

3.10—Occupational Health and Safety Program

BACKGROUND

The Ministry's Occupational Health and Safety Program (Program) sets, communicates, and enforces laws aimed at reducing or eliminating workplace fatalities, injuries, and illnesses. The Program operates under the authority of the *Occupational Health and Safety Act* (Act) and related regulations. The legislation covers most workplaces in Ontario. Workplaces not covered include farming operations and those under federal jurisdiction. The Ministry estimates that about 300,000 workplaces and 4.6 million workers are covered by the Act.

The Act sets out the rights and duties of all workplace parties (employers, supervisors, and workers). It establishes procedures for dealing with workplace hazards and provides for enforcement of the law where compliance has not been achieved voluntarily. The Act is based on a philosophy known as the "internal responsibility system," whereby workplace parties are deemed to be in the best position to identify health and safety problems and to develop solutions. Provisions of the Act aimed at fostering an adequate internal responsibility system include requirements for employers to have a health and safety policy and program and for large employers to establish a joint health and safety committee with management and worker representatives.

The Program is delivered through the Ministry's head office, four regional offices, and 26 district offices. For the 2003/04 fiscal year, Program expenditures totalled approximately \$52 million, of which approximately 75% was in salaries and benefits. The Ministry has a Memorandum of Understanding with the Workplace Safety and Insurance Board (WSIB) that calls for the WSIB to assume the costs associated with administering the Act. For the 2003/04 fiscal year, the WSIB reimbursed costs totalling approximately \$43 million. The following table shows the number of workplace fatalities and lost-time injuries for the past five years.

Workplace Fatalities and Lost-time Injuries, 1999–2003

	1999	2000	2001	2002	2003
number of fatalities	62	68	72	62	73
lost-time injuries per 100 workers per year	1.8	1.8	1.7	1.6	n/a

Source of data: Ministry of Labour

AUDIT OBJECTIVE AND SCOPE

Our audit objective for the Occupational Health and Safety Program was to assess whether the Ministry had adequate systems and procedures in place to fulfill its key mandate of enforcing occupational health and safety legislation to reduce workplace injuries, fatalities, and illnesses.

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

Our audit 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 12 district offices. At the district offices, we accompanied ministry inspectors on a number of visits to workplaces in the industrial, construction, and mining sectors to better familiarize ourselves with their activities. We also researched similar programs in other jurisdictions. In addition, we followed up on the recommendations we made in our 1996 audit of the 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 reviewed the work performed by the Ministry's Internal Audit Services Branch. The Branch had conducted an audit of the Program in 2001. We reviewed the audit report and adjusted the scope and extent of our work where possible to rely on their work.

OVERALL AUDIT CONCLUSIONS

We concluded that the Ministry's systems and procedures for enforcing occupational health and safety legislation to reduce workplace injuries, fatalities, and illnesses had improved in some areas since our last audit of the Program in 1996. Specifically, it has

developed an overall framework to improve priority setting and to better co-ordinate the delivery of occupational health and safety programs and services with the WSIB and other health and safety organizations. The Ministry has also increased the level of enforcement activities by redirecting resources towards more field inspections.

Notwithstanding that some progress has been made, we identified a number of areas where improvements are required if the Ministry is to be fully effective in fulfilling its key mandate of reducing workplace injuries, fatalities, and illnesses. In particular, the Ministry needs to ensure that strong enforcement action is taken when serious safety concerns are identified and make sure that corrective action is taken; and the Ministry must take more aggressive action to prosecute repeat violators and employers who repeatedly fail to comply with ministry compliance orders. In addition, the Ministry needs better monitoring of the quality of inspection work and the related documentation.

Our specific findings are as follows:

- The Ministry's inventory of workplaces that are potential candidates for inspection was incomplete. This inventory (a computerized database) is built from employer registrations as well as from previous inspections and investigations. However, there is no requirement for workplaces in the industrial sector to register with the Ministry. Even in the sectors where workplaces are required to register, a substantial number fail to do so. For example, in December 2003 a 45-day inspection blitz of construction projects in the greater Toronto area identified more than 90 large projects that had not been registered with the Ministry as required and therefore would not show up as inspection candidates on the Ministry's system.
- The number of compliance orders issued per inspector ranged from fewer than 100 to more than 500 per year. However, the Ministry had not investigated the reasons for such large variances to ensure that inspections and the issuing of orders were being done on a consistent basis throughout the province.
- The Ministry's information systems reported the number of outstanding orders where the employer had not taken the required corrective action to be approximately 7% of all orders issued. However, over 30% of the inspection and investigation files we examined did not have the required Notice of Compliance filed by the employer or evidence of re-inspection by the Ministry, even though the computer system indicated that the orders had been complied with. As a result, we questioned if the Ministry had reliable information on whether corrective action had actually been taken on the orders issued.
- We noted many cases where prosecutions were not used to deter repeat violators, or those with serious safety violations. The ability of inspectors to use prosecutions to act as a deterrent to help reduce workplace injuries, fatalities, and illnesses was made evident by the December 2003 inspection blitz of construction projects mentioned earlier. Using a zero-tolerance approach that required inspectors to

prosecute employers for high-risk safety violations, inspectors issued nearly 50% more tickets and summonses during the 45-day blitz in the greater Toronto area than had been issued during the entire previous year for all construction projects across Ontario.

