

Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

STANDING COMMITTEE ON PUBLIC ACCOUNTS

POLICY AND CONSUMER PROTECTION SERVICES DIVISION

(Section 3.04, 2003 Annual Report of the Provincial Auditor)

1st Session, 38th Parliament
53 Elizabeth II

Legislative
Assembly
of Ontario



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de l'Ontario

The Honourable Alvin Curling, M.P.P.,
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, M.P.P.,
Chair.

Queen's Park
July 2004

STANDING COMMITTEE ON PUBLIC ACCOUNTS

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PREAMBLE

The Provincial Auditor audited the Policy and Consumer Protection Services Division of the Ministry of Consumer and Business Services and reported in Section 3.04 of the *2003 Annual Report*. The Standing Committee on Public Accounts (the Committee) held hearings on this report on February 16, 2004 with representation from the Ministry of Consumer and Business Services (the Ministry). The Committee endorsed the Provincial Auditor's audit report and recommended the implementation of his recommendations by the Ministry.

The Committee would like to take this opportunity to extend its appreciation to the Ministry officials for their participation in these hearings. Also, the Committee would like to acknowledge the assistance provided by the Office of the Provincial Auditor (the Auditor), the Clerk of the Committee, and the Ontario Legislative Library's Research and Information Services Branch during these hearings.

This Committee's report includes introductory information in each section based directly on the Auditor's report, followed by an overview of the hearings and the Committee's recommendations.

Ministry Response to Committee Report

The Committee requests that the Ministry of Consumer and Business Services provide the Committee Clerk with a comprehensive written response to this report within 120 calendar days of tabling with the Speaker, Legislative Assembly of Ontario. In the event that the Committee feels that a longer period is required for the Ministry to respond to a given recommendation, the revised timeframe will be indicated in the recommendation.

AUDIT OBJECTIVES AND SCOPE

The audit objectives were to assess whether the Policy and Consumer Protection Services Division (Division) had adequate procedures and systems in place to:

- ensure compliance with the legislation and Ministry policies that are established to ensure public safety and consumer protection; and
- measure and report on the effectiveness of the key services and programs that it delivers in fulfilling its mandate.

The scope of the audit, which was substantially completed in April 2003, covered the Marketplace Standards and Services Branch and the Division's monitoring of four delegated administrative authorities.

AUDIT OBSERVATIONS AND CONCLUSIONS

1. MARKETPLACE STANDARDS AND SERVICES BRANCH

To allow the Ministry to monitor the marketplace and thereby to protect the interests of consumers, and to ensure proper business practices, businesses in certain industries must be registered with the Ministry. The Marketplace Standards and Services Branch's monitoring of the Ontario marketplace includes various checks (e.g., processing and issuing registrations and licences).

Each year, the Branch processes about 20,000 registrations and over 30,000 consumer complaints and inquiries through inspections and investigations. The Branch can initiate corrective action in cases of non-compliance, which include laying charges, and pursuing prosecutions and convictions.

1.1. Following Up On Consumer Complaints

Since 1997, the Ministry has delegated the administration of a number of consumer and public-safety statutes to eight delegated administrative authorities. Complaints relating to industry sectors regulated by one of the delegated authorities are referred to the delegated authorities, while the rest are addressed by the Ministry. The Auditor concluded as follows:

- The Ministry did not use its inspection resources based either on any formal assessment of risk to the public and consumers, or on the number of complaints received.
- The Ministry investigations were performed in a satisfactory manner, and in the case of mediations, appropriate efforts were made to obtain restitution for consumers.

The Ministry devoted over 95% of its inspection activities to theatres and video retailers, even though there were virtually no complaints about this industry, and the practices of industries that were at the top of the Ministry's list of complaints and inquiries were seldom inspected (e.g., collection agencies). According to the Ministry, the number of inspections under the *Theatres Act* was high in 2001 and 2002 to enforce a new video sticker program and to educate retail outlets about their obligations.¹

The Auditor recommended that to adequately protect the public, the Ministry should allocate its inspection resources for monitoring various industries based on a systematic assessment of risk as well as on the number of complaints it receives about these industries. As well, the Ministry should ensure unscrupulous practitioners are removed from the marketplace on a timely basis to protect consumers and the public from potential losses and abuse.

In response, the Ministry indicated that it has implemented a risk-based framework for allocating Marketplace Standards inspection resources. It will be used to ensure that inspection resources are appropriately deployed.

