

# Consumer Protection

## Background

The Ministry of Consumer Services (Ministry) oversees business and industry practices in Ontario's consumer marketplace for the protection of consumers and public safety. It does so by establishing a regulatory and legal environment that protects consumers, educating the public and businesses about business standards and other relevant issues, dealing with complaints received from the public, monitoring and inspecting businesses, and enforcing compliance with various consumer protection laws and regulations. The Ministry has responsibility for 27 consumer protection and public safety statutes. The primary legislation for which the Ministry directly monitors compliance includes the *Consumer Protection Act, 2002* (CPA), the *Collection Agencies Act*, the *Cemeteries Act*, and the *Film Classification Act, 2005*.

The CPA gives the Ministry powers to disseminate information for the purpose of educating and advising consumers; to provide information to consumers about the use of alternative dispute resolution techniques; and to enforce the CPA and other consumer protection legislation. The CPA covers consumer and business rights and their respective obligations, as well as requirements for warranties, unfair business practices, and other

areas. In addition, businesses that fail to respond and/or are found to be in violation of a consumer protection statute may be listed on the Consumer Beware Database, which is available to the public on the Ministry's website.

The responsibility for a number of consumer and public-safety statutes for specific marketplace sectors has been delegated to eight designated administrative authorities (delegated authorities) for some time, as shown in Figure 1. The delegated authorities are not-for-profit corporations and each has a board of directors. The majority of directors are industry representatives, although the Minister can appoint some members to each delegated authority's board. The delegated authorities use their industry and technical expertise to carry out the day-to-day functions of ensuring public safety and/or consumer protection in their industries by regulating and monitoring business practices, by inspection and enforcement, by dealing with complaints, and, in some cases, by administering industry-specific warranty or compensation funds to qualifying consumers. The Ministry monitors the performance and activities of delegated authorities and retains control over certain major decisions.

The Ministry's Policy and Consumer Protection Division (Division) consists of three branches: the Policy Branch, the Consumer Protection Branch, and the Sector Liaison Branch (which oversees the delegated authorities). In the 2008/09 fiscal year,

**Figure 1: The Ministry's Delegated Authorities, as of March 31, 2009**

Source of data: Ministry of Consumer Services

Delegated Authority (Year Established)	Primary Legislation Administered and Key Responsibilities	Annual Expenditures (\$ million)	# of Staff
Board of Funeral Services (BoFS) (1914)	<i>Funeral Directors and Establishments Act</i> regulates funeral services; licenses 2,500 funeral directors and 600 businesses	1.5	10
Electrical Safety Authority (ESA) (1999)	<i>Electricity Act, 1998</i> regulates the use of electricity and electrical equipment; enforces the Ontario Electrical Safety Code; licenses almost 14,000 electrical contractors and electricians	73.6	400
Ontario Motor Vehicle Industry Council (OMVIC) (1997)	<i>Motor Vehicle Dealers Act, 2002</i> regulates about 8,600 motor vehicle dealers and 23,800 salespersons	6.6	66
Real Estate Council of Ontario (RECO) (1997)	<i>Real Estate and Business Brokers Act, 2002</i> regulates 56,000 real estate brokerages, brokers, and salespersons	9.0	84
Tarion Warranty Corporation (Tarion) (1976)	<i>Ontario New Home Warranties Plan Act</i> administers a mandatory new home warranty program; registers 5,800 builders; enrolled over 1.45 million homes	68.2	250
Technical Standards and Safety Authority (TSSA) (1997)	<i>Technical Standards and Safety Act, 2000</i> regulates over 250,000 facilities, contractors, and workers for the boilers and pressure vessels, amusement and elevating devices, hydrocarbon fuels, and upholstered and stuffed articles industries	46.0	360
Travel Industry Council of Ontario (TICO) (1997)	<i>Travel Industry Act, 2002</i> regulates about 3,000 travel retailers and wholesalers	3.6	17
Vintners' Quality Alliance of Ontario (VQA Ontario) (2000)	<i>Vintners Quality Alliance Act, 1999</i> regulates VQA standards for over 100 registered wineries	1.2	3

the Division had approximately 110 staff and operating expenditures of approximately \$12.6 million.

## Audit Objective and Scope

The objective of our audit was to assess whether the Ministry (and, as applicable, the Ministry in partnership with its delegated authorities) had adequate authority, systems, and procedures in place to:

- ensure compliance with relevant legislation and Ministry policies that are established for the protection of consumers; and
- measure and report on its efforts to achieve public safety and consumer protection in accordance with its mandate.

We conducted our audit work primarily at the Ministry's two administrative offices in Toronto. Our work included reviews and analyses of the Ministry's procedures and guidelines, interviews with staff, reviews of relevant reports and documents, and examining a sample of case files. Because current legislation does not permit our Office to

audit the delegated authorities, our work in that regard consisted of reviewing processes in use and information received by the Ministry for its oversight responsibilities over delegated authorities. In addition, we met with senior management of two delegated authorities and a number of current and former ministry-appointed board members to discuss their views on delegated authorities' governance, ministry oversight and accountability arrangements, performance, and consumer protection and public safety issues.

We also considered the recommendations that we made in our last audit of this program in 2003 (Ministry of Consumer and Business Services, Policy and Consumer Protection Division), our 2005 follow-up on the status of those recommendations, and the related recommendations made to the Ministry by the Standing Committee on Public Accounts after its hearing on this section of our 2003 report.

We researched consumer protection programs and legislation in other provinces. In this regard, we met with management representatives of the Office de la protection du consommateur Québec (hereafter referred to as Quebec's consumer protection agency) to discuss their consumer protection programs. We also met with public consumer advocates to ask their opinions on consumer protection issues and the Ministry's role and activities. In addition, in June 2009 we engaged an independent research firm to conduct a survey to assess the Ontario public's awareness of the Ministry's consumer protection programs and of consumer protection rights.

We also engaged on an advisory basis the services of an independent expert with public-sector senior management experience in consumer protection programs, from another province.

Over the past several years, the Ministry's Audit Services Team conducted reviews of several aspects of the Ministry's consumer protection operations: the performance measurement framework established for the Technical Standards and Safety Authority (TSSA) and the Electrical Safety Author-

ity (ESA); a Risk Management Policy and Compliance Protocol established for cemeteries; and compliance with the government-wide purchasing card and travel expenses policies and procedures. These reviews and reported results allowed us to reduce the extent of our work in these areas.

## Summary

The Ministry has made progress in addressing many of the recommendations we made in our 2003 audit for achieving consumer protection and public safety, especially with respect to recent improvements in its oversight of delegated authorities. Several changes to legislation have been made that have strengthened consumer protection, such as larger penalties and longer maximum sentences for illegal activities and broader coverage of activities. The Ministry has also conducted several targeted initiatives to promote compliance with consumer protection legislation by certain industries. Nonetheless, we noted the following areas where additional action is required to ensure that consumer protection legislation is being adequately administered and enforced:

- The Ministry needs to better promote its mandate and services to consumers. The 33,800 inquiries and 6,000 written complaints the Ministry received during the 2008/09 fiscal year represented about the average numbers over the last seven years but are decreases of 12% and 15%, respectively, from their peak in 2004/05. The Ministry has not done work to assess whether the significant drop in consumers' contact with it was due to decreased public recognition of the Ministry's role or better practices by Ontario businesses. By contrast, although Quebec's population is only 60% of Ontario's, its consumer protection agency received over 250,000 consumer inquiries and complaints annually. In addition, our own independent external survey indicated that

the Ministry would not be among Ontarians' top choices for resolving a complaint.

- The Ministry had exercised good controls over its registration and licensing processes in most areas to ensure that applicants meet standards for integrity, honesty, and financial viability, and that they comply with legislation for their industry. However, for collection agencies, debt collectors, and bailiffs, more rigour is required.
- Problematic industries and repeat offenders need to be more effectively dealt with by the Ministry. For instance, no significant improvement was achieved for certain industries (such as collection agencies, home repairs, car repairs, home furnishings, health and fitness clubs, and credit reporting) that remained on the Ministry's Top 10 Complaints list from 2000 through 2008. The Ministry had assigned a relatively low priority to complaints about harassment by collection agencies, even though they topped the list for almost 10 years and were the subject of over 10% of all inquiries and complaints received during 2008/09.
- The Ministry has had four or fewer inspectors during the last several years, or roughly one inspector for every 100,000 businesses. Because of the limited inspection staff resources, in 2008/09, proactive visits were not made to business types covered under the CPA that were in the Top 10 Complaints list. As a direct result of the 6,000 written complaints received, only 148 inspections and educational field visits were initiated by the Ministry. The Ministry's lack of inspection powers under the CPA, which covers most businesses, hinder it from effectively identifying consumer protection violations. Similar programs in other Ontario ministries, delegated authorities, and provinces were noted that had both more inspection staff resources and powers to access businesses' records. In addition, others had legislation allowing them

to assess administrative monetary penalties as a cost-effective alternative for dealing with less serious violations.

- The Ministry has made some progress since our last audit in enforcing compliance by cemetery owners with reporting requirements under the *Cemeteries Act*. However, the Ministry had not identified and recorded in its information system, and therefore planned no follow-up action or investigation on, a number of financial discrepancies that we identified, including differences ranging from a few thousand dollars to over \$2 million between the trust fund balance as reported by the cemetery owner and the actual funds held by the trustee.

With respect to the delegated authorities, we noted that the Ministry is making progress in improving its oversight role and accountability relationship with them. However, there are several areas that still need to be addressed:

- In 2004, the Standing Committee on Public Accounts recommended that a comprehensive review of the delegated authority initiative was required to ensure that public safety and consumers are being adequately protected under delegated authorities, and that mechanisms are in place to ensure that delegated authority outcomes are being accurately reported. The Ministry launched the review on an urgent basis only after a tragic propane explosion occurred in Toronto on August 10, 2008, and over four years after the Committee's recommendation to do so. The review was completed in May 2009 and at the time of our audit the Ministry was considering the recommendations made.
- A good control established over the delegated authorities is that the Minister can appoint up to half of their board members. However, ministerial appointees range from 25% to 33% of the boards' composition. Boards were dominated by the industries they regulate. The Ministry has not encouraged greater balance

on boards between representation by government, consumers, the public, and industry.

