

Chapter 4

Section 4.05

Alcohol and Gaming Commission of Ontario and Ministries of
Environment, Finance, Government Services, and Transportation

Government User Fees

Follow-up on VFM Section 3.05, 2009 Annual Report

Background

Ontario collected almost \$2 billion in user fees in the 2010/11 fiscal year (\$2.2 billion in 2008/09), which represents about 2% of total provincial revenues in both years. A user fee is generally charged to recover all or a part of the costs of providing a specific good or service, such as a vehicle registration, to an individual or business that requests it. In contrast, a tax is used to produce revenues for general government purposes and for goods and services that the government deems to be a “public good,” such as health care. Compared to most other provinces, Ontario collects less in terms of percentage of total revenues obtained from user fees and relatively more in terms of tax revenues.

In both the 2008/09 and 2010/11 fiscal years, the Ministry of Transportation collected about half of all user-fee revenues for driver’s and carrier licences and vehicle registrations. Figure 1 shows revenues from user fees in 2010/11, broken down by activity and ministry or agency. In addition to our audit work at the Ministry of Finance, our audit work for the 2008/09 fiscal year focused on the Ministries of the Environment, Government Services, and Transportation, and on the Alcohol and Gaming Commission, which, at that time, accounted for 78% of total user fees.

A 1998 Supreme Court of Canada decision concluded that user fees could be considered

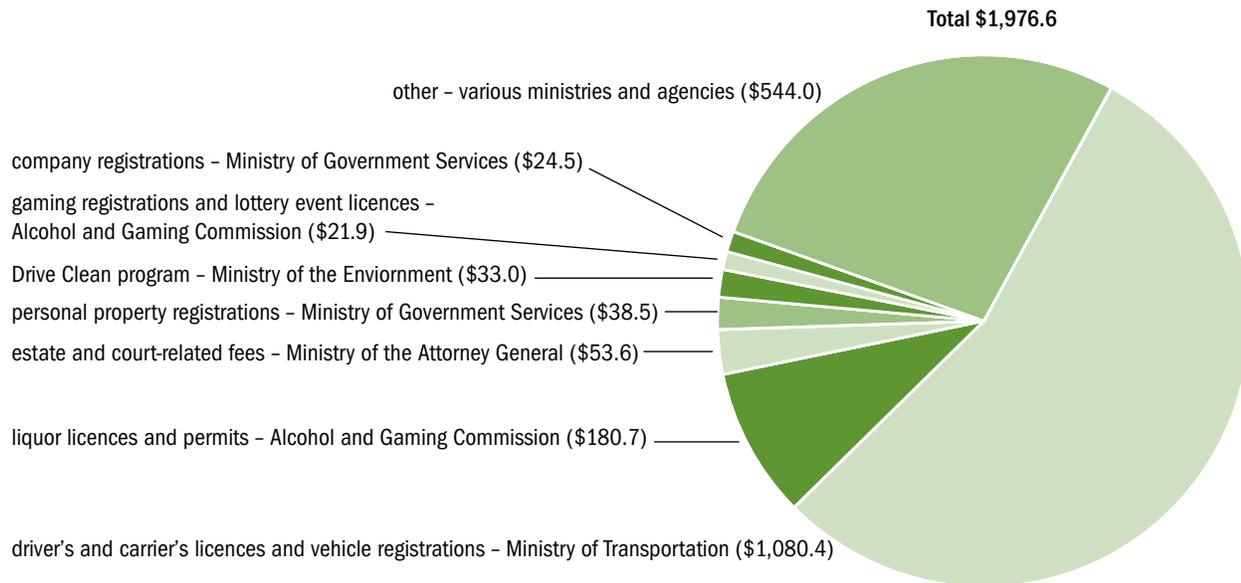
unlawful and therefore may be repayable if they were determined by a court to be a tax that had not been established by enacted legislation or if the fee amounts charged were excessive and did not have a reasonable relationship to the cost of the services provided. Although the Ontario government has taken some action over the past decade to address this ruling, at the time of our audit in 2009 there were still user-fee revenues collected by the Alcohol and Gaming Commission and the Ministry of Government Services of more than \$500 million annually that may be at risk because they may not have met the Supreme Court’s criteria for valid fees.

