

Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

STANDING COMMITTEE ON PUBLIC ACCOUNTS

EMPLOYMENT RIGHTS AND RESPONSIBILITIES PROGRAM

(Section 3.09, 2004 Annual Report of the Provincial Auditor)

1st Session, 38th Parliament
54 Elizabeth II

Legislative
Assembly
of Ontario



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législative
de l'Ontario

The Honourable Alvin Curling, MPP,
Speaker of the Legislative Assembly.

Sir,

Your Standing Committee on Public Accounts has the honour to present its Report
and commends it to the House.

Norman Sterling, MPP,
Chair.

Queen's Park
July 2005

STANDING COMMITTEE ON PUBLIC ACCOUNTS

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1st SESSION 38th PARLIAMENT

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PREAMBLE

The Auditor General reported on the Employment Rights and Responsibilities Program (the Program) in Section 3.09 of his *2004 Annual Report*.¹ The Standing Committee on Public Accounts held hearings on this audit report on March 3, 2005 with representation from the Ministry of Labour.

The Committee endorses the Auditor General's 2004 report on the Employment Rights and Responsibilities Program and recommends the implementation of his recommendations by the Ministry of Labour (the Ministry or MOL). The Committee has prepared supplementary recommendations based on its findings during the hearings. This report is a record of those findings and the Committee's recommendations.

The Committee extends its appreciation to the officials from the Ministry for their attendance at the hearings. Furthermore, the Committee acknowledges the assistance provided during the hearings by the Office of the Auditor General, the Clerk of the Committee, and staff of the Legislative Library's Research and Information Services.

Ministry Response to the Committee's Report

The Standing Committee on Public Accounts requests that the Ministry of Labour provide the Committee Clerk with a written response to the Committee's recommendations within 120 calendar days of the tabling of this report with the Speaker of the Legislative Assembly, unless otherwise specified in a recommendation.

1. BACKGROUND

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

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

- providing information and education to employers and employees, in part through a call centre operated by the Ministry of Finance;
- investigating and resolving complaints, primarily from former employees, of possible violations of employment rights;

- conducting proactive inspections of payroll records and workplace practices; and
- ordering employers to pay wages and benefits owed and initiating prosecution and collection efforts if warranted.

Employment standards officers have the power to look into possible violations of the Act. During the 2003/04 fiscal year, the Ministry investigated more than 15,000 complaints from employees and carried out approximately 150 proactive inspections.²

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

2. AUDIT OBJECTIVE AND SCOPE

The audit objective was to assess whether the Ministry had adequate systems and procedures in place to fulfill its key mandate of protecting the employment rights of workers. The audit fieldwork, which was substantially completed by March 2004, included a review of relevant files and administrative policies; interviews of staff at the Ministry's head office, three regional offices, and five district offices; and a review of similar programs in other jurisdictions. It also followed up on the issues raised in the 1991 audit of the Employment Standards Program, the predecessor of the current program.³

2.1 Overall Audit Conclusions

The Auditor General's staff noted that the Ministry focused its efforts almost entirely on investigating complaints from individuals against their former employers. As a result, MOL inspections aimed at protecting the rights of currently employed workers were inadequate. Many of the concerns identified during this audit were also reported on in the 1991 audit.⁴

Weaknesses were also found in the collections of amounts owed to employee claimants by employers. Collection agencies contracted by the Ministry were expected to have a collection rate of 35%; however, the rate achieved was only about 15%.

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

Committee Hearings

The Ministry indicated that it has adopted a three-pronged strategy to improve compliance with the *Employment Standards Act*.

The strategy involves (1) promoting heightened awareness of rights and responsibilities, (2) improving claims administration and collection of money, and (3) strengthening enforcement. MOL has assigned high importance to each of these objectives.

