

- 9) Correctly complete the following sentence:
_____ allows TSSA to accept and amend codes and standards without a regulatory change.
- a) Technical Standards and Safety Act
 - b) Regulation 215/01 Fuel Industry Certificates
 - c) Regulation 223/01 Codes and Standards Adopted by Reference
 - d) Regulation 211/01 Propane Storage and Handling
- 10) Who does TSSA report to?
- a) Ministry of Government and Consumer Services (MGCS)
 - b) Ministry of Energy (ME)
 - c) The Attorney General
 - d) Their shareholders
- 11) Which of the following best describes due diligence?
- a) Knowing and Understanding all of the Regulations before working in the industry.
 - b) Knowing who the local TSSA Inspector is and advising him/her of ongoing work.
 - c) Actions that are reasonable in the circumstances expected from a reasonable person.

2. Technical Standards and Safety Act, 2000

Overview

Purpose

The Ontario *Technical Standards and Safety Act, 2000* provides a high level set of legal requirements that enable the government to publish related regulations. In setting this framework, the Act includes a number of basic requirements and identifies and assigns administrative powers.

The gas technician needs to become familiar with the Act. This Chapter will examine the contents of the Act with the main focus on the responsibilities it assigns.

Objectives

At the end of this Chapter, you will be able to:

- name the Ontario Act directly related to standards and safety within the gas industry;
- correctly apply specific terms used in the Act by referencing their definitions;
- describe how the directors and inspectors are appointed;
- identify the individuals that the Act requires to be authorized;
- describe the various orders and powers outlined in the Act;

- identify the offences, fines, and penalties specified in the Act; and
- describe the duties of employers and contractors.

Terminology

Term	Abbreviation (symbol)	Definition
Administrative authority		A not-for-profit corporation without share capital incorporated under the laws of Ontario or Canada that operates in Ontario but that does not form part of the Government of Ontario, any other government, or an agency of a government [from the <i>Safety and Consumer Statutes Administration Act, 1996</i>]
Authorization		Any form of authorization under this Act and includes: <ul style="list-style-type: none"> a) with respect to a person, a certificate, identification, license or registration; and b) with respect to a thing, an approval, certificate, license, permit, or registration.
Designated administrative authority		An administrative authority that the Lieutenant Governor in Council has designated under Subsection 3 (2) [from the <i>Safety and Consumer Statutes Administration Act, 1996</i>]
Director		A person appointed as a director under this Act or a predecessor Act
Inspector		A person appointed as an inspector under this Act or a predecessor Act
Minister		The Minister responsible for the administration of this Act
Person		An individual, an association, a partnership, or a corporation
Seal		To mark, tag, seal, or label, and its noun has a corresponding meaning

Overview of act and definitions

An act is “a formally codified result of deliberation by a legislative body; a law, edict, decree, or statute.”

The *Technical Standards and Safety Act, 2000* became law in Ontario in 2001 and had its last amendment in 2019. The Act enhances public safety in Ontario by identifying the administrative powers of the authority having jurisdiction, stating the basic rights, duties, and responsibilities of

persons that the Act governs, and providing an efficient and flexible administration of technical standards with respect to amusement devices, boilers, pressure vessels, elevating devices, hydrocarbon fuels, and operating engineers.

This section presents the following text in the same order as the sections of the Act, with only some sections of the Act reproduced in highlighted boxes. It is worthwhile reading through the entire Act in addition to this summary.

Note: Throughout this Unit, texts contained in boxes like this sentence are quoted directly from the Act, Regulation or Code.

Definitions

The Act defines some important words upfront to clarify their intent and application for terms used in the Act and all documents made pursuant to the Act. A definition in the Act applies to the Regulations and Codes accepted by the Act unless those documents use a new definition for the word. Some examples are as follows:

“Authorization” means any form of authorization under this Act and includes:

- a) with respect to a person, a certificate, identification, license, or registration; - and
- b) with respect to a thing, an approval, certificate, license, permit, or registration.

The Act and Regulations extensively use the word authorization, which was identified in previous legislation as a certificate, license, registration, or approval, to replace these words:

Under the *Safety and Consumer Statutes Administration Act, 1996*:

“Administrative authority” means a not-for-profit corporation without share capital incorporated under the laws of Ontario or Canada that operates in Ontario but that does not form part of the Government of Ontario, any other government or an agency of a government.