- There is no provision for the Ministry to have full access to delegated authorities' information on such matters as quality assurance programs, strategic plans, executive salary and compensation packages, and board minutes. Although accountability arrangements with most delegated authorities were detailed and formal, the Ministry's accountability agreement with Tarion, which dated back to 2003, was not. Legislative amendments have not been made to clearly define the Ministry's authority over Tarion. In addition, the Ministry does not believe that it has a mandate to oversee how cost-effectively the delegated authorities are operating.

We noted that only one performance measure on customer satisfaction is reported publicly to cover all consumer protection programs delivered directly by the Ministry, and we questioned whether it was a reliable and meaningful measure.

## Detailed Audit Observations

### CONSUMER PROTECTION PROGRAMS DELIVERED DIRECTLY BY THE MINISTRY

#### Public Awareness of the Ministry's Mandate and Consumer Protection Legislation

Since our 2003 audit, we noted that the Ministry has had difficulties in promoting its mandate and services to consumers. Figure 2 shows that the 33,800 consumer inquiries and 6,000 written complaints received by the Ministry in the 2008/09 fiscal year represented approximately their average numbers during the period 2002/03 to 2008/09. In addition, the numbers of inquiries and written complaints had both decreased from their peak in 2004/05—by 12% and 15%, respectively. The Ministry had done no work to assess whether the

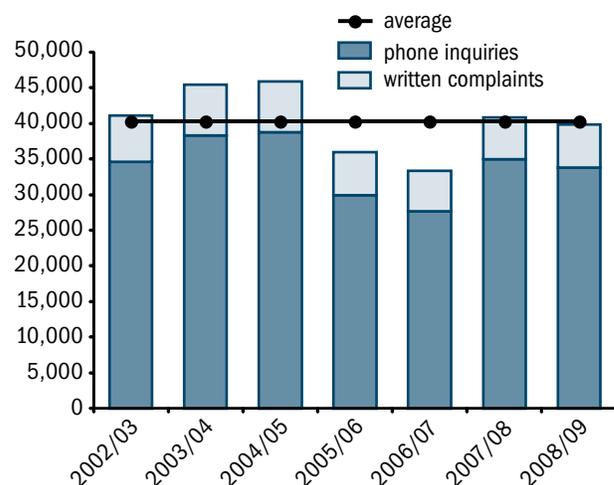
decrease represented a lack of public awareness of its consumer protection mandate or whether businesses and others were doing a better job in their consumer relations.

The Ministry relies extensively on its website to disseminate consumer protection information to the public. We noted that the number of times the Ministry's website was accessed tripled from about 7,800 visits in 2007 to 28,000 visits in 2008. Nonetheless, these overall numbers seem relatively low.

By contrast, although Quebec's population is only 60% of Ontario's, from 2005/06 through 2007/08 Quebec's consumer protection agency received about 251,000 consumer inquiries and complaints annually, or about six times more than Ontario, and its website was accessed over one million times annually, or about 35 times more than Ontario's. The consumer protection mandates of the two provinces differ in some ways (for example, the Ministry handles home renovation issues, whereas Quebec's consumer protection agency does not; and Quebec's consumer protection agency handles travel industry complaints, whereas in Ontario that is the responsibility of a delegated authority). But in our view, the differences do not explain the significant volume differences between Quebec and Ontario.

**Figure 2: Consumer Inquiries and Written Complaints Received by the Ministry's Consumer Protection Branch, 2002/03–2008/09**

Source of data: Ministry of Consumer Services



The Ministry informed us that its communication strategies generally target specific industries or businesses, but do not include large campaigns to promote either the Ministry's mandate or consumer protection legislation. The Ministry has not conducted a formal assessment of the effectiveness of its communication and outreach activities or why its services are not used more extensively.

The results of our survey conducted by an independent research firm also indicated that the Ministry could better promote awareness of consumer rights and its consumer protection programs and services. Some of the survey's key findings were:

- Overall, almost two-thirds of respondents reported having experienced a consumer-related problem in the past five years, with the most frequently cited issues being harassment, misleading sales information, and a lack of transparency in contractual relationships. Over 50% of those who indicated that they had experienced a consumer-related problem said that they did not contact anyone for help.
- When asked who they would be most likely to contact if they could not resolve a consumer complaint issue with a company, respondents cited the Better Business Bureau (BBB), the legal profession, and someone in the media before the Ontario government. (The BBB is a not-for-profit public-service organization with offices serving communities and marketplaces across North America that accredits businesses and upholds high standards for fair and honest business behaviour and for dealing with consumer complaints.)
- Among those who did contact someone for help, 23% indicated that they contacted the BBB. The Ontario government and the legal profession were each contacted by 11%, followed closely by the Canadian government, someone in the media, or a municipal government.
- Less than half of respondents had used the Internet to get information about consumer-

related problems, and only 3% of these respondents had used government websites to obtain this type of information.

As discussed later in this report, we also noted that the Ministry has not conducted a general public survey similar to ours. Instead, it asks those who call the Consumer Protection Branch to rate the quality of and their satisfaction with its services. We were informed by the Ministry that it generally receives high ratings in each of these areas. In contrast, our independent survey identified that one-third of respondents who had contacted the Ministry indicated that it was not helpful.

## RECOMMENDATION 1

To ensure that there is adequate public awareness of the Ministry's consumer protection mandate and complaint services, the Ministry should:

- consult with other jurisdictions that have significantly more activity and recognition by the public to see if there are any best consumer-protection practices that can be applied in Ontario;
- assess its outreach and education programs with a view to identifying changes needed to make them more effective; and
- establish mechanisms for regularly assessing the general public's awareness of consumer rights and the Ministry's programs.

## MINISTRY RESPONSE

The Ministry agrees that cross-jurisdictional consultations are valuable and believes that both public awareness of the Consumer Protection Branch program as a source of information and help along with public knowledge of basic consumer rights and obligations are key to protecting Ontario consumers from falling victim to unfair and inappropriate business practices.

The Ministry does and will continue to consult with other provinces to learn from their successful public outreach/educational programs

and explore mechanisms for assessing consumer awareness. The Ministry will explore the feasibility of adopting and adapting these strategies to Ontario consumer needs. The Ministry notes that some of its consumer education products, such as the Smart Consumer Calendar, have been adopted by other provincial jurisdictions.

## Registration and Licensing

Industry-specific legislation requires that certain businesses be registered and licensed by the Ministry. As of March 31, 2009, the Ministry registers, licenses, or appoints more than 12,000 individuals and businesses. During the 2008/09 fiscal year, the Ministry collected approximately \$5.6 million in registration and licensing fees.

We noted that the Ministry generally had exercised good controls over its registration and licensing processes for the cemetery, theatre, and video-store industries; however, improved controls were needed over the processes used for collection agencies, debt collectors, bailiffs, and assistant bailiffs. A key requirement for the registration and licensing processes is to ensure that applicants meet standards for integrity, honesty, and financial viability, and that they comply with the consumer protection and business obligation requirements of the legislation for their industry. We found that the files we reviewed had little or no documentation to demonstrate that the business or individual met these requirements, including:

- for collection agencies, debt collectors, and assistant bailiffs, whether the applicant's credit history had been checked;
- for collection agencies and bailiffs, the information on whether the required trust account was established;
- for collection agencies, whether financial statements were obtained;
- whether criminal background checks on the principals involved were ever conducted; and

- whether the applicant had supplied proof of citizenship, landed immigrant documents, or other documents showing eligibility to work in Ontario.

We also noted that the Ministry continued to renew collection agencies' licences even when they had been the subject of numerous past complaints. The *Collection Agencies Act* gives the Ministry the powers to refuse to issue a new registration or to revoke or suspend an existing one if the Ministry believes that the business "cannot reasonably be expected to be financially responsible in the conduct of business" or its past conduct indicates that it "will not carry on business in accordance with law and with integrity and honesty." For example, we found about 20 collection agencies that had each averaged from 20 to more than 460 inquiries and complaints annually in 2002/03 through 2008/09. All of their licences were renewed and active over the last two years, even though there was no documentation of any follow-up during the licensing renewal process to assess the legitimacy of the complaints.

The Ministry informed us that it has revoked licences for serious and repeat violations, making these decisions on a case-by-case basis. For example, between 2002/03 and 2008/09, it revoked the licences of five collection agencies; two debt collectors, 10 bailiffs, and nine assistant bailiffs. We agree with the Ministry that the number of complaints should not be the only basis for revoking or withholding a collection agency's licence, because complaints might not be justified or be all that serious in nature.

However, especially when the volume of complaints is significant, some follow-up should be required. The Ministry had not established a policy or guidelines that could be used to help assess how inquiries and complaints are to be considered during the registration and licensing renewal process, to ensure that it treats all businesses consistently, and to identify the level of non-compliance by a business that would trigger a licence review and possibly revocation.

## RECOMMENDATION 2

To ensure that its registration processes meet legislative requirements that only businesses that demonstrate financial responsibility and honesty and integrity are registered and licensed, the Ministry should:

- review the procedures, documentation requirements, and quality control processes that its staff must follow to conduct a proper and complete review of an application; and
- establish a policy and guidelines for staff to use that would require due consideration of the number and types of complaints about an applicant.

## MINISTRY RESPONSE

The Ministry agrees that periodic review of registration/licensing procedures, documentation requirements, and quality control processes is advisable and will conduct a review of the licensing review process, starting with the collection agencies program, this fiscal year.

