

Enforcement under the Towing and Storage Safety and Enforcement Act is strict and unforgiving

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The new towing regime in Ontario is now in effect with the changes to the *Towing and Storage Safety and Enforcement Act* (“TSSEA”) and its accompanying regulations in force since January of this year. In response to years of issues in the industry, particularly allegations of criminality as well as dangerous and aggressive behaviour by tow operators, the new regime is appropriately robust but equally unforgiving. Industry players should take note that the Ministry of Transportation’s Director of Towing (“Director”) appears intent on a strict enforcement of the regime and avenues for appeal are seriously curtailed relative to similar regimes such as that for the Commercial Vehicle Operators Registry (“CVOR”). Though the enforcement regime of TSSEA remains largely untested, the closest parallel is the CVOR system overseen by the Deputy Registrar of Motor Vehicles and helpful insights may be taken from its record.

Potential Ground for Denial of Certificates

The potential grounds for the denial of certificates to tow drivers and operators as well as those operating vehicle storage facilities are broad and present a potential minefield for applicants with skeletons in their closets and perhaps, more importantly, applicants with associates who may have the same. These grounds can be found in O. Reg. 167/23 under the TSSEA (the “Regulations”).

The grounds for denial are generally divided into two categories – those which can be appealed and those which cannot. The grounds for denial which can be appealed include:

- Prior contravention of the TSSEA or its regulations or a contravention of the *Consumer Protection Act*;
- Making false or inaccurate statements in their application;
- Failure to provide vehicle storage or towing services safely and competently;
- Being a fit and proper person to be a vehicle storage or towing operator.

Those grounds for refusal which cannot be appealed include:

- Being refused a municipal towing or vehicle storage license or having one suspended, cancelled or revoked;
- Having a tow or storage certificate cancelled or revoked under the TSSEA;
- Having a disqualifying record of convictions under the *Criminal Code* and related statutes;
- Having officers and directors with such a disqualifying record.

Crucially, one non-appealable ground for refusal are circumstances in which any person “related” to the applicant has a disqualifying record of convictions under the *Criminal Code* and related statutes or if they have or had been refused a municipal towing or storage business license or have or had one suspended or revoked. The Regulations define “related” persons in the same fashion as the *Highway Traffic Act* does for the CVOR regime. The definition includes:

- They are related individuals;
- There are or were partners or had partners in common;

- Either individual directly or indirectly controls or controlled or manages or managed the other;
- Either corporation have or had common officers or directors or are or have been controlled, directly or indirectly by the same persons.

This is a broad definition and may potentially include any number of persons with whom an applicant might be affiliated. It is important for any current or prospective tow or storage operator to be mindful of who they are in business with or with whom they have done business in the past. Past associations cannot be undone but arguments can be made to the Director prior to any non-appealable decisions being made.

Judicial Considerations of the New Regulations

At present, there has only been one case before the License Appeal Tribunal (“LAT”) dealing with a refusal under the TSSEA. In *Puma v. Director of Vehicle Storage Standards*, 2023 CanLII 116478 (ON LAT), the applicant was refused a Tow Driver Certificate due to a disqualifying record of convictions for offences under the *Criminal Code* or related statutes. Refusals pursuant to this section are not appealable. In his appeal, the applicant did not dispute the application of the section itself but instead argued that, in his particular circumstances, the application of the section would be contrary to the intention of the legislation. The applicant was never afforded the opportunity to make such submissions on this point because the LAT held that it did not have jurisdiction to hear an appeal based on a non-appealable refusal. The LAT also determined that the *Statutory Powers and Procedures Act*, which provides powers to tribunals to conduct their own proceedings, could not force the LAT to hear an appeal where the underlying statute did not permit one.

The LAT will not entertain appeals explicitly barred by the TSSEA or hear arguments with respect to the spirit of the law. Should an applicant wish to challenge the application of those grounds in the TSSEA to which there is no appeal, they must seek a judicial review in the Divisional Court.

In *Thibault v. Attorney General of Ontario*, 2024 ONSC 3168, another applicant challenged the constitutionality of the criminal conviction provisions in the Divisional Court by way of judicial review, after being denied of tow operator and tow driver certificates. The applicant sought an order from the court to prevent the refusal of his certificates from coming into effect pending the full hearing of his application for judicial review. The judicial review had not yet been heard, but the court refused to prevent the denial of the certificates coming into effect in the meantime.

How Should a Person Facing a Potential Refusal Protect Themselves?

A prospective tow driver or tow operator should exercise caution in advance of their application for a certificate to ensure that they do not find themselves facing a denial based on grounds that cannot be appealed. Once a prospective tow operator or driver has applied for a certificate, the Director will review the application and, if the Director is of the view that the certificate ought to be denied, they will issue a Notice of Proposal to Refuse that lays out the grounds for proposed refusal. At this stage, the applicant will be invited to make submissions to the Director on why the certificates should not be refused.

It is at this juncture that the party should engage a lawyer to prepare their written submissions to the Director. This is the time when the applicant is best positioned to convince the Director that a potential ground for denial should not be applied. Once the Director has reached a decision, options for an appeal are seriously limited, and such a refusal may bar an applicant from the industry for life. A PDF version is available for download [here](#).

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