The Ministry noted that it has made progress in areas addressing the issues and recommendations raised by the Auditor.⁵ These areas include expanding access to information for employers and workers. It has also introduced new measures to further recover money owed to employees, with \$2.3 million more recovered. It has increased the number of targeted proactive inspections by targeting employers and sectors with frequent violations of employment standards and has completed 1,418 proactive inspections by February 2005. These have resulted in the recovery of \$690,049 in payments owed to employees. MOL has a strong, new emphasis on enforcement, with 229 prosecutions commenced since July 2004. The Ministry has also taken action to address shortcomings in the administration of the trust fund.⁶

The Ministry believes that outreach, improved collections, and stronger enforcement are critical to improving compliance rates⁷ and that information dissemination is integral to the Ministry's approach to achieving better compliance over the long term. The Ministry noted that the *Employment Standards Act* is complex, and in some parts, it can be hard to fully understand. This is more difficult for employers and employees whose first language is not French or English.⁸

The Ministry highlighted initiatives to assist workers and businesses in learning about their rights and responsibilities. These include providing access to Web-based information and making information available in 19 languages to those whose first language is not English or French. In addition, the ministry has reached out to over 100 organizations, including legal aid clinics and multicultural community groups, to seek their assistance in providing information on employment standards to those who need it.

3. ENFORCEMENT

3.1 Extending Investigation Activity and Proactive Inspections

Historically, the Employment Rights and Responsibilities Program has been largely complaint-driven. For the most part, Program staff have been occupied with resolving the significant number of employee complaints. At the time of the audit, extended investigations and proactive inspections still represented only a small portion of the Ministry enforcement activities.⁹

The Auditor General noted that one or more violations were found in about 70% of complaints filed. Former employees tend to report the majority of workplace violations as current employees are reluctant to file claims for fear of losing their jobs, despite the Act's protection of employee rights. In fact, former employees

filed 90% of complaints. To be effective in its mandate, the Ministry has an obligation to protect current employees through expanding investigations of substantiated claims to cover other employees of the same employer and conducting more proactive inspections

With respect to proactive inspections, targeted inspections of high-risk business sectors have been effective in the past. These inspections uncovered violations at rates ranging from 40% to 90% of inspections. High violation rates indicate a need to increase proactive inspections in those sectors to promote greater compliance with employment standards legislation.

The Auditor General recommended that the Ministry expand investigations to cover other employees when individual violations are found and increase the number of proactive inspections in high risk industries.

Committee Hearings

The Committee encouraged the Ministry to continue strengthening its enforcement strategy. This is particularly the case with regard to the Auditor's finding that there existed an imbalance between investigating workers' complaints and pro-active inspections.¹⁰ The Committee, in line with the Auditor's report, agrees that proactive inspections will help improve compliance rates over the long term, particularly with regard to repeat violators.¹¹

The number of claims filed annually with the Ministry vary from 13,000 to about 15,000 or 16,000. There were 16,175 claims with the Ministry under the *Employment Standards Act* in 2003-04.¹² Typically, employment standards officers (officers) find contraventions in about 70% of these workplaces. In addition, there are strong indications that in some sectors the Ministry may not hear about the majority of compliance problems.¹³

The Ministry noted that it has taken action on three fronts:¹⁴

1. An officer may refer a case to the proactive investigations team, which will follow up with an inspection of the workplace in question.
2. Proactive inspections are targeting high-risk employers who have a history of multiple claims filed against them.
3. In about 10% of claims where violations are found, the officer expands the audit to include other workers.

The Ministry selects high-risk sectors based on historic information.¹⁵ Specifically, the dedicated enforcement team uses a risk-based approach based on past investigations.¹⁶ The majority of claims filed with the Ministry are in three sectors namely: the restaurant/tavern industry, the retail sector, and business management services, which employ such workers as cleaners in buildings and security guards.¹⁷ Consequently, the Ministry has focused on these sectors for proactive inspections. The Ministry noted that these sectors involve 90% of the claims it receives.¹⁸ The other sector that the Ministry has continually been

involved in, and will continue to work in, is the garment sector in the Greater Toronto Area.¹⁹