Committee Hearings

Risk-Based Framework and Enforcement

The Ministry concluded that “this risk-based framework will help the Ministry to deploy its field inspection resources in a manner that will have the greatest positive effect and will provide the regulatory flexibility needed to cater to urgent Ministry priorities.”² Field inspections are now allocated with a third each to theatres, debt recovery and cemeteries.

The Ministry has an escalating scale of compliance, beginning with a warning, followed by an investigation, and for difficult cases, suspensions and revocations.³ The Branch works between 120 to 180 cases from the complaint stage through investigation to prosecution in a given year.⁴ The number of charges under the *Business Practices Act* will vary widely, depending on the nature of the case and investigation.⁵ With a lot of complaints under the licensing statutes there tend to be fewer charges and fewer convictions, but there would be more registrars' actions such as suspensions, revocations, and caution letters.⁶ Charges are the rarity, as they are used in cases with evidence of malfeasance or misconduct.⁷ The Ministry indicated that its objective is to ensure that matters brought forward to court are going to reach convictions.⁸

The Committee expressed the general concern that enforcement resources should be evenly applied to those areas with a significant impact on the public such as vehicle repair shops and loan brokers, in addition to video establishments.⁹ It was noted during the hearings that the statistics reported in the audit report indicated a decrease in *overall* Ministry enforcement activities for 2000-02.¹⁰ The Committee noted that there were 2,156 complaints about credit reporting agencies, and suggested that misinformation on a credit file is very serious matter. Nevertheless, of those 2,100 complaints there was only one inspection.¹¹ The number of inspections for motor vehicle repairs was similarly very low, and non-existent for loan brokers.¹²

Loan Brokers

The Ministry acknowledged that it conducts few field inspections under the *Loan Brokers Act* in spite of the significant number of complaints.¹³ The Ministry does not do field inspections, because when it appears on the scene with inspectors, these operations shut down and relocate.¹⁴ Under the *Loan Brokers Act*, the Ministry would tend to lay charges, as opposed to imposing administrative actions.¹⁵

The complaints against loan brokers, which are increasingly cross-border in nature, have been the subject of a strategic partnership with the three levels of government, and law enforcement entities in Ontario (e.g., the Competition Bureau, the Toronto Police Service, the Ministry and the OPP's Project Phonebusters).¹⁶ Also, there is a Memorandum of Understanding with the U.S. Federal Trade Commission and the U.S. Postal Inspection Service.¹⁷

In the collection agency sector, there has been a low level of inspections on complaints. The majority of complaints received allege harassment, which is not often observable by field inspections.¹⁸ The Ministry follows set procedures in such cases with the registrar reviewing the formal complaint with the assistance of investigators.¹⁹ The Ministry indicated that enforcement numbers have now increased considerably.²⁰

Committee Recommendation

Modified Enforcement Regime

The Committee concluded that the Ministry's enforcement resources should be applied consistently to those areas with a significant impact on the public. The Committee therefore recommends that:

1. The Ministry of Consumer and Business Services should report to the Standing Committee on Public Accounts on the application of its modified enforcement regime, which has been reconfigured in response to the need to distribute inspections resources across the various industries. This report should provide details on the application of resources based on its risk assessment, providing a detailed breakdown of the Policy and Consumer Protection Services Division's enforcement activities (e.g., inspections, suspensions and revocations, etc.).

The Committee requests that the Ministry provide the Committee Clerk with a written response to this recommendation at the end of fiscal year 2004-05.

1.2. Monitoring Cemeteries' Trust Accounts

To ensure public safety and consumer protection, cemetery owners are required to deposit a percentage of the sales of plots into trust fund accounts to support the cost of caring for and maintaining the cemeteries. Cemetery owners are required to file annual returns, which include trust account statements. Ministry staff in turn is responsible for reviewing these annual returns to ensure compliance with filing requirements. The Ministry's objective is to minimize the risk of such payments not being deposited into trust accounts, and of a cemetery not having the resources needed for maintenance.

According to the Auditor, the Ministry's cemetery registration records indicated a number of missing records, and that some cemeteries had not filed their annual returns. Since 1995, the Ministry has exempted certain owners from filing the required returns. Also, the Auditor noted several concerns related to 2001 filings for active cemeteries (e.g., the Ministry did not receive returns from 400 cemetery owners and it did not perform the necessary reviews of returns).