- Inconsistencies in inspectors' reports of their activities made comparisons of their workloads difficult and also pointed to the need for better monitoring of the use of inspection resources. As well, we found that inspection records were often incomplete, inaccurate, and could not effectively support enforcement efforts.
- To enhance its performance reporting, the Ministry needs to measure and report on its own performance in reducing workplace injuries, fatalities, and illnesses in those areas that it can control and be accountable for.

Subsequent to our audit fieldwork, on July 8, 2004 the government announced the hiring of 200 additional enforcement staff over the next two years, including 100 new health and safety inspectors this year, to target workplaces with poor health and safety records. Its goal is to reduce workplace injuries by 20% in four years; this is expected to result in approximately 20,000 fewer lost-time injuries and 40,000 fewer non-lost-time injuries per year.

DETAILED AUDIT OBSERVATIONS

CO-ORDINATION WITH HEALTH AND SAFETY ORGANIZATIONS

In addition to this Program, a number of other organizations are involved in the delivery of programs and services related to improving occupational health and safety. These include the Workplace Safety and Insurance Board (WSIB) and 14 health and safety delivery organizations, which are funded primarily by the WSIB. The WSIB oversees Ontario's workplace safety education and training system, and provides compensation and rehabilitation services to injured workers. The health and safety delivery organizations, which comprise members from industry groups, are responsible for promoting the prevention of accidents and occupational illnesses by providing consultation and training to workers, managers, and employers.

In our 1996 audit, we recommended better co-ordination of workplace health and safety activities between the Ministry and these other organizations to avoid duplication and inefficient use of resources—for example, in the provision of training for workplace parties and the sharing of WSIB information with the Ministry.

The Ministry, in conjunction with the efforts of the WSIB and other health and safety organizations, has since developed an overall framework—through joint membership in the Occupational Health and Safety Council of Ontario—aimed at improving

priority setting and co-ordination. These efforts have resulted in better-defined responsibilities in that the Ministry is responsible for developing, communicating, and enforcing standards; and the WSIB, along with its health and safety delivery organizations, is responsible for the prevention of injuries and for the promotion of good and safe health practices.

Another significant improvement since our last audit has been in the WSIB's sharing of information with the Ministry, which allows the Ministry to target its inspection efforts towards employers with a history of more frequent worker injuries.

ENFORCING THE ACT AND REGULATIONS

Overview

Ministry inspectors have broad powers, among other things, to inspect any workplace; to conduct investigations in response to accidents, work refusals, or health and safety complaints; to order compliance with the Act and regulations; and to initiate prosecutions. In addition, the Act requires that employers report to the Ministry all cases where a person is killed or critically injured from any cause at a workplace so that the Ministry can conduct an investigation.

Where there are contraventions of the Act or the regulations, the inspectors may issue written orders requiring the employers to comply with the law within a certain time period. If the contraventions in question are dangerous to workers' health or safety, the inspectors may also issue stop orders, which require that the work be stopped until the contraventions have been corrected. The Ministry may also prosecute any person or corporation for failing to comply with such orders or for serious contraventions, particularly those resulting in critical injuries or fatalities.

The Ministry had about 230 inspectors, each of whom was designated to a business sector (primarily the industrial, construction, and mining sectors). In the 2003/04 fiscal year, ministry inspectors carried out about 56,000 field visits: two-thirds of those visits pertained to inspections, and the remaining one-third pertained to investigations.

We noted that the Ministry's enforcement activities have increased significantly since our last audit in 1996, as illustrated in the following table.

**Summary of Enforcement Activities
for Fiscal Years 1995/96 and 2001–2003/04**

	1995/96	2001/02	2002/03	2003/04
field visits for inspections	28,700	37,300	35,700	36,900
field visits for investigations	12,400	16,600	14,800	17,300
orders issued	36,300	75,200	72,600	77,800

Source of data: Ministry of Labour

The Ministry indicated that it was able to increase the level of enforcement through redirecting its resources from other areas, such as consultations, towards more field inspections and investigations.

