

Auditor General of Ontario Annual Report 2018

BOMA Toronto Brief

The Ontario Auditor General published the 2018 Annual Report on December 5, 2018. The Auditor General (AG) watches over the administration of Ontario's finances. The AG does this by carrying out detailed scrutiny of government spending in order to produce annual and special reports detailing the findings and recommendations. The Auditor is also required to assess whether government and broader public-sector activities operate with due regard for economy and efficiency as well as whether procedures to measure and report on the effectiveness of programs exist and functioning properly.

The purpose of this brief is to summarize the findings from sections of the report that directly impact the Commercial Real Estate industry and provide BOMA membership some best practices. This document is for information purpose only. Specific references to the report's findings are conveyed in the same context it was reported and is not to be taken as BOMA Toronto's interpretation or endorsement/condemnation of the findings. As the needs of individual buildings vary, it is recommended that the reader consult a qualified professional or subject matter expert before taking any business decision(s) related to the content of the report and this brief.

Background:

The Technical Standards and Safety Authority (TSSA), with oversight by the Ministry of Government and Consumer Services, acts as both a regulator and an advocate for safety standards in Ontario. The TSSA is responsible for enforcing the Act and Regulations while simultaneously promoting activities to continuously improve public safety. The Act requires the TSSA to regulate and enforce public safety in the following four sectors:

1. Fuels Storage and Handling (Fuels)
2. Boilers, Pressure Vessels and Operating Engineers (Boilers and Pressure Vessels)
3. Upholstered and Stuffed Articles
4. Elevating Devices, Amusement Devices and Ski Lifts

Summary: The 2018 Auditor General annual report concludes that the TSSA - the Ontario agency created to promote and enforce public safety by the Government of Ontario in 1997 - does not have the required oversight processes it needed to perform its intended role.

Key 2018 AG Annual Report findings that directly impact commercial real estate include:

- The TSSA has not been provided with strong enough enforcement powers to effectively deal with large elevator maintenance companies with poor compliance rates
- In 2018 over 80% of elevators failed their TSSA inspection, mostly due to maintenance and safety work that was not completed (or performed) according to the established schedules
- Safety incidents caused by elevators not operating in compliance with applicable safety laws have more than tripled over the last five years, from 37 in 2014 to 137 in 2018. In 2017/2018, 40 people were injured in such incidents
- The TSSA continues to collect fees that exceed the cost of operating two of its four safety programs. This resulted in greater than \$18M in TSSA revenue over program expenses in the Elevating Device sector alone, and more than \$15M overall after cross-sector subsidization over a 5-year period

Auditor General of Ontario Annual Report 2018

BOMA Toronto Brief

- Fully qualified elevator mechanics who possess skills needed to perform more complex safety tests and repairs are in short supply in Ontario
- The TSSA's 20/20 initiative began in 2014 in order to modernize their ineffective oversight and to digitize the recordkeeping system. It did not progress as planned and is one of the primary reasons for the appointment of the new CEO in March 2018. The AG report did not elaborate on the progress of the 20/20 initiative
- The TSSA is not proactive in meeting its mandate and seldom takes the initiative to protect public safety in areas of the regulated sectors that it does not currently license and/or inspect, but where its oversight activities would help promote public safety
- Since 2001, the TSSA has done little to enforce and promote the safety of an estimated 65,000 operating boilers and pressure vessels in the province
- The TSSA does not maintain records of how many boilers and pressure vessels operate in Ontario, where they are located, and whether they are maintained and inspected
- The TSSA does not inspect private fuel storage sites, and fuel related incidents are grossly under-reported, particularly with respect to incidents related to excavation work
- According to data obtained from the Ministry of the Environment, Conservation and Parks on reported leaks from fuel oil tanks in the last five years, about 640 leaks have resulted in an estimated release of 153,000 litres of fuel oil into nearby land and water
- Over the last eight years, about 2,500 incidents of carbon monoxide (CO) releases have been reported to the TSSA. These incidents have led to 14 people losing their lives and almost 350 sustaining injuries due to CO poisoning.

ELEVATOR DEVICE SECTOR

The elevator industry may have never faced a more turbulent time in its history, considering the Auditor General report paints such a dismal picture of the TSSA's success in improving safety and compliance in the Elevating Device sector. The AG Report comes on the heels of "*Bill 8, Access to Consumer Credit Reports and Elevator Availability Act, 2018*" receiving royal assent. While the effects these developments will have on the elevator industry, and consequently the CRE industry remain to be seen, they can be expected to influence the way elevator safety, elevator maintenance companies and service contracts are managed in the future.