The Auditor recommended that to comply with legislative requirements relating to cemeteries in Ontario and to make sure that sufficient funds are available for the proper care and maintenance of cemeteries, the Ministry should ensure that:

- cemetery registration records are complete and annual returns are filed by all cemetery owners within the required time frame; and
- Ministry staff verify, on a timely basis, the balances of trust accounts established to care for and maintain cemeteries.

At the time of the audit the Ministry was reviewing its procedures to ensure that cemetery records are requested from registrants on a timely basis and that where material underreporting occurs, timely follow-up action is taken. The Ministry is examining its procedures for reviewing trust account balances for the approximately 2,500 owners of the 5,000 cemeteries who may be required by statute to maintain these funds.

Committee Hearings

Ministry Completeness Project

The Ministry is proceeding with its cemetery database project (“cemetery completeness project”), to ensure that it has as complete a set of records as is reasonably possible on registration and financial information:²¹

- Cemetery registration files - the Ministry is now 100% complete on the database of cemetery registration files (registration records for the 5,000 cemeteries on file).²²
- Annual returns - declaration on the status of a cemetery's trust account (as required by certain cemeteries for care and maintenance). Some do not have an annual return, and the Ministry sent out letters in 2003 to all 2,500 cemetery owners to request annual return documentation. All 1,359 large active cemeteries have provided their returns, and deficiency letters were sent to those owners who did not reply.

The Ministry's internal auditor reported that Ministry records are virtually 100% complete based on their statistical sampling.²³

Risk Management Guidelines

The Ministry's objective within its risk management guidelines is to improve the quality of cemeteries data, and the filing of annual returns.²⁴ The Ministry has exempted small, inactive cemeteries, on a risk management basis.²⁵ Therefore, in the case of old and small low-risk cemeteries with minimal activity, and the absence of trust accounts, the Ministry would not send an investigator to collect evidence and lay a charge.²⁶ In the case of larger active cemeteries, the Ministry requires an annual return given that they are commercial in nature with significant consumer monies in trust.

The Ministry is in the process of developing more enhanced risk measures to identify those cemetery files that will become a priority for enforcement staff.²⁷

The staff will review specific features (e.g., volume of business, size and state of trust accounts, public compliance information, etc.) to ensure that reviews are conducted from a public-risk perspective.²⁸

Long-Term Cemetery Care and Maintenance

The Committee raised the issue of the care and maintenance of older cemeteries.²⁹ Cemeteries that sell interment rights require that 40% of the purchase price of interment rights be set aside and placed in trust as a care and maintenance deposit.³⁰ Some cemeteries may charge less, and many religious cemeteries will waive that requirement.³¹ The Ministry indicated that there have been concerns with insufficient income generated by trust accounts to maintain cemeteries.³² There has not been a dramatic increase in complaints on the operation of cemeteries.³³

Under the new bereavement legislation, the *Funeral, Burial and Cremation Services Act, 2002*, the Ministry will be considering various subject areas, which include whether a capital gain can be used as income for purposes of cemetery property maintenance.³⁴ Also, it will be examining the treatment of capital in the course of developing regulations under this new legislation.³⁵

Committee Recommendations

Financial Viability and Maintenance of Cemeteries

The Committee expressed the need for cemeteries to be financially viable and properly maintained.³⁶ The Ministry's cemetery database project ("cemetery completeness project") is an important step that will provide a current database on cemeteries, ensuring as complete a set of records as is reasonably possible.³⁷ In addition, the Committee agrees that the timely filing of annual returns with cemetery records, and the verification of trust accounts are priorities.

The Committee therefore recommends that:

2. The Ministry of Consumer and Business Services should report to the Standing Committee on Public Accounts on the status of the cemetery database project, with particular attention to the reporting deficiencies noted in this report (e.g., trust accounts).

The Committee requests that the Ministry provide the Committee Clerk with a written response to this recommendation within 120 calendar days of the tabling of this report in the Legislature.

3. The Ministry of Consumer and Business Services should review and report to the Standing Committee on Public Accounts on whether the current requirements governing trust funds are adequate to ensure that cemeteries in the province are financially viable and properly maintained. Where necessary, the report should indicate the Ministry's plan to address this issue.

The Committee requests that the Ministry provide the Committee Clerk with a written response to this recommendation within 120 calendar days of the tabling of this report in the Legislature.