Identifying Workplaces for Inspection

The Ministry's province-wide computerized Merged Information System (MIS) provides information to help inspectors plan work and track their visits, including the types of business, their locations, the results of previous field visits, and orders issued. The MIS database contains information obtained primarily through previous inspections and investigations, as well as the registrations required to be submitted by certain construction and mining sector operations. For example, construction contractors with projects valued at over \$50,000 are required to file a Notice of Project form with the Ministry identifying the owner, the general contractor, the type of construction, the number of workers, and the project's duration and value.

To help them choose which workplaces to inspect, the Ministry's inspectors rely on the MIS database, on previous inspection reports, and on a list of employers who have reported lost-time injuries to the WSIB. However, we noted that the MIS database was incomplete due to the following reasons:

- Not all workplaces are required to register with the Ministry. For example, there was no requirement for any workplaces in the industrial sector to be registered with the Ministry.
- The WSIB list includes only employers who have registered to pay WSIB premiums. Our discussions with the WSIB indicated that it devoted significant resources to identifying employers who did not register, particularly small and medium-sized employers, as they were perceived to pose a higher risk of non-compliance.
- The Ministry had not ensured that construction contractors filed the required Notice of Project for construction projects valued at \$50,000 or more. In December 2003, following a serious accident in a Toronto construction project, the Ministry initiated an inspection blitz of construction projects in the greater Toronto area. During the 45-day blitz, inspectors used information obtained from municipal building permits to identify more than 90 construction projects that had not filed the required Notice of Project.
- The Ministry also did not require construction contractors to identify their subcontractors when filing a Notice of Project, even though one of the Act's regulations requires that a list of subcontractors be maintained at the construction site's office. Without this information at the Ministry's office, inspectors cannot target high-risk subcontractors, such as those with a high incidence of WSIB claims, for inspection.

Our audit indicated that several districts have arranged to obtain information from alternative sources to help ensure that all workplaces are identified for inspection. For example, one district periodically contacted the Ministry of Natural Resources to access their records on the location of open-pit mines, and two other districts had arranged with municipalities for access to municipal building permits to help identify unregistered construction projects. However, none of the three districts we visited in the greater Toronto area had adopted the practice of accessing municipal building permits.

With respect to the WSIB list of employers with lost-time injuries, inspectors indicated to us that more information was needed to better identify and assess risks at workplaces. Examples included the size of the workforce, where in the workplace the injuries occurred, and whether the employer has workplaces in multiple locations (because if safety violations occurred at the workplace where the lost-time injury was experienced, that employer's other workplaces may present similar risks and should therefore be inspected as well). At the completion of our audit, the Ministry was in the process of negotiating on-line access to WSIB databases, which would allow inspectors to better target high-risk workplaces and research the worksite details before a visit.

Recommendation

To help ensure that all workplaces are identified for possible inspection, the Ministry should:

- **consider adopting the practices of some districts, such as using municipal building permits to identify unregistered workplaces, on a province-wide basis;**
- **develop ways to maintain a more complete inventory of workplaces that are candidates for inspection, including, where possible, establishing formal arrangements with other organizations to obtain information useful to inspectors for planning their inspections; and**
- **enhance monitoring practices to ensure that construction contractors submit Notices of Project as required and that the required information about subcontractors working on the project is provided.**

Ministry Response

On an overall basis, the Ministry acknowledges the finding of the Provincial Auditor that improvements have been made to the delivery of its Occupational Health and Safety Program since the Provincial Auditor's 1996 Annual Report. The Ministry also accepts the Auditor's observations that further improvements are required in the areas of stronger enforcement and quality control and assurance.

As noted by the Provincial Auditor, the Ministry announced plans to reduce workplace injuries by 20% by the end of four years through a comprehensive,

integrated health and safety strategy spearheaded by aggressive enforcement measures. The strategy also includes providing workplaces with easier access to health and safety information through a workplace gateway, ensuring Ontario's health and safety regulations are current and engaging stakeholders in sector-based "Action Groups" to help prevent workplace illnesses and injuries. The Ministry has already begun work to implement many of the specific recommendations linked to the detailed audit observations in the context of this broader strategy.

Such a large-scale change underscores the need for improved targeting and closer monitoring to ensure that the first re-investment in enforcement resources in some time achieves the intended outcomes for Ontario's workplaces and the fiscal sustainability of the Workplace Safety and Insurance Board (WSIB).

With respect to this particular recommendation, the Ministry is taking action to improve access to information needed to identify workplaces for possible inspection.

In May 2004, the Ministry finalized an information-sharing agreement with the WSIB. Using data from the WSIB, high-risk firms were identified based upon the cost of their lost-time injuries since January 1, 2000. The analysis of the data identified 6,000 high-risk workplaces where workers were injured more often, where compensation costs were higher, and where injuries were more costly when compared with other firms in their sector.