A fully dedicated inspection team was put in place on July 1, 2004, with the objective of conducting 2,000 proactive inspections by the end of March 2005 (end of fiscal year). These inspections target high-risk employers, high-risk sectors, and employers who have a history of multiple claims filed against them.²⁰

Generally, a proactive inspection will involve the following steps.²¹ The officers look at the history of the particular company, especially with regard to any claims filed against it in the past. They also look for the types of violations that are typical in that sector. If they announce their visit, it will be scheduled approximately a week in advance in order to ensure that records are available. At other times, officers will conduct a surprise visit. Officers will inspect the workplace and the company's records. For example, they will speak to employees to determine if they are working beyond 48 hours and whether they voluntarily agreed to work those excess hours.

The investigation results in an inspection report, which may include orders issued or tickets. In addition, the officer may require the employer to post the results of the investigation report in the workplace so that it can come to the attention of the workers employed there.

The Ministry had conducted 1,418 proactive inspections as of February 18, 2005. These inspections have resulted in a total of \$905,243 being assessed, with a recovery rate of just over 76%, resulting in \$690,049 of payments to workers.²² There have been 931 employers inspected, 229 prosecutions, and 640 compliance orders issued.²³

Following the introduction of the *Employment Standards Act, 2000*, the Ministry began using notices of contravention as an enforcement mechanism in 2001. These notices are administrative monetary penalties that range from \$250 to \$1,000 per offence per employee. As of February 2005, the Ministry issued 309 notices of contravention.²⁴

The Committee raised the issue of publicizing violations to act as a deterrent. The Ministry indicated that legislation put in place since March 1, 2005 creates the capability for the Minister to publish the names of organizations that have been prosecuted and it aims to do that.²⁵

In addition, some members of the Committee considered the possibility of introducing a strategy that rewards high performers in order to promote and recognize good practice.²⁶ Such a strategy could be similar to the City of Toronto rating systems for restaurants (the Food Premises Inspections and Disclosure System) with public displays of yellow, green and red ratings. In theory, a rating system related to employment standards could inform workers when they decide on whether to take a job with a particular employer. A positive rating could then become an incentive for employers to comply with the Act. Publishing results of

prosecutions and other measures will inform workers of problem areas, while positive ratings could act as an inducement for employers to comply with the Act.

Committee Recommendations

The Committee is of the view that posting notice of serious violations in the workplace will contribute to the reduction of non-compliance with the Act. It therefore recommends that:

- 1. The Ministry develop a protocol that requires the employer to post notice of serious violations of the Act in the workplace following an inspection. In addition, the Ministry should develop criteria to provide officers with guidelines on when to require employers to post notice of violations. The posted information should be presented in plain, non-technical language and should be posted in English and in languages commonly used in the workplace.**
- 2. The Ministry ensure adequate levels of proactive inspections are conducted and sustained. The Ministry should establish year-to-year targets for the number of proactive inspections to be completed in high-risk sectors.**
- 3. The Ministry report annually on the effectiveness of its increased inspection activities in reducing non-compliance, especially in high-risk sectors. The Ministry should increase proactive inspections if it finds that compliance rates have not improved.**
- 4. The Ministry complete the development of mechanisms to publicize serious violations of the *Employment Standards Act*. It also encourages the Ministry to explore a means of positive recognition in order to acknowledge employer compliance with the Act.**

The Standing Committee on Public Accounts requests that the Ministry of Labour provide the Committee Clerk with a written response to the Committee's recommendations within 120 calendar days of the tabling of this report in the Legislature, unless otherwise specified.

3.2 Prosecuting Violators

The Act permits an employment standards officer to negotiate the resolution to a claim. Most claims were settled without the issuance of a formal order to pay and without the imposition of a fine and administrative fee.²⁷

In general, the Ministry did not initiate prosecution or issue fines even when large amounts were involved. Over the past five years, of approximately 70,000 claims filed, violations were substantiated in 51,000 — a rate of over 70%. Of this number, only 18 cases were sent for prosecution, resulting in a total of 63 convictions for violations of various sections of the Act and the imposition of only \$210,000 in fines. Also, from December 2001 to February 2004, only 218

notices of contravention were issued, resulting in assessed total penalties of approximately \$140,000.