1.3. Measuring and Reporting on Effectiveness

The Ministry implemented a new management information system in 1999 to track complaints, inspections, and investigations. However, the Auditor noted that the Ministry was not ensuring that all the outcomes of such activities were captured in the system. This information would help the Ministry's management monitor the effectiveness of ongoing activities, identify recurring problems, and enable the Ministry to report on the effectiveness of its activities and outcomes.

The Ministry conducted a customer satisfaction survey of the Ministry's handling of inquiries and complaints for the 2001/02 fiscal year. The majority of callers surveyed (90%) rated the services as excellent. The Auditor's concerns related to the methodology used for the oral-telephone survey, and specifically the fact that written complaints were not included in this survey. The Auditor recommended that to enhance management's ability to properly measure and report on its effectiveness in protecting consumers and public safety, the Ministry should use its management information system to capture and analyze the outcomes of its activities (to be in a position to improve and report on its effectiveness); and conduct proper consumer satisfaction surveys of both telephone and written complaints.

In its 2003 response to the audit, the Ministry committed to improving its outcomes data capturing and processing as part of the ongoing refinement of the information system. The Marketplace Standards and Services Branch conducts regular customer satisfaction surveys at the point of transaction with consumers to gather customer satisfaction data. An independent consultant was retained to survey a sample of consumers, who had dealings with the Ministry, with the objective of providing feedback against which to consider the Auditor's findings.

Committee Hearings

Customer Survey Methodology

The Ministry's objective has been to obtain very timely information on a frequent basis for each complaint file. The Committee noted the Auditor's concerns over the management of complaints and the survey methodology, and the Ministry acknowledgement that the survey approach to determining customer satisfaction required an objective third party to collect the data.³⁸

Subsequently, an independent survey firm was retained to look at all provincial call centres to survey customer satisfaction.³⁹ According to the Ministry, the results validated the results from the internal staff tracking survey, with approximately a 90% client satisfaction rating.⁴⁰ The consultant's survey of ministry call centres found that approximately 92% of respondents rated these services very highly.⁴¹

Committee Recommendation

Survey Methodology

The Ministry indicated that it intends to improve its survey methodology next year, building on the initial independent validation.⁴² The Committee concluded that the methodology used would also have to address the Ministry's initial requirements while respecting the availability of Ministry resources.

The Committee therefore recommends that:

4. The Ministry of Consumer and Business Services should report to the Standing Committee on Public Accounts on the plans to improve its survey methodology, demonstrating that it meets the Ministry's initial survey requirements (e.g., timely information on a frequent basis and affordability).

The Committee requests that the Ministry provide the Committee Clerk with a written response to this recommendation within 120 calendar days of the tabling of this report in the Legislature.

2. DELEGATED ADMINISTRATIVE AUTHORITIES

In recent years, the province has established a number of delegated administrative authorities (DAAs or delegated authorities⁴³) to permit certain industries to undertake regulatory functions. The provincial government is responsible for legislating regulated industries, and the Ministry remains accountable for the outcomes of improving public safety and consumer protection. The Auditor reviewed information including the administrative agreements with the Ministry and performance information, as well as other material for the Technical Standards and Safety Authority (TSSA), the Electrical Safety Authority (ESA), the Ontario Motor Vehicle Industry Council (OMVIC), and the Ontario New Home Warranty Program (ONHWP).

2.1. Monitoring Performances of the DAAs

The Auditor concluded that the Ministry needed to strengthen its procedures to have adequate assurance that public safety and consumers were being properly protected under the delegation of regulatory functions to certain industries. Furthermore, the Auditor concluded that the Ministry did not have proper mechanisms in place to ensure outcomes reported by the delegated authorities were reliable, and the Ministry's monitoring efforts were inadequate.

The Auditor recommended that to better protect public safety, the Ministry should ensure the reliability of the outcomes that are reported by the DAAs and monitor their activities to ensure that appropriate actions are taken on a timely basis and are sufficient to ensure the achievement of established safety outcomes.