The Ministry is working with five other regulatory ministries to improve the effectiveness of inspections, investigations, and enforcement across government. This includes work to improve the sharing of intelligence about non-compliant workplaces to enable better targeting of inspections and collaboration with the Ministry of Municipal Affairs on an electronic building permit (e-permit) initiative. E-permitting would enable construction companies to apply electronically through one window for all needed permits, including building permits. It would also give inspectors access to building permit information and eventually replace the Ministry's Notice of Project system. In the interim, the Ministry will increase enforcement of notification requirements to ensure that construction contractors submit Notices of Project as required and that the required information about subcontractors working on the project is provided.

Prioritizing Inspections

The majority of an inspector's time is spent on conducting inspections of workplaces to identify potential health and safety concerns. To help allocate its resources to high-risk workplaces, the Ministry prepares an annual sector plan that provides overall information on each business sector and summarizes major hazards and key concerns. Also, a priority list of workplaces that are considered high risk based on MIS and WSIB

data is provided to inspectors, who are required to conduct at least 70% of their inspections on workplaces selected from this list. The remaining inspections are to be conducted on workplaces that inspectors select based on their own judgment and on familiarity with their assigned areas.

We noted that the Ministry did not monitor the inspections that were carried out to ensure that at least 70% involved workplaces selected from the priority list and that the remainder also appropriately targeted high-risk workplaces. Inspectors did not have to provide such information in their inspection reports or input it into the MIS to facilitate monitoring by management. Although we were advised that district managers could require inspectors to provide them with lists of workplaces chosen for inspection, the practices followed were inconsistent and few records were kept of the results of any such monitoring for follow-up and future reference. In a November 2001 report to ministry management, the Ministry's internal auditors also reported on this issue. However, the matter had not been corrected at the time of our audit.

We also noted that inspections were conducted during routine business hours, generally between 8:00 a.m. and 5:30 p.m. No inspection resources were targeted to evenings and weekends to cover businesses that operate during these hours (for example, factories that operate on shifts, and transportation and construction activities that take place during evenings and weekends). The risk of workplace injuries occurring might be higher on evenings and weekends for some businesses, because more part-time workers, who tend to be less experienced with safe workplace practices, might be employed during that time and supervisory oversight might not be as prevalent.

Recommendation

To help ensure that high-risk employers are inspected, the Ministry should:

- **establish a more formal process for monitoring whether the required inspections of high-risk workplaces are being carried out; and**
- **assess the need for allocating a portion of inspector resources for targeting inspections during evenings and weekends.**

Ministry Response

The Ministry agrees with this recommendation and, as noted earlier, is implementing a strategy to reduce workplace injuries by increasing inspectorate resources and targeting high-risk workplaces for inspections. A dedicated management structure and processes have been put in place to ensure that the required inspections of the high-risk workplaces are taking place and appropriate enforcement action is taken.

Extended workplace inspection coverage is already taking place during evenings and weekends in some districts.

A pilot project to extend workplace inspection coverage in the construction sector began in mid-June 2004 and will extend to September 30, 2004. On a volunteer basis, inspectors varied their hours of work, including evening and some weekend work (primarily Saturday). At the end of this pilot project, the results will be evaluated to determine next steps. The Ministry points out that the advertisements for the current recruitment of 100 new inspectors include the possibility that inspectors may be required to work extended weekday hours and on weekends.

Advancing the Internal Responsibility System

Provisions of the Act aimed at fostering the internal responsibility system include requiring that most workplaces with 20 or more workers have a joint health and safety committee with both management and worker representatives. For smaller workplaces, the Act requires that a health and safety representative for workers be appointed. The main purpose of the committees and of the health and safety representatives is to identify and evaluate workplace hazards and to make recommendations to the employer regarding health and safety concerns so that they are addressed in a timely manner.

When conducting workplace inspections, the Ministry's inspectors are to ensure that the internal responsibility system is in place and working effectively. However, for most districts we visited, the inspectors' reports often did not specifically address this important area by covering such legislative requirements as:

- whether there was a joint health and safety committee and the frequency of its meetings;
- whether the committee carried out regular inspections;
- committee members' involvement in developing health and safety policies and procedures, in accident investigations, and in worker training; and
- whether the employer had taken action on any recommendations made by the committee to address hazards (since any unresolved problems might warrant the inspector's follow-up with the employer).

We also noted that where Ministry inspectors issued orders to correct hazards, those orders rarely addressed whether the joint health and safety committee had originally detected the deficiencies, and if they had, why they weren't corrected or recommendations made to prevent future recurrences and to improve the effectiveness of the internal responsibility system.

Recommendation

To help enhance workplace safety, the Ministry should require that its inspectors address whether an effective internal responsibility system is in place at each workplace inspected or investigated, and whether it appears to be operating effectively.

