



2011 Annual Report



Office of the
Auditor General
of Ontario



Office of the Auditor General of Ontario

To the Honourable Speaker
of the Legislative Assembly

In my capacity as the Auditor General, I am pleased to submit to you the *2011 Annual Report* of the Office of the Auditor General of Ontario to lay before the Assembly in accordance with the provisions of section 12 of the *Auditor General Act*.

A handwritten signature in black ink, appearing to read 'Jim McCarter'.

Jim McCarter, FCA
Auditor General

Fall 2011

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Overview and Summaries of Value-for-money Audits and Reviews

Overview

BETTER INFORMATION HELPS ENSURE VALUE FOR MONEY

There are numerous instances in this, my ninth Annual Report, where we noted that meaningful and reliable information was not being obtained or properly used to enhance the operation of government programs. In addition to enhancing day-to-day decision-making, better information would help government managers measure the results achieved for funds spent. It would also enable the Legislature and the public to reach knowledgeable conclusions about the extent to which their tax dollars have produced value for money. Areas we identified as needing better information include:

Auto Insurance Regulatory Reform

The Financial Services Commission of Ontario (FSCO) oversees auto insurance provided by the private sector. Auto insurance premiums are significantly higher in Ontario than anywhere else in Canada, and these high premium levels are driven primarily by high claims costs. However, FSCO does not get enough information to know whether insurance companies are handling claims judiciously and paying out the proper amounts. In addition, auto insurance fraud is estimated to account for up to 15% of all claims in Ontario, and better informa-

tion and more timely action are needed if both the government and the Commission are to proactively address this problem.

Electricity Sector—Renewable Energy Initiatives

The *Green Energy and Green Economy Act, 2009* gave the Minister of Energy authority to expedite the development of wind and solar power without many of the traditional planning and regulatory oversight processes. While this undoubtedly helped billions of dollars of renewable energy projects to move forward quickly, there are significant long-term costs associated with this initiative. Within this context, it will be critical for the Ministry of Energy and the Ontario Power Authority to objectively measure the progress to date against the associated costs and provide policy options supported by sound underlying analyses that government decision-makers can use on a go-forward basis.

Electricity Sector—Stranded Debt

The restructuring of the electricity sector in 1999 left Ontario Hydro with about \$20 billion in what was called stranded debt—loans that its successor companies could not realistically service in the new, more competitive electricity market. Responsibility for servicing and managing this debt was given to the new Ontario Electricity Financial Corporation (OEFC). It was expected that about \$7.8 billion of

the debt could not be repaid by the electricity sector, and this debt was classified as “residual” stranded debt. The *Electricity Act* authorized collection of a Debt Retirement Charge from electricity consumers until this residual stranded debt was repaid. The Act requires the Minister of Finance to provide a public update “from time to time” on the outstanding balance of the residual stranded debt. The Debt Retirement Charge began in 2002 and the OEFC has collected more than \$8 billion so far, but no update to the public has been provided. We believe this information should be provided to electricity consumers in the near future.

Forest Management Program

Private forestry companies that harvest timber are responsible for regenerating areas in which they operate, and the Ministry of Natural Resources is responsible to ensure that the companies carry out this work properly. The effectiveness of such oversight is especially important because forests take upwards of 70 years to regenerate, which leaves little immediate financial incentive for private companies to undertake appropriate renewal activities. We found that while the Ministry has developed a good process to assess regeneration activities, it did not follow through in carrying out the required oversight work and thus did not have reliable information about the extent to which harvested areas were actually being successfully regenerated.

Funding Alternatives for Family Physicians

The province has traditionally paid family physicians on a fee-for-service basis. In recent years, however, the Ministry of Health and Long-Term Care has encouraged family doctors to participate in alternate funding arrangements designed to, among other things, improve patient access to care. While these arrangements have led to significant cost increases, the Ministry does not have adequate information to enable it to determine whether the new payment mechanisms have achieved their intended purposes.

Funding Alternatives for Specialist Physicians

The Ministry of Health and Long-Term Care offered alternate funding arrangements to specialist physicians to, for instance, encourage them to provide academic training and to work in more remote areas. While overall payments to specialists have increased significantly, as with family physicians, the Ministry has conducted little formal analysis to assess whether the expected benefits, including improved access to specialists by patients, have been achieved.

Legal Aid Ontario

Legal Aid Ontario has a mandate to provide legal assistance to Ontarians with little or no income. Although Ontario provides more funding for legal aid on a per capita basis than any other province, it issues the fewest certificates providing full legal representation on a per capita basis, which requires that more people rely on duty counsel and information from its call centre and website. Legal Aid Ontario, in conjunction with the Ministry of the Attorney General, has not conducted any formal analysis of the impact of this on low-income people needing legal representation.

LCBO New Product Procurement

The LCBO pays its suppliers a percentage of the retail selling price it wants to charge for their products. Other provinces use a similar pricing mechanism. But if the LCBO obtained information on the lowest cost that the supplier was willing to accept, it could assess whether paying that cost would enable it to meet its retail price objectives while at the same time increasing its profit margins.

Office of the Children’s Lawyer

Our research indicated that no other jurisdiction in Canada provides children with the same range of centralized legal services as Ontario’s Office of the

Children’s Lawyer, which is part of the Ministry of the Attorney General. The Office historically has exercised its discretion to refuse about 40% of child custody and access cases referred to it by the courts. However, it has never formally assessed the impact of these refusals on the children, their parents or guardians, and on the court system.

Ontario Trillium Foundation

The Ontario Trillium Foundation provides grants to hundreds of not-for-profit and charitable organizations across Ontario, spending about \$110 million each year. While it has a well-defined grant review and approval process, the supporting documentation often did not demonstrate that the most worthy projects were funded for reasonable amounts; nor did the Foundation ensure that recipients always spent the grants for their intended purposes.

Private Career Colleges

The Ministry of Training, Colleges and Universities oversees 470 private career colleges serving 60,000 students in Ontario. Five years ago, the Ministry stopped collecting information on graduation rates and employment success after graduation. Students who responded to our survey indicated that they would find such information extremely useful when evaluating colleges and their programs. Such data would also provide the Ministry with valuable information about the extent to which the colleges are meeting the needs of students and employers.

Supportive Services for People with Disabilities

The Ministry of Community and Social Services’ Supportive Services program spent \$571 million providing services to help people with developmental disabilities live at home and work in their communities. However, although the program relies on community agencies to deliver most of the services, the Ministry does not know whether

the agencies are providing the appropriate level of service in return for the funding received; nor does it have reliable information on the level of unmet needs in each community across the province.

Déjà Vu

On the first page of last year’s Annual Report, I presented a few observations about the challenges facing Ontario over the next decade. I then wrote that I could not take credit for these pragmatic observations, as they were taken from reports issued by Ontario’s Committee on Government Productivity—four decades ago. One of these observations from the early 1970s bears repeating because it aptly sums up my view that the better the information underlying a decision is, the better that decision is likely to be: “The core of sound decision-making is good information. In government, where decisions have far-reaching implications, the means of obtaining and effectively using information are of critical importance as tools for management.”

OUR WORK FOCUS

Financial Audits

The Legislature, the media, and the public usually pay the most attention to our value-for-money audits. However, doing financial audits remains one of our most critical legislative responsibilities. The purpose of these audits is to express opinions on whether the province’s financial statements, as well as those of Crown agencies such as the LCBO, the Ontario Securities Commission, Legal Aid Ontario, and others, have been presented fairly. In the same way that corporate shareholders in the private sector expect independent assurance that a company’s financial statements fairly reflect its operating results and its balance sheet, Ontarians want the same assurances about public-sector entities.

I am pleased to report that for the 18th straight year, the Office was able to provide assurance to the Legislature and the public that the government-prepared consolidated financial statements of

Ontario—the largest audited entity in the province—are fairly presented in accordance with Canadian generally accepted accounting principles. The results of this work are discussed in Chapter 2.