The Auditor General recommended that the Ministry should provide better direction to employment standards officers regarding the appropriate use of enforcement measures, including notices of contravention and prosecutions, and better monitor the use of these measures for consistency of application.

Committee Hearings

The Committee agreed that the Ministry could make fuller use of all the enforcement tools at its disposal. The Ministry noted that it has instituted a prosecution policy that provides clear direction to officers on circumstances where prosecution should be considered. Since the implementation of the policy in July 2004, 229 prosecutions have been commenced — an increase from a total of 18 prosecutions in the past five years.²⁸

The Ministry also increased the range of enforcement tools available to officers. Since July 2004, the Ministry has concentrated mainly on the issuance of tickets for certain violations of the Act. Specifically, officers have been issuing tickets to employers for employment standards violations under Part I of the *Provincial Offences Act*. More serious offences will continue to be prosecuted under Part III of the *Provincial Offences Act*, which has larger fines and imprisonment.²⁹

Monetary penalties and payments to workers are distinct. Essentially, there are two kinds of monetary penalties in place. One is a notice of contravention and the other is prosecution by way of Part I or Part III of the *Provincial Offences Act*. Under prosecution by Parts I or III, fines are paid to the municipalities to help pay for the administration of the courts. A surcharge is returned to the Province. On notices of contravention, the money accrues to the provincial government.³⁰

Penalties do not result in payments to workers. The notice of contravention is an administrative monetary penalty. Similarly, tickets and prosecutions, unless directed by the court, do not result in payments to the worker. The primary tools for actually getting payments for a worker include recovering bank account monies through writs and third-party demands placed through the bank.³¹

Committee Recommendation

The Committee is concerned about those employers who repeatedly contravene the Act. It therefore recommends that:

- 5. The Ministry use all enforcement tools at its disposal and consider publishing the names of organizations that have been prosecuted, particularly with regard to repeat violators. The Committee requests that the Ministry report on the results of increasing the use of all enforcement tools.**

The Standing Committee on Public Accounts requests that the Ministry of Labour provide the Committee Clerk with a written response to the

Committee's recommendations within 120 calendar days of the tabling of this report in the Legislature.

3.3 Collecting for Claimants

On average, about 40% of amounts owed by employers is voluntarily paid. Since 1998, up to three collection agencies have been used to collect overdue orders to pay. At the time of the audit, only one collection agency was performing this service.³²

There has been a significant decrease in collection results over the past three years. Initial forecasts used in the business case for transferring collections to private collection agencies in 1998 were based on an expected collection rate of 35%. Up until 1993, when the Ministry operated its own centralized in-house collection unit, the collection rate was 22%. Currently, the private collection agency achieves a collections rate of about 18%. Alberta has collection rates ranging from 20% to 35%.

The Auditor General recommended that the Ministry should implement more timely and vigorous enforcement measures. In addition, it should better monitor its success.

Committee Hearings

The Committee was interested in the Ministry's progress on reducing the time to process claims and on the issue of collecting monies for workers.

The Ministry emphasized that it is making significant changes to increase the rate at which claims are processed and to improve the effectiveness and timeliness of collections.

It is hoped that a streamlined process will get payments to workers more quickly. In the early and mid-1990s, the Ministry had a file completion turnaround time of 90-94 days. Currently, the process has been reduced to about 37-40 days. In 80% to 85% of cases, the employer and the worker quickly settle either in full or in part when the Ministry intervenes.³³

Of the 15,000 or so claims that the Ministry receives every year, about 80% to 85% of workers receive some or all of their money as the result of early intervention by the Ministry. MOL puts the remaining 15% to 20% of claims into investigations and collections activity. Of these claims, about 20% to 22% of the claims are not founded and have no entitlement.³⁴

Unresolved disputes take time because they require a full investigation. They can involve the appeal process and a decision by the Ontario Labour Relations Board. Owed money brings the case to the collections process. Consequently, unresolved disputes and collections can significantly slow payments to an employee.³⁵

With regard to the area of claims, the Ministry has streamlined intake and implemented a triage system to reduce overall time to render decisions. It has set

a program target to render decisions on 80% of claims within 90 business days of receipt.