The Ministry notes that improvements to the Consumer Affairs Tracking System (used by its staff to record consumer inquiries and complaints and any action taken by the Ministry to help educate the consumer or resolve the complaint) to support better documentation are already under way in the cemeteries area.

The Ministry has completed a number of reviews and revisions of the operational policies applying to regulatory decisions. This is an ongoing process, and the Ministry will work to develop and document policies that establish criteria to “flag” chronic violators as candidates for further administrative action.

### Dealing with Consumer Complaints

The CPA gives the Ministry the mandate to receive consumer complaints (whether or not the complaint

involves conduct that represents an offence under consumer protection legislation) and to make inquiries, gather information, and attempt to mediate or resolve complaints. The Ministry’s action depends on the nature and severity of the complaint and on whether there is an allegation of an offence. In most phone inquiries, consumers are advised of their rights and businesses’ obligations, and informed of steps they can take themselves, such as seeking legal assistance or going to Small Claims Court. Complaints relating to industry sectors that are regulated by one of the eight delegated authorities are referred to the relevant delegated authority to handle. If consumers request ministry follow-up action, they typically file their complaint in writing to authorize the Ministry to take further action.

The Ministry cannot force businesses to compensate consumers. For the approximately 6,000 written complaints the Ministry receives annually, the Ministry may make a phone inquiry, conduct a mediation process between the consumer and a co-operating business, and/or initiate an inspection (if the business is required to be registered with the Ministry) or conduct an “educational field visit” (for other businesses). For serious allegations of an offence under consumer protection legislation for unfair business practices, such as failure to disclose key contract requirements and to refund deposits for work not completed, the Ministry initiates a formal investigation, which can lead to prosecution. In addition to fining or jailing offenders, courts can also order them to pay compensation or make restitution to victims. In the 2008/09 fiscal year, the Ministry’s actions resulted in about \$437,000 in full or partial voluntary refunds from businesses to consumers and about \$428,000 from enforcement efforts and prosecutions.

### Recent Initiatives

Since our 2003 audit, several changes to legislation have strengthened consumer protection. For example, the *Consumer Protection Act, 2002* (which consolidated six previous consumer protection laws

and came into force in 2005) provides consumers and businesses with new rights, responsibilities, and remedies for a fair, safe, and informed marketplace. The new CPA stipulates, for instance, increased penalties for illegal activities: the maximum sentences were increased to two years less a day; and maximum fines were doubled to \$50,000 for individuals and more than doubled to \$250,000 for corporations. In addition, it covers leasing agreements, purchases made over the Internet, and other agreements that were not covered in the old legislation. Since 2005, new legislation or amendments to existing legislation has been introduced to address marketplace concerns or improve consumer protection regarding gift cards issued by retailers, payday loans, title fraud for property, real estate sales, collection agencies, the travel industry, identity theft, electrical safety, technical standards and safety, new home purchases, and motor vehicle purchases.

In addition, recently the Consumer Protection Branch has conducted several targeted initiatives to promote compliance with the consumer protection legislation by certain industries. For example, the Ministry initiated action to review service contracts used by fitness clubs and wireless phone providers; discuss rules of conduct with the Canadian Association of Movers; enter into a one-year joint pilot project with the Ministry of Revenue to educate car repair shops and video retailers to promote increased compliance with the legislation; and visit certain companies that sell gift cards and payday loans to educate them on new legislative requirements.

### Information Systems

Since our 2003 audit, the Ministry has made significant improvements to its Consumer Affairs Tracking System (CATS), which is used by its staff to record consumer inquiries and complaints and any action taken by the Ministry to help educate the consumer or resolve the complaint. The Ministry can build on this initiative by considering the following areas where further improvements could be made:

- There are at least 20 categories established in CATS for complaint-handling staff to record the industry or type of services that the public inquired or complained about, which, for example, allow the Ministry to generate the annual Top 10 Complaints list that it reports to the public. However, for staff who conduct inspections and educational field visits, CATS limits their recording of the industry in which the activity took place to only four categories: cemeteries; debt recovery; theatres; and, for all other businesses and industries, “CPA.” The “CPA” category was the most often used: in 2008/09, of the 342 inspections and educational field visits conducted, 145 (42%) fell into that category. This high use of the “CPA” category inhibits the proper analysis of violations and of education, inspection, and enforcement activity. For instance, the number of educational field visits conducted for areas with high complaints, such as fitness clubs and car repair shops, could not be determined from CATS, nor could the visits recorded under “CPA” be compared with the 20 categories recorded for inquiries and complaints for further analysis. We were informed that, due to the new legislation regarding gift cards and payday loans, the Ministry has recently started to record in CATS its inspections and educational field visits for these specific industries.
- In 2008/09, the Consumer Protection Branch closed just over 39,800 inquiries and complaints, of which about 23,700 (60%) were closed by Ministry staff after having provided information to the consumer. However, staff are not required to record in CATS what type of information they provided, the nature of the consumer-related concern raised, or the action recommended by the Ministry to be taken. In addition, no information is captured in the system about the types of violation or contraventions of the laws (such as improper or misleading signage or contracts) found by

inspections. This information was generally available on the individual inspection reports, but could not be summarized from CATS. Such information would be useful for assessing inquiries and complaints and for targeting areas where future educational activities should be directed.

- The Ministry reported on its website that it handles, on average, about 55,000 complaints and questions each year. However, we noted that in 2008/09, although all of the about 6,000 written complaints were recorded in CATS, only about 70% of the calls (about 33,800 of 48,800) were recorded there. For the remaining 30% of calls, Ministry staff recorded no information (such as whether they were not consumer-protection related, or the caller called the wrong number or Ministry).

### RECOMMENDATION 3

To enhance the ability of staff to use the information recorded in the Consumer Affairs Tracking System to analyze consumer issues by the type of industry and the type of inquiry or complaint, the Ministry should:

- capture information on its inspections and educational field visits by industry and violation type and on the type of information provided for the public inquiries; and
- ensure that the nature of all inquiries and calls is input into the system.

### MINISTRY RESPONSE

The Ministry agrees that improvements to the inspection module of the Consumer Affairs Tracking System (CATS) database are necessary to more fully report and analyze compliance issues. The Ministry will make programming changes to better report on issues, violations, and business types. The Ministry will also review the quality of information being recorded on CATS with respect to inspections

of registered/licensed businesses to ensure that CATS provides optimum information on compliance to management.

We agree that recording the nature and subject of inquiries is key to determining topical compliance issues and marketplace trends. The Ministry will work to ensure that staff record appropriate details of all inquiries insofar as they are relevant to our consumer protection mandate.

### Problematic Industries and Repeat Offenders

We found that more progress was needed to deal with problematic industries and to ensure that repeat offenders are more effectively dealt with by the Ministry. For instance, we reviewed the Top 10 Complaints list published by the Consumer Protection Branch and found that certain industries (such as collection agencies, home repairs, car repairs, home furnishings, health and fitness clubs, and credit reporting) had remained on the list from 2000 through 2008, suggesting that no significant improvement was achieved.

For example, collection agencies had topped the list for almost 10 years. In 2008/09, about 4,200 inquiries and complaints (over 10% of all inquiries and complaints) were related to collection agencies. Although the Consumer Protection Branch conducted an average of 40 inspections and five investigations in this industry annually over the last five years, collection agencies remained the top complaint. We were also informed that inspections did not address harassment issues (which represented, on average, about 30% of the closed written complaints in the last three years). Given the limited resources devoted to inspections, the Ministry had assigned a relatively low priority to harassment complaints in relation to other complaints (such as those involving cemetery trust funds and home renovations) because they involve low monetary values and low public-safety risk.

The Ministry also informed us that it had difficulties in gathering evidence of harassment by collection agencies. Our research identified that Quebec has somewhat stronger legislation governing debt collectors, including a regulation requiring that all communications by the collector with the debtor, such as telephone calls and letters, must be recorded in a register. An investigator can subsequently use the register and any other information to more thoroughly investigate and, if warranted, prosecute the collection agent. No similar requirement exists under Ontario's *Collection Agencies Act*.

We also noted that certain businesses had high numbers of complaints and were known to the Ministry as repeat offenders, but the Ministry's enforcement efforts had not been effective in bringing about a change in their business practices. When the Ministry's efforts do not result in obtaining compliance and permanent changes to a business's operations, there is a risk that the business will come to believe that the ramifications of getting caught from time to time are an acceptable risk they take and a "cost of doing business." We noted the following examples of where these situations may exist:

- The Ministry had received written complaints against one fitness club relating to automatic renewals, billing disputes, cancellation of contracts, and other allegations of violations under the CPA. The fitness club was contacted in May 2007 by a special Ministry enforcement project targeting fitness clubs to review the legality of their contracts. The Ministry's efforts appear to have had some but not complete success in reducing the number of written complaints against this club from 65 in 2007/08 to 33 in 2008/09.
- One vacation club had 131 written complaints filed from 2005/06 to 2007/08, or about 44 complaints on average per year. The Ministry initiated an investigation in each of the years from 2005/06 through 2007/08: two of these investigations resulted in either refunds to consumers or prosecution, and one was

ongoing at the time of our audit. However, the Ministry still received a further 22 written complaints about this business in 2008/09.

- One lawn-care business had an average of 33 written complaints each year between 2004/05 and 2006/07. An investigation launched in 2004/05 resulted in obtaining refunds to consumers; another, launched in 2006/07, was ongoing at the time of our audit. The complaints were generally about the same unfair practices, including unsolicited services provided and negative-option marketing (that is, charging consumers for goods or services they did not request). However, in 2007/08 and 2008/09, the Ministry received, respectively, 24 and 31 further similar written complaints, which suggests that the behaviour has persisted.

We were informed that the Ministry had no formal plans to further address industries in Ontario's Top 10 Complaints list, such as movers, home repairs/furnishings, health and fitness clubs, credit reporting, or time shares. We were advised that addressing issues in these industries would require further policy analysis and possibly legislative changes and additional staff resources.