Similarly, I can report that we concluded that the financial statements of all the Crown agencies we audited this year were also fairly presented.

Value-for-money Audits

About two-thirds of the Office's resources are devoted to the conduct of value-for-money audits. These audits focus on assessing the delivery of services to the public rather than being an audit of just the “numbers,” as is the case with our financial audits. The next section in this chapter contains one-page summaries of the 14 value-for-money audits and reviews conducted this year.

Pre-election Report on Ontario's Finances

The *Fiscal Transparency and Accountability Act, 2004* (Act) requires the Minister of Finance to issue a report on Ontario's finances in advance of a provincial election to provide detailed information on the province's estimated future revenues, expenses, and projected surplus or deficit for the next three fiscal years. A key principle of the Act is that Ontario's fiscal policy be based on cautious assumptions. Because a provincial general election had been called for October 6, 2011, the government released its *2011 Pre-Election Report on Ontario's Finances* on April 26, 2011.

The Act also requires the Auditor General to review this report to determine if it is reasonable, and to release a report on the results of this review. We released our review on June 28, 2011.

Overall, we concluded that the government's estimates of revenues and interest on the public debt were based on prudent and cautious assumptions. However, we also concluded that many of the assumptions underlying its estimates for program expenses (that is, expenses excluding interest on the public debt and reserves) were optimistic and

aggressive rather than cautious, especially for public-sector salaries and health-care costs, which together account for the majority of total expenses.

The Government Advertising Act

The *Government Advertising Act, 2004* requires our Office to review most proposed government advertising before the items are broadcast, published, or displayed. In the 2010/11 fiscal year, we reviewed 1,082 individual advertising items. Chapter 5 contains a discussion of our work in this area.

125th Anniversary of the Office

On March 25, 1886, the *Act to Provide for the Better Auditing of the Public Accounts of the Province* was passed, creating an Office of the Provincial Auditor. That made 2011 our 125th anniversary.

MPPs and past and present staff, including former Auditors General Doug Archer and Erik Peters, attended an April reception at the Legislature.

We also published a booklet on the Office's history, along with brief sketches of the 12 Auditors General of the last 125 years and the Office's evolution from accounting to accountability and from compliance auditing to value-for-money auditing.

Some might think that 125 years of auditing would make for a pretty boring story. But I urge you to peruse this booklet. As you read it, I suspect you will be drawn by the narrative and the accompanying pictures that will take you back in time—and to some rather interesting times at that.

The booklet is available at www.auditor.on.ca/en/downloads_en/oago_anniversary_booklet.pdf.

Summaries of Value-for-money Audits and Reviews

The following are summaries of the value-for-money audits and the review reported in Chapter 3.

3.01 AUTO INSURANCE REGULATORY OVERSIGHT

The Financial Services Commission of Ontario (FSCO), an arm's-length agency of the Ministry of Finance, is responsible for, among other things, regulating the province's insurance sector. FSCO's auto insurance activities include ruling on applications by private-sector insurance companies for changes in the premium rates that vehicle owners pay. FSCO must ensure that proposed premiums are justified based on such factors as an insurance company's past and anticipated claim costs and what would be a reasonable profit. FSCO also periodically reviews the statutory accident benefits available to people injured in auto accidents, and it provides dispute resolution services to settle disagreements between insurers and injured people about entitlement to statutory accident benefits.

The government must balance the need for a financially stable auto insurance sector with ensuring that consumers pay affordable and reasonable premiums and receive fair and timely benefits and compensation after an accident. Claims payments are the largest driver of the cost of auto insurance premiums and, with the average cost of injury claims in Ontario being about \$56,000 and five times more than the average injury claim in other provinces, Ontario drivers generally pay much higher premiums than other Canadian drivers do. However, claims costs in Ontario are also high because Ontario's coverage provides for one of the most comprehensive and highest benefit levels in Canada.

The government has begun taking action to address the high cost of claims in Ontario. However, the following observations outline some of the challenges FSCO faces if it is to be more successful in proactively fulfilling its role of protecting the public interest:

- From 2005 to 2010, the total cost of injury claims under the Statutory Accident Benefits Schedule rose 150% even though the number of injury claims in the same period increased by only 30%. Benefit payments rose the most

in the Greater Toronto Area, where drivers also generally pay much higher premiums.

- FSCO had not routinely obtained assurances from insurance companies that they have paid the proper amounts for claims or that they have handled claims judiciously. Without such assurances, there is a risk that unnecessarily high payouts help insurers obtain FSCO approval for higher premium increases.
- Industry estimates peg the value of auto insurance fraud in Ontario at between 10% and 15% of the value of 2010 premiums, or as much as \$1.3 billion. Ontario does not have significant measures in place to combat fraud, and the government and FSCO are awaiting the recommendations of a government-appointed anti-fraud task force expected in fall 2012.
- In approving premium rates for individual insurance companies, FSCO allows insurers a reasonable rate of return—set at 12% in 1996, based on a 1988 benchmark long-term bond rate of 10%. However, that profit margin has not been adjusted downward, even though the long-term bond rate has been about 3% recently. Furthermore, FSCO needs to improve its documentation to demonstrate that it treats all insurers' premium-rate-change requests consistently and that its approvals are just and reasonable.
- FSCO's mediation service is backlogged to the point that resolution of disputes between claimants and insurers is taking 10 to 12 months, rather than the legislated 60 days.
- The Motor Vehicle Accident Claims Fund, administered by FSCO to compensate people injured in auto accidents when there is no insurer to cover the claim, had \$109 million less in assets as of March 31, 2011, than it needs to satisfy the estimated lifetime costs of all claims currently in the system. This unfunded liability is expected to triple by the 2021/22 fiscal year unless, for instance, the \$15 fee currently added to every driver's licence renewal is doubled.

3.02 ELECTRICITY SECTOR— REGULATORY OVERSIGHT

The Ontario Energy Board (Board) is charged with overseeing the electricity sector, which provides an essential commodity while operating as a near-monopoly. The Board is responsible for protecting the interests of Ontario's 4.7 million electricity customers, and for helping to see that the sector is run efficiently and cost-effectively, and that it remains sustainable and financially viable.

The Board has about 170 staff and operating costs of close to \$35 million, all of which are paid by the entities that it regulates. The Board sets prices for electricity and its delivery, monitors electricity markets, and approves the administrative costs of the Ontario Power Authority and the Independent Electricity System Operator.

Electricity prices for the average Ontario consumer have risen about 65% since the restructuring of the electricity sector in 1999, and prices are projected to rise another 46% in the next five years. In light of this, the Board's role of protecting consumers while setting rates that will provide a reasonable rate of return for the industry is all the more important.

However, a number of factors limit the Board's ability to perform these duties to the extent that consumers and the electricity sector might expect. Our observations included the following:

- The criterion that electricity bills be just and reasonable applies only to areas over which the Board has jurisdiction—only about half of the total charges on a typical bill. The Board can set rates only for the nuclear power and some of the hydro power produced by Ontario Power Generation (OPG), along with transmission, distribution, and certain other charges. The other half of a typical bill is based on government policy decisions over which the Board has no say, and these costs are not subject to Board oversight. This includes the 50% of the electricity sold to residential customers that comes from other electricity suppliers

and that, in total, constitutes 65% of the cost of the electricity component of the typical bill.

- Consumers can purchase electricity through their utility at the Regulated Price Plan prices set by the Board or through an electricity retailer that sets its own price. About 15% of residential customers, looking for price stability on their power bills, signed fixed-price contracts with electricity retailers. These consumers could be paying 35% to 65% more for their electricity than they would pay had they not signed those contracts. In the last five years, the Board has received more than 17,000 complaints from the public, the overwhelming majority of them about electricity retailers. Issues included misrepresentation by sales agents and forgery of signatures on contracts. Although the Board follows up on complaints, it has taken only a limited number of enforcement actions against retailers.
- In areas in which it has jurisdiction, the Board sets rates using a quasi-judicial process that requires utilities and other regulated entities, such as OPG and Hydro One, to justify any proposed rate changes at a public hearing. Many small and mid-sized utilities say the cost of this process—\$100,000 to \$250,000 per application—can be as much as half the revenue increase sought in the first place. These costs, generally incurred every four years, are recovered from consumers.
- Individuals or organizations wishing to participate in the hearings on behalf of consumers can obtain intervenor status, and can qualify for reimbursement of their expenses. However, many of the utilities and other regulated entities that have to reimburse the intervenors say the number of requests that they receive can be onerous, the cost of providing detailed information to the intervenors is high, and they want the Board to better manage this process.

