

# POSITION PAPER ON THE TOPIC OF DIRECT SUPERVISION BY A LICENSED ARCHITECT

## The Act

The Architects Act of 2008 makes reference to “direct supervision” under Part 35, Clause (c) wherein it states that:

*“Nothing in this Act shall be taken or construed to prohibit or preclude a person from providing architectural services where he or she is under the direct supervision of a person holding a license;”*

To clarify, if not obvious, this means that anyone who is employed or contracted by a licensed architect (presumably other architects, interns, technicians, technologists or draftsmen/draftswomen) can provide architectural services. Except that there is one crucial and imperative caveat: that person must be under the direct supervision of the licensed architect.

The corollary of this statement can be interpreted thus: Anyone who provides architectural services without the “direct supervision” of a licensed architect is in contravention of the Act (a provincial statute) and therefore, if found guilty of such an offence, may be subject to the penalties described in the Act. In short, that person is breaking the law.

Architectural services are broadly defined in the definitions portion of the Act, but it is apparent from Section 35 what sort of services are excluded. These have been considered and documented based on what constitutes a tolerable level of risk to the safety of the general public. For instance, an architectural design for assembly buildings with an occupant load of 60 persons or less may be prepared, theoretically, by anyone. No architect is required. Similarly, a retail or office building can be designed by anyone, provided the building offers no more than 300 square metres of gross floor area. Readers are encouraged to become familiar with all the exceptions.

These exceptions are clear to provincial and most municipal authorities having jurisdiction. That is to say, the Act is sufficiently clear to allow an agency responsible for issuing permits or approvals to recognize building projects that require associated documents (typically drawings and specifications) to be sealed and signed by a licensed architect. And since the proclamation of the Act, these agencies have demonstrated not only a thorough understanding of what constitutes violation of the Act, but also a willingness to enforce the statute by withholding or refusing permits, including building permits and occupancy permits.

## The Regulations

Understanding what constitutes architectural services as described in the Act, and the fact that these can be provided by anyone under the direct supervision of a licensed architect, leads to the concept of “responsible control” as documented in the Architects Regulations of 2008.

The Regulations are essentially the documented means whereby the precepts covered under the Act are enforced. The Regulations are where “responsible control” is defined thus:

**“Responsible control** means the degree of control over and detailed knowledge of the content of technical submissions during their preparation that is ordinarily exercised by architects applying the required professional standard of care but does not include reviewing, or reviewing and correcting, technical submissions after they have been prepared by others.”

The notion of responsible control can assist in determining the spirit of what is meant by “direct supervision”, and this is critical because a licensed architect cannot seal documents over which he/she has not exercised responsible control.

Part 6, Section 5 of the Regulations indicate all the circumstances under which an architect can seal documents pertaining to the design and construction of any given building. The purpose of this position paper is to focus on Sentence (b) wherein it states that *“An architect can only stamp or seal documents where they are prepared by persons under the architect’s responsible control”*. Therefore, architects who stamp or seal drawings prepared by persons over which he/she does not or cannot practicably exercise responsible control, is in contravention of the Regulations and by default, the Act. To put it unequivocally: it is illegal.

## Interpretation

1. Persons who provide architectural services who are not under the responsible control of an architect are in contravention of the Act.
2. Architects who seal or stamp documents that have not been prepared under his/her direct supervision are in contravention of the Act.

So where is the gray area in the above statements? How can we interpret what constitutes responsible control or direct supervision now that technological advances have made remote work commonplace? And even if a clear notion is ascertained, can the notion be applied to the ever-widening gamut of project delivery methodologies?

To help explore these questions, we need to return to the sole reason why the legislation as it applies to architects and architectural services was enacted in the first place: to protect the general public. Every year thousands of people die or are injured in buildings – most commonly in fires, but sometimes through structural collapse or through asphyxiation/trampling caused by a stampede brought on by panic. An architect is the one key professional charged with the overarching responsibility to mitigate loss of life and loss of property due to catastrophic events through proven design methodologies. Any injury or death is a catastrophic event.

Architects are also responsible to protect the public by providing building designs that are fit for purpose – that is they will withstand the rigors of the environment for an accepted period of time, exhibiting limited deterioration based on the cost and schedule parameters that have agreed with the Owner, but in no case, providing less than that prescribed by building codes and regulations.

With public safety as the paradigm for the Act, the interpretation of what constitutes non-compliance is not a particularly taxing exercise. In protecting the public, architectural services cannot be provided by persons who:

- (a) have not had the rigorous formal education demanded by the profession;
- (b) have not had their academic standards scrutinized by an independent body;
- (c) have not had the benefit years of internship under senior professionals;
- (d) have not had the professional standards to which they aspire formally tested and examined;
- (e) do not carry professional liability insurance to protect clients or offer recourse in the event of professional negligence; and
- (f) are not required to participate in continuing education as part of a condition of licensing.