Ministry Response

The internal responsibility system (IRS) is a central feature of the Occupational Health and Safety Act, but the IRS is not specifically defined in the legislation. It is important to note that the core foundation of the IRS is the role and direct responsibility of the employer, supervisor, and worker to ensure safety in the workplace. Numerous orders to the employer, supervisors, or workers arising from an inspection at a workplace would be indicative of a poorly functioning IRS.

The joint health and safety committees in workplaces play an important contributory role by monitoring health and safety performance and the effectiveness of the IRS within the workplace, making recommendations for improvement and providing a mechanism for worker participation.

Discussions are underway with key stakeholders through three health and safety “action groups” on ways to reduce workplace injuries and illnesses. One area of discussion has been problems with and ways to improve the role and functioning of joint health and safety committees in workplaces.

The Ministry’s Policy and Procedures Manual requires inspectors to promote the IRS, hold the parties accountable through the issuance of appropriate orders, and include a summary of their discussions and interactions in the inspection report. The Ministry will ensure that these standards are re-communicated to all inspectors and that compliance with them is monitored.

Issuing and Monitoring Compliance with Orders

Ministry policy requires an inspector to issue a written order to an owner, constructor, employer, supervisor, or worker for each contravention observed during an inspection or investigation. Such orders may be appealed within 30 days. Employers are required to submit a Notice of Compliance form once the contravention is corrected.

Depending on the severity of the violation, the inspector may cancel the order based on a follow-up inspection, a phone call to the employer or worker representative, or the receipt of a Notice of Compliance. If no response from the employer is received by the compliance date, the inspector is required to conduct a follow-up inspection. The follow-up inspection could result in additional orders and/or in prosecution.

We found a lack of consistent application of ministry policy among inspectors across the province in the issuing of orders. The number of orders issued ranged from fewer than

100 to more than 500 per inspector per year. While a certain amount of variance can be expected—for example, an inspector who is conducting a large, complex investigation will have less time available to conduct other inspections and investigations—the Ministry had not assessed the reasons for such a wide variation. Ministry staff indicated that reasons for the variance in issuing orders might include inspectors' not properly identifying contraventions and the practice of some inspectors of giving out verbal warnings instead of issuing orders.

In our 1996 audit, we noted that a significant number of orders remained outstanding for long periods and that over 15% of the files we sampled showed no evidence that employers had submitted Notice of Compliance forms or that other verification of compliance with orders issued, such as follow-up inspection, had been done. At the time of our current audit, the Merged Information System (MIS) reported the number of outstanding orders to be approximately 7% of all orders issued over the previous 12 months. However, over 30% of the inspection and investigation files we reviewed contained no evidence indicating that the employer had rectified the unsafe workplace practices or that a re-inspection had been done. Consequently, the reliability of the MIS records that indicated all those orders had been complied with was questionable, as the Ministry was unable to demonstrate whether the discrepancy was caused by the lack of documentation or by corrective action not having been taken on the orders issued.

For example, a May 2002 inspection report noted that an employer had not established a joint health and safety committee and that the employees had not been properly trained on the use of lift trucks to move large objects. The inspector issued an order requiring the employer to establish a committee; the MIS indicated that the order had been complied with in December 2002. However, there was no evidence on file to show that compliance had taken place. In May 2003, an accident occurred in that workplace, resulting in a fatality of a worker who had been operating a lift truck. The Ministry's investigation determined that the deceased operator and 10 other workers who operated lift trucks had not been trained on their use and that the company had not established a joint health and safety committee. The Ministry has since initiated prosecution of the employer.

We found that some district managers were not familiar with using the MIS to extract information on inspectors' activities, such as reports on the number of orders issued and on whether follow-ups are being performed to verify compliance. As a result, their ability to monitor inspectors' activities appropriately was hindered.

Recommendation

To help ensure that contraventions are consistently dealt with and that corrective action is taken on identified health and safety hazards, the Ministry should monitor inspectors' activities to make sure that:

- orders are issued for all health and safety contraventions, as required by ministry policy; and
- orders are cancelled only after the inspector has received sufficient confirmation that the unsafe workplace practice has been rectified.

Ministry Response

The Ministry accepts this recommendation that its quality assurance and quality control (QA/QC) program, including the review and monitoring of inspectors' reports, needs to be improved. All managers have been re-instructed on the importance of this critical management responsibility. The Ministry will immediately undertake a comprehensive QA/QC initiative to ensure that inspectors' orders are issued according to ministry policy and are cancelled only when the inspector has appropriate documentation that the orders have been complied with.

Some of the deficiencies noted by the Auditor relating to compliance with orders may be related to data collection, input, and management. All staff will be provided with a refresher on basic inspector notebook rules and procedures and the proper use and coding of activity report forms.

Prosecuting Violators

OVERVIEW

The Ministry may initiate prosecutions when there have been serious contraventions, including gross disregard of the legislation, failure to comply with orders, and obstruction of an inspector. The methods used by the Ministry to prosecute are found under Parts I and III of the *Provincial Offences Act*.