Designated administrative authority means an administrative authority that the Lieutenant Governor in Council has designated under subsection 3 (2).

The designated administrative authority in Ontario is the Technical Standards and Safety Authority.

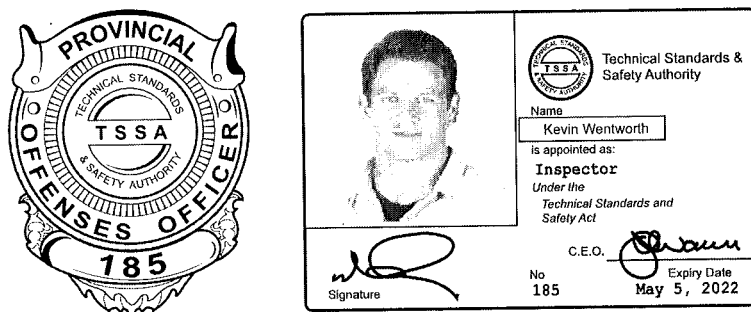
“Director” means a person appointed as a director under this Act or a predecessor Act.

The President and CEO of the TSSA appoints a Director authorized to perform functions necessary for the regulation of the fuels industry.

When the Act, Regulations or Codes refer to the “authority having jurisdiction”, it means the Director of Fuels Safety with TSSA.

“Inspector” means a person appointed as an inspector under this Act or a predecessor Act.

Figure 2-1
Sample inspector badge



An inspector for the purposes of the Act means the Director or a Fuels Safety Inspector who works for TSSA. The powers assigned to an inspector under the Act do not apply to the inspection divisions of gas utilities or propane suppliers. (The Gaseous Fuels Regulation specifies the responsibilities of the distributor.)

Inspectors, who have designation under the Act with respect to hydrocarbon fuel matters, are located regionally throughout Ontario, and all carry identification, similar to that shown above, as proof of their designation.

“Minister” means the Minister responsible for the administration of this Act.

The Minister of the Ministry of Government and Consumer Services is ultimately responsible for the administration of the Act.

“Person” means an individual, an association, a partnership, or a corporation.

Often the word “person” implies an individual in normal conversation. It is important to realize that when the word is used in the Act, Regulation and Codes it has a much wider application. When rights, duties, and responsibilities are assigned to a person by the Act, it refers to an individual, an association, a partnership, or a corporation.

“Seal” means to mark, tag, seal, or label, and its noun has a corresponding meaning.

“Seal” has a wide range of meanings and uses under the new Act. One use is as a replacement for the term “red tag” used in the previous legislation. As such, a “seal” (as shown in Figure 2-2) is a means of marking an appliance or thing that the director or inspector has determined is unsafe for use or requires restriction placed upon it.

A “seal” may also mean a TSSA field label on an appliance as shown in Figure 2-3.

Figure 2-2
Seal example

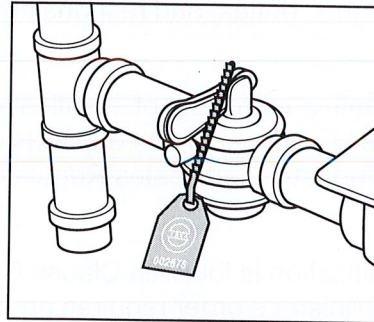


Figure 2-3
TSSA field label example



Appointments and authorizations

Appointments

After the definition section in the Act, the first two clauses deal with the appointment of directors and inspectors. TSSA appoints directors and inspectors or, in the absence of a designated authority, the Minister may appoint directors and inspectors. A director is also an inspector.

Knowing who a director or inspector is under the Act is important for anyone working in the gas industry, as these officials have significant powers and responsibilities that affect daily activities within the industry.

As illustrated under the definition of inspector, the proof of appointment may be a badge and I.D. card, or it may be a letter of appointment or delegation.

In either case, documentary proof of appointment must be produced on request.

Authorizations

As indicated earlier, the term authorization can refer to your certificate or registration. Sections 6 through 16 of the Act outline your rights, duties, and responsibilities as a certificate holder or registered contractor.

It is, of course, a requirement to obtain a certificate of qualification prior to performing work on a hydrocarbon-fuelled appliance. The type of certificate depends on the type of work to be performed as specified in the Fuel Industry Certificates Regulation, which will be covered in Chapter 3. *Regulations*.

