

Policy and Consumer Protection Services Division

Follow-up to VFM Section 3.04, *2003 Annual Report*

Background

The mandate of the Policy and Consumer Protection Services Division (Division) of the Ministry of Consumer and Business Services is to oversee business and other practices in the Ontario marketplace. The Marketplace Standards and Services Branch, which accounts for approximately two-thirds of the Division's expenditures, administers various statutes relating to consumer protection and business licensing. Its activities include the registering and licensing of a number of industries, processing consumer complaints, inspecting businesses for compliance with consumer protection acts, and investigating alleged infractions.

Since 1997, the Ministry has also delegated the administration of several consumer and public safety statutes in such sectors as amusement devices, boilers, elevators, fuels, electricity, and new-home warranties to eight delegated authorities. The delegated authorities are not-for-profit corporations that carry out the day-to-day functions of ensuring public safety and consumer protection by regulating and monitoring business practices in their industry. Nevertheless, the Ministry retains

overall responsibility for the outcomes of the delegated authorities' activities in protecting the consumers and the public. The Division's Sector Liaison Branch is responsible for overseeing the eight delegated authorities.

In the 2004/05 fiscal year, the Division had approximately 94 staff (100 staff in 2002/03) and operating expenditures of approximately \$9 million (approximately \$10 million in 2002/03).

In 2003, we found that the Marketplace Standards and Services Branch (Branch) did not deploy its inspection resources based either on an assessment of risk or on the number of complaints it received. For example, while the practices of debt collectors had been the number one source of complaints and inquiries received by the Branch, with a total of approximately 4,000 received in 2001/02, the Branch conducted fewer than 10 inspections of collection agencies. In contrast, although the Branch received only eight complaints about theatres and video retailers, the Branch devoted 95% of its inspection resources and conducted 1,600 inspections to check whether video retail stores were operating with a valid licence and were selling adult videos only with proper stickers indicating their ratings.

We also concluded that the Ministry had not been effectively monitoring cemeteries' trust accounts to ensure that deposits from sales of plots were sufficient to support the cost of caring for and maintaining the cemeteries. In addition, the outcomes of its regulatory activities were not being adequately captured by the Ministry's Management Information System.

With respect to the delegated authorities, we noted that:

- The Ministry had not ensured that data on the outcome of delegated authorities' activities, as reported by the authorities—such as the number of safety-related incidents and the number of serious injuries—were reliable.
- The Ministry had not assessed the sufficiency and appropriateness of the enforcement activities undertaken by the delegated authorities in response to identified violations.
- The Ministry was unable to obtain adequate information about the outcomes and activities of the Ontario New Home Warranty Program (now called the Tarion Warranty Corporation) to assess whether new homeowners were being properly protected.

We made a number of recommendations for improvement and received commitments from the Ministry that it would take action to address our concerns.

Current Status of Recommendations

According to information received from the Ministry of Consumer and Business Services, some progress has been made on implementing the recommendations in our *2003 Annual Report*. The current status of action taken on each of our recommendations is as follows.

MARKETPLACE STANDARDS AND SERVICES BRANCH

Following Up on Consumer Complaints

Recommendation

To adequately protect the public, the Ministry should allocate its inspection resources for monitoring various industries based on a systematic assessment of risk as well as on the number of complaints it receives about these industries.

As well, the Ministry should ensure that unscrupulous practitioners are removed from the marketplace on a timely basis to protect consumers and the public from potential losses and abuse.

Current Status

The Ministry had not yet performed an updated risk analysis, nor had it allocated its inspection resources based on the number of complaints it received. Nevertheless, as a temporary measure, the Ministry had followed a consultant's recommendation to arbitrarily allocate its proactive inspection resources equally among the debt recovery, cemetery, and theatres sections.

From January 2004 to March 2005, the Ministry employed the services of an investigator to review complaints against collection agencies in order to identify unscrupulous practitioners that should be considered for removal from the marketplace. The Ministry indicated that, as a result of this review, more timely administrative actions were taken to warn unscrupulous practitioners and revoke their licences. It took, on average, only several months—instead of the two or more years it was taking at the time of our audit—to revoke the licence of an unscrupulous practitioner. The Ministry advised us that starting August 2005, when its contract with the investigator was to expire, its Compliance and Consumer Services Bureau Section and its Investigations Office would assume the responsibilities for investigating outstanding charges and taking proposed actions against collection agencies.

