this nature, practitioners should encourage their employers to have clear approvals processes that are consistent with PEO's practice guidelines, especially *Use of the Professional Engineer's Seal* and *Assuming Responsibility and Supervising Engineering Work* ([peo.on.ca/sites/default/files/2019-11/Assumingresponsibilityandsupervisingengineeringworkguideline.pdf](http://peo.on.ca/sites/default/files/2019-11/Assumingresponsibilityandsupervisingengineeringworkguideline.pdf)). [e](#)

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