The basic requirement to have certification is found in Clause 6 of the Act, which simply states that where the Act, regulations, or Minister's order requires an authorization, a person shall obtain the authorization before carrying out the activity.

Notice that the new Act does not include the exemption found in the previous Energy Act that permitted an uncertified person to work as long as they were "in the presence of a holder of a certificate". The three regulations that this text covers place a greater emphasis on certification but balance these stricter requirements with greater allowance for certified trainees to conduct valuable work under the supervision of higher-level certificate holders.

To attain an authorization, a person must meet all the requirements that the regulations have established or that TSSA has specified in writing. Indeed, the Act states that the person has the right to the authorization if he/she meets the requirements and may be refused that right if he/she doesn't. See Clauses 6. (2) and 6.(3) of the Act.

Clauses 6. (7) and 13. (1) of the Act outline the possible reasons for suspending, revoking, or refusing to grant or renew a certificate or registration. You should study these two important clauses carefully.

The powers of the director under the Act provide TSSA with the ability to carry out its mandate of enhancing public safety and improving services to its clients.

Regarding the gas industry, a critical component of this mandate is to ensure that persons authorized to work in the industry are competent and compliant with the rules governing the gas industry.

TSSA is empowered to ensure a "level playing field" for all technicians and companies by refusing or removing a person's certificate or registration to work in the industry. It only uses this power in dealing with those persons (including companies) who fail to meet minimum standards that the industry and government have established.

All authorization holders should closely consider Clause 13, especially as it relates to the default on the payment of a fee. This is the most common reason for the suspension of a certificate or registration.

Procedure for appeal for refusing or revoking an authorization

Clauses 7 through 13 of the Act provide the steps that a director must follow when refusing to grant or revoking an authorization. It also discusses the rights of the person affected by the director's decision in detail.

The Act limits the far-reaching powers of the director, which can ultimately be appealed to the Provincial Divisional Court.

Orders

The Act enables specified individuals to issue Orders, which are official legal requirements.

Safety orders

The director of the Fuels Safety Division of TSSA may issue a safety order to one or all persons that identifies and addresses a safety issue. Safety orders allow the director to take immediate and effective action to protect public safety.

14. (1) a director may give a safety order to any person or class of persons with respect to any matter governed by this Act that pertains to safety.

(2) The safety order may require that any thing or part of a thing, or class of things, be dealt with as set out in the order, including:

- (a) being shut down;
- (b) being used only in accordance with the order; and
- (c) not being used.

(3) Subject to clause (2.3) (a), the safety order may be given orally or in writing, and be made without prior notice or the holding of a hearing.

If the director issues a general safety order, all certificate holders and registered contractors will receive notification. Failure to comply may result in the suspension of your authorization.

Compliance orders

16. (1) If it appears to a director that a person is not complying with any provision of this Act, the regulations or a Minister's order, the director may apply to a judge of the Superior Court of Ontario for an order directing compliance.

The above section of the Act gives the director another tool for dealing with individuals or companies that do not comply with the laws governing the gas industry. In extreme cases, the director can seek a Superior Court order requiring compliance.

Court-issued compliance orders have a higher status in law and therefore higher penalties and powers of enforcement than normally available to the director. Of course, the court functions independently of TSSA, but if it agrees with the director's request, the court reinforces the requirement to comply by using the full weight of the law.

Powers

The Act defines and assigns powers to specific individuals.

Powers of an Inspector

Clauses 17 through 21 outline the powers of an inspector designated under the Act, with Clause 22 outlining the appeal process regarding inspector's orders.

Fuels safety inspectors are the field representatives of TSSA. They monitor and enforce the requirements of the Act, regulations, codes, standards, and manufacturer's instructions. They also investigate incidents and complaints, as well as field-approve appliances.

Some inspectors have a designated geographic area and are generally known as "the local inspector". Others are project-oriented and may conduct voluntary quality assessments on contractors, facilities, or appliances seeking TSSA endorsement or approval. The director of the Fuels Safety Division of TSSA and some of the TSSA engineers are also designated as inspectors.

The following points summarize the powers of the inspector as given in Clauses 17 to 22 of the Act, which should have direct reference for clarification.

