

# 3.09—Employment Rights and Responsibilities Program

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## BACKGROUND

The *Employment Standards Act, 2000* (Act) sets out the minimum standards of employment for wages and working conditions that employers must provide for their employees. The Act covers a wide range of employment rights including hours of work and overtime, minimum wages, pregnancy and parental leave, public holidays, vacation pay, termination notices, and severance pay. The Act applies to most employers and employees in Ontario with certain exceptions such as businesses regulated by the Government of Canada, including airlines and banks.

The Act is enforced by the Ministry of Labour's Employment Rights and Responsibilities Program (Program). The Program is delivered through the Ministry's head office in Toronto and regional and district offices throughout the province.

Program services include:

- providing information and education to employers and employees, in part through a call centre operated by the Ministry of Finance;
- investigating and resolving complaints, primarily from former employees, of possible violations of employment rights;
- conducting proactive inspections of payroll records and workplace practices; and
- ordering employers to pay wages and benefits owed and initiating prosecution and collection efforts if warranted.

Employment standards officers have the power to look into possible violations of the Act. During the 2003/04 fiscal year, the Ministry investigated more than 15,000 complaints from employees and carried out approximately 150 proactive inspections.

For the 2003/04 fiscal year, the Ministry's expenditures for the Program totalled approximately \$22.4 million, of which about 75% was spent on salaries and benefits for about 220 staff.

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## AUDIT OBJECTIVE AND SCOPE

Our audit objective was to assess whether the Ministry had adequate systems and procedures in place to fulfill its key mandate of protecting the employment rights of workers.

Prior to the commencement of our audit, we identified the audit criteria that would be used to conclude on the audit objective. These were reviewed and accepted by senior management of the Ministry.

Our audit field work, which was substantially completed by March 2004, included a review of relevant files and administrative policies and interviews of staff at the Ministry's head office, three regional offices, and five district offices. We also researched similar programs in other jurisdictions. In addition, we followed up on the issues we raised in our 1991 audit of the Ministry's Employment Standards Program, the predecessor of the current Program.

Our audit was conducted in accordance with standards for assurance engagements, encompassing value for money and compliance, established by the Canadian Institute of Chartered Accountants, and accordingly included such tests and other procedures as we considered necessary in the circumstances.

We also conducted a review of recent reports prepared by the Ministry's Internal Audit Services Branch and, where appropriate, incorporated relevant concerns into our audit work.

## OVERALL AUDIT CONCLUSIONS

We noted that the Ministry was focusing its efforts almost entirely on investigating complaints from individuals against their former employers. As a result, we concluded that the Ministry's inspection activities relating to protecting the rights of currently employed workers was inadequate. Many of the concerns identified during this audit were also reported on in our 1991 audit of the then Employment Standards Program, as the following table shows.

**1991 Audit Concerns and Their Status at the Time of Our Current Audit**

| 1991 Concern  | Current Status  |
|---|---|
| When an investigation of an individual complaint found that violations of minimum standards had occurred, the Ministry did not generally extend those investigations to determine whether similar violations had occurred for other employees of the same employer. | <i>No significant improvement.</i> Despite finding violations in 70% of complaints investigated, the Ministry usually did not extend investigations to cover other employees working for the same employer. Because 90% of employees who filed claims did so only after leaving their employment, expanding the scope of an investigation to cover the employer's other workers would be an important way of ensuring that the rights of these workers are being protected. |
| The Branch had virtually abandoned proactive inspections despite their effectiveness in uncovering violations.  | <i>No significant improvement.</i> Efforts to resolve complaints have left officers little time for proactive inspections of employers. The need for such inspections is evident given the fact that violations were uncovered in 40% to 90% of the proactive inspections that were conducted, depending on the business sector being inspected.  |
| Prosecutions had been virtually non-existent, creating little incentive for employers to voluntarily comply with the Act.   | <i>No significant improvement.</i> The Ministry seldom initiated prosecutions or issued fines. We found instances where employers were not fined or required to pay administrative fees even when their violations involved large amounts. This lack of any punitive action such as a fine or prosecution could encourage some employers to ignore their legal obligations to employees.  |
| Computer and communication technologies were inadequate.  | <i>No significant improvement.</i> The Program relied on a mix of paper and computer information systems that were not integrated. Information useful for enforcement was not easily accessible, thus hampering the ability of officers to effectively and efficiently perform their duties.  |
| The system for measuring and reporting program effectiveness was unsatisfactory. Established targets related more to staff productivity than to program effectiveness.  | <i>No significant improvement.</i> The Ministry had not defined the critical aspects of the Program's performance or established adequate indicators to measure and report on program effectiveness. It communicated to the Legislature and the public only a single workload measure—the time inspectors took to complete claim files.   |