The Non-Tax Revenue Directive, established in 1991, is intended to maximize the Ontario government’s non-tax revenues, including user fees, and to ensure that ministries regularly review services and rates, and keep non-tax revenue rates up to date. However, we noted in our *2009 Annual Report* that the existing processes were, for the most part, not effective in achieving the Directive’s goals. In addition, unlike user-fee legislation in place federally and in some other provinces, Ontario’s existing policies and procedures lacked transparency and public involvement in key decisions about changes to user-fee rates, nor was there sufficient public reporting on fees collected, their use, and the costs associated with providing the fee-related services.

A key principle of the Directive is that, when it is reasonable and practical to do so, the cost of providing services to the public should be borne by those who benefit from the service. In 2008, as

Figure 1: Revenues from User Fees, 2010/11 (\$ million)

Source of data: Public Accounts of Ontario



part of the Budget process, the Ministry of Finance conducted a one-time review, which indicated that forecast user-fee revenues would recover less than 75% of the costs identified for these fee-related services. In cases where a ministry decides not to charge the full cost of a service—such as when it is not practical or economical to do so, or users cannot afford to pay—the Directive requires that the ministry document the reasons for setting fees at reduced rates. We noted in 2009 that, for the most part, this was not being done.

In addition, there were generally no recurring processes in place to keep user-fee rates up to date, as is required under the Directive. We noted many examples of fees with no rate-increase for 10 to 20 years, despite the fact that the fees recovered only from 23% to 45% of the full costs of providing the services.

Ministry of Finance guidelines require that ministries discount fees for services provided electronically, to encourage their increased use by the public. We noted that no discounts were offered for driver's licences and vehicle registrations via the Internet or at electronic kiosks. On the contrary, services at electronic kiosks across the province

incur a so-called “convenience” surcharge of one dollar per transaction.

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

Status of Actions Taken on Recommendations

On the basis of information we received from the Ministry of Finance, which also co-ordinated additional responses from other ministries, we noted that some progress has been made to address our recommendations. For instance, legislation was passed to replace the \$470 million in annual beer and wine *fees* with beer and wine *taxes* effective July 2010 in order to provide legislative clarity with respect to these revenues. As well, these taxes are being separately disclosed in the Province's 2010/11 financial statements. The Ministry of Finance has also obtained a commitment from each ministry to review all existing non-tax revenues

over the next several years as part of the Results-based Planning process. However, the implementation of several of our recommendations will be incumbent on a multi-ministry working committee that is expected to make recommendations by the end of the 2011/12 fiscal year for changes to the Ministry of Finance's policies and to the Non-Tax Revenue Directive.

The status of action taken on each of our recommendations is as follows.

POLICY AND CONTROL FRAMEWORK OVER USER FEES

User Fees versus Taxes

Recommendation 1

To ensure that user fee revenues are not at risk of repayment because they are unconstitutional, the Ministry of Finance should obtain the legal assurances it needs or consider legislated or other changes that would protect the validity of these revenues.

Status

As part of the *Ontario Tax Plan for More Jobs and Growth Act, 2009* (the 2010 Ontario Budget), new beer and wine taxes were imposed to replace the combination of beer and wine fees and revenue that would have been lost from lowering the sales-tax rate on alcohol associated with these fees. Effective July 1, 2010, approximately \$470 million in manufacturers' fees that were previously paid to the Alcohol and Gaming Commission of Ontario by breweries, microbreweries, and wineries were replaced with beer and wine taxes collected by manufacturers from consumers and payable to the Ministry of Revenue. According to the 2010 Ontario Budget, this change is revenue-neutral for the province.

Our *2009 Annual Report* also noted that the Ministry of Government Services was collecting revenues for certain registration services that were at risk of constitutional challenge because the revenues exceeded the cost of providing the services by approximately \$60 million, and it did not have

an action plan to address this risk. The Ministry of Government Services has since completed a costing and pricing review of its fees as part of the 2011/12 Results-based Planning process and has identified potential remediation strategies, including the possible development of a plan to reduce the fees over time. We were informed that the Ministry of Government Services is currently working with the Ministry of Finance to develop a strategy to address this issue for consideration by the Treasury Board/Management Board of Cabinet; however, no timetable was provided for completing this.