Monitoring Cemeteries' Trust Accounts

Recommendation

To comply with legislative requirements relating to cemeteries in Ontario and to make sure that sufficient funds are available for the proper care and maintenance of cemeteries, the Ministry should ensure that:

- cemetery registration records are complete and annual returns are filed by all cemetery owners within the required time frame; and
- ministry staff verify, on a timely basis, the balance of trust accounts established to care for and maintain cemeteries.

Current status

Cemeteries are required to submit their annual reports on care and maintenance within three months after the end of their fiscal year and to submit audited statements if their trust fund accounts exceeded \$500,000 within six months after the fiscal year end. As of May 2005, most cemeteries had submitted the required annual report for 2003, but almost 570 cemeteries, or 21%, had not, and these were being followed up on.

Of 119 cemeteries with trust fund accounts exceeding \$500,000, 64, or 54%, had not submitted their audited statements for 2003 as required. The Ministry indicated that notifications or inspections orders had been issued to the owners of these cemeteries.

According to the Ministry, staff were utilizing the Ministry's tracking system to help verify trust account balances by matching and reconciling annual returns submitted by cemetery owners and those received from external trustees. The Ministry also informed us that its tracking system had been modified to reflect the status of trust account balances, and it was being used to generate a report on outstanding annual returns.

Measuring and Reporting on Effectiveness

Recommendation

To enhance management's ability to properly measure and report on its effectiveness in protecting consumers and public safety, the Ministry should:

- use its management information system to capture and analyze the outcomes of its activities and thereby be in a position to improve and report on its effectiveness; and
- conduct proper consumer satisfaction surveys of both telephone and written complaints.

Current Status

The Ministry advised us of two enhancements that had been made in recording inspection outcomes. First, a results field was added to the tracking system to capture action taken after inspection visits focusing on the non-regulatory/licensing statutes. Second, a follow-up field was added to the tracking system to monitor post-inspection action taken by the Division.

The Ministry had engaged a third party to conduct surveys of consumers calling the Ministry's Consumer Services Bureau. According to the Ministry, the surveys indicated that 97% of callers were satisfied with the services they received.

DELEGATED ADMINISTRATIVE AUTHORITIES

Technical Standards and Safety Authority

Recommendation

To better protect public safety the Ministry should improve its monitoring of delegated administrative authorities (delegated authorities) by:

- ensuring the reliability of the outcomes that are reported by the delegated authorities; and
- monitoring the activities of the delegated authorities to ensure that inspections, investigations, enforcement measures, and other appropriate actions are taken on a timely basis and are

sufficient to ensure the achievement of established safety outcomes.

Current Status

To ensure the reliability of outcomes reported, the Technical Standards and Safety Authority (TSSA) and the Electrical Safety Authority (ESA) engaged a third party to validate their safety data. The TSSA entered into a contract with its external auditor in January 2005 to provide validation of data included in the TSSA's State of Public Safety Report 2004, which was to be published in August 2005. The ESA entered into a contract with a consultant in January 2004 to provide validation of data included in its already published *Electrical Safety in Ontario—2003 Report (2003 Annual Safety Report)* (the ESA's 2004 Annual Safety Report was to be published in September 2005).

The Ministry indicated that, since our audit, it had implemented new ways of monitoring the activities of delegated authorities. These included enhanced performance reports for delegated authorities and a complaint-tracking system. The Ministry indicated that it has committed to reviewing the reports and providing analysis and feedback to the authorities.

Electrical Safety Authority

Recommendation

To help reduce electrical incidents involving serious injuries and the deaths of electricians, the Ministry and the Electrical Safety Authority should work with other stakeholders to develop consistent safety standards for the training and initial and ongoing licensing of electricians working in Ontario.

Current Status

Bill 70 amended Part VIII of the *Electricity Act, 1998* to establish a statutory framework for province-wide licensing of electrical contractors, master electricians, and electricians in the compulsory electrical trades to be administered by the Electrical

Safety Authority. The Bill received royal assent in November 2004. At the time of our follow-up, regulations were under development and targeted to be completed in summer 2005.