*Prepared by the Office of the Provincial Auditor*

Weaknesses were also found in the collection of amounts in default owed to employee claimants by employers. The collection agencies contracted by the Ministry were expected to have a successful collection rate of 35%. However, the rate achieved was much lower, about 15%. In contrast, Alberta achieved collection rates ranging from 20% to 35% by using more stringent collection measures.

Significant control weaknesses existed over the Ministry's administration of its \$11 million trust fund for employee claimants. We found examples of money collected as far back as 1995 that had not been sent to claimants, of duplicate payments being made, of numerous accounting errors, and a lack of essential reconciliation and supervisory controls.

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# DETAILED AUDIT CONCLUSIONS

## ***ENFORCEMENT***

The Act provides employment standards officers with the power to enter employers' premises during regular business hours in order to investigate possible contraventions of the Act. When conducting an investigation or inspection, an employment standards officer may question any person and may request and examine records or other evidence that the officer considers relevant.

The Act permits an employment standards officer to negotiate a resolution to a claim. In addition, an employment standards officer may issue an order to the employer to:

- compensate an employee for the amount owing by the employer (up to a maximum of \$10,000 per employee);
- reinstate an employee who has been terminated; and
- pay a statutory administration fee of the greater of 10% or \$100 on the compensation that an employer was ordered to pay.

In addition, an officer may issue a notice of contravention, which requires an employer to pay \$250 for a first offence and increases to \$1,000 per employee for repeat violations.

Employers can also be prosecuted and, upon conviction, ordered to pay fines of up to \$50,000 and/or to serve up to 12 months in jail. Corporations can be ordered to pay fines of up to \$100,000 for a first offence and up to \$500,000 for repeat violations.

## **Extending Investigation Activity and Proactive Inspections**

The Employment Rights and Responsibilities Program has been largely complaint-driven and, for the most part, its staff have been occupied with resolving the significant number of employee complaints, almost all of which are made by individuals against their former employers. In our 1991 audit, we reported that when an investigation found violations for a specific claimant, the investigation was not generally extended to check whether the same violations had also occurred for other employees of the same employer and that the Ministry had undertaken few proactive inspections, which are non-complaint related, despite their effectiveness.

In our current audit we found the situation had not significantly improved since 1991. Extended investigations and proactive inspections still represented only a small portion of the Ministry's enforcement activities, as shown in the following table.

**Summary of Inspection Activities for Fiscal Years 1990/91  
and 2000/01–2003/04**

|                             | 1990/91 | 2000/01 | 2001/02 | 2002/03 | 2003/04 |
|-----------------------------|---------|---------|---------|---------|---------|
| complaints file completions | 18,582  | 13,975  | 12,457  | 15,078  | 15,771  |
| extended inspections        | 1,795   | 849     | 630     | 535     | 802     |
| proactive inspections       | 85      | 1,543   | 1,156   | 357     | 151     |

*Source of data: Ministry of Labour*

We noted that one or more violations were found to exist in about 70% of complaints filed. However, the majority of workplace violations are reported by former employees as current employees are generally reluctant to file claims for fear of losing their jobs, despite the protection of employee rights that exists in the Act. In fact, 90% of complaints were filed by individuals no longer working for the employers against which they filed claims. To be effective in fulfilling its mandate, the Ministry has an obligation to protect the employment rights of currently employed workers who may be reluctant to file claims.

Greater ministry emphasis on extending investigations of a substantiated claim to cover other employees of the same employer to determine whether additional violations had taken place would be an effective and efficient means of enforcing the employment standards legislation. For example, a complaint by a former employee against an employer in 2001 identified violations relating to unpaid wages, vacation pay, and termination pay. At the time, the investigation was not extended to include other employees. However, from 2001 to 2003, four subsequent investigations of complaints against the same employer determined similar violations with a total assessed amount of about \$25,000 owing to those employees. We also noted that prosecutions were not initiated for any of these claims.