Policy Framework and Processes

Recommendation 2

To improve accountability, openness, and transparency in decisions related to user fees and compliance with policies, the Ministry of Finance should research legislation, policies, and processes in use or planned in other jurisdictions to identify best practices that could be applied in Ontario. It should also consider making available to the Legislature and the public, as some other provinces do, information on decisions related to user fees, such as the extent to which fees are expected to recover costs, and requirements for proposing new fees and fee increases.

Status

A Non-Tax Revenue Working Group was established in July 2010 to review the government's approach to non-tax revenue. The Working Group is focusing on aligning the existing Costing and Pricing Policy guidelines and the Non-Tax Revenue Directive with public policy choices while ensuring compliance with applicable case law. The group is made up of representatives from the Ministry of Finance and several ministries that collect a significant amount of non-tax revenues, such as the Ministries of Transportation, Government Services, and the Environment. In addition to being given a mandate to review the recommendations we made in our *2009 Annual Report*, by the end of the 2011/12 fiscal year the Working Group was to present options

to senior decision-makers for proposed revisions to the Ministry of Finance's Costing and Pricing Policy and Guidelines and the Non-Tax Revenue Directive.

In November 2010, the Ministry of Finance completed a jurisdictional review of non-tax revenue best practices, including consideration of areas such as legislation, policy, cost recovery, transparency, reporting, and indexation. Detailed responses were received from six provinces, one territory, and the federal government. The review noted that the type of information jurisdictions make available to the public regarding decisions related to user fees varies between jurisdictions. We were advised that the Working Group will evaluate the responses and provide recommendations at the end of the 2011/12 fiscal year on practices that could be applicable in Ontario, including practices related to public reporting and transparency, subject to the approval of Treasury Board/Management Board of Cabinet.

FEE PRICING AND COSTS

Cost Recovery for Services

Recommendation 3

To meet the intent of the Non-Tax Revenue Directive that non-tax revenues be maximized, user-fee rates should be set at levels that would recover the costs of providing services where it is reasonable and practical to do so. Where full costs are not being recovered, there should be adequate documented rationale. As well, the Ministry of Finance, in conjunction with the other ministries and with Treasury Board approval, should consider establishing target cost-recovery ratios for services for which full costs are not being recovered.

Status

The Ministry of Finance advised us that the annual Results-based Planning process has been changed to require that business cases prepared by ministries proposing new non-tax revenues or changes to existing fees include information on cost recovery. While the Ministry of Finance does not require ministries to set target cost-recovery ratios for ser-

vices provided at fees below full cost, ministries are required to indicate whether a proposed fee is below full cost recovery and, if so, to explain why, and to calculate the percentage of full cost recovery for any proposed change to a fee or any new fee.

We were informed that, as part of the 2011/12 Results-based Planning process, the Ministry of Finance required ministries to commit to developing a multi-year plan to review all existing non-tax revenue sources to ensure consistency with government policies and guidelines. Ministries are required to develop their plans over the next several years with scopes and timelines that best suit their individual circumstances, although the Ministry of Finance has imposed no deadline for ministries to complete these plans. We were also advised that, at the time of our follow-up, the Working Group was working with ministries to determine the most appropriate cost-recovery options.

Updating Fee Amounts

Recommendation 4

To help ensure that ministries comply with existing policies requiring them to keep fee rates up to date with costs being incurred, the Ministry of Finance should work with ministries to establish regular processes for identifying changes in the costs of service delivery and for making formal recommendations to the Treasury Board for regularly updating fee rates.

Status

The Ministry advised us that a multi-year review of all non-tax revenues, which the ministries have committed to as part of their future annual Results-based Planning processes, will identify fees set at rates below full cost recovery and will state the impact of any changes to the rates.

As part of its study of best practices across jurisdictions, the Working Group has identified regular review processes used in other jurisdictions, such as annual reviews and regular updates to fees based on indices such as the Consumer Price Index. The Working Group was in the process of evaluating

these practices and the feasibility of implementing them in Ontario and will consider them for its recommendations when it submits the results of its review by the end of 2011/12.

The Ministry advised us that the Treasury Board and the Management Board of Cabinet considers changes to non-tax revenue fees on a case-by-case basis during the annual Results-based Planning processes. Decisions on individual fees are made using a documented business case within the context of applicable case law as well as the existing Costing and Pricing Policy guidelines and public policy choices.