3.03 ELECTRICITY SECTOR— RENEWABLE ENERGY INITIATIVES

The Ontario government has proposed that the province rely increasingly on renewable energy—especially wind and solar power. One reason for this is to help replace the power lost from the phasing out of coal-fired generation plants, to be completed by 2014. In 2009, the government enacted the *Green Energy and Green Economy Act* (Act) to help attract investments and jobs in renewable energy, promote energy conservation, and reduce greenhouse gas emissions.

The Ministry of Energy (Ministry) has developed programs and policies to implement the Act, and the Ontario Power Authority (OPA) has played a key role in planning and procuring renewable energy by contracting to buy power from developers of renewable energy projects. Under the Act, the Minister is provided with the authority to supersede many of the government's usual planning and regulatory oversight processes in order to expedite the development of renewable energy.

Wind and solar power will add significant costs to ratepayers' electricity bills. It was felt that the higher costs associated with renewable energy were an acceptable trade-off given the environmental, health, and anticipated job-creation benefits. As well, these energy sources are not as reliable as traditional sources, and they require backup from alternative energy sources, such as gas-fired generation.

Our significant observations relating to the implementation of the government's renewable energy policy included the following:

- Ontario is on track to shut down its more than 7,500 megawatts (MW)—the capacity as of 2003—of coal-fired generation by the end of 2014, to be replaced by nuclear power from refurbished plants, an increase of about 5,000 MW of gas-fired generation, and renewable energy, which is projected to increase to 10,700 MW by 2018.
- Because the Ministry and the OPA aimed to implement the Minister's directions as quickly as possible, no comprehensive evaluation was done on the impact of the billion-dollar commitment to renewable energy on such things as future electricity prices, net job creation or losses across the province, and greenhouse gas emissions.
- When the Act was passed, the Ministry said implementing the Act would lead to modest increases in electricity bills of about 1% annually. This was later increased to 7.9% annually over the next five years, with 56% of the increase due mainly to the cost of renewable energy.
- The OPA was directed to replace a successful program—the Renewable Energy Standard Offer Program (RESOP)—with a much more costly Feed-in Tariff (FIT) program that required made-in-Ontario components and encouraged both larger and smaller generation projects, but provided renewable energy generators with significantly more attractive contract prices than RESOP.
- Although the OPA made a number of recommendations that could have significantly reduced the costs of FIT, these were held in abeyance until the two-year review of the FIT program could be undertaken so as to ensure price stability and maintain investor confidence.
- A Korean consortium contracted by the Ministry to develop renewable energy projects is to receive two additional incentives if it meets job-creation targets: \$110 million in addition to the already attractive FIT prices; and priority access to Ontario's already limited transmission capacity. However, no economic analysis or business case was done to determine whether the agreement with the consortium was cost-effective, and neither the Ontario Energy Board nor the OPA was consulted about the agreement.

3.04 ELECTRICITY SECTOR—STRANDED DEBT

The restructuring of Ontario's electricity sector in 1999 and the creation of competitive wholesale and retail markets for electricity effective May 2002 meant the province had to deal with the sector's stranded debt. This is defined as that portion of the total debt of the old Ontario Hydro that could not be serviced in a competitive market environment.

On April 1, 1999, the Ministry of Finance determined that Ontario Hydro's total debt and other liabilities stood at \$38.1 billion. This greatly exceeded the estimated \$17.2-billion market value of the assets being transferred to the five new companies that were formed to succeed Ontario Hydro. The resulting shortfall of \$20.9 billion was determined to be "stranded debt." Responsibility for servicing and managing the stranded debt was given to the Ontario Electricity Financial Corporation (OEFEC).

To service and retire the stranded debt, the government's long-term plan called for \$13.1 billion to be funded from expected dedicated revenue streams from the electricity sector, and for the remaining \$7.8 billion—called the "residual stranded debt"—to be funded through a new Debt Retirement Charge (DRC), borne by electricity consumers. Since spring 2002, nearly every Ontario consumer's electricity bill has included the DRC.

We have provided updates in past Annual Reports on the electricity sector's stranded debt, and this year we also reviewed the DRC, in response to ongoing interest shown by members of the Legislature, the public, and the media.

Some of our observations included the following:

- Progress in retiring the overall stranded debt has been slower than anticipated, due primarily to the lower-than-expected profitability of Hydro One and, particularly, Ontario Power Generation (OPG). The lower their earnings, the lower the payments in lieu of taxes they are required to make to the OEFEC. Some of the factors that have affected OPG's profitability

over the past 11 years include cost overruns on electricity-generation projects, volatile investment returns, and public and political pressure to keep electricity rates low.

- The original objective of the DRC, as stated by the then-Minister of Energy in 2000 and reiterated in the OEFEC's 2010 and 2011 Annual Reports, was that it would be paid by consumers until the residual stranded debt was retired. However, external legal advisers we engaged to assist us with our review of the DRC confirmed our view that section 85 of the *Electricity Act, 1998* (Act), which is titled "The Residual Stranded Debt and the Debt Retirement Charge," allows the DRC to be used for any purpose that is in accordance with the OEFEC's objectives and purposes, and not just the retirement of the residual stranded debt.
- Section 85 requires that the Minister of Finance "from time to time" determine the amount of the outstanding residual stranded debt and make this determination public. To date, this has not been done. Given that the DRC has been collected from electricity consumers for almost a decade and that more than \$8 billion in DRC revenue has been collected during that time, we believe that the Minister should make such a determination in the near future and make this determination public. We also suggest that the government consider specifying by regulation, as allowed for under section 85, how the amount of the outstanding residual stranded debt is to be calculated and when it is to be publicly reported.

3.05 FOREST MANAGEMENT PROGRAM

Forests cover more than 700,000 square kilometres—about two-thirds—of Ontario. More than 80% of these forests are on Crown land, and their management—harvesting, renewal, and maintenance—is governed mainly by the *Crown Forest Sustainability Act, 1994* (CFSA). The CFSA aims to provide for the long-term sustainability of Ontario's Crown forests so that they meet the social, economic, and environmental needs of present and future generations.

The forest industry is an important source of employment, especially in northern communities. In 2009, overall employment in the industry was estimated at 166,000 jobs, and the value of the sector's products at \$12 billion. However, the industry has experienced significant decline in recent years due mainly to the increase in value of the Canadian dollar and the economic downturn in the United States. Many mills have closed, resulting in a reduction in timber harvest levels and associated forest management activities.

Before the CFSA was enacted, the province was directly responsible for managing Crown forests, including regeneration. Under the CFSA, licensed forest management companies became responsible for overall forest sustainability planning and for carrying out all key management activities, including harvesting and forest renewal, on behalf of the Crown. The province's role in ensuring the sustainability of Crown forests has increasingly become one of overseeing the activities of the private-sector forest management companies. Such oversight is vital given that forests take upwards of 70 years to re-grow and these companies have little immediate financial incentive to carry out appropriate renewal activities.