Committee Hearings

Reporting and Monitoring Outcomes

The Committee addressed the adequacy of the Ministry's monitoring of DAAs. The Ministry explained that the experience following delegation has been positive with an increase in the number of inspections and investigations, and enforcement activities, exceeding the levels prior to delegation.⁴⁴

The role of outcome measures to ensure reliable and quality data from the delegated authorities was also addressed during the hearings.⁴⁵ The Ministry has committed to address the need for improved DAA reporting on outcomes and activities (the Ontario Motor Vehicle Industry Council has met this requirement).⁴⁶

Corrective measures have been taken to improve the quality of data that will now be reviewed by independent external auditors to ensure reconciliation with the original source documents. Two safety authorities have now committed to have their external auditors look at their data for reconciliation with source materials. Other undertakings will complement this process, for example:⁴⁷

- clear documentation where revisions have been made (e.g., a footnote indicating a revision to an historic series, indicating the reason for the revision);
- performance score cards to ensure staff understand amendments and are able to identify trends; and
- compliance protocols with TSSA (link incidents with compliance activity requirements).

Consumer Complaints

Each DAA has a complaints process. Under each, a complainant has the option of appealing to the Ministry for an internal review of the matter.⁴⁸ Complaints that are sent to the Ministry are tabulated in a report, which would be available through a freedom-of-information request.⁴⁹ The Ministry indicated that this information could be used to consider amendments to a DAA contract.⁵⁰

Committee Recommendation

Monitoring and Reporting on DAAs

The Committee expressed interest in the overall performance of the DAAs with respect to fulfilling their respective mandates, and the overall impact on industry and consumers. The Ministry has to be vigilant in ensuring that DAAs get the message that they are there to represent the consumer and not the industry. The Ministry has already committed to improving its tracking of DAAs' performance statistics to ensure timely quarterly reporting to the Ministry on relevant performance measures. The Committee concluded that a comprehensive analysis of this initiative would be instrumental in determining whether public safety and

consumers were being protected under DAAs, and that mechanisms were in place to ensure that DAA outcomes were accurate.

The Committee therefore recommends that:

5. The Ministry of Consumer and Business Services should monitor the operation of DAAs on a timely basis and prepare performance reviews annually to ensure compliance with their respective agreements and established outcome measures. Also, a comprehensive review of the DAA initiative is required to ensure that public safety and consumers are being adequately protected under DAAs, and that mechanisms are in place to ensure that DAA outcomes are being accurately reported. The Ministry should ensure that DAAs represent the interests of consumers.

The Committee requests that the Ministry provide the Committee Clerk with a written response to this recommendation within 120 calendar days of the tabling of this report in the Legislature.

2.2. Governance and Accountability of Delegated Authorities

Delegated authorities were established to be more responsive to the needs of their industries and other stakeholders in the marketplace and in deploying resources for regulatory activities. The Ministry introduced a number of formal and informal tools to ensure that delegated authorities remain accountable and fair, and provide sufficient consumer representation through administrative agreements to ensure accountability (e.g., annual performance reporting, Minister's appointees on the boards of directors, and a Ministry monitoring unit).

The Auditor recommended that to better protect consumers and the public, the Ministry should strengthen its governance and accountability arrangements with delegated administrative authorities by:

- establishing administrative agreements with the delegated authorities on a timely basis;
- having an adequate number of government, consumer, and public representatives on the boards of directors of the delegated authorities to achieve a fair balance of representation;
- ensuring that sufficient levels of resources are devoted to monitoring the performance of the delegated authorities; and
- ensuring that reporting and other performance requirements are complied with on a timely basis.

The Ministry provided the Auditor with an update on the initiatives undertaken prior to the release of the *2003 Annual Report*:

- Five delegated authorities have administrative agreements which have been updated to reflect recent improvements in governance and accountability best practices.

- The Ontario New Home Warranty Program and the Minister of Consumer and Business Services have signed a letter of accountability.
- The Ministry has a legislative basis to work with the government and stakeholders to create a new cemetery and funeral service administrative authority. The Ministry has committed to review governance and accountability provisions in the context of implementing the new legislation.
- The Ministry will develop a skills profile reflecting the ideal competencies sought for non-industry members in order to optimize non-industry member effectiveness on these boards of directors.
- The Ministry will review its capacity to fulfill oversight functions and make the necessary staffing adjustments as warranted.
- The Ministry will develop a tracking process for the tabling of delegated authorities' annual reports to take timely corrective action when necessary.