For more serious violations, including any that result in a worker's death or critical injury, individuals and/or corporations are prosecuted under Part III of the *Provincial Offences Act*. Part III prosecutions can result in lengthy, complex trials. If convicted of an offence under Part III, an individual employer, supervisor, or worker can be fined up to \$25,000 and imprisoned for up to 12 months. The maximum fine for a corporation is \$500,000.

For other violations, individuals are prosecuted under Part I of the *Provincial Offences Act*, using one of two methods: a summons or a ticket. Both carry a maximum fine of \$500. A summons compels the defendant to appear in court. Tickets are used for certain offences (known as "scheduled offences"), each of which carries a set fine. A defendant can choose either to plead guilty and pay the set fine out of court or to appear in court to provide an explanation or request a trial.

The following table summarizes all fines imposed in 2003.

**2003 Occupational Health and Safety Fines
by Industry Sector and Workplace Party**

Industry Sector	Employers		Supervisors		Workers		Total Fines (\$)
	Number Fined	Average Fine (\$)	Number Fined	Average Fine (\$)	Number Fined	Average Fine (\$)	
industrial	99	39,500	9	5,500	4	300	3,960,000
mining	11	34,300	2	1,200	2	300	380,000
construction	86	30,800	144	500	232	200	2,780,000

Source of data: Ministry of Labour

PURSUING PROSECUTIONS

We found that the Ministry generally pursued prosecutions under Part III of the Act when more serious violations resulting in fatal or critical injuries to workers had occurred. However, it had not adequately monitored inspectors' activities to ensure that, where appropriate, prosecutions under Part I of the Act were pursued.

The ability of inspectors to increase the number of Part I prosecutions to act as a deterrent to reduce workplace injuries and illnesses was made evident by the results of the Ministry's December 2003 inspection blitz of construction projects in the greater Toronto area, discussed earlier in this report. As a result of the zero-tolerance approach taken during this initiative, nearly 50% more Part I tickets and summonses were issued in the 45-day blitz than had been issued during the entire previous fiscal year for all construction projects in Ontario, as the following table illustrates.

Construction Industry Prosecutions

Type of Prosecution under the <i>Provincial Offences Act</i>	All of Ontario, 2001/02 Fiscal Year	Greater Toronto, 45-day Inspection Blitz Commencing in December 2003
Part I – tickets	190	267
Part II – summons	52	92
Part III	56	14

Source of data: Ministry of Labour

In a November 2001 report to management, the Ministry's internal auditors had expressed their concerns about the inspectors' limited use of prosecutions. Their review indicated that strong enforcement action was rarely taken and that inspectors were generally uncomfortable with prosecuting. Instead, inspectors preferred to discuss their concerns with the employer.

The lack of prosecutions was even more prevalent in the mining and industrial sectors than in the construction sector. One reason for this lack of prosecutions could be that the Ministry had not established scheduled offences for these two sectors, as it had for the construction sector. Doing so would permit inspectors to impose set fines by issuing tickets—an alternative that consumes much less total time on the inspector's part than

does issuing a summons (which requires both the defendant and the inspector to appear in court). Inspectors in these sectors informed us that the relatively low maximum fine of \$500 under Part I of the Act often did not justify the substantial amount of work involved in issuing a summons. As a result, these inspectors tended to concentrate their prosecution efforts almost exclusively on Part III violations—that is, the more serious violations, especially those resulting in fatal or critical injuries to workers.

Ministry policy specifies that repeat offenders should be considered for prosecution, but we noted many cases where there was no prosecution even in instances where a number of repeat violations had occurred. In addition, as we noted earlier in this report, over 30% of the inspection and investigation files we reviewed had no evidence to demonstrate that the unsafe practices identified in the order had been rectified or that a re-inspection had taken place. In our view, the number of prosecutions was below what would be expected given the large proportion of cases in which there was no evidence that the employers had complied with the Ministry's orders and the high number of repeat offenders.

In a number of other North American jurisdictions, as well as in several other Ontario ministries, administrative monetary penalties have been introduced as an alternative to prosecution for certain offences. Under this arrangement, violators who have not committed a criminal offence are assessed financial penalties. If a case is appealed, the administrative process followed is much quicker and less costly than going through the courts. Administrative monetary penalties are also typically larger than the fines for Part I offences and are therefore more effective in deterring future violations. In early 2003, the Ministry made proposals to the incumbent Minister to amend the Act to provide for administrative monetary penalties.