Overall, we found that improvements are needed if the Ministry of Natural Resources (MNR) and the Ministry of Northern Development, Mines and Forestry are to have adequate assurance about the long-term sustainability of Ontario's Crown

forests. Our significant observations included the following:

- In 2008/09 (the latest period for which information was available at the time of our audit), the two-thirds of the licensed forest management companies that had reported the results of their forest management activities indicated that although 93% of the total area that had been assessed by the companies had met the province's minimum 40% stocking standard, only 51% of the total area assessed had achieved silviculture success—a measure of whether the appropriate or preferred trees have grown back.
- MNR's 40% stocking standard has not changed since the 1970s. Several other provinces hold the industry to higher standards.
- Two factors ensure the likelihood of successful regeneration: preparing the site, not only before planting and seeding, but also before natural regeneration can take place; and then tending the site to kill off competing vegetation. From 2004/05 to 2008/09, only about a third of the area targeted for regeneration was prepared and/or subsequently tended by the forest management companies. Several Independent Forest Audits completed in 2008 and 2009 expressed concern about inadequate site preparation or about non-existent or inadequate tending practices that were leading to reductions in growth, yield, and stand densities.
- Although the Silviculture Effectiveness Monitoring program was a good initiative to assess forest industry regeneration efforts, we found that MNR's district offices were not completing many of the “core tasks” in the program.

3.06 FUNDING ALTERNATIVES FOR FAMILY PHYSICIANS

In the past, Ontario family physicians were traditionally paid almost entirely on a fee-for-service basis from the Ontario Health Insurance Plan for providing medical services. Over the past 10 years, the Ontario Ministry of Health and Long-Term Care (Ministry) has significantly increased its use of alternate funding arrangements for family physicians in order to, among other things, improve patients' access to care and provide income stability for physicians.

By 2011, there were 17 types of alternate funding arrangements for family physicians. Under many of the funding arrangements, instead of receiving a fee for each service performed, physicians are paid an annual fee (called a capitation fee) to provide any of a specific list of services to each enrolled patient (that is, each patient who agrees to see the physician as his or her regular family physician). Physicians may bill for additional services, as well as for services to non-enrolled patients, on a fee-for-service basis. In the 2010/11 fiscal year, the Family Health Group (FHG), Family Health Organization (FHO), and Family Health Network (FHN) arrangements accounted for more than 90% of family physicians in alternate funding arrangements, and more than 90% of enrolled patients.

By the end of the 2009/10 fiscal year, more than 7,500 of the province's almost 12,000 family physicians were participating in alternate funding arrangements, and more than nine million Ontarians had enrolled with these physicians. Of the \$3.7 billion in total payments made to the province's family physicians in 2009/10, more than \$2.8 billion was paid to physicians participating in alternate funding arrangements, with \$1.6 billion of this amount related to non-fee-for-service payments, such as annual capitation payments.

In 2007/08, most family physicians participating in alternate funding arrangements were being paid at least 25% more than their counterparts in the fee-for-service system. By 2009/10, the 66% of family physicians who participated in alternate

funding arrangements were receiving 76% of the total amount paid to family physicians. The Ministry has not tracked the full cost of each alternate funding arrangement since 2007/08, or analyzed whether the expected benefits of these more costly arrangements have materialized.

Some of our other significant observations included the following:

- Based on a survey it commissioned, the Ministry estimated that various initiatives, including alternate funding arrangements, have resulted in almost 500,000 more Ontarians having a family physician in 2010 than in 2007. However, the survey also found that patients generally indicated that the wait times to see a physician had not changed significantly. Although more than 40% of patients got in to see their physician within a day, the rest indicated that they had to wait up to a week or longer.
- Of the 8.6 million patients enrolled with either an FHO or an FHG, 1.9 million (22%) did not visit their physician's practice in the 2009/10 fiscal year, yet the physicians in these practices received \$123 million just for having these patients enrolled. Further, almost half of these patients visited a different physician, and OHIP also paid for those visits.
- The annual capitation fee for each patient enrolled in an FHO can be 40% higher than the annual fee for patients enrolled in an FHN, because almost twice as many services are covered under FHO arrangements. Nevertheless, in 2009/10, 27% of all services provided to FHO patients were not covered by the arrangement, and the Ministry paid an additional \$72 million to the physicians for providing these services. Thirty percent of these services were for flu shots and Papsmear technical services, yet the Ministry had not assessed whether it would be more cost-effective to have the annual capitation payment include coverage for these and other relatively routine medical services.

3.07 FUNDING ALTERNATIVES FOR SPECIALIST PHYSICIANS

Specialist physicians provide services in more than 60 areas, including cardiology, orthopaedic, and emergency services, and obtain most of their income from fee-for-service OHIP billings. In the 1990s, the Ministry of Health and Long-Term Care (Ministry) introduced alternate funding arrangements to encourage specialist physicians to provide certain services, such as training new physicians and doing research, as well as to encourage them to work in remote areas of the province. In 1999, the Ministry introduced specialist alternate funding arrangements for physicians who provide emergency services in hospitals.

In the 2009/10 fiscal year, the Ministry paid almost \$1.1 billion under specialist alternate funding arrangements to more than 9,000 physicians, about 17% of the \$6.3 billion the Ministry paid to all specialists that year and more than a 30% increase from 2006/07. As of March 31, 2010, half of the almost 13,000 specialists in the province and more than 90% of the 2,700 emergency department physicians received payments through a specialist alternate funding arrangement.

We found that the Ministry has conducted little formal analysis of whether the alternate funding arrangements for specialists have yielded the expected benefits—such as improving patients' access to specialists—or whether the arrangements are cost-effective. We found, for instance, that payments to emergency department physicians increased by almost 40% between 2006/07 and 2009/10, while the number of physicians working in emergency departments increased by only 10%, and the number of patient visits increased by only 7%.

Some of our more significant observations were as follows:

- There are numerous types of payments and premiums that specialists can earn under alternate funding arrangements, making it difficult for the Ministry to monitor contracts and related payments. For example, for aca-

demical services at Academic Health Science Centres, there are as many as nine different categories of payments.

- Ten Academic Health Science Centres received “specialty review funding” totaling \$19.7 million in 2009/10 to serve as an interim measure to alleviate shortages in five specialty areas. Yet similar interim funding has been given annually since 2002.
- The Ministry paid \$15,000 each to 234 northern specialists, who gave the Ministry permission to collect information on each physician's income from provincial government-funded sources.
- In order to monitor whether specialists funded under academic contracts performed the required services, the Ministry provided the specialists with a checklist to self-evaluate their performance. But the checklists were never requested back, and minimal other monitoring has been done.
- In April 2008, the Ministry paid more than \$15 million to 292 physicians who signed a document indicating that they intended to join a northern specialist alternate funding arrangement. However, 11 of the physicians, who were paid a total of \$617,000, did not subsequently join such an arrangement, yet they were allowed to keep the funding.

3.08 LCBO NEW PRODUCT PROCUREMENT

The mandate of the Liquor Control Board of Ontario (LCBO)—a Crown agency with the power to buy, import, distribute, and sell beverage alcohol products in Ontario—is to be a socially responsible, performance-driven, innovative, and profitable retailer. For the 2010/11 fiscal year, the LCBO’s sales and other income totalled approximately \$4.6 billion, and net income was \$1.56 billion. The LCBO remitted virtually all that profit to the province. LCBO sales have increased 67% from 10 years ago, and its net income and the dividends it pays to the province have gone up 80% in that time.

The LCBO offers consumers more than 21,000 products available at more than 600 stores. It uses three methods to select and buy new products. The principal one, both for general-list products and for the Vintages fine wine and premium spirits line, is to issue a call to suppliers, known as a “needs letter,” for a specific category of product. It can also buy products on an ad hoc basis, or, in the case of Vintages, directly from suppliers.

The LCBO has the power to set the retail prices for the products it sells, guided by its mandate to promote social responsibility in the sale and consumption of alcohol while generating revenue for the province. Ontario’s *Liquor Control Act* sets out minimum retail prices for alcohol to encourage social responsibility, and most Canadian jurisdictions operate this way. This means that the LCBO, like other Canadian jurisdictions, does not sell its products at the lowest possible prices, so retail prices for alcohol products are generally higher than those in the United States.

Although some of the products that the LCBO sells are offered at lower prices in other Canadian jurisdictions, an April 2011 survey found that the LCBO had the lowest overall alcohol prices of all those jurisdictions, with the third-lowest prices for spirits and beer, and the lowest wine prices.