With respect to proactive inspections, targeted ministry inspections of high-risk business sectors have been effective in the past. These inspections uncovered violations involving unpaid wages, overtime pay, and public holidays at rates ranging from 40% to 90% of inspections, depending on the business sectors inspected. These high rates of violations indicate a need to increase proactive inspections to promote greater compliance with employment standards legislation. The above table shows that for the 2000/01 and 2001/02 fiscal years, when fewer complaints were processed, the Ministry was able to devote more staff resources to proactive inspections. However, even in those years the number of proactive inspections represented only a relatively small proportion of the estimated 300,000 employers in Ontario.

The Ministry indicated to us that it has a statutory responsibility to resolve claims and that limited resources left little time for staff to extend investigations and pursue proactive inspections. In addition, the resources needed to conduct extended investigations or proactive inspections could be significant, requiring an additional two

to 14 days per employer, depending on the size of the business. During our field visits, we noted that emphasis was placed on employment standards officers completing complaint investigations within a set time period, which left little time for proactive inspection activities.

In our opinion, the Ministry needs to consider ways to better balance its inspection efforts to protect the rights of currently employed workers. More proactive inspections in higher risk industries could result in fewer complaints by employees over the longer term.

An approach that warrants consideration may be to adopt employment standards practices from Alberta and British Columbia that permit charging employers found in violation of the legislation for the costs of external audits to assess overall compliance. This in effect transfers the cost of enforcement to employers where violations are detected and frees up ministry resources to pursue other priorities such as extending inspection activities and proactive inspections. The added costs to the employer could also act as a deterrent to violations.

### **Recommendation**

**To more effectively enforce the *Employment Standards Act, 2000*, and better protect the rights of currently employed workers, the Ministry should:**

- **expand investigations when individual violations are found and increase the number of proactive inspections in higher risk industries; and**
- **assess the impact—both on enforcement and as a deterrent—to making employers found in violation of the Act responsible for the costs of investigations and inspections.**

### ***Ministry Response***

***On an overall basis, the Ministry accepts and will act on the recommendations made by the Provincial Auditor. Our determination is to improve the effectiveness of all of our employment rights and responsibilities programs. In this regard, the Ministry announced an enhanced enforcement and awareness initiative on April 26, 2004.***

***With respect to this particular recommendation, the Ministry acknowledges that its approach to enforcement was largely reactive over the years. Such an approach does not provide sufficient deterrent to non-compliant employers, and it is not an effective tool in ensuring the collection of unpaid monies owing. Therefore, the approach and direction has been changed.***

***The emphasis is now on a proactive approach to enforcement. A dedicated inspection team was established July 1, 2004, and high-risk sectors have been identified. Over the next year, the Ministry will be conducting 2,000 proactive inspections. These inspections will be targeted to high-risk employers in high-***

***risk sectors and employers who have a history of multiple claims filed against them. The results will be measured so that program effectiveness can be constantly monitored and improved.***

***At the same time, the (reactive) complaint-handling procedure is being revamped. Where an officer investigating a claimant believes that other employees may also have entitlements, the officer will transfer this information to a targeted enforcement team for additional follow-up.***

***An increased awareness of rights and responsibilities on behalf of both employers and workers is essential to the success of the Program. With respect to employers, an outreach program has already begun with various organizations to determine ways of ensuring that employers who genuinely do not know their rights and responsibilities can learn them quickly. Many of the workers who are most vulnerable to employment standards violations are those whose first language is not English or French. Over the past several months, the Ministry has been engaged in an extensive and expanding outreach program targeted to these workers.***

***It is expected that these initiatives will have a number of results. First, they will provide a much stronger deterrent to the non-compliant employer community. Secondly, they will increase collections efficiency with respect to unpaid accounts (internal studies have shown that proactive inspections are much better at collecting unpaid monies). Finally, over the longer term, they will reduce the number of potential claims that might otherwise arise. Other work is being undertaken to make employers found in violation of the Act responsible for the costs of investigations and inspections to the extent possible.***

## Prosecuting Violators

The Act permits an employment standards officer to negotiate the resolution to a claim. We noted that most claims were in fact settled without the necessity to issue a formal order to pay and without the imposition of a fine and administrative fee. This approach to resolving complaints could be justified in certain situations such as when violations are minor and the employer has no previous violations and acts expediently to deal with employee complaints. However, if not deployed prudently, this practice could convey to employers that there is a level of tolerance for employers who do not voluntarily adhere to requirements of the Act, as there is little likelihood of a fine or penalty even if they do violate the Act. Any increased non-compliance with the Act on the part of employers also puts an additional burden on employees to initiate complaints with the Ministry to ensure their rights are respected.