Ontario Motor Vehicle Industry Council

Recommendation

To protect consumer interests with respect to the regulation of the motor vehicle industry in a more cost-effective manner, the Ministry should work with the Ontario Motor Vehicle Industry Council on ways to improve the effectiveness of consumer protection with respect to motor vehicle repairs.

Current Status

Prior to our follow-up, through an initiative called the Strategic Partnership on Auto Repair, the Ministry's Marketplace Standards and Services Branch had discussed the potential for co-ordinated inspection activity with the two ministries—Environment and Labour—involved in inspecting vehicle repair shops for their own purposes (for example, for compliance with the Clean Air program, workplace safety, and mechanic certification). The objectives of the proposed partnership were to share and conserve resources, reduce the regulatory burden on business, and focus on chronic violators. At the time of our follow-up, the Ministry indicated that it and the other ministries were in the process of addressing issues of information sharing. It was also consulting with the Ontario Motor Vehicle Industry Council on how to improve the effectiveness of motor vehicle repairs.

Ontario New Home Warranty Program

Recommendation

The Ministry should take action to ensure that better accountability mechanisms are in place to protect consumers buying new homes in Ontario.

Current Status

Subsequent to our 2003 audit, the name of the Ontario New Home Warranty Program changed to Tarion Warranty Corporation. In 2003, an accountability letter was signed between Tarion and the Ministry that establishes formal reporting requirements and outlines the roles and responsibilities of each party. In addition, the Ministry indicated that, through its negotiation efforts, Tarion bylaws were changed to allow four government appointees to serve on Tarion's board. As of March 2005, four ministerial appointees were on the 17-member board.

Governance and Accountability of Delegated Authorities

Recommendation

To better protect consumers and the public, the Ministry should strengthen its governance and accountability arrangements with delegated administrative authorities (delegated authorities) by:

- *establishing administrative agreements with the delegated authorities on a timely basis;*
- *having an adequate number of government, consumer, and public representatives on the boards of directors of the delegated authorities to achieve a fair balance of representation;*
- *ensuring that sufficient levels of resources are devoted to monitoring the performance of the delegated authorities; and*
- *ensuring that reporting and other performance requirements are complied with on a timely basis.*

Current Status

At the time of our follow-up, the Ministry had updated its administrative agreements with six of the eight delegated authorities with which it had already negotiated such agreements eight years ago. As for the remaining two delegated authorities:

- A letter of accountability pertaining to the Ontario New Home Warranty Program—now “Tarion”—had been signed by the Ministry that

establishes formal reporting requirements and outlines the roles and responsibilities of each party.

- The *Funeral, Burial and Cremation Services Act, 2002*, which pertains to the Board of Funeral Services, received royal assent on December 13, 2002. However, the regulations under the Act, which are necessary to bring the Act into force, had not yet been finalized at the time of our follow-up. The Ministry indicated that it would work with the Board to establish an administrative agreement once the regulations are in place.

The Minister has legislated authority to appoint up to 50% of the members on the boards of directors of delegated authorities. In the past year, the Ministry adjusted the composition of the boards of both the Technical Standards and Safety Authority and Tarion to increase the number of ministerial appointees. As of March 2005, the percentage of ministerial appointees on the boards of the eight delegated authorities ranged from 22% to 38%. In addition, the Ministry was tracking the ministerial appointee process and the attendance of ministerial appointees at board meetings.

The Ministry's Sector Liaison Branch has been given the responsibility for monitoring the performance of delegated authorities. The Ministry informed us that it had reviewed the Branch's resources for this task and had hired additional staff. Also, in response to Internal Audit recommendations, the Ministry's Compliance and Consumer Services Bureau had assumed the responsibility of handling consumer inquiries and complaints relating to the delegated authorities. This change has enabled Sector Liaison Branch staff to devote more resources to monitoring the performance of the delegated authorities. Consumers are referred to the Sector Liaison Branch only if dealing with the inquiry or complaint requires special technical and/or governance and accountability expertise.

The Ministry had developed a ministry-wide annual report tracking system to monitor the report

tabling process from the time the draft report is received until the reports are tabled in the Legislature. The Ministry had also improved its tracking of delegated authorities' performance statistics to ensure timely quarterly reporting.