For example, as of December 1, 2004, the Ministry rendered decisions on 82% of claims within 90 days.³⁶ Once an investigation is complete and a decision is rendered, the employer has five days to remit the money to the Ministry or an order to pay will be issued. When the order to pay is issued, there is a 30-day appeal period. Following that, the file is sent to the collection group within five days.³⁷ The average dollar value of a claim falls between \$750 and \$1,000.³⁸

The Ministry recognizes that it could increase its collections rate. It is continuing to explore best practices in other provinces and jurisdictions to identify ways to increase the effectiveness of its collections process. In July 2003, the Ministry initiated a review of its collections function. This report was completed in February 2004.³⁹ It has served to help improve the Ministry's process within the centralized collections unit.

As noted above, the Ministry set up a centralized collections unit in the central region. It ensures that all collection and enforcement options have been exhausted on all files. Specifically, it handles ongoing files returned to the Ministry by private collections agencies. The central region deals with 55% of the province's collections workload and has already collected \$2.3 million since 2003.

Based on MOL preliminary data, the Ministry is now achieving a collections rate of about 36%.⁴⁰

Committee Recommendation

The Committee recommends that:

- 6. The Ministry ensure that timely and aggressive collections efforts are made using all enforcement and regulatory tools at its disposal, including reporting to credit bureaus, obtaining liens and writs, garnisheeing assets and taking legal action.**

The Standing Committee on Public Accounts requests that the Ministry of Labour provide the Committee Clerk with a report on the success of its collection efforts within one calendar year of the tabling of this report in the Legislature.

4. INFORMATION SYSTEMS

Decisions, claim orders, and investigation reports are largely paper-based and kept at district offices. Each district uses a stand-alone computer system to store caseload information and to track the status of files. Each district forwards paper copies of completed reports to head office, where information is manually entered on a separate computer system.⁴¹

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

Upon completion of the audit, the Ministry was still working on a project that was started in 1998 to develop a new, province-wide computer information system. Once completed, it is expected to:

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

However, the project had experienced significant delays since development started. As of March 31, 2004, over \$1.2 million had been spent, and the Ministry estimated that another \$2 million was needed to complete the project. In addition, the Ministry had not obtained the required approval for the system from Management Board. As of March 31, 2004, the project was placed on hold until the proper approvals were obtained.

The Auditor General recommended that the Ministry expedite the development of the new system to meet the needs of all users in order to ensure that staff and management of the Ministry's Employment Rights and Responsibilities Program have access to accurate, relevant, and timely information for decision-making.

Committee Hearings

The Committee echoed the Auditor's recommendation that the Ministry must complete its province-wide information system.⁴² The Ministry informed the Committee that it is pursuing approval to complete the implementation of the system.⁴³

Committee Recommendation

The Committee recommends that:

- 7. The Ministry complete the upgrade of its management information system capability so that management and inspection staff have the information they require to conduct inspection activities in the most effective manner. The Committee requests that the Ministry report on the status of the information system upgrade and its expected completion date.**

The Standing Committee on Public Accounts requests that the Ministry of Labour provide the Committee Clerk with a written response to the Committee's recommendations within 120 calendar days of the tabling of this report in the Legislature.

5. QUALITY ASSURANCE

In mid-2003, the Ministry introduced quality assurance reviews of investigation reports for each district office.⁴⁴ The new initiative requires that region program coordinators review 5% of all completed investigation reports each year. All regions visited by the Auditor's staff had initiated these reviews, but the results had not yet been summarized.

The Auditor General recommended that the Ministry improve its documentation of claims and investigations to ensure the completeness and accuracy of information.