Over the past five years, of approximately 70,000 claims filed, violations were substantiated in 51,000 of them—a rate of over 70%. Of the 51,000 substantiated claims, only 18 cases were sent for prosecution, resulting in a total of 63 convictions for

violations of various sections of the Act and only \$210,000 in fines imposed. We found that in general the Ministry did not initiate prosecution or issue fines even when large amounts were involved, including a number of examples where the amounts owed to employees was over \$100,000 but no penalties or additional costs had been assessed against the employers. We noted the same weakness with regard to the use of notices of contravention, which are used to fine employers. From December 2001, when they were first introduced, to February 2004, only 218 notices of contravention were issued, resulting in assessed total penalties of approximately \$140,000.

The Ministry's employment standards practices and procedures manual outlines factors and types of contraventions inspectors should consider in determining whether employers found in violation should be prosecuted. However, the Ministry's emphasis on quickly resolving claims contributed to officers' reluctance to prosecute violations and impose fines and administrative fees even in instances where the employer had a number of prior violations. For example, an employer found in violation for unpaid wages of \$5,000 in July 2003 had four previous, similar violations. The inspector did not issue a notice of contravention to the employer or initiate prosecution.

In addition, the Ministry had not monitored employment standards officers to ensure that levels of enforcement were consistent and appropriate for encouraging compliance and deterring future violations.

### **Recommendation**

**To ensure that its enforcement efforts are effective in promoting employers' compliance with the *Employment Standards Act, 2000*, the Ministry should provide better direction to employment standards officers regarding the appropriate use of enforcement measures, including notices of contravention and prosecutions, and better monitor the use of these measures for consistency of application.**

### ***Ministry Response***

***The Employment Standards Act, 2000 provides for significant enforcement tools, but they have not been utilized to the extent possible. This has been addressed in two ways. First of all, the announcement of an enhanced enforcement initiative in April 2004 emphasized that all of the enforcement tools under the Act are to be utilized. Secondly, effective July 1, 2004, employment standards officers have been issuing tickets to employers for violations under Part I of the Provincial Offences Act. These do not create new offences but are a new and more efficient means of charging offences. This will provide a much more effective means of ensuring that, where appropriate, prosecutions can be instituted. More serious offences will continue to be prosecuted under Part III of the Provincial Offences Act, which can result in larger fines and imprisonment.***

***The Ministry has developed and implemented a comprehensive prosecutions policy (updated July 2004) that identifies criteria for initiating and guidelines for conducting prosecutions under the Provincial Offences Act. To improve consistency in the application of the reviewed and revised procedures, the changes in procedures have been formalized through the Officers' Procedures Manual and communicated to staff through appropriate training.***

## Collecting for Claimants

When an employer fails to comply with an order to pay, the Ministry initiates collection efforts. Amounts collected are placed in a trust fund for subsequent payment to the affected current or former employees. Enforcement of payments ensures that employees obtain amounts legally owed to them, effectively promotes and enforces employment standards legislation, and deters employers from future violations.

On average, only about 40% of amounts owed by employers is voluntarily paid without the need for further collection efforts. For the amounts remaining, since 1998, up to three collection agencies have been used to collect overdue orders to pay. Default orders are sent to collection agencies approximately 30 days after payments are overdue. The collection agencies are required to return the orders to the Ministry after one year of unsuccessful collection efforts. At the time of our audit, only one collection agency was performing this service. The following table shows the amounts collected by the agencies and their collection rates over a four-year period.