An inspector may enter any lands or premises to carry out an inspection for the purpose of determining compliance with the Act, regulations, or a Minister's order or presence of a hazardous condition. However, an inspector shall not enter a place or part of a place that functions as a dwelling without the occupier's informed consent.

An inspector may remove anything for the purpose of examination of tests to determine compliance with the Act and regulations. He/she must provide notice and receipt to the appropriate person (i.e., owner, supervisor, and operator).

An inspector may seal anything that poses a public safety threat or that the director designates. A seal restricts the use of the thing as the inspector or director sets out in writing. This may be a partial or total restriction on its use.

An inspector may issue an order in writing directing compliance with the Act or regulations (including codes, standards, and certified manufacturer's instructions). He/she will give a time period for compliance, which may be immediate or whenever reasonable. It may involve a follow-up to confirm compliance.

The powers of an inspector under the Act also place some important duties and responsibilities on any person involved in the execution of those powers.

Certificate holders and contractors working in the gas industry must clearly understand these duties and responsibilities. Clauses 19. (1), (3) and 20. (1), (2), and (3) outline duties and responsibilities regarding an inspector.

Based on the number of fuel inspectors, the likelihood of coming into direct or indirect contact with an inspector is very high.

Inspectors are active in the field conducting inspections, investigations, appliance approvals, and compliance audits.

One of the most important duties and responsibilities of a technician or contractor concerning inspectors is compliance with an inspector's order.

The inspector gives a time period for compliance with the order, which you can appeal using the procedure given in the Act. Be aware of the following clauses in this regard.

21. (1) If an inspector finds that any provision of this Act, the regulations or a Minister's order is being contravened, or that a thing under this Act is unsafe or is not being operated or used in accordance with the authorization relating to it, the inspector may

(a) serve the person he or she believes to be the contravener or that person's supervisor or employer, or both, with an order in writing directing compliance with the provision or authorization and may require that the terms of the order be carried out forthwith or within such other time specified in the order; or

(b) seal any thing to which this Act or the regulations apply where there is or may be a demonstrable threat to public safety, whether or not the thing is subject to an authorization.

(2) An inspector who has reason to believe that there is a contravention of this Act, the regulations or a Minister's order that does not present an immediate hazard may serve the contravener or a person who has authority to correct the contravention with a written order directing that the correction be carried out within the time specified in the order.

(5) Any person who receives an order under subsection (2) and complies with it or who has made all reasonable efforts to comply with it is not guilty of an offence in respect of the contravention or other matter that formed the basis of the order.

If the contravention presents an immediate hazard, the inspector may issue an order under 21.

(1) requiring immediate correction and may also seal the hazard to prevent its use. In this case, a technician/contractor must comply with the order (although compliance does not exclude further legal action from the inspector) and with an order issued under 21. (2) related to a non-immediate hazard (but the inspector cannot take further action if the technician/contractor is still carrying out compliance or a reasonable effort at compliance).

Powers of a director

A director is an inspector but has additional powers, duties, and responsibilities under the Act as set out in Clauses 22. (9) through to 32.

Clause 31 outlines the most important of these powers as quoted below. A Director's Order is similar to the safety order powers provided under Clause 14, but allows TSSA to respond quickly to problems not addressed in the Act, regulations, or codes.

31. In cases where there is or may be a demonstrable threat to public safety, a director may make an order with respect to the following matters if they have not otherwise been provided for in this Act, the regulations or a Minister's order:

1. Requiring and establishing the form and location of notices, markings or other forms of identification to be used in conjunction with equipment or other things that are prescribed.

2. Regulating, governing and providing for the authorization of the design, fabrication processing, handling, installation, operation, access, use, repair, maintenance, inspection, location, construction, removing, alteration, service, testing, filling, replacement, blocking, dismantling, destruction, removal from service and transportation of any thing, whether new or used, or a part of a thing and any equipment or attachment used in connection with it.

For the same purpose of providing speedy response to new developments or technological advances or requests for a variance from code requirements, the Act gives the director additional powers (see 32.(3) and 33.(1)).

Powers of the Minister and Lieutenant Governor in Council

The Act gives a number of powers to the Minister of Consumer Relations and the government as represented by the “Lieutenant Governor in Council”, which is essentially the Premier and cabinet.