Committee Hearings

Governance and Accountability Initiatives

The delegated authority model was described by the Ministry as an “innovative and forward-looking way of involving consumers, government and industry in providing services and ensur[ing] compliance.” The general rule for board representation is that the Minister's appointees would represent approximately 25% (consisting of government officials and non-industry public appointees) with the option of increasing this to 49%.⁵¹ It is possible then to increase the Minister's appointees to ensure a balanced representation.⁵²

The Ministry has provided governance structures, clear regulations and an overhaul of the legislative frameworks for DAAs to succeed.⁵³ According to the Ministry, its “role in the partnership is to manage the governance of the authorities and hold them accountable for their results.”⁵⁴

According to the Ministry, each authority must “leverage the relationships and knowledge in their fields to come to effective and efficient measures to meet these goals.”⁵⁵ The onus is on industry and consumers to develop the best ways to administer government standards. The Ministry commented on the success of this initiative, as follows:

There are more inspections, more rigorous enforcement, greater protection for new home buyers, and more focus and transparency in these fields than ever before. For example, TICO, RECO and OMVIC, the travel, real estate and motor vehicle councils, have more than doubled the investigation, inspection and enforcement resources available to enforce these statutes since 1996.

Under the province's accountability legislation, the Ministry is permitted to ask for a report from delegated administrative authorities, and they have generally complied.⁵⁶ In other instances, an authority may not be included under the statute

- for example, with respect to the Ontario New Home Warranty Program and the Board of Funeral Services - and the Ministry does not have the authority to request information in this case.⁵⁷

Committee Recommendation

Governance and Accountability Structures

Delegated authorities have been apprised of the need to continually enhance their governance and accountability regimes. The Ministry has indicated that it will be expanding this sphere of activity in the future, building on regular reporting through boards and audit committees, for example.⁵⁸

The Committee therefore recommends that:

6. The Ministry of Consumer and Business Services should report to the Standing Committee on Public Accounts on its plans to enhance the governance and accountability structures at delegated administrative authorities, building on the initiatives addressed in this report.

The Committee requests that the Ministry provide the Committee Clerk with a written response to this recommendation within 120 calendar days of the tabling of this report in the Legislature.

2.3. Ontario New Home Warranty Program

The Ontario New Home Warranty Program (ONHWP) was established in 1977 to make new home warranty coverage mandatory. At the time of the audit, the Ministry had not been successful in negotiating an administrative agreement with the ONHWP to define their respective roles and responsibilities in protecting homebuyers in Ontario. The Auditor noted that because it did not have a formal agreement in place, the Ministry could not effectively provide any direction to the ONHWP, or obtain adequate information about its operations in protecting homebuyers.

The Auditor noted that there were no data on complaints to the ONHWP beyond 2000 because the ONHWP had stopped publishing complaints in its annual report. Furthermore, it was noted in the audit report that while new home sales in Ontario had steadily increased since 1998 and complaints had increased slightly in proportion, the number of claims approved had declined significantly. Also, the amount paid out to consumers had declined.

The Auditor recommended that the Ministry should take action to ensure that better accountability mechanisms are in place to protect consumers buying new homes in Ontario. Subsequent to the audit, ONHWP and the Minister of Consumer and Business Services signed a letter of accountability establishing formal reporting requirements and outlining their respective roles and responsibilities.

Committee Hearings

Dispute Resolution

The Committee discussed two of the areas where provincial Members of Parliament receive the most complaints: that its services are biased in favour of the builder over the consumer, and bias against small builders over big builders. The Committee also considered the matter of resolving complaints and the number of individuals that give up on the resolution process.⁵⁹

Recent Initiatives

The Ministry indicated that ONHWP has introduced mandatory, legally binding time frames to avoid prolonged negotiations between builders and consumers. If, at the end of an established mandatory, legally binding time period, the matter is not resolved, the warranty program steps in with a conciliation decision. The decision is appealable to the licence appeals tribunal.⁶⁰

Various initiatives have also been undertaken to address issues of governance and accountability, as follows:

- more transparent reporting and complaints management. The letter of accountability signed asks for more information (e.g., data and reports on complaints handling, investigations and enforcement, and regular quarterly reports);
- introduction of a more transparent nominations process for the board of directors which at present is completely controlled by the Ontario Home Builders' Association and negotiations with ONHWP for Ministry representatives on the ONHWP board;
- transparency around the use of builders' money for consumers' and builders' education, and how the compensation warranty program worked, etc.; and
- a new consumer service centre was established to manage access to information and obtain the status of complaints.