**Results of Collection by Private Collection Agencies, 2000–2003**

|  | 2000  | 2001  | 2002  | 2003* |
|--|-------|-------|-------|-------|
| collected amounts (\$ 000)   | 1,002 | 707   | 772   | 988   |
| amounts of defaulted payments sent to private collection agencies (\$ 000) | 4,901 | 4,727 | 4,890 | 7,931 |
| collection rates (%)   | 20.4  | 15.0  | 15.8  | 12.4  |

\* Collections relating to some 2003 orders were still in progress at the conclusion of our audit and final collected amounts will be somewhat higher.

*Source of data: Ministry of Labour*

As the above table illustrates, there has been a significant decrease in collection results over the past three years. Initial forecasts used in the business case for transferring collections to private collection agencies in 1998 were based on an expected collection rate of 35%. Up until 1993, when the Ministry's centralized in-house collection unit was in place, the collection rate was 22%.

In comparison, Alberta had collection rates for defaulted orders ranging from 20% to 35% over the last five years using a combination of in-house collection efforts, stronger enforcement measures at the time an order goes into default (such as writs of

enforcement registered with the courts against employers for amounts owing), and private collection agencies.

We noted a general lack of strong, timely enforcement measures by both the collection agency and the Ministry when employers did not pay. For example, employers were not reported to a credit bureau; liens and writs were either not registered against them or not acted on to seize assets; and legal action was seldom taken against the employer. Also, there were no management reports on the types of enforcement measures used or which measures were more successful.

In October 2003, the Ministry initiated an internal review of its collections function to recommend improvements to ministry procedures and to its relationship with private collection agencies. A report had not been issued at the time of our audit.

### **Recommendation**

**To effectively collect amounts owed to employees, the Ministry should implement more timely and vigorous enforcement measures. In addition, it should better monitor the success of those enforcement efforts.**

### ***Ministry Response***

***Several steps have been taken over the past year. First, a centralized unit was established in the Central Region office to address 55% of the provincial collections workload. This office conducts quality control checks on files going to and being returned by the collection agency, conducts post-agency enforcement, and investigates insolvency to ensure that all reasonable collection and enforcement options have been exhausted prior to file closure. This initiative has been successful in recovering funds that would not have been otherwise recovered. However, much more needs to be done.***

***In addition, the changes that the Ministry implemented in April 2004 are expected to get owed monies back faster into the hands of workers and increase the efficiency of collecting unpaid accounts.***

***Changes made to the claims process will get claims to the collection process faster. By moving claims through the system efficiently, a decision can be made much earlier as to: whether to move the claim to collection; or indeed whether the claim needs to be collected. By using the other tools available for enforcement, such as director's orders to pay and related fees, fewer files will need to go to collection. This change in philosophy is being undertaken now. In addition, the Ministry is initiating development of a better model of collection. Models across the country and elsewhere are being considered in order to increase the effectiveness of the process.***

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## **INFORMATION SYSTEMS**

The Program relies on a mix of paper and computer systems to produce management information on its enforcement activities and the results achieved. Decisions, claim orders, and investigation reports are largely paper-based and kept at district offices. Each district uses a stand-alone computer system to store caseload information and to track the status of files.

As investigations are completed, each district forwards paper copies of the completed reports to the head office, where information about the investigations is manually entered into a database on a separate computer system. The head office system produces summary statistical reports on investigation activities and results by district. These include information such as the turnaround times for claim files, investigation times, the number of employers in violation, the number of claim orders issued, and amounts assessed and recovered.

The use of approximately 30 separate district and head office computer systems is inefficient and labour-intensive and has resulted in the duplication of record-keeping and data-entry work. At the same time, the sharing of enforcement information between districts is difficult because detailed information about cases is kept in paper files in individual district offices. Even within the same district, officers indicated to us that obtaining certain information about previous or related claims is cumbersome and as result, often not pursued.

In addition to the information stored on the district and head office computer systems, other types of information are kept in different computer systems within the Ministry and are not easily accessible to officers in performing their duties. This includes information about claims appealed to the Ontario Labour Relations Board, receipts and disbursements of funds held in trust from payments made by employers, the results of prosecutions, the status of outstanding orders and collection histories, and amounts collected by collection agencies.