Among our observations were the following:

- In the private sector, large retailers use their buying power to negotiate lower costs with suppliers. However, the LCBO, despite being one of the largest purchasers of alcohol in the world, does not focus on getting the lowest cost it can for a product. Rather, the cost it pays is driven by the retail price it wants to charge for a product. The LCBO gives suppliers a price range within which it wants to sell a product. Suppliers’ product submissions include, among other things, the retail price at which they want their product to sell in LCBO stores, and they then work backwards, applying the LCBO’s fixed-pricing structure to determine their wholesale cost. We noted that in some instances suppliers submitted wholesale quotes that were significantly lower or higher than what the LCBO expected, in which cases the suppliers were asked to revise the amount of their quotes in order to match the agreed-upon retail price, which effectively either raises or lowers the price the LCBO pays the supplier for the product.
- The LCBO does not negotiate volume discounts. This is also true of other Canadian jurisdictions we looked at. The LCBO’s fixed-pricing structure gives it no incentive to negotiate lower wholesale costs; doing so would result in lower retail prices, and, in turn, lower profits, something that runs against the LCBO’s mandate of generating profits for the province and encouraging responsible consumption.
- We did note that the LCBO has many well-established purchasing practices that are consistent with those in Canadian and other jurisdictions. However, it could improve some of its processes relating to purchasing and monitoring of product performance to better demonstrate that these processes are carried out in a fair and transparent manner.

3.09 LEGAL AID ONTARIO

Legal Aid Ontario is an independent corporation accountable to the Ministry of the Attorney General with a mandate to provide low-income people with consistently high-quality legal aid services in a cost-effective and efficient manner, while recognizing the private bar and clinics as the foundation for providing such services.

Legal Aid Ontario provides assistance to people in three ways: it issues legal aid certificates to people who then retain private lawyers who in turn bill Legal Aid Ontario for those services; it pays and manages about 1,500 staff and contract lawyers to provide duty counsel services at criminal and family courts; and it funds and oversees 77 independent community legal clinics to assist people with government assistance issues and tribunal representation issues, such as landlord–tenant disputes. Legal Aid Ontario received \$354 million in funding during the 2010/11 fiscal year, most of that from the provincial government.

For at least the past decade, Ontario has spent more on legal aid support per capita than any other province, even though it has one of the lowest income eligibility thresholds and issues fewer certificates entitling people to legal aid per capita than most other provinces. Legal Aid Ontario acknowledges the need to address a history of operating deficits, make its operations more cost-effective, improve access to its services, and help make the courts more efficient. We noted that it has a well-defined long-term strategy to address these issues and that it has moved to increase access to legal aid services beyond the issuing of certificates, such as through expanded use of duty counsel available at courthouses and through its new call centre.

We felt that Legal Aid Ontario's multi-year long-term strategy was heading in the right direction. However, the following are some of the areas the program must address if it is to be fully successful in meeting its mandate:

- Only people with minimal or no income qualify for legal aid certificates or for assistance

from community legal clinics, and the financial eligibility cut-offs for qualifying have not changed since 1996 and 1993, respectively. This, combined with an escalation in the average legal billing for each certificate issued, has meant fewer people over the last couple of years have been provided with certificates and more clients have been required to rely on duty counsel, legal advice, and information from Legal Aid Ontario's website for legal services.

- Since its inception in 1999, Legal Aid Ontario has not had a quality assurance audit program in place with the Law Society of Upper Canada to help ensure that legal services provided by contract and staff lawyers to its low-income and vulnerable clients are of a high standard.
- At the time of our audit, Legal Aid Ontario was working to address deficiencies with its lawyer payment system. Most importantly, strengthening of controls is required to ensure that all payments, which total \$188 million annually, are justified.
- Legal Aid Ontario's efforts to extract greater efficiencies from community legal clinics have strained its relationship with the clinics.
- With the significant amount of solicitor–client privileged information on Legal Aid Ontario's information technology systems, we expected it to have performed recent and comprehensive privacy and threat risk assessments of its computer databases. However, the last privacy assessment was in 2004, and its systems have changed significantly since then.

As with our 2001 audit, we again noted that Legal Aid Ontario was lacking key performance measures on the services it provides to its clients and stakeholders, and its annual reporting was three years overdue.

3.10 OFFICE OF THE CHILDREN'S LAWYER

The Office of the Children's Lawyer (Office), which is part of the Ministry of the Attorney General, provides children under the age of 18 with legal representation in child protection cases, custody and access cases, and property rights matters such as personal injury claims. Although the Office must provide legal representation for children in child protection cases and property rights cases when appointed by the court, it has discretion in accepting cases when the court requests its involvement in custody and access matters.

The Office has approximately 85 staff, including lawyers, social workers, and support staff. The Office also engages what it calls "panel agents"—approximately 440 private lawyers and 180 clinical investigators—on an hourly fee-for-service basis. For the 2010/11 fiscal year, the Office's expenditures totalled approximately \$32 million. It accepts about 8,000 new cases a year, and, as of March 31, 2011, it had more than 11,000 open cases.

Demand for the Office's legal and clinical investigation services is significant. The Office is unique—no other jurisdiction in Canada provides children with the same range of centralized legal services. Overall, the legal and investigative work done by the Office is valued by the courts, children, and other stakeholders. However, these services are often not assigned or delivered in a timely enough manner.

We identified several areas in which the Office's systems, policies, and procedures needed improvement. Among our more significant findings:

- The Office's case management system was not meeting its information needs, and the Office did not have an adequate process in place for evaluating the cost-effectiveness of its operations. For example, the Office had not adequately analyzed why its payments to panel agents had increased by more than \$8 million, or 60%, over the last 10 years even though new cases accepted each year

decreased by 20% and the Office's overall active caseload did not change significantly over the same period.

- In the 2010/11 fiscal year, the Office exercised its discretion to refuse more than 40% of child custody and access cases referred to it by a court. We found, however, that the Office had not adequately assessed the impact of these refusals on the children and courts. Many of the decisions to refuse cases were made primarily because of a lack of financial resources.
- Although the Office has substantially reduced the time it takes to accept or refuse custody and access cases—from 68 days in 2008/09 to 39 days in 2010/11—it still is not meeting its 21-day turnaround target.
- In custody and access cases in which the Office is asked to investigate and then provide the court with a report and recommendations, Family Law Rules require it to do so within 90 days. However, the Office met this deadline less than 20% of the time and did not have any formal strategy in place for improving its performance in this regard.
- The Office had a sound process for ensuring that personal rights lawyers and clinical investigators were well qualified and selected fairly. However, there was no open selection process in place for the almost 100 property rights lawyers the Office engaged.
- The Office permits property rights panel lawyers to charge up to \$350 an hour when recovering their costs from a child's estate, or from trust or settlement funds. Yet if the same lawyers charge their services directly to the Office, they are paid \$97 an hour.
- The Office's programs for reviewing the quality of the work performed by panel agents did not include an assessment of whether the fees charged were reasonable.

3.11 ONTARIO TRILLIUM FOUNDATION

The Ontario Trillium Foundation (Foundation) was established in 1982 as an agency of the Ontario government. Its mission is to build “healthy and vibrant communities throughout Ontario by strengthening the capacity of the voluntary sector, through investments in community-based initiatives.”

In the 2010/11 fiscal year, the Foundation distributed about 1,500 grants worth more than \$110 million to not-for-profit and charitable organizations working in the areas of human and social services, arts and culture, environment, and sports and recreation. Most of the grant money goes to pay the salaries and wages of people working in these organizations.

The agency has a volunteer board of directors and about 120 full-time staff located at its Toronto head office and in 16 regional offices. In addition, more than 300 volunteers may be named to grant-review teams across the province—18 to 24 volunteers on each team—to vote on which projects or organizations should be funded.