#### RECOMMENDATION 4

To ensure that it can effectively deal with industries and businesses that incur high numbers of and/or repeated consumer complaints, the Ministry should:

- conduct research to identify best practices in other provinces that can be applied in Ontario to improve compliance by certain industries and businesses; and
- identify industries and businesses that persistently incur a high number of consumer complaints, assess the effectiveness of its past enforcement activities used against these problematic industries and businesses, and establish effective education and enforcement strategies for dealing with them.

## MINISTRY RESPONSE

The Ministry agrees that cross-jurisdictional consultations are valuable; it consults with other provinces when developing reform proposals. The Consumer Protection Branch will initiate a discussion forum with other Canadian consumer protection agencies on best compliance-management and -enforcement practices. Ministry staff will conduct an environmental scan of the best practices and techniques of other provincial jurisdictions with a view to enhancing marketplace compliance by businesses operating in Ontario.

The Ministry regularly identifies “problem sectors” and allocates its compliance inspection resources, using a risk-assessment framework for proactive inspections and a priority-setting protocol for reactive inspections. Ministry investigations are assigned priority using a points-based system that accounts for complaint volumes by issue/sector and by specific businesses. The Ministry will assess and revise, as appropriate, its risk-based enforcement strategy for industries and businesses that have historically been problematic for consumers and about which the Ministry has persistently received high numbers of complaints.

The Ministry will explore the development of effectiveness indicators against which it can assess its compliance and enforcement performance.

### Inspections and Educational Field Visits

When warranted by complaints the Ministry receives from consumers, the Ministry may carry out inspections or educational field visits to determine whether further ministry action, such as investigation and enforcement, is required. The Ministry can also use inspections or educational field visits proactively, to educate businesses and try to reduce non-compliance with legal requirements

and deter unfair practices. Inspections can be made only at registered businesses—that is, those that are covered by separate legislation (such as cemeteries, collection agencies, or theatres and video stores). All other businesses receive only educational field visits, because they fall under the CPA, which does not grant inspection powers to the Ministry’s inspectors. In 2008/09, the Ministry conducted 197 inspections and 145 educational field visits.

In our 2003 audit, we noted that the Ministry did not deploy its inspection resources based either on any formal assessment of risk to the public and consumers or on the number of complaints received for each of the industries it monitors. In 2006, the Ministry introduced an annual risk assessment process to better allocate its inspection staff to areas of higher consumer risk. Factors considered as part of the risk assessment include public safety, changed rules under new legislation, the risk of significant consumer financial loss, and the number and type of complaints.

Notwithstanding this new risk assessment process, our review identified that too few staff resources are made available for inspections and that the Ministry’s limited powers under the CPA, which covers most businesses, reduces its effectiveness in identifying consumer protection violations.

Regarding the Ministry’s staff resources, we noted the following:

- Between 2002/03 and 2007/08, the Ministry had four inspectors for the entire province to cover both registered and non-registered businesses (roughly one inspector for every 100,000 businesses). For half of 2008/09, vacancies reduced the number of inspectors to two. The Ministry has been aware of its staff shortages for some time. As stated in its 2005/06 Results-based Plan, “the Ministry notes that its complement of inspectors is dramatically lower than in the past due to constraints. At one time, the Branch included seven regional cemeteries inspectors and five regional theatres inspectors, plus a varying number of ‘generalists’. The number of

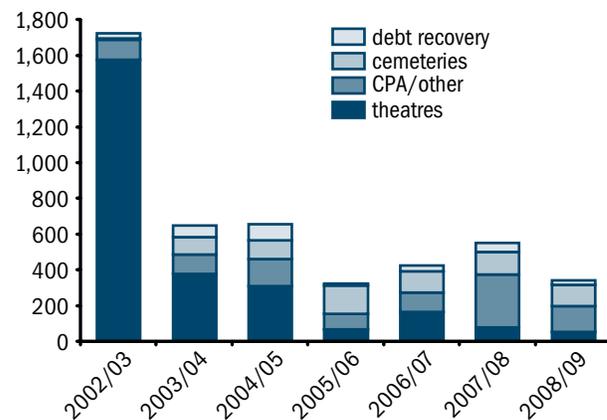
inspectors is now four, to cover everything that the Branch regulates. This is inadequate to prevent further erosion of compliance standards.”

As indicated in Figure 3, the number of inspections and educational field visits dropped significantly, from 1,723 to 342, between 2002/03 and 2008/09. Most of the large drop occurred in 2003/04, when the Ministry dramatically reduced its inspections of video retailers following the concerns we raised in our 2003 audit about over-inspecting these types of businesses at the expense of under-inspecting others. However, there was an overall downward trend in the total numbers of inspections and educational field visits being carried out over the period. We were informed that the decline was partly due to the higher number of cemetery inspections (which can take more than twice as long as other inspections) being carried out as a result of the new risk assessment process.

- In 2008/09, the Ministry conducted 227 proactive visits: 60 of these visits were to educate businesses that sell gift cards and make payday loans on new legislative requirements; and the remaining 167 proactive visits were used to conduct inspections and target registered businesses such as cemeteries, collection agencies, and theatres/video stores. Because of limited staff resources, no proactive visits were made to other non-registered businesses covered under the CPA (including those in the Top 10 Complaints list, such as car repair shops and home furnishings and appliances retailers).
- The new risk assessment process is used to allocate existing resources, but it does not determine the number of inspections or educational field visits that should be conducted for each industry sector to obtain a reasonable sample and representation of the industry’s level of compliance. Nor had the Ministry conducted any other formal assessment to determine the number, nature,

**Figure 3: Number of Inspections and Educational Field Visits by the Ministry’s Consumer Protection Branch, 2002/03–2008/09**

Source of data: Ministry of Consumer Services



Note: The Ministry uses only four categories to segregate its inspections and educational field visits by industry type, as follows:

- *debt recovery* includes inspections of collection agencies, debt collectors, bailiffs, and assistant bailiffs;
- *cemeteries* includes inspections of cemeteries, crematoria, and mausoleums;
- *CPA/other* includes educational field visits made to all businesses not covered by industry-specific legislation; and
- *theatres* includes inspections of movie theatres and film and video distributors and retailers.

and extent of inspection resources needed to adequately address the consumer risks in various industries. Rather, inspections were initiated and assigned based largely on available inspection resources, with those resources being allocated based on Ministry priorities at the time. We noted that only 148 inspections and educational field visits were initiated in 2008/09 as a direct result of the approximately 6,000 written complaints the Ministry received. However, no log was maintained to track the number of requests made by the Ministry’s complaints-handling staff for inspections or educational field visits and whether the inspection staff actually carried out those requests. This information would be useful for determining if internal demand for inspections and educational field visits was being met.

- The Ministry's delegated authorities with inspection activities had greater numbers of inspectors than the Ministry, yet were responsible for fewer businesses. For example, OMVIC had nine inspectors for the motor vehicle industry and TICO had five inspectors for the travel industry. Other provinces with smaller populations and fewer businesses had greater inspection resources for their consumer protection programs: British Columbia had five inspectors, and Quebec's consumer protection agency has trained the 35 consumer protection officers in its 11 regional offices to perform basic inspections, and they currently devote 40% of their time to these inspections. Similarly, Ontario's Ministry of Labour currently has 146 permanent and 23 temporary employment standards officers to investigate complaints and conduct proactive inspections regarding businesses' employment practices.

As noted earlier, only at registered businesses can the Ministry's inspectors conduct actual inspections. Under the separate laws governing such businesses, the Ministry's inspectors can enter a licensee's premise at any reasonable time; ask the business to produce documents or items that may be relevant to the inspection; and inspect and remove documents or items relevant to the inspection. All other businesses are covered by the CPA, which provides the Ministry's inspectors only with the right to "make inquiries, gather information and attempt to mediate or resolve complaints." If a serious violation is alleged or suspected, the Ministry may conduct a formal investigation, which requires that a search warrant be obtained based on probable grounds that a violation has occurred in order for the investigator to obtain the information he or she would need to properly investigate. Otherwise, the Ministry's inspectors can only make "educational field visits" to CPA businesses: they have no authority to request and inspect books and records, even if numerous complaints have been made against that business or that type of business

(as is the case, for example, with fitness clubs, vacation clubs, and lawn-care companies).

By comparison, we noted that increased powers of inspection are included under the legislation administered by the Ministry's delegated authorities for regulated businesses and under the Ministry of Labour's *Employment Standards Act* for any business. In both British Columbia and Quebec, consumer protection legislation provides inspection powers, including the power to enter a business's premises "at any reasonable time" and to "inspect, audit, or examine any record, goods, or other thing or the provision of services in the premises." Manitoba's *Consumer Protection Act* gives consumer services officers the right to access premises during normal business hours "where there are reasonable and probable grounds to believe that those premises contain specific documents, correspondence and records relevant to the complaints" and to "make copies, or take extracts from, the documents, correspondence and records."

## RECOMMENDATION 5

To expand its coverage and capabilities for its inspection activities for the protection of consumers, the Ministry should:

- conduct a formal assessment of the number of inspection staff resources it should have to adequately fulfill its mandate and ensure comprehensive coverage; and
- explore the need to obtain increased legislative authority and powers for its inspectors, consistent with those in other consumer protection organizations in Ontario and other provinces, that would allow them to more efficiently and effectively deal with consumer complaints and identify potential consumer protection violations.

## MINISTRY RESPONSE

The Ministry will use a risk-based approach to assess the compliance resources necessary to fulfill its mandate. The Ministry has increased

its inspection complement and recruited two inspectors to bring its inspection team to full strength of five inspectors. In addition, in an effort to improve its regulatory reach, the Ministry is working with the Ministry of Revenue to test the use of Revenue staff to increase the number of educational field visits focused on motor vehicle repair shops and video retailers. This approach has helped to increase our presence in these areas of the marketplace.