The Ministry was aware of these limitations and the need for a centralized computer system to better manage information and allow for more efficient work processes. At the time of our audit, the Ministry was still working on a project that was started in 1998 to develop a new, province-wide computer information system that, once completed, is expected to:

- record and facilitate all enforcement activities, such as the preparation of investigation reports and claim orders;
- provide information such as file status, identification of repeat offenders, the status of collections, and program measures; and
- improve data integrity by using edit controls and by eliminating multiple entries of information as well as improve the security of information.

However, we noted that the project had experienced significant delays since development started in 1998. As of March 31, 2004, over \$1.2 million had been spent, and the Ministry estimated that another \$2 million was needed to complete the project. In addition, the Ministry had not obtained the required approval from the Management Board of Cabinet for this system (approval is required for projects with expected costs of \$1 million or more).

The Ministry informed us that, as of March 31, 2004, the project was placed on hold and no further expenditures or commitments would be authorized until the proper approvals were obtained.

### **Recommendation**

**To ensure that staff and management of the Ministry's Employment Rights and Responsibilities Program have access to accurate, relevant, and timely information for decision-making, the Ministry should:**

- **obtain the required approvals for the development of its new computer system from the Management Board of Cabinet; and**
- **expedite the development of the new system to meet the needs of all users.**

### **Ministry Response**

***The Ministry recognizes the need for enhanced information technology (IT) infrastructure to support the program. A process-mapping and re-engineering exercise to streamline and improve efficiencies within the program is currently underway. Once this exercise is completed, the Ministry will determine the type of IT infrastructure required to support the revised operating practices and will seek the necessary approvals at that time.***

***It is important to make sure that the IT support is relevant to and fulfills the needs of the revamped program. We must complete the revamping before developing an IT system in order to ensure that we have one that is "fit for the purpose."***

## **QUALITY ASSURANCE**

An employment standards officer is required to complete an investigation report for each complaint that the officer completes. A copy of the investigation report is to be submitted to head office so that information from the report can be entered into the head office database.

In mid-2003, the Ministry introduced quality assurance reviews of investigation reports for each district office. The new initiative requires that each year 5% of all investigation reports completed by each employment standards officer be reviewed by the region's

program co-ordinator. All regions we visited had initiated these reviews, but the results had not yet been summarized.

We reviewed a sample of investigation reports at district offices and found that the reasons for officers' decisions were generally well documented. However, for much of the other required information the reports were not complete in more than 50% of the cases we reviewed. We found examples of reports that were missing information on order number and date, the date of voluntary payment, and the reasons why no collection was made.

We also found some of the data that should have been in the head office database were missing and that other data were wrong due to data-processing errors. This resulted in incomplete and inaccurate management reports. At the time of our audit, quality assurance reviews did not include verification of the completeness or accuracy of the investigation information stored in either local or head office databases.

### **Recommendation**

**To ensure that the quality of information pertaining to claims made under the *Employment Standards Act, 2000*, is adequate for enforcement and for management decision-making, the Ministry should:**

- **improve its documentation of claims and investigations to ensure the completeness and accuracy of information; and**
- **expand quality assurance procedures to include verifying that information contained in ministry databases is also complete and accurate.**

### ***Ministry Response***

***The Ministry agrees with the Auditor's recommendation. Program staff developed and implemented a quality assurance audit for claims investigation files in 2003/04, which covered such areas as the quality and completeness of documentation and adherence to legislation and policy. Results of the Program's 2003/04 internal audits indicate deficiencies in the completion of the investigation report, failure to consistently comply with program policy, and evidence of incomplete core documentation. The Ministry is taking steps to address the deficiencies and improve the quality assurance audit. We will emphasize to staff the importance of completely documenting claims and investigations as well as ensuring the information being entered into the ministry database is accurate.***

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## **MEASUREMENT OF AND REPORTING ON PROGRAM EFFECTIVENESS**

The mandate of the Employment Rights and Responsibilities Program is to protect the rights of workers as set out in the *Employment Standards Act, 2000*. The Ministry is required to provide to the Management Board of Cabinet an annual, results-based business plan that outlines program plans for the coming year and reports on program performance from the previous year. Such reporting is intended to inform legislators and the public about the extent to which programs and services are providing value to the public. It serves not only as a vehicle to focus attention on results and drive change but also as a mechanism for openness and accountability.