Builders' Fees

The Committee enquired about builders' fees for ONHWP, and specifically whether there is sufficient money in the account to reduce costs to builders, which are eventually passed on to consumers.⁶¹ The Ministry acknowledged that in the past fees have been reviewed and adjustments introduced.⁶² For example, fees have been reduced in the last three years, and the Program is currently looking at options to improve consumer protection.⁶³ The Ministry questioned the merit of reducing its revenues significantly, and suggested that it would want to establish a solid record under its new provisions prior to looking at the status of the revenue account.⁶⁴

Committee Recommendation

Accountability Structure

The Committee concluded that an enhanced accountability and governance relationship with ONHWP needs to be pursued, within the framework of the letter of accountability.

The Committee recommends that:

7. The Ministry of Consumer and Business Services should report to the Standing Committee on Public Accounts on its progress in improving the accountability and governance relationship with the Ontario New Home Warranty Program. In addition, the Ministry should report to the Committee on the financial status of the Ontario New Home Warranty Program and review the appropriateness of builders' fees on an ongoing basis.

The Committee requests that the Ministry provide the Committee Clerk with a written response to this recommendation within 120 calendar days of the tabling of this report in the Legislature.

2.4 Service Costs to Consumers

The Committee enquired about the cost of services prior to and following the designation of these agencies.⁶⁵ At issue is whether it is more expensive for consumers with the introduction of DAAs (e.g., electrical inspections), than when Consumer and Corporate Relations Branch was responsible. For example, the Committee discussed complaints from contractors, electricians and consumers about exorbitant fees charged by the Electrical Safety Association for inspection.

The Ministry indicated that fees are established in contract and in legislation, under the purview of the DAA's board of directors or the administrative authority.⁶⁶ Under the administrative agreements, DAAs are required to follow an established process for setting fees, which requires that they consult with the customer base and that the Minister is duly notified.⁶⁷ DAAs have to consult as fees have an impact on the licensee or the regulated sector, and approval of the board of directors' is required.⁶⁸

If it is questioned whether fees are in line, a review process is followed.⁶⁹ There is no mechanism to force a DAA to change the fee; however, the Minister has the ultimate authority through the administrative agreement to cancel the relationship.⁷⁰ In addition, DAAs are required to inform the Ministry of their rationale for a fee adjustment, demonstrating that they have been set on a cost recovery basis, without a profit.⁷¹ Ultimately the Ministry must understand the process, with the assurance that due diligence has been met on the rationale for the fee increases.⁷²

The Ministry explained that fees in 2004 are higher than pre-delegation, which occurred in approximately 1996, largely because of the increase in the cost of doing business over the past decade, taking into account various factors such as inflation.⁷³

Committee Recommendation

DAA Fees and Remedy Option

The Ministry did not track consumers' costs for services formerly provided by the province; however, as discussed in this section, the Ministry now monitors the fee process for each DAA.⁷⁴ The Committee concluded that proactively monitoring fees by the Ministry is required to ensure that consumers receive services at fair value.

The Committee therefore recommends that:

8. The Ministry of Consumer and Business Services should review fees charged by delegated administrative authorities on a regular basis. The Ministry should closely monitor these fees with the objective of identifying excessive charges as early as possible, thereby minimizing the financial burden on consumers and industry, and the need to resort to the fee remedy process.

The Committee requests that the Ministry provide the Committee Clerk with a written response to this recommendation within 120 calendar days of the tabling of this report in the Legislature.

3. COMMITTEE RECOMMENDATIONS

The Committee requests that the Ministry provide the Committee Clerk with a written response to the following recommendations within 120 calendar days of the tabling of this report in the Legislature, unless otherwise indicated in the recommendation.

1. The Ministry of Consumer and Business Services should report to the Standing Committee on Public Accounts on the application of its modified enforcement regime, which has been reconfigured in response to the need to distribute inspections resources across the various industries. This report should provide details on the application of resources based on its risk assessment, providing a detailed breakdown of the Policy and Consumer Protection Services Division's enforcement activities (e.g., inspections, suspensions and revocations, etc.)

The Committee requests that the Ministry provide the Committee Clerk with a written response to this recommendation at the end of fiscal year 2004-05.

2. The Ministry of Consumer and Business Services should report to the Standing Committee on Public Accounts on the status of the cemetery database project, with particular attention to the reporting deficiencies noted in this report (e.g., trust accounts).