Fees for Electronic Service Delivery

Recommendation 5

The Ministry of Transportation, in conjunction with the Ministry of Government Services, should compare its costs for delivering services via electronic kiosk and online with those of over-the-counter, in-person service delivery to establish whether “convenience” fees added to electronic kiosk services are justified and whether kiosk and online service delivery should be discounted.

Status

In December 2010, the Ministry of Government Services completed a product and service costing and fee review of services delivered by ServiceOntario, and submitted the results as part of the 2011/12 Results-based Planning process. The review included an analysis of ServiceOntario’s costs for those programs where it collects fees on behalf of partner ministries, such as the Ministry of Transportation (such as those for driver licensing and vehicle registration). While the results of the review were shared with the partner ministries, we were informed that work has yet to be done on integrating ServiceOntario’s costs with those of the partner ministries to form a basis of comparison of costs between alternative delivery methods (e.g., electronic versus in-person), and for determining whether the “convenience” fees of approximately \$749,000 in 2010/11 (\$849,000 in 2008/09) collected at kiosks were justified. We were

advised that the Ministry of Government Services will be reviewing the kiosk fee as part of the kiosk strategy being developed for the expiry of the current contract in 2013.

Enforcement and Compliance Costs

Recommendation 6

To ensure that accurate and consistent information is available for making informed decisions on fee rates, the Ministry of Finance should amend its Costing and Pricing Policy and guidelines used by ministries to require that compliance and enforcement costs be appropriately considered when determining the full cost of fee-related services.

Status

We were advised that the mandate of the Working Group includes a review of the Costing and Pricing Policy and guidelines used by ministries, including whether compliance and enforcement costs will be used in arriving at the full cost of fee-related services. The results are expected by the end of 2011/12.

REVENUE COLLECTION

Recommendation 7

The Ministry of the Environment should obtain periodic internal or external audit and other assurances that the revenues collected and remitted by the private-sector operators of its Drive Clean program are accurate.

Status

The Ministry of the Environment requested the Ontario Internal Audit Division to complete an audit of the accuracy of revenue collected for the Drive Clean program. For the period from November 2008 to November 2009, it examined the accuracy of revenues collected and remitted by the private-sector operators of the program, and assessed the Drive Clean Office’s processes and its private-sector service provider’s revenue management controls that assure the accuracy of revenues collected. This included emission-test recording

and verification processes, and billing and collection processes for revenues from approved facilities. In their July 2010 report, the internal auditors concluded that, overall, effective controls were in place to reduce the risk of revenue loss to an acceptable level, and they made several recommendations for improving controls. We were advised that another internal audit of the program's revenue collection process has been scheduled for 2011/12.

The Ministry of the Environment entered into a new contract with the private-sector operator of the Drive Clean program in January 2011. The contract requires the operator to have an independent external auditor conduct an annual audit following a process approved by the province to ensure that all information systems and applications are operating in accordance with provincially-approved specifications and that all operating procedures conform to those that were approved by the province. The Ministry of the Environment expects to receive the first external audit report in January 2013.

The Ministry of the Environment also reconciles Drive Clean tests recorded on the Ministry of Transportation vehicle database with revenues from the program.

SERVICE STANDARDS AND REPORTING

Recommendation 8

To enhance accountability and reporting over ministries' fee-related services, the Ministry of Finance, in conjunction with ministries, should identify and

implement the best practices in use in other jurisdictions relating to establishing and publicly reporting service standards and actual service levels achieved.

Status

In our 2009 Annual Report, we noted that certain other jurisdictions impose requirements for departments, agencies, boards, and commissions to report on how their standards compare to those established by other countries with which a relevant comparison can be made and against which performance can be measured. In addition, clients must be provided with explanations of how user fees are determined and of their related costs and revenues. In this way, clients can clearly see the costs of the services they pay for in relation to what they receive.

The Ministry of Government Services indicated that it has worked with ministries in the Ontario Public Service to assist with the implementation of the new Service Directive that came into effect in January 2010. This Directive requires ministries to establish program-specific standards for services offered, for monitoring and measuring the quality of services provided, and for communicating to customers the actual level of service achieved. We were informed that the Ministry of Government Services has been working with the Working Group to assess best practices in other jurisdictions, including practices relating to public reporting, and was to cover this area in its recommendations expected at the end of 2011/12.