We assessed whether or not the Ministry had adequate systems and procedures in place to measure and report on the Program's effectiveness. The criteria that we agreed to with the Ministry for the purpose of assessment encompassed a set of performance-reporting principles developed by the CCAF–FCVI Inc. (formerly the Canadian Comprehensive Auditing Foundation–La fondation canadienne pour la vérification intégrée), a national, non-profit research and educational foundation, working in consultation with legislators, government officials, and legislative auditors across Canada. These principles include:

- focusing on the few critical aspects of performance;
- looking forward as well as back;
- explaining key risk and capacity considerations and other factors critical to performance;
- integrating financial and non-financial information;
- providing comparative information;
- presenting credible information, fairly interpreted; and
- disclosing the basis for reporting.

We concluded that the Ministry did not have adequate performance-reporting systems or procedures in place for the Program that met the CCAF–FCVI Inc. principles. For instance, the Ministry had not defined the critical aspects of performance nor had it explained the Program's key risk and capacity considerations. At the time of our audit, it reported on only one measure—the percentage of cases closed within 60 days. In doing so, the Ministry focused on reducing processing time as a priority in order to enhance client service. While this was a valid measure, in itself, it was insufficient to inform the Legislature and the public of the Program's success in contributing to the protection of employment rights for workers.

The Ministry advised us that its 2004/05 results-based plan would implement effectiveness measures. However, the plan had only two additional measures: the

percentage of non-compliant workplaces found and the satisfaction rate of employee claimants with the resolution of their claims. More comprehensive and appropriate performance indicators are needed to inform the Legislature and the public of the success of the Program.

We identified additional areas that the Ministry could measure and report on to better inform and help the Legislature and the public understand factors that influence the success of the Program, including:

- the most commonly found violations, such as unpaid statutory holidays, vacations, and severance pay, and the number and extent of these violations by business sector as well as the underlying reasons for any high rates of violation;
- employment standards officers' efforts to target high-risk businesses and extend their investigations beyond complaints and the success of those efforts; and
- the enforcement measures (orders to pay, notices of contravention, prosecutions, and so on) available, their rates of use, and the success of those measures in gaining compliance.

Some of the above information, for example, the results of enforcement, is already available and could be made public in the Ministry's results-based plan.

Results-based performance measures and targets can also be invaluable to management in directing resources to industries and areas presenting the greatest risk to employees.

### **Recommendation**

**To help ensure the openness and accountability of the Employment Rights and Responsibilities Program and to assist management in making decisions affecting program direction and resource allocation, the Ministry should develop and implement more comprehensive indicators to measure and report on the Program's effectiveness.**

### ***Ministry Response***

***The Operations Division has established a clear set of targets and has developed a program to monitor the achievement of those targets. The Ministry has developed a risk-based approach to targeted inspections to be able to maximize the impact of its investigation resources.***

***The measures recommended by the Provincial Auditor are being considered, and new program measures being implemented in 2004/05 include tracking:***

- ***the percentage of workplaces found non-compliant to employment standards legislation from ministry inspection activities;***
- ***customer satisfaction with the employment standards program; and***
- ***the achievement of officers in rendering decisions on 80% of the claims within 90 days.***

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## **FINANCIAL CONTROLS**

### **Trust Fund**

As of March 31, 2004, the Ministry administered a trust fund with approximately \$11 million in assets and over 1,000 active trust accounts. Over half of the money in the fund represents employer payments held in trust for employees terminated with recall rights. Recall rights permit former employees to return to their workplace within a specified time period if employment becomes available. The money in the fund is payable to the employees if the recall is not exercised within the specified time period. Other funds are held in trust awaiting the results of employers' appeals of the orders against them. The remaining funds are made up of amounts collected from employers for claimants. During 2003, ministry staff processed approximately 2,000 deposits from employers averaging \$7,000 per deposit and made about 3,000 payments to employees averaging \$3,000 per payment.