The Ministry agrees that increased inspection powers would assist in furthering consumer protection within the province of Ontario. The Ministry will explore the feasibility of changing legislation to achieve this.

### Investigations and Enforcement

As Figure 4 indicates, between 2002/03 and 2008/09, there have been some large declines in the Ministry's investigation activities and outcomes.

Staff resources remained about the same, but we were advised that the investigation process had become more complex and lengthy, particularly since there is a trend of laying a greater number of charges for each case, and that new requirements had increased the workload involved in processing court restitution orders. However, we are not aware of any formal assessment having been conducted by the Ministry on the effectiveness of its enforcement activities and use of available enforcement measures.

Current enforcement measures available to the Ministry include revoking a licence for a registered business; issuing a Compliance Order for a business covered under the CPA; posting a business's name on the Consumer Beware Database; and initiating prosecution and seeking court orders. Since our 2003 audit, the Ministry had revoked between four and 28 licences each year, but it had issued only three Compliance Orders over the entire period. The Ministry also issued deficiency letters to individuals and businesses, but these were mostly

**Figure 4: Investigation Activities and Enforcement Outcomes by the Ministry's Consumer Protection Branch, 2002/03–2008/09**

Source of data: Ministry of Consumer Services

	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	Change Between 2002/03 & 2008/09 (%)
# of investigations closed	179	132	136	115	113	107	114	(36)
# of individuals and businesses charged	147	114	144	162	122	163	158	7
# of convictions	125	93	238	265	159	365	161	29
length of jail time and probation ordered by courts (months)	733	344	578	836	724	706	474	(35)
settlements negotiated by investigators prior to prosecution* (\$)	595,706	481,436	77,343	111,288	133,508	103,957	100,283	(83)
restitution ordered by courts (\$)	721,212	128,410	367,492	319,768	314,188	431,932	327,656	(56)
amount of court fines levied (\$)	220,250	193,475	495,200	480,427	284,400	362,225	384,850	75

\* This excludes refunds (\$437,645 in 2008/09) obtained each year through the Ministry's complaints-handling process and mediation services prior to any investigations.

for mediation purposes and not binding to the individuals or companies. We were informed that revoking a licence may not be an effective approach for certain common issues: for example, it may not help ensure a cemetery owner's compliance with the annual reporting requirement. Both issuing a compliance order and prosecution require an onerous amount of the Ministry's time and resources.

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 quicker and less costly than going through the courts. In addition, certain other ministries can issue small fines under Part I of the *Provincial Offences Act*; commonly referred to as tickets, these can be a cost-effective and more immediate means of dealing with less serious violations. The Ministry has neither of these more cost-effective enforcement options available in enforcing consumer protection laws and would require changes to its legislation before they could be introduced.

In contrast, legislation governing the Ministry's delegated authorities permits them to impose administrative monetary penalties. Other ministries' programs with powers to impose administrative monetary penalties include those involving employment standards, environmental protection, food safety, and forest management.

In addition, we noted that the Ministry had not formally assessed the effectiveness of its Consumer Beware Database in promoting compliance since it was introduced in 2005. In this regard, we noted the following:

- Our independent survey found that fewer than one in 10 respondents had heard of the Consumer Beware Database. Of these, only about 10% had used it. However, when a description of the Ministry's website and of the Consumer Beware Database was provided

to respondents, 96% said it is very likely or likely that they will use the information.

- Although almost 10,000 Internet users accessed the database in 2008, by comparison, almost 60,000 Internet users annually access Quebec's equivalent database.

## RECOMMENDATION 6

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

- consider introducing more expeditious and effective enforcement tools, including administrative monetary penalties and tickets, for violations that either do not warrant criminal prosecution or are less serious; and
- undertake periodic reviews, including researching best practices in other similar organizations, of its investigative program, enforcement measures, and the Consumer Beware Database, to assess their effectiveness and identify areas for improvement.

## MINISTRY RESPONSE

The Ministry will consider current enforcement tools and evaluate whether additional tools are required for the treatment of less serious violations.

Inspection enforcement tools have improved under the new *Payday Loans Act, 2008*, which allows inspectors to impose Administrative Monetary Penalties (AMPs) in response to a range of infractions under the Act. The Ministry will carefully evaluate the efficacy of AMPs to determine their potential for enhancing compliance in other sectors; implementation of AMPs in other sectors will require legislative reform.

The Consumer Protection Branch will initiate a discussion forum with other Canadian consumer protection agencies on best compliance-management and -enforcement

practices. We will conduct an environmental scan of best practices and techniques of other provincial jurisdictions with a view to enhancing the Consumer Beware Database function and marketplace compliance by businesses operating in Ontario.

The Ministry agrees that interagency consultations are valuable; enforcement staff continue to participate extensively in several interagency forums. The Ministry will review the best practices of investigative programs in other jurisdictions.

### Cemeteries' Trust Accounts

The *Cemeteries Act* sets out the obligations of cemetery owners and the rights of consumers when buying cemetery graves, cremation services, and interment services. Ontario has over 5,000 registered cemeteries, which are operated by approximately 2,400 owners; about two-thirds of the cemeteries have active sales. The Ministry monitors cemetery owners for compliance with certain financial requirements, such as a requirement to deposit between 15% and 40% of the sales of interment spaces into trust fund accounts. The income from these accounts is intended to support the long-term cost of maintaining the cemeteries (headstones, grounds, and buildings).

Given that consumers have paid hundreds of millions of dollars that have been deposited into trust funds, cemetery owners are required to file annual returns within three months after the cemetery's fiscal year-end and are to include trust account statements. The return must be certified complete and accurate by both the owner and an independent trustee. Cemetery owners are also required to file, within six months after the cemetery's fiscal year-end, audited financial statements for care and maintenance trust funds containing more than \$500,000 and for pre-need trust funds

(those relating to pre-arranged burial services) of more than \$100,000.

Ministry staff are responsible for reviewing, on a timely basis, the annual returns from cemetery owners to detect errors, omissions, and instances of non-compliance with filing requirements. The monitoring of such returns, especially in relation to trust fund accounts, is intended to minimize the risk that consumers' payments are not deposited into the required trust accounts or that insufficient amounts are deposited. The other significant risk involves a cemetery having insufficient resources for care and maintenance purposes. In these cases, the cemetery may have to be turned over to the municipality to be maintained at the expense of local taxpayers. About 150 cemetery sites have been transferred to municipalities since 1999.

In our 2003 audit, we found that less than half of cemetery owners had filed their required annual returns to the Ministry, and for those that did, the Ministry had not processed or adequately reviewed the returns to ensure proper accounting for the trust funds. For our current audit, we noted that the Ministry has made some progress in improving its monitoring of cemeteries' financial reporting requirements and in ensuring that cemetery owners comply with legal requirements.

For example, in 2006 the Ministry established a "Risk Assessment Guide for the Monitoring, Compliance and Enforcement of Cemeteries in Ontario" for trust funds, and used that guide to prioritize inspection and investigation activities. From 2003 to 2008, the Ministry initiated 35 investigations of cemetery owners, which had resulted in four prosecutions by the time of our audit.

However, we concluded that the Ministry needs to take more effective action to deal with cemetery owners that do not fully comply with their annual filing requirements and to obtain compliance. For example, for the reporting years 2003 through 2007, we noted that from 7% to 13% of all owners did not submit the required annual report each year. For 2007, more than 260 cemetery owners who operate one or more active cemetery sites had

not filed a return as of February 2009, which was more than a year overdue. Almost 90% of these delinquent owners were in the Ministry's "small" classification: that is, they had fewer than 10 burials per year and less than \$100,000 in their trust fund accounts. However, we did note that two cemetery owners had not filed an annual return since 1992, including one "small" and one "large" (which would have had more than 10 burials per year and up to \$500,000 in its trust fund). Ministry staff had tried to contact both owners numerous times since 2005 and had initiated inspections in 2008; however, as of the end of our audit, it still had not obtained compliance from them, nor had it issued compliance orders to the owners.

For cemetery owners that do file returns, Ministry financial review procedures need to improve to ensure that returns are properly assessed and that action is taken to address financial discrepancies. Our review of the Ministry's Consumer Affairs Tracking System (CATS), which is used to track information from the returns, noted that for about 160, or 8%, of the over 2,000 cemetery owners that operate the almost 3,000 active cemeteries, there was key information missing that would be necessary for verifying that owners' reported fund balances matched funds held by trustees for any given year.

In addition, for returns filed for the years 2003 through 2007, CATS indicated that Ministry staff had identified "deficiencies" in almost 1,200 instances when reviewing annual returns. Ministry-identified deficiencies could include balance discrepancies, errors, or missing reports or information. However, we found that not all of the deficiencies were being recorded in the system. Our sample included 30 instances where discrepancies existed between the owner's reported funds and the trustee's bank account, but only seven of these cases had been identified by Ministry staff in CATS as having deficiencies. The amounts of the unidentified discrepancies where the owner's balance was greater than the trustee's balance ranged from a few thousand dollars to \$2.4 million. Unless a deficiency is

identified in CATS, the Ministry takes no follow-up action with the cemetery owner to investigate these differences. As of February 2009, we also noted that about one-quarter of the 1,200 deficiencies identified in CATS remained unresolved.

## RECOMMENDATION 7

To ensure that cemetery owners comply with legislative reporting requirements and that funds are accounted for and sufficient for the proper long-term care and maintenance of cemeteries, the Ministry should ensure that:

- all annual returns are filed by all cemetery owners; and
- timely and effective action is taken to enforce reporting requirements, to properly assess reports received, and to follow up on and resolve financial discrepancies identified on returns.

In view of the significant demand that cemetery legislation places on the Ministry's limited staff resources, the Ministry should also explore the option of having cemetery legislation administered by a delegated authority.