Recommendation

To help ensure that the Ministry's enforcement efforts are both timely and effective in achieving compliance and in deterring future violations, the Ministry should:

- **take more aggressive action to prosecute violators who fail to comply with ministry orders or who are repeatedly found to have unsafe workplace practices; and**
- **consider introducing more expeditious and effective enforcement tools, including scheduled offences for the industrial and mining sectors and administrative monetary penalties for violations that do not warrant criminal prosecution.**

Ministry Response

The Ministry accepts this recommendation and has re-instructed its managers and staff on its enforcement policy.

The Ministry's recent announcement that 200 additional inspectors will be recruited includes putting additional legal branch resources in place to enable the Ministry to greatly increase the effectiveness of its enforcement.

The Ministry is currently working to provide inspectors greater access to using prosecutions under Part I of the Provincial Offences Act. New schedules of offences are being developed to enable inspectors to issue tickets in the industrial and mining sectors. The policy on the use of tickets will also be reviewed. This work will be completed by late fall 2004.

Monitoring Enforcement Efforts

REPORTING ON THE NUMBER OF INSPECTIONS AND INVESTIGATIONS

The Merged Information System (MIS) records cases, each of which represents either one premise or project inspected or an investigation into an event (such as a fatal work accident). To complete a single case, an inspector may have to conduct one or more field visits.

The Ministry measures inspectors' workloads based on quotas for the number of field visits completed during the year. However, we found inconsistencies among the practices of inspectors in reporting field visits that hindered the usefulness of this measure as an indicator of inspectors' workloads. For example, some inspectors recorded such activities as picking up and delivering reports as field visits, whereas others simply treated those as administrative activities and therefore did not record them as field visits. In addition, some inspectors had created multiple cases for the same inspection or investigation, thereby overstating the number of premises or projects inspected. In one instance, we found that an inspector had created 15 separate cases and 48 field visits, of which 32 were for preparation time, for an investigation into a single accident. Inappropriate practices such as these make comparisons of inspectors' workloads difficult and also point to the need for better monitoring of inspector effectiveness and the deployment of the Program's overall inspection resources.

REPORTING ON INSPECTION RESULTS

Inspectors are required to prepare a report following each inspection documenting such information as the purpose of the visit, the places and parts of the workplace inspected, a summary of any orders issued, and a brief account of the inspector's observations and comments. They are to obtain the names and, wherever possible, signatures of the employer's representative and of a worker representative. Information

from the reports is transferred electronically to the MIS, and signed paper copies of the reports are filed in the respective district offices.

We reviewed a sample of files at the district offices and found that the records were often incomplete, inaccurate, and not of an adequate quality to effectively support enforcement efforts. With regard to the files we reviewed, we found that:

- In many cases the Ministry could not locate the actual inspection reports or other important documents, such as Notices of Compliance or other evidence of compliance with orders issued by inspectors.
- Half the reports that were available for review did not meet the quality standards specified by the Ministry's own policy and procedures manual. For many workplace inspections, the inspector's comments stated only "routine inspection" and provided no further details as to what the inspector reviewed and observed during the inspection. Also, in many instances the inspector did not obtain the signature of the report's recipient and/or of a worker representative, and provided no explanation as to why the missing signature(s) were not obtained.
- The Ministry had not required inspectors to record certain information in their inspection reports that would, if entered into the MIS, help the Ministry monitor inspection and investigation activities and make more effective management decisions. Such information could include an indication of how the workplace was selected for inspection (for example, because it was on the priority list established by management or for some other reason); and a list of any prosecution activities previously undertaken, along with the results of those activities.

We also had concerns regarding the completeness and accuracy of the information contained in the MIS database. Due to various data input, coding, and computer errors, the database contained too many instances where information did not make sense, such as a compliance date that was before the date on which the order in question was issued. Also, new identification numbers were created for workplaces that were already on the MIS. Consequently, inspectors had to be aware of multiple identification numbers to access all the history that the MIS contained on a specific workplace.

IMPROVING THE QUALITY OF INSPECTIONS

Each region had established a quality assurance program that required the region's program co-ordinators to review inspectors' activities, including assessing samples of inspection and investigation reports and periodically accompanying inspectors on field visits. A sound quality assurance oversight process can be a valuable tool to assure management that its processes are working as intended. However, given our concerns with respect to inspectors' reports and documentation, we discussed these issues with a number of the regional program co-ordinators and they informed us that their reviews had found many of the same concerns.

This raises the issue of the overall effectiveness of the quality assurance programs in identifying and implementing improvements. The Ministry's internal auditors also identified this issue in a November 2001 report. They noted that organizational culture issues occur between the role of the co-ordinator and that of the inspectors, and that these issues often did not permit independent and frank reviews of inspectors' activities.

There were also inconsistencies in the co-ordinators' approaches to conducting quality assurance reviews and to reporting on their results. Some program co-ordinators did not communicate their findings to inspectors or district managers, but instead reported their observations only to regional management.