Our examination revealed serious internal control weaknesses in the administration of the trust fund. These weaknesses included the lack of a monthly reconciliation of the ministry's accounting records with its bank accounts to ensure all receipts and payments are properly accounted for and a lack of supervisory review of the work of staff. We also found serious errors and omissions in the accounting for the fund and significant delays in payments or non-payment of funds to employee claimants, as illustrated by the following examples:

- We identified discrepancies ranging from \$2,000 to \$150,000 due to the lack of a monthly reconciliation of the Ministry's accounting records with its bank accounts.
- The Ministry could not pay money totalling \$27,000 plus interest that it received on behalf of two employees in 1995 and 1996 because it had no information on when their recall rights expired. The Ministry had made no attempt to follow up even though payments had been made approximately four years ago to other employees of the same company. In three other instances, the Ministry had deposits from employers totalling approximately \$140,000 that could not be paid out because the Ministry could not locate supporting documentation to determine whether it was owing to the employees or refundable to the employer.
- We found many instances of delays in paying claimants, in some cases as long as three years. In one case, the Ministry paid \$16,200 in January 2004 to an individual even though the former employee's recall rights had expired three years earlier, and in another case, the Ministry paid \$8,400 to an individual in March 2004 although the funds were collected in June 2002. In both cases, action was taken as a result of our bringing these instances to the Ministry's attention.
- In another instance, payments totalling approximately \$44,000 were made to seven individuals, even though the payment from the employer was to have been for six

employees. The Ministry could not explain why the number of employees had increased to seven. In addition, the amount paid out included administration fees that should have been kept by the Ministry. We also found instances where the Ministry had failed to collect the required administrative fees.

- We found that an active account with a negative balance was the result of duplicate cheques totalling approximately \$15,000 dating back to 1998 and 1999 that had been issued to three claimants. We noted that prior attempts by the Ministry to recover these amounts were made without success. Once we brought this matter to the Ministry's attention, the Ministry initiated further action and recovered these amounts.

Since 1999, the Ministry had transferred approximately \$2.1 million to the government's Consolidated Revenue Fund. About half of this amount was from the trust fund as a result of unclaimed wages—for example, payments to employees that were undelivered or cheques that had become stale-dated—and the remaining half was from similarly unclaimed amounts owed to employees from the former Employee Wage Protection Program, which ended in 1997. The Ministry had not tried to locate the employees through, for example, checking address changes from driver's licence records or using local telephone directories. Long delays of up to several years can occur between the date an employee initiates a claim and the date that funds become available, increasing the likelihood that employees have moved. We believe that the Ministry should make a greater effort to locate claimants prior to transferring trust funds to the government.

### **Recommendation**

**To ensure employee claimants receive the money they are entitled to under the *Employment Standards Act, 2000* on a timely basis and to adequately safeguard assets held in trust, the Ministry should:**

- review all the trust fund accounts for errors and omissions and, where warranted, take necessary corrective action;
- improve controls over the administration of the trust fund and monitor the use of these controls on an ongoing basis;
- establish improved procedures for locating and paying claimants; and
- involve internal audit in ensuring that discrepancies and completion of the required reconciliations are appropriately investigated and resolved.

### **Ministry Response**

***The Ministry agrees with the Provincial Auditor's recommendation and is taking concrete, immediate action to address the Auditor's concerns and ensure that effective accounting processes and financial controls are put in place.***

***The Ministry has undertaken an action plan, to be completed within a short time frame, to ensure better collection of claimant information and to allow for process enhancements, improved reconciliation and financial control, and better administration of undisbursed funds. For example:***

- ***The Ministry has updated the policy and procedures manual for trust fund controllership and is implementing enhancements to existing financial controls beyond reports generated by the bank (for example, reconciliation of deposits and disbursements and bank fee verifications by the Ministry).***
- ***Separation of duties (dealing with, for example, receipts, disbursements, and data entry) will be undertaken where required to achieve financial integrity and control.***
- ***The Ministry is working with the Ministry of Finance to develop a policy for undisbursed funds, emphasizing the degree of diligence required to locate the individual payees before any transfer to the Consolidated Revenue Fund can be authorized. Enhanced measures for locating claimants have been initiated, including requesting additional contact information on claim forms and using search methods to reach employee claimants on the existing list where contact has been lost.***

***It should be noted that, where claimants fail to provide updated address information and entitlements flow to the Employment Standards Unclaimed Wages Account and ultimately to the Consolidated Revenue Fund, the entitlements continue to remain available to the beneficiary regardless of whether they are maintained within the trust account or transferred to the Consolidated Revenue Fund.***