Committee Hearings

The Ministry recognizes that a quality management system ensures that policies and procedures are followed in order to ensure complete and accurate documentation. Consequently, a quality assurance audit system was developed and implemented in 2003, which entailed auditing 5% of files.⁴⁵

This quality assurance audit found that officers are generally doing well in areas such as following policy and procedures during investigations, reaching decisions on claims, and completing information enforcement orders and related materials. However, the Ministry identified areas for improvement, including mailing timely acknowledgement letters to claimants and completing information required to fully document claims.⁴⁶

In April 2005, the Ministry will review the results of its 2004-05 quality assurance audit to further strengthen program delivery.⁴⁷

5.1 Measurement of and Reporting on Program Effectiveness

The Auditor assessed whether or not the Ministry had adequate systems and procedures in place to measure and report on the Program's effectiveness.⁴⁸ The agreed criteria for this assessment encompassed a set of performance reporting principles. These included

- focusing on the few critical aspects of performance;
- looking forward as well as back;
- explaining key risk and capacity considerations and other factors critical to performance;
- integrating financial and non-financial information;
- providing comparative information;

- presenting credible information, fairly interpreted; and
- disclosing the basis for reporting.

The Ministry did not have performance-reporting systems that met these principles. It had not defined the critical aspects of performance nor had it explained the Program's key risk and capacity considerations. It reported on only one measure — the percentage of cases closed within 60 days. Thus, the Ministry focused on reducing processing time. While this was a valid measure, it does not fully inform the Legislature and the public of the Program's overall success.

Additional measures could include

- the most commonly found violations, their number, extent by business sector, and underlying reasons for their frequency;
- officers' efforts to target high-risk businesses and extend their investigations beyond complaints and the success of those efforts; and
- available enforcement measures, their rates of use, and their success in gaining compliance.

The Auditor General recommended the Ministry should develop and implement more comprehensive indicators to measure and report on the Program's effectiveness.

Committee Hearings

The Committee is eager for the Ministry to develop baseline measures of program effectiveness, which can later serve to assess the Ministry progress on various issues. The Ministry indicated that it should have multiple measures of program effectiveness. Nonetheless, the ultimate measure of effectiveness in this instance is compliance with the law. Random inspections targeting specific sectors will be used to establish what normal compliance is in individual sectors.⁴⁹

The Ministry is currently focusing on the restaurant sector. Once the Ministry establishes what normal compliance rates are for this sector, it will then put a concerted effort in place with workers and employers to improve their knowledge of what constitutes a contravention.⁵⁰ It will also increase proactive inspections in the sector. The aim is to achieve better compliance rates.

The Ministry aims to have dealt with and launched initiatives in the three highest risk sectors by 2009.⁵¹ It seeks to ensure that workers and employers will be aware of recent contraventions and have information and Ministry help. In addition, it will do public reporting on compliance rates through the results-based plan.

The Ministry initiated an employment standards working group of stakeholders, chaired by the Parliamentary Assistant, Mr. Kevin Flynn, to help guide the Ministry at improving the administration and operation of its program. Feedback

from the 100 organizations that the Ministry has reached out to will help it have a sense of whether it is achieving a higher compliance rate.⁵²

The Ministry aims to achieve a compliance rate of 80% for specified sectors, to achieve a 78% overall client satisfaction rate, and to render decisions on 80% of claims within 90 days.⁵³

Committee Recommendation

The Committee recommends that:

- 8. The Ministry develop baseline measures of its progress in increasing compliance with the Act, particularly in high risk sectors.**

The Standing Committee on Public Accounts requests that the Ministry of Labour provide the Committee Clerk with a written response to the Committee's recommendations within 120 calendar days of the tabling of this report in the Legislature.