Among our observations are the following:

- One of the Foundation’s main responsibilities is to ensure that it gives out its allocation of more than \$100 million each year to community not-for-profit and charitable organizations. A wide range of projects can be funded, as long as they support the local community and relate to the areas mentioned above. The determination of value for money received for each grant may well be in the eye of the beholder, and it is within this context that the Foundation operates.
- Although the Foundation has a well-defined grant application and review process for deciding which applicants receive grants, the underlying process and resulting documentation often did not demonstrate that the most worthy projects were funded for reasonable amounts. This was due to the fact that there was often little documentation available to demonstrate that the Foundation objectively

compared the relative merits of different proposals, adequately assessed the reasonableness of the grant amounts requested and approved, and effectively monitored and assessed spending by recipients.

- Many of the grant recipients we visited could not substantiate the expenditure and performance information they reported to the Foundation.
- We felt the Foundation’s website was comprehensive and informative. However, the Foundation could do more to inform community organizations about the availability of grants and about the application process. It could, for example, consider advertising in local and ethnic-community newspapers.
- Although the Foundation’s administrative expenditures are relatively modest, it nevertheless needs to tighten up certain of its administrative procedures to ensure that it complies with the government’s procurement and employee-expense guidelines.

3.12 PRIVATE CAREER COLLEGES

Private career colleges are independent organizations that offer certificate and diploma programs in fields such as business, health services, and information technology. They often cater to adult students who need specific job skills to join the workforce or become more competitive in the job market. There are about 470 registered private career colleges in Ontario serving 60,000 students.

The Ministry of Training, Colleges and Universities (Ministry) administers the *Private Career Colleges Act, 2005* (Act). The Act focuses on protecting the rights of students. Through the Training Completion Assurance Fund, the Act also provides students with the right to complete their training at another institution at no additional cost if the college they are attending ceases operations.

Although the Ministry does not fund private career colleges directly, it provides significant funding to the sector through its employment training and student assistance programs. Over the past three fiscal years, a total of almost \$350 million was provided through the Ministry's Second Career and Skills Development programs to an average of 13,000 students annually for their tuition at private career colleges. In addition, in the last three academic years, almost \$200 million in loans and grants was provided to an annual average of 9,500 students through the Ministry's Ontario Student Assistance Program.

The Ministry has recently undertaken a number of good initiatives to improve its oversight of private career colleges and strengthen protection for students. However, further improvements are needed to ensure compliance with the Act, its regulations, and ministry policies, and to protect students. The following are some of our more significant observations:

- Although it has taken steps to identify and act on unregistered colleges, the Ministry could make better use of information it already has on hand to identify colleges that continue to operate illegally. For example, the Ministry

does not routinely check to see that schools that have been closed remain closed. We reviewed a sample of schools that had been closed and found that a number appeared to be offering courses.

- In 2006, the Ministry stopped collecting information on graduation rates and employment upon graduation for private career colleges, something it does for public colleges. More than 85% of the private career college graduates who responded to our survey said that such student outcome data would have been useful in helping them with their choice of college and courses.
- The Ministry did not have adequate processes in place for assessing the financial viability of colleges when they seek to renew their annual registration. One college with significant losses had its registration renewed without any evidence that its financial viability had been reviewed. The college subsequently closed, costing the Training Completion Assurance Fund more than \$800,000.
- The Ministry can enter and inspect the premises of a registered private career college or an unregistered institution that should be registered. Although a recent risk assessment done by the Ministry identified 180 private career college campuses with multiple compliance risk factors, the Ministry could not demonstrate that it had done enough inspections to manage the risk of non-compliance with the Act and its regulations. There are approximately 470 registered private career colleges with 650 campuses in Ontario, but the Ministry estimated that only 30 campuses had been inspected in 2010.

3.13 STUDENT SUCCESS INITIATIVES

Ontario's Student Success Strategy is a collection of initiatives that has been implemented by the Ministry of Education (Ministry) since 2003 to help secondary school students graduate with their high school diplomas. A 2003 Ministry report cited the graduation rate at the time as 68%. The overall objective of the Student Success Strategy was to reduce the high school dropout rate, and raise the graduation rate to 85% by the 2010/11 school year.

The Ministry's Student Achievement Division is responsible for developing and monitoring the Student Success Strategy, while school boards and schools are responsible for delivering the strategy's initiatives. Every board receives funding for one student success leader to help implement programs in its schools, as well as funding for one student success teacher per secondary school who is responsible for providing supports to students at risk of not graduating. In the 2010/11 school year, the Ministry provided almost \$130 million to school boards for the delivery of student success initiatives.

Steady progress has been made toward the goal of an 85% graduation rate, and the rate stood at 81% for the 2009/10 school year. However, we did note some areas where refinements to the initiatives would help ensure that the Ministry's objectives can be met and that students have acquired the knowledge and skills they need to go on to post-secondary education or employment. Some of our observations were as follows:

- Ontario school boards we visited track risk factors such as gender, absenteeism, and course success to help identify students at risk and then provide them with supports. However, we noted that some other jurisdictions have found that targeting supports to specific groups of students based on factors such as ethnicity, disability, and economic status has been very effective in improving graduation rates. For example, targeted programming in one U.S. high school resulted in a 92% gradu-

ation rate for African-American students, which far exceeded the state-wide average of 67% for this group.

- The Ministry's reported graduation rate is based on calculating the percentage of grade 9 students who graduate within five years. However, the 2009/10 graduation rate would have been 72% if it had been based on graduation within the four-year span of high school. On the other hand, the graduation rate would have been 91% if it had been extended to when students reach the age of 25.
- The Ministry relies primarily on tracking changes in the graduation rate to measure the outcome of the Student Success Strategy. However, graduation rates are generally not publicly available by school board, and boards do not use a consistent method of calculating graduation rates, so it is difficult to meaningfully compare rates across the province. Better information is also needed on graduates' level of preparedness for post-secondary studies and employment.
- We noted situations where the work placements in the Cooperative Education program did not appear to complement the students' curriculum requirements for in-class learning. Students earned credits in a wide range of placements, such as clothing stores, fast-food outlets, coffee shops, and laboratories.
- In the 2009/10 and 2010/11 school years, only \$15 million of the \$245 million the Ministry provided to school boards for student success initiatives was allocated based on a direct assessment of student needs. Much of the remaining funding was allocated based on the number of students in each board, rather than being targeted to the boards, schools, and students most in need of support.

3.14 SUPPORTIVE SERVICES FOR PEOPLE WITH DISABILITIES

The Ministry of Community and Social Services (Ministry) funds a variety of supportive services programs to help people with developmental disabilities live at home and work in their communities. In 2010/11, the Ministry spent \$571 million on such programs, \$472 million of that through 412 contracts with transfer-payment agencies in nine regions, which provided services to about 134,000 eligible people. The Ministry-administered Special Services at Home (SSAH) program received \$99 million to serve 24,000 families.

Agencies that receive transfer-payment funding provide or arrange for such services as assessment and counselling, speech and language therapy, behaviour intervention therapy, and respite care. Agencies also administer the Passport program, which provides direct funding to families for such things as personal development, as well as social and recreational activities. The SSAH program provides direct funding to eligible families for purchasing supports and services beyond those typically provided by families and that are designed primarily to enhance personal development and provide family relief through respite care.

Many of the concerns noted in our last audit of this program 15 years ago have still not been satisfactorily addressed. The Ministry still does not have adequate assurance that its service delivery agencies are providing an appropriate and consistent level of support in a cost-effective manner to people with developmental disabilities. The Ministry's oversight procedures are still not adequate to ensure that quality services are provided and that public funds are properly managed by transfer-payment agencies.