## MINISTRY RESPONSE

The prevalence of volunteer operators for small-scale cemeteries in this sector makes risk assessment complex and enforcement challenging. The Ministry will work to ensure that all annual returns are filed by cemetery owners.

The Ministry recognizes that timely and effective action is important within the cemetery sector and agrees to ensuring improved time frames for the resolution of financial discrepancies identified on returns.

There is a provision within the *Safety and Consumer Statutes Administration Act, 1996* that allows for the cemeteries regulation to be administered by a delegated authority.

## MINISTRY OVERSIGHT OF DELEGATED AUTHORITIES

After the 1996 passage of the *Safety and Consumer Statutes Administration Act* (SCSAA), Ontario established five designated administrative authorities (delegated authorities) to permit certain industries to undertake regulatory functions that had previously been administered directly by the Ministry. At the time, the Ministry already had in place two similar arrangements for new home warranties and funeral service providers. In 2000, VQA Ontario was established under its own legislation (see Figure 1). Key reasons that the delegated authorities were established by the government were the assumption that they can be more responsive to the needs of the marketplace and of maintaining high marketplace standards because of their interest in the industries they regulate, and to reduce the size and cost of government.

The SCSAA prescribes the key accountability relationship requirements for the five delegated authorities it established. For example, it requires the establishment of an administrative agreement between the Ministry and each delegated authority; requires the tabling in the Legislature of each delegated authority's annual report; allows the Minister to appoint members of each delegated authority's board of directors, as long as the ministerial appointees do not constitute a majority of the board; and grants powers to the Minister to terminate the delegation. In contrast, the legislation establishing Tarion does not specify its accountability requirements to the Ministry.

Ministries are also required to follow the Accountability Directive established by Management Board Secretariat in 1997 for relationships with external service providers, including not-for-profit organizations such as delegated authorities. Three key elements are required for effective accountability: i) defining expectations, roles and responsibilities, and managing consistent action; ii) reporting on and monitoring performance; and iii) reviewing performance against expectations

and taking corrective action when required. This includes requirements for controls and verification procedures for both operations and finances and the right to conduct independent audits.

Figure 5 summarizes the key expectations in the relationship between the Ministry and delegated authorities.

### Accountability and Oversight Arrangements

Appropriate oversight is needed to ensure that services to the public are delivered cost-effectively, including when the services and key responsibilities for ensuring consumer protection and public safety are delegated to other organizations on the government's behalf. The Ministry's oversight relationship with each delegated authority is predicated on finding the right balance between appropriate high-level oversight on the one hand, and not micromanaging on the other. Delegated authorities must be allowed the autonomy to run their day-to-day operations without the constant involvement of ministry managers; but ministry management must ensure that an effective accountability relationship is in place and that sufficient, useful, timely, and credible information is being received and assessed to ensure that the public is getting the appropriate level of service in a cost-effective and timely manner.

In our 2003 audit, based on our review of the information gathered by the Ministry and of the Ministry's monitoring activities, we concluded that the Ministry did not have adequate assurance that public safety and consumers were being properly protected by delegated authorities. Our audit indicated that the Ministry did not have proper mechanisms in place to ensure that outcomes reported by the delegated authorities were reliable. We also found that the Ministry's monitoring efforts were inadequate.

As a result of our 2003 audit and the Ministry's continuing efforts to improve its accountability framework over delegated authorities, the Ministry made the following changes to its systems and procedures:

- established an annual report tracking system to ensure that annual reports are received on time and Ministry feedback is provided;
- established a system for tracking performance measures on a quarterly basis, and for monitoring performance trends and gaps against

**Figure 5: Key Expectations of the Ministry and Delegated Authorities**

Prepared by the Office of the Auditor General of Ontario

Responsibility	Role of Ministry	Role of Delegated Authority
sector-specific legislation and regulations, industry standards and code of conduct	establishes and amends legislation and regulations to adjust or change marketplace rules, and to establish delegated authorities' mandate, powers, and responsibilities	<ul style="list-style-type: none"> <li>● advises Minister by recommending legislative and regulatory proposals, or on matters of an urgent or critical nature</li> <li>● develops industry standards and code of conduct</li> </ul>
governance	<ul style="list-style-type: none"> <li>● Minister may appoint up to 50% of board members, which may include representatives of consumers, industry, or government</li> <li>● establishes administrative agreement with board that clarifies responsibilities, accountability arrangements, and expectations for conduct and performance reporting</li> <li>● oversees delegated authority's performance to protect the public interest and promote public safety and consumer protection</li> </ul>	<ul style="list-style-type: none"> <li>● board appoints majority of board members and establishes governance processes, including elections, annual meetings, voting procedures, bylaws, etc.</li> <li>● board establishes corporate organizational structures, staffing needs, control frameworks, and administrative and operational policies</li> <li>● responsible for overseeing all day-to-day administrative and regulatory activities</li> </ul>
organizational planning and accountability	<ul style="list-style-type: none"> <li>● reviews multi-year business plan and annual audited financial statements</li> <li>● reviews annual report and tables it in the Legislature</li> <li>● requests additional reports or information quarterly or as necessary from delegated authority</li> <li>● Minister, Deputy Minister, and ministry staff meet with board and senior management several times each year to discuss key issues</li> </ul>	<ul style="list-style-type: none"> <li>● develops multi-year business plans outlining objectives, planned initiatives, and performance measures</li> <li>● board publishes an annual report to the public and Ministry on its achievement of its mandate and key accomplishments</li> <li>● obtains an annual financial audit</li> </ul>
fees	approves fee-setting process for delegated authority	establishes fee structure in accordance with fee-setting process and collects and retains fee revenues to fund operations
compliance and enforcement	no ministry role	<ul style="list-style-type: none"> <li>● registers and licenses businesses and individuals</li> <li>● provides education and training</li> <li>● carries out inspections, investigations, and prosecutions, and issues sanctions for violations (e.g., revoking or suspending registrations or licences, issuing fines)</li> <li>● reviews and mediates consumer complaints and may maintain a member-funded general compensation fund for reimbursing consumers</li> </ul>

the performance commitments made by the delegated authorities; and

- established a Minister's appointees tracking system that outlines the number and percentage of Minister appointments on each Board, and their attendance at board meetings.

The Ministry has also worked to establish and update its accountability agreements with delegated authorities. The Minister signed its first letter of accountability with Tarion in 2003, with several subsequent letters covering further agreed-upon changes. In 2005, the administrative agreements with all delegated authorities that fall under the SCSAA were updated, with the revised agreements specifying, for example, reporting requirements for business plans and annual reports.

For our current audit, we noted that the Ministry has taken several good initiatives and has made progress in improving its accountability relationship with the delegated authorities; however, the Ministry needs to further strengthen its oversight and the delegated authorities' reporting requirements to protect consumers and the public interest. The following sections detail our observations and concerns.

### Formalizing Accountability Relationships with Tarion

The *Ontario New Home Warranties Plan Act* (which was last amended in 2006) still does not include specific requirements for an accountability framework between the Minister and Tarion similar to that established by the SCSAA for other delegated authorities. Therefore, the Ministry has followed a separate path for establishing its accountability relationship with Tarion, and this has been a slow and negotiated process. The 2003 letter of accountability signed by Tarion and the Minister was the first time Tarion formally acknowledged that it is fully accountable to the Minister. However, the letter of accountability was much less detailed than the administrative agreements established for other delegated authorities. The letter did not include or

specify the roles and responsibilities of both parties; any requirement regarding the submission or contents of a business plan; the details that should be included in an annual report; the fee-setting process and criteria; and the payments by Tarion to the Ministry for its oversight, which other delegated authorities pay.

Thus, since 2003, Tarion's accountability arrangements have lacked many of the requirements that other delegated authorities had to fulfill. More recently, since 2006, following several letters from the Minister to Tarion—including concerns raised by the Minister about the high number of consumer complaints against Tarion—we noted that significant improvements have been made to Tarion's reporting and accountability relationships with the Ministry. These improvements have included the completion of new homeowner surveys; more ministerial appointees on Tarion's board; the sharing of Tarion's business plan and strategic plan with the Ministry; the provision of additional quarterly performance information on service, claims, complaints, staffing, and governance issues; and changes to enhance public transparency (such as holding its first public annual general meetings in April 2009, and increased disclosure in Tarion's annual report). At the time of our audit, Tarion had complied with almost all of the requests made by the Minister in 2008, and we were informed that the remaining requested changes were in progress.

### Review of Accountability Relationships

Following its review of our 2003 audit, the Standing Committee on Public Accounts recommended in 2004 that a comprehensive review of the delegated authority initiative was required to ensure that public safety and consumers are being adequately protected under delegated authorities, and that mechanisms are in place to ensure that delegated authority outcomes are being accurately reported.

The Ministry's response to the Committee at the time was that it had retained a consulting firm to

complete an evaluation of the delegated authorities in 2001, and it had worked with the delegated authorities to implement the recommendations arising from that evaluation. These recommendations included improving communication with the public; evaluating stakeholder feedback; enhancing public education and awareness; establishing outcome-based performance measures; improving customer services; and better risk management. The Ministry stated that it would continue to work with the delegated authorities to make legislative, regulatory, and government improvements, based on ongoing reviews.

The Ministry advised us that no further comprehensive reviews were undertaken as a result of the Standing Committee's 2004 recommendation. Instead, the Ministry had focused on improving its accountability arrangements with each of its delegated authorities. In addition, as a result of concerns we raised in 2003 regarding the reliability of the TSSA's reported outcomes, the Ministry worked with the TSSA to improve controls over its data integrity.

On August 10, 2008, a tragic propane explosion occurred in Toronto. At the completion of our audit, the formal investigation of the incident and the propane retailer was ongoing. In addition, the Ministry launched an independent review of propane safety in Ontario. The registration, licensing, and inspection of propane retailers fall under the TSSA's authority. At the time of the incident, public concerns were also raised about the quality of information reported by the TSSA on registered propane retailers, and this resulted in a further internal ministry review of TSSA's board governance.