3. The Ministry of Consumer and Business Services should review and report to the Standing Committee on Public Accounts on whether the current requirements governing trust funds are adequate to ensure that cemeteries in the province are financially viable and properly maintained. Where necessary, the report should indicate the Ministry's plan to address this issue.

4. The Ministry of Consumer and Business Services should report to the Standing Committee on Public Accounts on the plans to improve its survey methodology, demonstrating that it meets the Ministry's initial survey requirements (e.g., timely information on a frequent basis and affordability).

5. The Ministry of Consumer and Business Services should monitor the operation of DAAs on a timely basis and prepare performance reviews annually to ensure compliance with their respective agreements and established outcome measures. Also, a comprehensive review of the DAA initiative is required to ensure that public safety and consumers are being adequately protected under DAAs, and that mechanisms are in place to ensure that DAA outcomes are being accurately reported. The Ministry should ensure that DAAs represent the interests of consumers.

6. The Ministry of Consumer and Business Services should report to the Standing Committee on Public Accounts on its plans to enhance the governance and accountability structures at delegated administrative authorities, building on the initiatives addressed in this report.

7. The Ministry of Consumer and Business Services should report to the Standing Committee on Public Accounts on its progress in improving the accountability and governance relationship with the Ontario New Home Warranty Program. In addition, the Ministry should report to the Committee on the financial status of the Ontario New Home Warranty Program and review the appropriateness of builders' fees on an ongoing basis.

8. The Ministry of Consumer and Business Services should review fees charged by delegated administrative authorities on a regular basis. The Ministry should closely monitor these fees with the objective of identifying excessive charges as early as possible, thereby minimizing the financial burden on consumers and industry, and the need to resort to the fee remedy process.

NOTES

¹ Ontario, Legislative Assembly, Standing Committee on Public Accounts, *Official Report of Debates (Hansard)*, First Session, 38th Parliament (16 February 2004): P-112.

² Ibid., P-111.

³ Ibid., P-133.

⁴ Ibid., P-123.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid., P-126.

⁸ Ibid., P-123.

⁹ Ibid., P-122.

¹⁰ Ibid., P-133.

¹¹ Ibid., P-121.

¹² Ibid.

¹³ Ibid., P-122.

¹⁴ Ibid.

¹⁵ Ibid., P-123.

¹⁶ Ibid., P-122.

¹⁷ Ibid.

¹⁸ Ibid., P-112.

¹⁹ Ibid.

²⁰ Ibid., P-133.

²¹ Ibid., P-124.

²² Ibid., P-116.

²³ Ibid., P-113.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid., P-119.

²⁸ Ibid.

²⁹ Ibid., P-117.

³⁰ Ibid., P-118.

³¹ Ibid.

³² Ibid., P-117.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid., P-119.

³⁷ Ibid., P-124.

³⁸ Ibid., P-134.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid., P-135.

⁴³ The delegated authorities are not-for-profit corporations with Boards whose members represent both the industry in question and the public interest—some members are nominated by the related industry and others are appointed by the Minister to represent the government, the public, and consumers. The *Safety and Consumer Statutes Administration Act, 1996* was passed to facilitate the administration of a number of consumer and public-safety statutes by these delegated authorities (*2003 Annual Report*, p. 105).

⁴⁴ Ontario, Legislative Assembly, Standing Committee on Public Accounts, *Official Report of Debates (Hansard)*, First Session, 38th Parliament (9 February 2004): P-124

⁴⁵ Ibid., P-124.

⁴⁶ Ibid., P-131.

⁴⁷ Ibid., P-112.

⁴⁸ Ibid., P-130.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid., P-125

⁵² Ibid.

⁵³ Ibid., P-112.

⁵⁴ Ibid.

⁵⁵ Ibid., P-110.

⁵⁶ Ibid., P-120.

⁵⁷ Ibid.

⁵⁸ Ibid., P-124.

⁵⁹ Ibid., P-137.

⁶⁰ Ibid.

⁶¹ Ibid., P-135.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid., P-127 and P-128.

⁶⁶ Ibid., P-127.

⁶⁷ Ibid.

⁶⁸ Ibid., P-128.

⁶⁹ Ibid., P-129.

⁷⁰ Ibid., P-127.

⁷¹ Ibid., P-128

⁷² Ibid.

⁷³ Ibid., P-127.

⁷⁴ Ibid.