Best Practices:

1. **Proactive Management of Compliance and Safety:** Working closely with your elevator consultant and maintenance company, and actively participating in the TSSA's inspection of your elevators, ensures compliance and safety are proactively managed, and improvements in reliability and elevator performance can also be expected. Active management demonstrates due diligence and a proactive approach to safety and compliance in the event an elevator incident occurs.
2. **Comprehensive Elevator Management Program:** Work with industry partners to develop a comprehensive elevator management program. This allows property management to start addressing their concerns regarding elevator service more directly

Auditor General of Ontario Annual Report 2018

BOMA Toronto Brief

and effectively with the maintenance company. The program should address key elements such as regular meetings with the maintenance company, ongoing communication with site mechanics and TSSA inspectors, priority scheduling of work related to compliance with TSSA inspection reports, consultant inspections, as well as elevator performance and ride quality.

3. **Capital Planning:** Develop capital plans to update or replace aging and under-performing equipment to take advantage of new technologies which offers enhanced efficiency, safety, and reliability.

FUEL SECTOR

Best Practices:

1. **Active Involvement in Management of Fuel Burning Assets:** BOMA members can protect their properties through active involvement in the management of fuel burning assets such as fuel oil storage tanks and distribution systems for diesel generators. Licensed fuel oil distributors are not permitted to deliver fuel oil into tanks that are in poor condition and unsafe.
2. **Annual Inspections:** Licensed fuel oil distributors are required to inspect the tanks and distribution systems to which they deliver fuel oil once every 5 years and must retain their inspection records; however best practice suggests a comprehensive annual inspection and maintenance program is warranted for these critical systems. As part of the inspection, among other things, the fuel oil distributors/contractors:
 - o Check the oil tank for visible signs of rust or corrosion and for leaks or spills around the pipes that carry the oil from the tank to the engine or appliance
 - o Check if the tank is vented properly, to ensure there is no risk of carbon monoxide (CO) being released
 - o Additional inspections of equipment operation and safety devices in keeping with manufacturer specifications and fuel quality tests are also recommended.

Only TSSA-licensed companies and certified technicians are allowed to install and maintain most types of fuel-burning equipment. Robust preventive maintenance and inspection programs using reputable licensed firms will reduce the likelihood of failures and non-compliance involving fuel burning systems and equipment.

Auditor General of Ontario Annual Report 2018

BOMA Toronto Brief

BOILER & PRESSURE VESSELS SECTOR

Most BOMA members are familiar with Boiler and Pressure Vessel (BPV) Certificates of Inspection issued by insurance companies for applicable components in buildings such as boilers, tanks and certain specialized equipment.

New Process to Obtain COI: As of July 1, 2018, there is a new process to obtain a Certificate of Inspection (COI) for your boilers and pressure vessels. Each owner requires a TSSA account to validate and pay for their COI. Following inspection by the owner's insurance company a Record of Inspection (ROI) will be issued to the TSSA. Owners will be required to validate the ROI with the TSSA, and upon receipt of payment the COI will be issued by the TSSA. Fees for Certificates have been approved, ranging from \$40 annually to \$115 every 3 years, depending on inspection frequency.

This is intended to permit the TSSA BPV sector to become revenue self-sufficient and assist the TSSA in compiling records of Boilers and Pressure Vessels in Ontario. Please see the link below for additional information.

BOMA Toronto will continue to advance the needs and interests of our membership and the CRE industry in collaboration with the relevant Ministries, TSSA, Original Equipment Manufacturers (OEM), Service Providers, Unions, and other industry stakeholders with respect to these areas, and will keep you informed as new information becomes available.

References & Resources

1. [New TSSA Boiler & Pressure Vessel Certificate of Inspection Process:](https://www.tssa.org/en/boilers-pressure-vessels/bpv-certificate-of-inspection.aspx?_mid_=457)
https://www.tssa.org/en/boilers-pressure-vessels/bpv-certificate-of-inspection.aspx?_mid_=457
2. 2018 Annual Report:
<http://www.auditor.on.ca/en/content/annualreports/arbyyear/ar2018.html>
3. 2018 Annual Report News Releases and Summaries:
<http://www.auditor.on.ca/en/content/news/news.html#latest>