In response to the incident, on August 28, 2008, the Ministry established an expert panel to conduct a comprehensive review of the legislative and regulatory framework for the safe storage, handling, location, and transport of propane. On November 13, 2008, the Minister announced plans to implement all 40 recommendations made by the expert panel. On May 28, 2009, the government also introduced legislation designed to improve the

TSSA's accountability and transparency and further strengthen the province's technical safety system. The proposed legislation would require the TSSA to appoint an independent Chief Risk and Safety Officer to report annually and publicly on how the TSSA is meeting its public safety mandate; provide the Minister with the authority to guide the TSSA's strategic focus by issuing policy directives and to appoint the Chair and Vice Chair from the members of the TSSA's board of directors; and provide our Office with access to the TSSA's records should the Auditor General choose to conduct an audit.

In addition, in October 2008 the Ministry launched the sort of review of its delegated authorities that the Standing Committee had recommended it undertake four years previously. The study was designed to be undertaken in two phases, to allow for the two public-safety delegated authorities—TSSA and ESA—to be given a higher priority in the first phase, with the second phase covering the six consumer protection delegated authorities. The scope of the review included three main elements: Governance and Accountability, Stakeholder/Public Relations, and Performance.

The Ministry informed us that it was unable to follow traditional competitive procurement requirements for hiring a consultant to conduct this review, which, according to the Management Board of Cabinet Procurement Directive established in November 2007, would have required that at least five pre-authorized consultants from the government's Vendor of Record (VOR) listing be invited to submit proposals. In this regard, the government's VOR listing for the "Program Evaluation and Performance Measurement Services" category lists 30 consultants. We noted that the Ministry, instead, followed a "restricted-competitive" procurement process—an approach permitted by the procurement Directive when circumstances warrant it, the contract is less than \$500,000, and the Deputy Minister approves it. (Note: for amounts of \$500,000 up to \$1 million, approval from the Supply Chain Leadership Council, which is a senior management executive committee established by

Management Board of Cabinet, is required). The Ministry supported its decision in this regard based on the urgency of the review (as part of the Ministry's response to the propane explosion); the need for a high level of confidentiality due to intense media scrutiny and public criticism of the delegated authority model; and the need for specialized consultant expertise in the area of public-sector governance and accountability. We noted that four consultants were invited to submit proposals, and only two responded with submissions. Only one of the four invited consultants was from the pre-authorized vendor-of-record list. In November 2008, after an internal process to review the bids, the Ministry selected to perform the review a firm that was not on the VOR listing that bid a maximum cost of \$499,335, even though the other consultant, which was on the VOR list, had bid about \$150,000 less.

Phase one of the review was completed in March 2009, and phase two was completed in May 2009. Overall, the review was supportive of the existing delegated authority arrangements, but it made a number of suggestions for strengthening the efficacy of the current model in areas such as corporate and regulatory governance, the Ministry's accountability tools and oversight, stakeholder engagement, co-operation among the delegated authorities, and performance measures. In addition, the consultant recommended improvements in areas such as inspection and enforcement activities, information systems, data quality control and assurance processes and procedures, and information disclosures.

## Ministerial Appointees to Delegated Authorities' Boards

A good control established over the delegated authorities is that the Minister can appoint members to their boards, which may include representatives of consumers, industry, or government. Minister-appointed board members protect the Ministry's interests by their direct involvement in corporate decisions and activities and can provide a consumer perspective to the boards, which are all dominated by the industry they regulate. A good practice implemented by the Ministry since 2006 is to provide annual training to each Minister-appointed member. We noted the following areas for maximizing the benefits the Ministry receives from Minister-appointed board members and for balancing the representation of interests on boards:

- The SCSAA enables the Minister to appoint up to 50% of the members of delegated authorities' boards of directors. In our 2003 audit, we noted that board members who were independent of the industries being regulated were significantly under-represented: ministerial appointees represented on average only 16% of the boards' total composition. Since that time, as part of the Ministry's efforts to improve consumer and ministry representation on the Tarion and TSSA boards, several additional ministerial appointments have been made. As noted in Figure 6, however, ministerial appointees constitute only from 25% to 33% of the boards' compositions.
- Delegated authorities are not-for-profit corporations and have Ministry and statutory

**Figure 6: Composition of Board of Directors for Selected Delegated Authorities, as of April 1, 2009**

Source of data: Ministry of Consumer Services

	ESA	OMVIC	RECO	Tarion	TICO	TSSA*	Total
total board members	12	12	12	15	15	14	<b>80</b>
# of ministerial appointees	3	3	3	5	4	4	<b>22</b>
% of ministerial appointees on the board	25	25	25	33	27	29	<b>27</b>

\* By September 2009, the TSSA intended to increase the number of Minister-appointed board members to six, and to decrease the total number of board members to 13, bringing the proportion of ministerial appointees to 46%.

mandates to protect public safety and/or consumers. Each of the boards has established its own process and criteria for selecting and appointing board members other than those appointed by the Minister. However, in the absence of any legislative requirement or direction from the Ministry, each of the delegated authorities has decided to have industry representatives form the majority of its board members, and the Ministry has not encouraged greater balance between representation by government, consumers, the public, and the industry. The current industry dominance could lead to either a real or perceived industry bias for decisions made by delegated authorities. For example, Tarion, which has a stated mandate to protect Ontario's new home buyers, has established a requirement that the majority of its board members (eight out of 15) be appointed by the Ontario Home Builders' Association (OHBA), which represents its industry's interest. Furthermore, Tarion permits OHBA to have an observer (typically OHBA's president) at all board meetings, which is an unusual business practice.

- There were three senior ministry staff, including two with direct responsibility for overseeing delegated authorities, appointed to board positions. As board members, ministry staff participate in the board's decision-making processes and receive substantial information on the delegated authorities' operations. In 2004, the Supreme Court of Canada stated:

“The statutory fiduciary duty requires directors and officers to act honestly and in good faith vis-a-vis the corporation. They must respect the trust and confidence that has been imposed on them to manage the assets of the corporation in pursuit of the objects of the corporation. They must avoid conflicts of interest with the corporation.... They must maintain the confi-

dentiality of information they acquire by virtue of their position. Directors and officers must serve the corporation selflessly, honestly, and loyally.”

To help staff deal with any conflict-of-interest situation, we were informed, the annual training provided by the Ministry to Minister-appointed board members helps to address this possible situation and makes the Ministry's interest paramount. Ministerial appointees, including ministry staff, are required to sign comprehensive confidentiality agreements with delegated authorities. As a result, ministerial appointees are not empowered without permission of the board to discuss with the Ministry their discussions at the delegated authority's board meetings or share any information they obtain while serving as a board member. This can create a difficult conflict situation for ministry board members.

### Access to Delegated Authorities' Information

The *Freedom of Information and Protection of Privacy Act* (FIPPA) applies to Ontario's provincial ministries and most provincial agencies, boards, and commissions, as well as community colleges, universities, and Local Health Integration Networks. FIPPA requires that the government protect the privacy of an individual's personal information existing in government records; but it also gives individuals the right to request access to government information, including general records and records containing their personal information. Because the delegated authorities are not bound by FIPPA, however, the public has no right to access their information.

We noted that the Ministry also has no right to access the delegated authorities' records and, as stated in the previous section, Minister-appointed board members cannot disclose information to the

Ministry about delegated authorities' activities due to the confidentiality agreements they sign. The administrative agreements state that "all records obtained from any source, created, or maintained by the [delegated authority] in the course of carrying out its delegated administration are the property of the [delegated authority]." We noted that the administrative agreements revised in 2005 specified additional information (such as details on business objectives; performance measures on compliance, efficiency and effectiveness; and financial details) that the delegated authorities should provide in their business plans and annual reports. However, there remain limitations on the Ministry's access to information unless the delegated authority chooses to share its information. For example, the Ministry does not regularly request or receive information on:

- board and advisory committee meeting minutes;
- quality assurance programs and the results of any reviews commissioned by the delegated authority to examine its programs and key areas, such as inspection activities and data quality;
- multi-year strategic plans that detail a delegated authority's long-term key priorities and activities;
- reports made to the audit committees by the external financial auditors regarding any concerns over financial and operational internal controls and other financial matters;
- executive or staff salaries and other compensation;
- employee and travel-related expense reimbursement policies;
- use and cost of consultants; and
- staffing resources in key areas, such as inspection and enforcement, call-centre representatives, and senior management complements.

The Ministry needs appropriate and timely information to ensure that the delegated authorities' boards of directors are adequately discharging their fiduciary responsibilities and establishing

quality assurance mechanisms for their systems and procedures to reduce key risks. A review of board minutes, for instance, would indicate significant matters that are brought to the boards' attention and decisions made to address any concerns. For example, the TICO had been monitoring the precarious financial status of a large travel retailer for several months before the company suddenly terminated its operations on April 15, 2009, leaving its customers stranded abroad. We understand that the Ministry was unaware of the financial and consumer risk of this company's continuing until its collapse was made public.

Similarly, the Ministry could use information on salaries and other compensation packages to executives and staff, on the use and cost of consultants, and on employee and travel-related expenses to ensure that the delegated authorities use their revenues in an appropriate manner for a quasi-public-sector organization.

The Ministry does not provide any direction in its administrative agreements with delegated authorities to ensure the prudent use of their revenues and due regard for economy and efficiency with respect to their expenditures. Our discussion with Ministry staff overseeing delegated authorities indicated that imposing requirements to promote economical and efficient use of delegated authorities' revenues exceeded their authority. Indeed, the SCSAA states that the money that a designated administrative authority collects "is not public money" and that it "may use it to carry out activities in accordance with its objects or any other purpose reasonably related to its objects." Although the Ministry may not have ownership of the revenues, in our view, the fact that the delegated authority's powers to receive revenues are granted by provincial legislation should be sufficient authority for the Ministry to expect that its accountability arrangements adequately ensure that delegated authority resources are used cost-effectively and in the public's interest.