6. FINANCIAL CONTROLS

6.1 Trust Fund

As of March 31, 2004, the Ministry administered a trust fund of approximately \$11 million in assets and over 1,000 active trust accounts. Over half of this money represents employer payments held in trust for employees terminated with recall rights. Other funds are held in trust awaiting the results of employers' appeals of orders against them. The remainder are amounts collected from employers for claimants.⁵⁴

There were serious internal control weaknesses in the administration of the trust fund. These included the lack of a monthly reconciliation of the Ministry accounting records with its bank accounts to ensure all receipts and payments are properly accounted for and a lack of supervisory review of the work of staff. The Auditor also found serious errors and omissions in the accounting for the fund and significant delays in payments or non-payments of funds to claimants.

Since 1999, the Ministry has transferred approximately \$2.1 million to the Consolidated Revenue Fund. About half of this amount was from the trust fund as a result of unclaimed wages; the remaining half was from similarly unclaimed amounts owed to employees from the former Employee Wage Protection Program. The Ministry had not tried to locate the employees through checking address changes from driver's license records or local telephone directories.

The Auditor General recommended that the Ministry review all the trust fund accounts for errors and omissions, improve controls over the administration of the trust fund, establish improved procedures for locating and paying claimants, and

involve an internal audit to ensure that discrepancies and completion of the required reconciliations are appropriately investigated and resolved.

Committee Hearings

The Auditor General expressed concerns over the Ministry's handling of the trust fund. In the hearings, the Ministry outlined steps it has taken to address these concerns.

Following the audit, the Ministry brought in its chief accountant and other financial control staff to implement proper controllership principles and practices.⁵⁵

The Ministry noted that one of the Auditor's findings related to the lack of monthly reconciliation with bank accounts. The root cause of reconciliation difficulties is that head office and 26 field offices were making deposits into the trust fund. In September 2004, the Ministry stopped that practice. Currently, all deposits are made and accounted for in the main office. In addition, the Ministry noted that it is looking for software to ease the workload and enable more accurate accounting.⁵⁶

A review of the trust fund operations is continuing, with a view to further improve the effectiveness of financial controls. The internal audit division will conduct a follow-up audit on the appropriateness and effectiveness of trust fund controls in this fiscal year, 2005-06.⁵⁷

On the issue of the inability to locate claimants, the Ministry advised that 44% of the claimants have now been located. On a going-forward basis, claim forms have been revised to include alternate contacts, including address and telephone number, and a message asking people to advise the ministry of address changes.⁵⁸

Committee Recommendations

The Committee recommends that:

- 9. The Ministry expedite the completion of its internal audit review of the adequacy of internal controls over the trust fund.**
- 10. The Ministry expedite efforts to locate and pay claimants.**

The Standing Committee on Public Accounts requests that the Ministry of Labour provide the Committee Clerk with a written response to the Committee's recommendations within 120 calendar days of the tabling of this report in the Legislature.

7. LIST OF COMMITTEE RECOMMENDATIONS

- 1. The Ministry develop a protocol that requires the employer to post notice of serious violations of the Act in the workplace following an inspection. In addition, the Ministry should develop criteria to provide officers with guidelines on when to require employers to post notice of violations. The posted information should be presented in plain, non-technical language and should be posted in English and in languages commonly used in the workplace.**
- 2. The Ministry ensure adequate levels of proactive inspections are conducted and sustained. MOL should establish year-to-year targets for the number of proactive inspections to be completed in high-risk sectors.**
- 3. The Ministry report annually on the effectiveness of its increased inspection activities in reducing non-compliance, especially in high-risk sectors. The Ministry should increase proactive inspections if it finds that compliance rates have not improved.**
- 4. The Ministry complete the development of mechanisms to publicize serious violations of the *Employment Standards Act*. It also encourages the Ministry to explore a means of positive recognition in order to acknowledge employer compliance with the Act.**
- 5. The Ministry use all enforcement tools at its disposal and consider publishing the names of organizations that have been prosecuted, particularly with regard to repeat violators. The Committee requests that the Ministry report on the results of increasing the use of all enforcement tools.**
- 6. The Ministry ensure that timely and aggressive collections efforts are made using all enforcement and regulatory tools at its disposal, including reporting to credit bureaus, obtaining liens and writs, garnisheeing assets and taking legal action.**
- 7. The Ministry complete the upgrade of its management information system capability so that management and inspection staff have the information they require to conduct inspection activities in the most effective manner. The Committee requests that the Ministry report on the status of the information system upgrade and its expected completion date.**
- 8. The Ministry develop baseline measures of its progress in increasing compliance with the Act, particularly in high risk sectors.**

9. The Ministry expedite the completion of its internal audit review of the adequacy of internal controls over the trust fund.