In addition, regional management is not required to report the results of reviews conducted under its quality assurance programs to senior management at the Ministry's head office. Such reporting would improve senior management's ability to monitor Program activities to ensure consistency in enforcing the Act throughout the province and to identify and address common issues.

We noted that at two districts, managers had established periodic rotation schedules for their inspectors, requiring them to exchange geographic areas from every six months to every two years. Rotations permit inspectors to gain exposure to different types of workplaces or projects and bring new perspectives to an area. The Ministry did not have a formal policy on rotations, and we believe this practice would improve quality if applied in all districts.

Recommendation

To strengthen support for enforcement efforts aimed at reducing workplace injuries and illnesses, the Ministry should:

- **review and improve its systems and procedures for measuring and monitoring the deployment of staff resources on enforcement activities to ensure the allocation of staff is based on relative workload and risk;**
- **improve its reporting of inspection results to ensure that important documents are kept, that the information is complete and accurate, and that the quality of inspections complies with ministry policies and procedures;**
- **build on its quality assurance initiative by taking action to ensure that it is effective and consistent between regions and that concerns and best practices noted are appropriately communicated to staff and management;**
and
- **consider implementing periodic rotation of inspectors to different geographic areas.**

Ministry Response

The Ministry is taking action to improve the allocation of staff based on workload and risk. The formal agreement with the Workplace Safety and

Insurance Board for sharing information, referred to earlier, now enables the Ministry to identify specific high-risk workplaces for targeted inspections. The 200 additional inspectors are being earmarked for locations across the province based on a workload assessment.

As noted previously, the Ministry has initiated action to improve its quality assurance system to ensure that ministry policies and procedures are followed and that concerns as well as best practices are communicated to staff and management. Particular attention will be paid to ensuring that inspectors, support staff, and managers know and fulfill their respective roles in delivering quality standards such as the quality of inspection reports and the completeness of files.

Managers will consider the periodic rotation of inspectors to different geographic areas, where and when that is operationally feasible and appropriate.

MEASURING AND REPORTING ON PROGRAM EFFECTIVENESS

According to the Ministry's most recent business plan, the Program "supports Ontario workplaces to be among the safest in the world, where safety, productivity and competitiveness are inter-connected." The Ministry's contributions include "setting, communicating and enforcing occupational health and safety laws to reduce or eliminate workplace injury or illness."

The Ministry is required to provide to the Management Board of Cabinet an annual results-based business plan that outlines plans for the coming year and reports on performance from the previous year. Such reports are also intended to inform legislators and the public about the extent to which programs and services are meeting program objectives and providing value to the public. The annual business plan serves not only as a vehicle to focus attention on results and drive change but also as a mechanism for fostering 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 that works 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;

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- 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. The Ministry's business plan supplied only one performance measure and offered a limited narrative to highlight program results during the year. The Ministry's key measure was the rate of lost-time injuries resulting from workplace accidents over the previous five years. But that measure reflects the effectiveness of the system as a whole, since the rate of lost-time injuries is affected not only by the Ministry's own activities but also by those of the WSIB and its health and safety delivery organizations.

To better inform the Legislature and the public about the Program's success in contributing to protecting worker safety, the Ministry needs to report on aspects of its own performance that it can control and be accountable for. We suggested the following additional areas that the Ministry should consider measuring and reporting on to better inform the public and to help clarify factors that influence the Program's success:

- the number of cases (workplaces) inspected and investigated;
- best workplace practices as well as the most common health and safety violations identified from inspections, such as fall hazards, ineffective internal responsibility systems at workplaces, and the use of unsafe equipment;
- the most common types of accidents investigated, such as falls, amputations, and work-related diseases;
- performance by industry sectors and subsectors in reducing lost-time injuries and violations; and
- enforcement measures used (for example, orders, fines, and prosecutions) and the effectiveness of these measures in achieving compliance.

Most of this above information was already available internally to ministry management or could be easily made available with minimal changes to existing procedures. The information could be reported publicly using the Ministry's business plan or on its public Web site.

Recommendation

To help ensure the accountability of the Occupational Health and Safety Program and to assist the Legislature in making decisions affecting program direction and resource allocation, the Ministry should develop, in accordance with appropriate performance-reporting principles, more comprehensive indicators for measuring and publicly reporting on the Program's effectiveness.

Ministry Response

The Ministry uses the lost-time injury rate as an important outcome measure reflecting the overall state of health and safety, and one that can be used to compare with other jurisdictions. However, the Ministry also monitors other outcome measures, such as fatalities, injury costs, and the non-lost-time injury rate. In addition, the Ministry monitors key activity measures, including the number of inspections, investigations, total field visits, orders issued, and prosecutions. The number of work refusals and complaints reported to the Ministry are also tracked. Statistics on all of these measures for the past 10 years have recently been posted on the ministry Web site, and additional measures are being considered.