There is no authority that permits the Ministry to have its own auditors conduct reviews of a

delegated authority, and the delegated authorities are not subject to audits by our Office. Instead, the Ministry's administrative agreements with the delegated authorities give it the authority to require a review of their operations. One such review was initiated for the TSSA following the 2008 propane explosion; another examined the TICO's handling in April 2009 of the travel retailer's abrupt closing. Although such reviews can be useful for addressing known areas of concern, they should not be a substitute for delegated authorities establishing their own quality assurance programs, or for the Ministry routinely obtaining information on how effective the delegated authorities' quality assurance programs are.

### Delegated Authorities' Performance Information Reported to the Ministry

The Ministry's administrative agreements with the delegated authorities provide for accountability by requiring them to report on their performance through their business plans and annual reports. Examples of performance information required by the Ministry include information on compliance activities (such as the number of inspections, investigations, prosecutions, orders issued, penalties, and charges, and the amount of penalties assessed); processing efficiencies (such as turnaround times for complaints and inspections); the number of serious incidents; the results of client satisfaction surveys; and the number of complaints against member businesses and individuals, as well as against the delegated authority itself.

We assessed the reporting requirements imposed on delegated authorities by the Ministry and noted significant improvements since our 2003 audit. In general, the Ministry was receiving more relevant and useful performance information on a quarterly basis, and delegated authorities were required to explain significant variances from prior periods. However, we noted that inconsistencies exist with respect to performance information the Ministry requires. For example, the administrative

agreements with OMVIC, RECO, TICO, and ESA provide detailed guidelines on what should be included in performance reporting, whereas the agreements with TSSA and Tarion contain very little detail on this subject. Figure 7 summarizes these reporting differences for the six delegated authorities we reviewed.

In addition, none of the delegated authorities' agreements required their performance measures to be compared with other jurisdictions and industry-recognized benchmarks. The ESA does its own limited comparisons, including comparing Ontario's electrocution fatality rate per electrical worker to those in British Columbia, Alberta, and Quebec. We noted that, for example, British Columbia's Homeowner Protection Office reports on information that should also be considered in Ontario, such as educational activities and homeowner awareness of consumer protection legislation; and the percentage of home warranty insurance claims that have been resolved by a builder or the Homeowner Protection Office's warranty provider.

### RECOMMENDATION 8

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

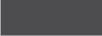
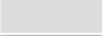
- establishing formal comprehensive accountability agreements with each delegated authority that cover financial and operational requirements and that would protect the public's interests;
- encouraging a more appropriate and fair balance of representation on boards of directors between governments, consumers, the public, and industry;
- ensuring that it has the necessary authority over delegated authorities to access any relevant information needed, such as information on quality assurance programs and use of financial resources, that would allow for a

**Figure 7: Inconsistencies in Requirements for Performance Information Reporting by Selected Delegated Authorities to the Ministry, as of March 31, 2009\***

Source of data: Ministry of Consumer Services

Performance Information Required by the Ministry	ESA	OMVIC	RECO	Tarion	TICO	TSSA
average turnaround times for processing claims to compensation funds or for warranties						
targets established for processing claims to compensation funds or for warranties						
types of inspections carried out (e.g., complaint-initiated, random, or targeted)						
results of inspections (e.g., # that found deficiencies)						
# of investigations						
disciplinary fines levied against registered businesses						
key types of complaints received against businesses						
complaint-handling turnaround times and targets established for dealing with complaints						
disposition of complaints handled (e.g., no action required, or written warning issued)						
# of complaints received against the delegated authority itself						

\* Figure is not inclusive of all performance information the Ministry receives from the delegated authorities, only information that is inconsistently required.

	performance information was required to be reported by delegated authority to the Ministry regularly
	performance information was not required to be reported by delegated authority to the Ministry
	n/a because no compensation fund is maintained by the delegated authority
	n/a because all inspections are based on claims
	n/a because no fines are levied by the delegated authority against registered businesses

comprehensive and thorough assessment of their financial and operational performance, and where the Ministry's authority to do so is in question or limited, seeking the legislative changes necessary to grant it unfettered authority in this regard; and

- establishing requirements that delegated authorities provide consistent performance information and compare their performance to similar organizations in other jurisdictions.

## MINISTRY RESPONSE

The delegated authorities model establishes a framework where the Ministry retains overall accountability and control of the delegated legislation and regulations, and the delegated authorities assume the day-to-day delivery of their regulatory duties, including financial stewardship.

The Ministry agrees with the importance of comprehensive accountability agreements with

each delegated authority to ensure that the Ministry has adequate tools for effective oversight.

In 2009, the Ministry undertook an independent review of the delegated authorities model. The review concluded that the model is serving the public interest well. However, the review also identified where improvements could be made.

As part of the implementation plan of the review's recommendations, the Ministry will be renegotiating accountability agreements with each of the delegated authorities. The Ministry is reviewing pertinent oversight elements that should be included in the revised accountability agreements to make certain that public interest protection is enhanced, including a protocol for appropriate disclosure of information.

The Ministry will work with the delegated authorities on a system-wide governance review. This will include a review of board composition to determine if there is a fair and appropriate balance of board members and a study of governance best practices.

The Ministry has been working with the delegated authorities over the past several years to enhance the delegated authorities' reporting of performance measures to the Ministry and, as the Auditor noted, has been successful in improving this reporting. As a part of the review of the delegated authorities' accountability agreements, the Ministry will work with the delegated authorities to determine what further key information and performance measures should be included in the agreements. This review will include a jurisdictional comparison.

## MINISTRY PERFORMANCE MEASURES

The Ministry's key activities are to recommend changes aimed at strengthening consumer protection legislation; to disseminate information for the purpose of educating and advising consumers; to

provide information to consumers about the use of alternative dispute resolution techniques; to mediate written complaints between consumers and businesses; and to enforce compliance with consumer protection laws. The Ministry's other key activity is to provide effective oversight of the eight delegated authorities. Although the Ministry is not required to publish an annual report, its website does include its annual Results-based Plan. The plan includes a description of the consumer protection programs and their key goals, priorities, and activities; performance measures the Ministry has established for the programs; and achievements. No other performance measures are publicly reported, except for information on its website describing some successful prosecutions.

The Ministry included four performance measures in its 2009/10 Results-based Plan. One measure covered its customers' satisfaction with the Ministry's handling of consumer phone inquiries and complaints; the other three performance measures pertained to the Ministry's processes for providing oversight of delegated authorities. In view of the many key activities required by the Ministry's mandate, we concluded that the performance measures reported by the Ministry need to be expanded if they are to allow legislators and the public to assess the Ministry's performance and hold it accountable for the extent to which it achieves its mandate.

To complement these four public measures, the Ministry introduced internally a set of performance measures, called a balanced scorecard, that included quarterly reporting on a suite of performance measures. The performance measures included turnaround times for processing registrations and issuing licences; percentage of cemetery owners meeting the annual filing requirements; number of days to resolve complaints; inspection hours incurred; number of investigations and prosecutions; refunds to consumers and value of cancelled and rescinded contracts; amounts of court fines and restitution; length of jail time ordered; and number of education events held. However,

these additional performance measures were not made public.

In our 2003 audit, we reported that the Ministry needed to improve the customer satisfaction survey about its handling of phone inquiries and complaints to ensure that the results were independently determined and meaningful. In addition, there was no survey done on written complaints, which would be an important and perhaps more objective indicator of the Ministry's effectiveness in dealing with consumer concerns. In this regard, the Ministry informed us that it successfully mediated 11% of written complaints and that 7% were referred to its investigations branch; about 24% were referred to another agency; and the remaining 58% resulted in providing information or advice, or requiring no action. During our current audit, we noted that the Ministry had not satisfactorily dealt with these issues. For example, the same staff member who handles the phone inquiry or complaint also conducts the survey at the end of the call to determine whether the caller is satisfied with the service and the handling of the complaint, an approach that may not lead to an objective response or recording of the result. To address this concern, the Ministry had indicated in 2003 that it intended to engage an independent company to conduct the customer survey, but only one independent survey (in 2003) was conducted. No survey was done on written complaints either by Ministry staff or independently.

In addition, the Ministry has in the past surveyed only consumers who contacted the Ministry with an inquiry or complaint, and not the general public. In our view, the kind of information indicated by our own public survey conducted by an independent firm on the extent to which the public is aware of and uses consumer protection programs would be important in helping the Ministry plan its educational activities and measure the outcomes of its efforts in this regard.

We also noted that the consumer protection programs in Quebec and British Columbia provide a wider range of publicly available performance goals and measures. These include the number of inspections and investigations completed, the number of mediations conducted, the amounts of restitution, and the number of licences issued. Alberta Consumer Protection, via Service Alberta's annual report, also reports on several customer satisfaction measures.

Although the Ministry reports publicly only limited performance information on the extent to which it achieves its mandate, it has been successful in making more detailed reporting a key requirement for the eight delegated authorities that it oversees.

## RECOMMENDATION 9

To improve accountability and its reporting on the extent to which it achieves its consumer protection mandate, the Ministry should:

- report publicly on performance targets and measures for all its key activities; and
- on a periodic basis, such as every two to three years, conduct independent consumer satisfaction surveys of its handling of both telephone and written complaints.

## MINISTRY RESPONSE

The Ministry agrees that appropriate performance measures and targets should be reported publicly and in accordance with the requirements of the new Ontario Public Service Directive and has committed to publishing an increased number of performance measures beginning January 2010.

The Ministry will establish processes to objectively evaluate customer-service satisfaction levels as they relate to telephone and written complaints at the Consumer Protection Branch.