Although the Ministry is in the midst of a comprehensive Developmental Services Transformation project intended to address these and other areas, it will take several years before many of the issues we identified can be effectively addressed. Among our more significant findings were the following:

- In half the cases we reviewed, agencies lacked supporting documentation to adequately demonstrate a person's eligibility or needs. As a result, agencies could not demonstrate, and the Ministry could not assess, whether the individual was receiving the appropriate level of service or was in need of additional support.
- The Ministry has not established acceptable standards of service, or the necessary processes to properly monitor the quality of services provided. Consequently, it cannot assess whether it is receiving value for money for the funding provided to community-based agencies. Ministry staff rarely visit agencies for these purposes.
- The Ministry is not aware of the number of people who are waiting for agency-based supportive services, information that is necessary for assessing unmet service needs.
- Although one would expect a consistent set of rules about what are appropriate services and, therefore, allowable expenditures under the Passport program, the Ministry has not set such rules. As a result, expenses for services reimbursed in one region were deemed ineligible for reimbursement in another.
- In practice, annual agency funding continues to be primarily historically based rather than needs-based. This exacerbates any previous funding inequities. As a result, some hourly service costs appeared excessive, and the range of costs per hour for similar services varied widely across the province.
- The Ministry had little knowledge of whether the agencies it funded and their boards of directors had effective governance and control structures in place.
- As of March 31, 2011, there was a waiting list of almost 9,600 people who met the SSAH eligibility criteria but were still waiting for SSAH funding.

Public Accounts of the Province

Introduction

Ontario's Public Accounts for each fiscal year ending on March 31 are prepared under the direction of the Minister of Finance, as required by the *Financial Administration Act* (Act). The Public Accounts comprise the province's annual report, including the province's consolidated financial statements, and three supplementary volumes of additional financial information.

The government's responsibility for preparing the consolidated financial statements encompasses ensuring that the information, including the many amounts based on estimates and judgment, is presented fairly. The government is also responsible for ensuring that a system of control, with supporting procedures, is in place to provide assurance that transactions are authorized, assets are safeguarded, and proper records are maintained.

My Office audits these consolidated financial statements. The objective of our audit is to obtain reasonable assurance that the statements are free of material misstatement—that is, free of significant errors or omissions. The consolidated financial statements, along with my Independent Auditor's Report on them, are included in the province's annual report.

The province's 2010/11 annual report also contains a Financial Statement Discussion and Analysis section that provides additional information about

the province's financial condition and fiscal results for the year ended March 31, 2011, including some details of what the government accomplished in the 2010/11 fiscal year. The provision of such information enhances the fiscal accountability of the government to both the Legislative Assembly and the public.

The three supplementary volumes of the Public Accounts consist of the following:

- Volume 1—statements from all ministries and a number of schedules providing details of the province's revenues and expenses, its debts and other liabilities, its loans and investments, and other financial information;
- Volume 2—audited financial statements of significant provincial corporations, boards, and commissions whose activities are included in the province's consolidated financial statements, as well as other miscellaneous financial statements; and
- Volume 3—detailed schedules of ministry payments to vendors and transfer-payment recipients.

My Office reviews the information in the province's annual report and in Volumes 1 and 2 of the Public Accounts for consistency with the information presented in the province's consolidated financial statements.

The Act requires that, except in extraordinary circumstances, the government deliver its annual report to the Lieutenant Governor in Council within 180 days of the end of the fiscal year. The three

supplementary volumes must be submitted to the Lieutenant Governor in Council within 240 days of the end of the fiscal year. Upon receiving these documents, the Lieutenant Governor in Council must lay them before the Legislative Assembly or, if the Assembly is not in session, make the information public and then lay it before the Assembly within 10 days of the time it resumes sitting.

This year, the government released the province's 2010/11 Annual Report and Consolidated Financial Statements, along with the three Public Accounts supplementary volumes, on August 23, 2011, meeting the 180-day deadline.

In conducting our annual audit of the Public Accounts we work closely with the Ministry of Finance and particularly with the Office of the Provincial Controller. While we may not always see eye-to-eye on all issues, our working relationship has always been professional and constructive.

The Province's 2010/11 Consolidated Financial Statements

The *Auditor General Act* requires that I report annually on the results of my examination of the province's consolidated financial statements. I am pleased to report that my Independent Auditor's Report to the Legislative Assembly on the province's consolidated financial statements for the year ended on March 31, 2011, is clear of any qualifications and reservations, and reads as follows:

Independent Auditor's Report

To the Legislative Assembly of the Province of Ontario

I have audited the accompanying consolidated financial statements of the Province of Ontario, which comprise the consolidated statement of financial position as at

March 31, 2011, and the consolidated statements of operations, change in net debt, change in accumulated deficit, and cash flow for the year then ended and a summary of significant accounting policies and other explanatory information.

Management's Responsibility for the Consolidated Financial Statements

The Government of Ontario is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with Canadian public sector accounting standards, and for such internal control as the Government determines is necessary to enable the preparation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

My responsibility is to express an opinion on these consolidated financial statements based on my audit. I conducted my audit in accordance with Canadian generally accepted auditing standards. Those standards require that I comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are

appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Government, as well as evaluating the overall presentation of the consolidated financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

Opinion

In my opinion, these consolidated financial statements present fairly, in all material respects, the consolidated financial position of the Province of Ontario as at March 31, 2011 and the consolidated results of its operations, change in its net debt, change in its accumulated deficit, and its cash flows for the year then ended in accordance with Canadian public sector accounting standards.

[signed]

Toronto, Ontario
August 8, 2011

Jim McCarter, FCA
Auditor General
Licensed Public Accountant

As a result of new Canadian Auditing Standards that came into effect in December 2010, my report this year differs from those of previous years. The following are some of the key changes in this year's report that reflect the requirements of the new standards.

- *Title*—the title of the report now includes “independent” to clearly convey to readers the auditor's independence;
- *Paragraph on Management's responsibility*—the report now includes a separate paragraph that describes the government's responsibility for the preparation and fair presentation of the financial statements in accordance with

the applicable accounting standards, and its responsibility for internal control to enable the preparation of financial statements free from material misstatement, whether due to fraud or error; and

- *Paragraph on Auditor's responsibility*—the standards now require a clearer description of the Auditor's responsibility with respect to the audit, including a more detailed description on the process for performing the audit, that the auditor needs sufficient appropriate audit evidence, and that the Auditor is expressing no opinion on the effectiveness of internal control.

Ontario's Debt Burden

Government debt has become a worldwide economic issue, especially since the global recession of 2008 that saw governments around the world incur large deficits to pay for stimulus programs to combat the effects of the recession.

Ontario has not been immune to the recession, with the government reporting large deficits in each of the last three fiscal years. The government is also projecting shortfalls for the next six years, as illustrated in Figure 1.

The government's projections indicate that by the time Ontario revenues are sufficient to meet its expenses in the 2017/18 fiscal year, the combined annual deficits from 2008/09 to 2016/17 will total almost \$110 billion. The government will need to issue new debt to finance these projected annual deficits, which will increase Ontario's current debt load significantly before it is able to balance its books in six years' time.

In this section, we first highlight the different measures of government debt—that is, the different ways government debt can be looked at. We then compare the province's growing debt to the strength of the provincial economy, and to the debt burden of other governments for perspective.

Figure 1: Ontario Revenue and Expenses, 2008/09–2017/18 (\$ billion)

Source of data: 2010/11 Province of Ontario Consolidated Financial Statements and 2011 Ontario Budget

	Actual			Plan Medium-term Outlook			Extended Outlook			
	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
Total Revenue	96.9	95.8	106.7	108.5	111.8	117.0	122.8	129.0	135.4	142.2
Expense										
program expense	94.8	106.4	111.2	113.8	114.6	116.7	118.8	121.0	122.9	124.9
interest on debt	8.5	8.7	9.5	10.3	11.4	12.6	13.7	14.8	15.7	16.3
Total Expense	103.3	115.1	120.7	124.1	126.0	129.3	132.5	135.8	138.6	141.2
reserve	–	–	–	0.7	1.0	1.0	1.0	1.0	1.0	1.0
Surplus/(Deficit)	(6.4)	(19.3)	(14.0)	(16.3)	(15.2)	(13.3)	(10.7)	(7.8)	(4.2)	–

Finally, we highlight some of the consequences to the province as a result of carrying a significant debt load.