10. The Ministry expedite efforts to locate and pay claimants.

NOTES

¹ Section 1.1 of the *Auditor General Act* changes the title Provincial Auditor to Auditor General. *Auditor General Act*, R.S.O. 1990, c. A.35.

² Office of the Provincial Auditor, *2004 Annual Report*, (Toronto: The Office of the Provincial Auditor, 2004), p. 238.

³ *Ibid.*, p. 239.

⁴ *Ibid.*, pp. 239-240.

⁵ Ontario Legislative Assembly, Standing Committee on Public Accounts, *Official Report of the Debates (Hansard)* (3 March 2005), P-311.

⁶ *Ibid.*

⁷ *Ibid.*, P-312.

⁸ Standing Committee on Public Accounts, *Official Report of the Debates*, P-311.

⁹ Office of the Provincial Auditor, *2004 Annual Report*, pp. 241-244.

¹⁰ *Ibid.*, p. 241.

¹¹ *Ibid.*, pp. 242-243.

¹² Standing Committee on Public Accounts, *Official Report of the Debates*, P-318.

¹³ *Ibid.*, P-311.

¹⁴ *Ibid.*, P-313.

¹⁵ *Ibid.*, P-316.

¹⁶ *Ibid.*

¹⁷ *Ibid.*, P-314.

¹⁸ *Ibid.*, P-327.

¹⁹ *Ibid.*

²⁰ *Ibid.*, P-312.

²¹ *Ibid.*, P-316.

²² *Ibid.*, P-312.

²³ *Ibid.*, P-320.

²⁴ *Ibid.*, P-312.

²⁵ *Ibid.*, P-319.

²⁶ *Ibid.*, P-324.

²⁷ Office of the Provincial Auditor, *2004 Annual Report*, pp. 244-246.

²⁸ Standing Committee on Public Accounts, *Official Report of the Debates*, P-312.

²⁹ *Ibid.*

³⁰ *Ibid.*, P-324.

³¹ *Ibid.*, P-325.

³² Office of the Provincial Auditor, *2004 Annual Report*, pp. 246-247.

³³ Standing Committee on Public Accounts, *Official Report of the Debates*, P-322.

³⁴ *Ibid.*, P-318.

³⁵ *Ibid.*, P-322.

³⁶ *Ibid.*, P-312.

³⁷ *Ibid.*, P-325.

³⁸ *Ibid.*, P-316.

³⁹ Ministry of Labour, Correspondence, March 29, 2005.

⁴⁰ Standing Committee on Public Accounts, *Official Report of the Debates*, P-317.

⁴¹ Office of the Provincial Auditor, *2004 Annual Report*, pp. 248-249.

⁴² *Ibid.*, p. 249.

⁴³ Standing Committee on Public Accounts, *Official Report of the Debates*, P-313.

⁴⁴ Office of the Provincial Auditor, *2004 Annual Report*, pp. 249-250.

⁴⁵ Standing Committee on Public Accounts, *Official Report of the Debates*, P-313.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ Office of the Provincial Auditor, *2004 Annual Report*, pp. 251-252.

⁴⁹ Standing Committee on Public Accounts, *Official Report of the Debates*, P-315.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*, P-327.

⁵² Ibid., P-315.

⁵³ Ibid., P-313

⁵⁴ Office of the Provincial Auditor, *2004 Annual Report*, pp. 253-255.

⁵⁵ Standing Committee on Public Accounts, *Official Report of the Debates*, P-313.

⁵⁶ Ibid.

⁵⁷ Ibid., P-313 and P-314.

⁵⁸ Ibid., P-314.