However, in recognition of the fact that the design and construction of a building takes the combined effort of a team of creative and talented individuals, the bulk of whom will not be licensed architects, architectural services are permitted to be provided by these individuals provided they are under the direct supervision of a licensed architect. Direct supervision does not mean constant supervision, but there are a host of indicators that form the litmus test. This is why the regulations make reference to “adequate and complete records” that demonstrate direct supervision be retained for up to five years. Examples could be, although not limited to, the following:

- 1) Formal contract with an Owner, Owner’s Representative or Prime Consultant. If no such legally binding agreement exists, it suggests that the architect is essentially removed from the specific requirements of the project. This typically means that an individual has acted as an intermediary and suggests that the architect did exercise responsible control.
- 2) Project correspondence. Even the smallest projects today require a plethora of correspondence. This will include written exchanges between the architect and the Owner, the architect’s sub-consultants, authorities having jurisdiction, funding agencies, specialist services providers, etc. If the architect cannot produce examples such correspondence, it is again an indication that someone else has acted as intermediary.
- 3) Documentation as to building code and regulatory compliance. If the architect has no evidence of having completed various code checks that demonstrate his/her research into the regulatory compliance of the design, it can be argued that the architect has little or no “detailed knowledge” of the design. The architect may have had third party expertise in this area, but he/she should be able to produce evidence that such expertise was personally contracted by them.
- 4) Clear supervisory hierarchy and line of authority. Because a team effort is required, especially on larger projects, it is understood that the architect exercising responsible control over the technical documentation may need to establish a reporting structure that supports responsible control of the process. In smaller practises this may not necessarily be formalized, however, where technical services are contracted out, direct supervision may be difficult to argue unless it is supported by the previous items together with a traceable series of written instructions and drawings reviews (mark-ups) that are preserved as the required “records”.
- 5) Concept and Design Development. Every architectural project has distinct phases prior to contract documentation or construction drawings / specifications. One of the hallmarks of a legitimate practice would be the preparation of conceptual designs and documentation with respect design development. The absence of any evidence with respect to the conceptual or preliminary design phases would suggest that the contract documentation was sealed / stamped fraudulently, i.e. without direct supervision / responsible control.

## Conclusion

Let's be clear. This policy paper is aimed at two essentially illegal practices perpetrated by different parties but inextricably connected through the process of architectural services for any given building design that is not clearly an exception under Section 35 of the Architects Act. These are persons who have prepared construction documents without any input from a licensed architect, and licensed architects who are prepared to seal/stamp such documents even though they have not had oversight in the production of these documents.

The Act was not put in place to preserve the domain of licensed architects while persecuting trained technicians, technologists and/or draftspersons. It was enacted so that the general public, building owners and managers, municipalities and advocate groups for persons with disabilities can have the highest level of assurance that buildings are safe and accessible.

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## References

Part 32 of the **Architects Act** 2008, SNL2008 A-15.1 , Clause (b.1):

*“The board may, with the approval of the minister, make regulations respecting the use of stamps and seals;”*

Part 35 of the **Architects Act** 2008, SNL2008 A-15.1, Clause (c):

*“Nothing in this Act shall be taken or construed to prohibit or preclude a person from providing architectural services where he or she is under the **direct supervision** of a person holding a license;”*

Part 2 of the **Regulations**, 105/10 Clause (c):

*“In these regulations “responsible control” means the degree of control over and detailed knowledge of the content of technical submissions during their preparation that is ordinarily exercised by architects applying the required professional standard of care but does not include reviewing, or reviewing and correcting, technical submissions after they have been prepared by others.”*

Part 6 of the **Regulations**, 105/10 Section (5):

*An architect shall only seal or stamp documents where*

- (a) *they are prepared by the architect;*
- (b) *they are prepared by persons under the architect's responsible control;*
- (c) *they contain limited parts of a design prepared by another architect where the sealing or stamping architect has reviewed the other architect's work and either has coordinated the preparation of the work or has integrated the work into his or her own technical submissions;*
- (d) *they are prepared by another architect licensed in another jurisdiction recognized by the board where*
  - i. *the sealing or stamping architect has reviewed the other architect's work and has integrated the work into his or her own document, and*
  - ii. *the other architect's documents are prototypical building documents;*
- (e) *the name of the architect or, in the case of architectural services being provided by a firm, partnership or corporation, its name is prominently displayed in the document and identified as the "Architectural Consultant"; and*
- (f) *the document being sealed or stamped does not identify another party that could be misconstrued by authorities having jurisdiction or members of the public as a provider of architectural services unless the party holds a licence or the firm, partnership or corporation retains an architect licensed to provide direct supervision of the offering and provision of architectural services as permitted by subsection 13(2) of the Act.*

Part 6 of the **Regulations** 105/10 , Section (6):

*An architect may seal or stamp drawings, specifications or other work related to the provision of architectural services that are exempt under section 35 of the Act where the drawings, specifications or other work meets the requirements of subsection (5).*

Part 6 of the **Regulations** 105/10, Section (7):

*A registered architect sealing or stamping documents not prepared by that architect but prepared under the architect's responsible control by another person, shall maintain and make available to the board upon request for at least 5 years following the sealing and stamping, adequate and complete records demonstrating the nature and extent of the architect's control over and detailed knowledge of those documents throughout their preparation.*

Part 6 of the **Regulations** 105/10, Section (8):

*An architect sealing or stamping documents integrating the work of another architect into the architect's own work that are permitted under paragraph (5)(c) or (d) shall maintain and make available to the board upon request for at least 5 years following the sealing or stamping, adequate and complete records demonstrating the nature and extent of the architect's review of and integration of the work of the other architect into his or her own documents, and that the review and integration met the required professional standard of care.*

Part 6 of the **Regulations** 105/10, Section (9):

*An architect may make application to the board and the board may grant permission to an architect to seal or stamp documents prepared under the responsible control of another architect who is no longer permitted or able to seal or stamp documents, subject to terms set by the board.*