Although the government has designated TSSA as the authority having jurisdiction over the Act, the government—specifically the Minister—retains ultimate responsibility for the Act.

Minister's orders (see Clause 32) are extremely rare in the area of fuels safety given past experience.

The list of issues that the government may make regulations concerning is very long and general (see Clause 33). It is similar to other acts in this regard.

The function of these sections (32 and 33) is important from a legal sense. These sections establish the scope and extent of government control over an industry or activity. Lawyers, rather than technicians, study them.

Offences, fines, and penalties

Clause 37 (below) defines what constitutes an offence under the Act:

37. (1) every person who

(a) contravenes or fails to comply with any provision of this Act, the regulations or a Minister's order;

(b) knowingly makes a false statement or furnishes false information under this Act, the regulations or a Minister's order;

(c) contravenes or fails to comply with a term or condition of an authorization; and

(d) contravenes or fails to comply with an order or requirement of an inspector or obstructs an inspector, is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than one year, or to both, or, if the person is a body corporate, to a fine of not more than \$1,000,000.

Duty of director or officer

(2) Every director or officer of a body corporate has a duty to take all reasonable care to prevent the body corporate from committing an offence under subsection (1).

Offence

(3) Every director or officer of the body corporate who has a duty under subsection (2) and who fails to carry out that duty is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than one year, or to both.

Separate offence

(4) Where a person contravenes any of the provisions of this Act, the regulations, a Minister's order or any notice or order made under them on more than one day, the continuance of the contravention on each day shall be deemed to constitute a separate offence.

Another consequence of carrying out an offence may be an administrative penalty. This is an allowance given to TSSA under the regulations to levy a fee against a person found to be in contravention of the Act or regulations. It does not preclude charges being laid or fines being assessed (see 37.(5)).

Time limit

37. (6) No proceeding in respect of an alleged offence under this Act may be commenced after two years following the date on which the facts that gave rise to the alleged offence were discovered.

The Act confirms that the expiry date of an offence is based on the time of its discovery—not the time of its commission.

For example, if a chimney liner company improperly installed a liner five years ago (let's say by inserting three feet of liner at the bottom of the chimney and three feet at the top but nothing in between!), and it was not discovered until the chimney collapsed on January 1, 2002, then TSSA could still lay charges for the offence until January 1, 2004.

Of course, TSSA would have to prove to the court beyond a reasonable doubt that no one removed the middle section of the liner between the date of installation and the date of discovery.

Duties of employers and contractors

Employers and contractors need to be aware of their duties and responsibilities specified in the Act.

41. Every contractor and employer shall take all reasonable precautions to ensure that they and their agents and employees comply with this Act, the regulations or a Minister's order.

Notice the use of the word reasonable. Remember the definition of due diligence and the meaning and expectations of this Clause will be transparent. A certificate holder is individually responsible for his or her actions, but so is his or her employer.

“Reasonable precautions” may include, among other things, having a procedure and evidence of monitoring and responding to compliance issues.

For example, how can you reasonably prove that a new employee knows the requirements of the Act and regulations and follows legal requirements? What actions have you taken as an employer when infractions of the code were brought to your attention? What training has been provided or required on new appliances or activities?

This section of the Act is very important and often referenced in charges laid against companies.

Assignment Questions – Chapter 2

- 1) What is the maximum fine that can be charged against a corporate body that is found guilty of obstructing an inspector?
 - a) \$1,000,000
 - b) \$100,000
 - c) There is no maximum
- 2) How can one recognize an inspector?
 - a) By their TSSA jacket
 - b) By their inspectors' certificate
 - c) By their identification badge or card
- 3) Who has the authority to issue an Order banning the use of an unsafe gas appliance model?
 - a) An inspector
 - b) A regional manager
 - c) A director
 - d) A service technician
- 4) Who has the authority to remove a suspected faulty gas valve and take it away for further examination?
 - a) A private investigator
 - b) An inspector
 - c) An engineer
 - d) A service technician
- 5) Name the Ontario Act directly related to safety and standards within the fuels industry.
 - a) Technical Standards and Safety Act, 2000
 - b) The Energy Act
 - c) Occupational Health and Safety Act (OHSA)
- 6) Can someone, other than a certificate holder, service gas equipment if under the direct supervision of a certificate holder?
 - a) Yes, as long as it is inspected before activation
 - b) No