

October 22, 2008

Hon. Harinder Takhar
Minister of Small Business and Consumer Services
Whitney Block
Suite 1306
99 Wellesley St W
Toronto ON M7A1W2

Dear Minister:

Thank you for the opportunity to share our concerns with the TSSA with you last Wednesday.

As we informed you, our members have a high degree of dissatisfaction with all of TSSA's regulatory areas. The results of our member survey on the TSSA were contained in our presentation to you (copy enclosed for your ready reference). These results are unprecedented in terms of dissatisfaction with a government agency or ministry in the province of Ontario.

We believe that the TSSA should be eliminated as a separate agency and that its regulatory activities should be brought back into a ministry of the Ontario government. In the meantime we have a number of interim recommendations.

The purpose of this letter is to document the rationale for our overall recommendation and to detail our interim recommendations.

We believe that the TSSA regulatory model is inherently defective for four reasons:

1. TSSA's mandate is too broad
2. TSSA is not adequately accountable to the Government of Ontario nor are its activities subject to adequate oversight.
3. TSSA fee for service practices are highly questionable.
4. There is inadequate representation of small businesses in TSSA's governance and stakeholder activities.

TSSA's Mandate

According to TSSA's business plan for 2007/2008, *"In addition to its delegated responsibilities, TSSA has the ability to engage in other business activities as long as they do not detract from or conflict with its delegated responsibilities."*

Accordingly, TSSA has the following five-year expansion plan:

1. *“Seek one new delegation of authority of authority (from the province);*
2. *Develop new markets within the province;*
3. *Expand TSSA’s Quality Assessed Facility program; and,*
4. *Continue to develop international business.”*

This is inherently defective and quite possibly against the law. It is inherently defective in the sense that preoccupation with growth and expansion detracts from attention to TSSA’s delegated regulatory responsibilities. To not put too fine a point on it, time and money spent in the past developing international business might have been better spent on ensuring that TSSA knew where all of the province’s propane storage facilities were located.

This expansionary mandate is possibly against the law at least in the manner in which it has been funded. It would be one thing if the Ontario Government was financing the expansion. It is not. But these activities are being funded by fees charged to the businesses TSSA regulates under its delegated authority. This amounts to imposing a tax on these businesses under the guise of a fee for service. This is quite possibly not legal and, in any case, highly objectionable.

Interim Recommendation: The TSSA should be directed to halt these activities immediately and all funds expended in the past on these activities returned to the businesses it regulates under its delegated authority.

Inadequate Accountability to Government and Inadequate Government Oversight of the TSSA

From the foregoing it is evident that TSSA has, and always has had, an expansionary mandate and culture. It has and can be expected to continue to seek to expand its market. It has and will continue to find new safety risks to regulate.

In order to oversee this, the Ontario Government itself must have the engineering, technical and risk assessment skills and knowledge necessary to evaluate TSSA recommendations for new regulation, or forever be hostage to claims, by TSSA, that there is some as yet unregulated threat to public safety. The Ontario government does not currently have these skills.

It is clear from the Sunrise Propane tragedy that the general public holds the Government of Ontario, not the TSSA, responsible for its protection. It behooves the Government of Ontario to eliminate its dependency on what is virtually an arms length agency.

Its new 2006 regulation in refrigeration is a prime example of the above problem. After a year of meetings, phone conversations and extensive correspondence with CFIB, the TSSA has been unable to furnish so much as a single anecdote – let alone data and analysis – supporting the need for its new regulatory activities in this area.

The TSSA has now taken the absurd and indefensible position that its refrigeration regulation doesn’t even require a single incident as proof of need (See Boilers and Pressure Vessels Advisory Council Executive Summary of the November 15, 2007 Council Meeting Minutes). The refrigeration regulation is quite simply a solution in search of a problem – and revenue for the TSSA.

Subsequent discussions and correspondence with ministry officials later revealed that: (1) contrary to what TSSA had told us, its new refrigeration initiative did require new regulatory authority from the government; (2) the ministry did not have the technical capability to assess the actual need for this additional regulation; and, (3) the ministry does not have the power to challenge TSSA regulatory decisions - i.e., TSSA is outside the control of the Ontario Government

Interim Recommendation: The TSSA should be directed to cease its regulatory activities in the area of refrigeration and all regulatory authority in this area should be withdrawn.

Questionable Fee and Expense Practices

The TSSA engages in two highly questionable fee practices.

In its early years, TSSA converted the government flat rate system for services and inspections to a system of charging by the hour. This is a moral hazard for TSSA inspectors. We have had complaints of members being charged for four hours when the inspector only spent two hours. But what business would dare complain directly to TSSA about having been overcharged? It would be suicidal to do so for fear of retaliation on the next inspection.

It is our information that there are situations in which TSSA charges for services (inspections) to be delivered later. This is a moral hazard for TSSA management. Again, what business would dare complain if the inspection was not actually carried out?

Consider the government's interest in all of this. What if a tragedy occurs and it is found that an inspector had done a haphazard inspection or none at all? What if a tragedy occurs and it is found that a already paid for inspection had never actually taken place?

There may be a third area in which TSSA practices may be problematic. We want to stress, at this point, that what follows are no more than unsubstantiated allegations. But these allegations are of such a serious nature that they must be tabled.

In the days prior to TSSA, government charged a flat fee for inspections. All expenses, including travel, were incorporated in the fee. TSSA not only increased the government fees substantially but also added a charge for travel expenses.

We have had several allegations from different areas of the province that more than one business in an area has been charged travel expenses for the same travel. In other words the TSSA staffer went from point A to destination B; visited two businesses; and charged them both for the full amount of travel from A to B.

We ourselves have great difficulty in crediting these allegations. Nevertheless, they bear examination.

Interim Recommendation: Return to fixed fees basis for services; eliminate billing in advance of services rendered; conduct an outside audit of billing for expenses

Governance

There are two aspects to this issue. One is the representation of small businesses in TSSA's stakeholder processes. The other concerns the need to develop a process to appeal TSSA decisions.

The TSSA takes great pride and comfort in working closely with its stakeholders. Unfortunately, small and medium-sized businesses are far from sufficiently represented on its Board and Advisory Councils.

92.9% of Ontario businesses have fewer than 20 employees. 72% have fewer than five employees! Businesses of this size constitute, far and away, the bulk of the TSSA stakeholders that are subject to its various regulatory regimes. Failure to engage these businesses in an advisory capacity accounts for the low performance ratings these businesses give the TSSA.

These small businesses are inadequately represented on the TSSA Board and advisory councils. Generally they are unable to come out to meetings or travel long distances to Toronto. TSSA needs to reach out to these stakeholders which is easy to do in this electronic age. CFIB is able to communicate with thousands of our members electronically, so why can't they?

A second issue here is that small businesses have no effective appeal to TSSA decisions. The best of agencies make mistakes. In view of the low performance ratings assigned to this agency it is all too clear that an appeal process **independent of TSSA** must be created.

Interim Recommendation: Ensure that small businesses have representation on the TSSA board and advisory councils in proportion to their numbers in each industry sector; create alternative processes for securing small business participation in stakeholder consultations; create an independent third party, no cost appeal process for small businesses.

Our overriding recommendation, of course, is that the regulatory services provided by the TSSA be brought back into a ministry of the Ontario Government.

We enjoyed meeting with you Minister. We were encouraged to hear of some of the developments concerning TSSA. And we will certainly honor your request to schedule a meeting with the President and senior management of the TSSA.

Thanks again,

Sincerely,

Original signed by

Judith Andrew

Copy: Ontario Cabinet