DIFFERENT MEASURES OF DEBT

The government's debt can be measured in a number of ways. Figure 2 provides details on the debt over the last four fiscal years as reported in the province's consolidated financial statements, along with projections over the next three fiscal years as reported in the 2011 Budget.

Definitions of the province's three measures of debt in Figure 2 are as follows:

- *Total debt* represents the total amount of money the government owes to outsiders and consists of bonds issued in public capital markets, non-public debt, T-bills, and U.S. commercial paper. It provides the broadest measure of a government's debt load and its total borrowings to date.
- *Net debt* is the difference between the government's total liabilities and its financial assets. Liabilities consist of all amounts the government owes to external parties, including total debt, accounts payable, pension and retirement obligations, and transfer payment obligations. Financial assets are those that can be used to pay off liabilities or finance future operations, and include cash, accounts receivable, temporary investments, and investments in government business enterprises. Net debt

provides a measure of the amount of future revenues required to pay for past government transactions and events.

- *Accumulated deficit* represents the sum of all past government annual deficits and surpluses. It is derived by taking net debt and deducting the value of the government's non-financial assets, such as its tangible capital assets.

Net debt is generally considered to be a useful indicator of a government's financial position and one that provides insight into how well a government can afford to provide future services. A significant net-debt position reduces the ability of a government to devote financial resources and future revenues to the provision of public services. The Canadian Institute of Chartered Accountants publication entitled *20 Questions about Government Financial Reporting* notes that net debt is an important measure of a government's fiscal capacity.

The government, on the other hand, considers the accumulated deficit to be a better measure for evaluating its financial position and its capacity to deliver future services, because the accumulated deficit takes into account the acquisition of non-financial assets, such as tangible capital assets, using debt. Under the *Fiscal Transparency and Accountability Act, 2004* (FTAA) the government is required to maintain a prudent ratio of provincial debt (defined in the FTAA as the accumulated deficit) to Ontario's gross domestic product, which is discussed in more detail in the next section.

Figure 2: Total Debt, Net Debt, and Accumulated Deficit, 2007/08–2013/14 (\$ million)

Source of data: 2010/11 Province of Ontario Consolidated Financial Statements, 2011 Ontario Budget, and Office of the Auditor General of Ontario

	Actual				Estimate		
	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14
total debt	162,217	176,915	212,122	236,629	254,800	279,200	299,900
net debt	156,616	169,585	193,589	214,511	238,300	261,700	281,700
accumulated deficit	105,617	113,238	130,957	144,573	160,800	176,000	189,300

MAIN CONTRIBUTORS TO NET-DEBT GROWTH

For the most part, the province's growing net debt since the 2007/08 fiscal year is attributable to large deficits in recent years, along with investments in capital assets such as buildings, other infrastructure, and machinery and equipment acquired directly by the government or its consolidated organizations, such as public hospitals, as illustrated in Figure 3.

While the government has not provided details on its debt beyond the 2013/14 fiscal year, we estimate that Ontario's net debt could surpass \$300 billion by the 2017/18 fiscal year, based on the government's deficit projections in the 2011 Budget and assuming government investments in capital assets continue at the levels of recent years.

In summary, Ontario's net debt will increase from \$157 billion at the end of the 2007/08 fiscal year to over \$300 billion by 2017/18, in effect almost doubling in the 10-year period before the

government projects it will be able to bring its books back into balance. Accordingly, the amount of debt owed by each resident of Ontario on behalf of the government will increase from about \$12,000 per person in 2008 to about \$21,000 per person in 2018.

ONTARIO'S RATIO OF NET DEBT TO GDP

The level of debt relative to the size of the economy—the ratio of debt to the market value of all goods and services produced over a defined period, called the gross domestic product (GDP)—is generally considered to be a good indicator of a government's ability to manage its debt load. The ratio of net debt to GDP measures the relationship between a government's obligations and its capacity to raise funds to meet them. When the ratio is rising, it means that the government's net debt is growing at a faster rate than the provincial economy.

Figure 3: Net Debt Growth Factors, 2007/08–2013/14 (\$ million)

Source of data: 2010/11 Province of Ontario Consolidated Financial Statements, 2011 Ontario Budget, and Office of the Auditor General of Ontario

	Net Debt Beginning of Year	Deficit/ (Surplus)	Net Investment in Tangible Capital Assets ¹	Miscellaneous Adjustments ²	Net Debt End of Year
2007/08	153,742	(600)	4,033	(559)	156,616
2008/09	156,616	6,409	5,348	1,212	169,585
2009/10	169,585	19,262	5,832	(1,090)	193,589
2010/11	193,589	14,011	7,306	(395)	214,511
2011/12	214,511	16,300	7,489	–	238,300
2012/13	238,300	15,200	8,200	–	261,700
2013/14	261,700	13,300	6,700	–	281,700

1. Includes investments in government-owned land, buildings, machinery and equipment, and infrastructure assets capitalized during the year less annual amortization and net gains reported on sale of government-owned tangible capital assets.

2. Unrealized Fair Value Losses/(Gains) on the Ontario Nuclear Funds Agreement (ONFA) Funds held by Ontario Power Generation Inc.

The province's net debt-to-GDP ratio was relatively stable between the 2005/06 and 2007/08 fiscal years, averaging about 30% at each fiscal year-end, as illustrated in Figure 4. The ratio then began to increase in 2008/09 and is projected to peak at 40% in 2014/15 before starting to fall.

The net debt-to-GDP ratio shows that government debt will grow at a faster rate than the provincial economy until the 2014/15 fiscal year and will begin to fall only in 2015/16, when the rate of expected government debt growth will fall below the expected growth rate of the provincial economy.

Another useful exercise in assessing Ontario's debt load is to compare it with other Canadian jurisdictions. The net debt of most provinces and the federal government, along with their respective ratios of net debt to GDP, is illustrated in Figure 5.

Generally, the western provinces have a significantly lower net debt-to-GDP ratio than Ontario, while the Maritime provinces are roughly similar to Ontario and Quebec has a significantly higher ratio than Ontario.

Ontario's net debt-to-GDP ratio is lower than that of the United States and several European countries that also carry significant debt loads, as illustrated in Figure 6. Although caution is warranted because there may be differences in how

Figure 4: Ontario Net Debt-to-GDP Ratio, 2005/06–2017/18 (%)

Source of data: 2010/11 Province of Ontario Annual Report and Consolidated Financial Statements

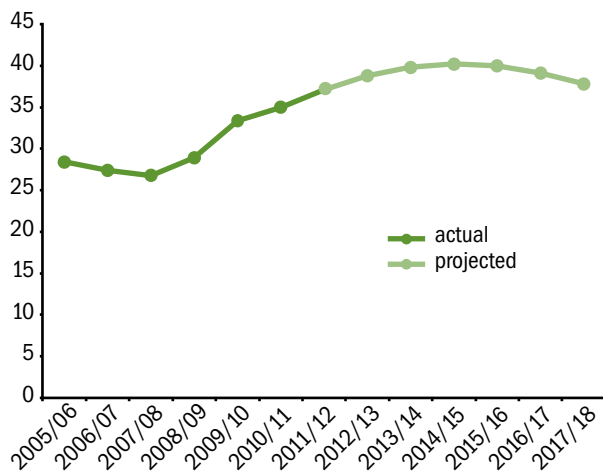


Figure 5: Net Debt and the Net Debt-to-GDP Ratios of Canadian Jurisdictions, 2010/11

Source of data: 2010/11 Province of Ontario Annual Report and Consolidated Financial Statements, 2011 Federal Budget, budget updates and 2011 budgets of selected provincial jurisdictions, and Office of the Auditor General of Ontario

	Net Debt/(Net Asset) (\$ million)	Net Debt to GDP (%)
BC	30,637	15.2
AB	(21,653)	(7.4)
SK	3,783	6.2
MB	12,837	24.0
ON	214,500	34.9
QC	158,955	50.1
NB	9,480	33.2
NS	12,837	35.7
PEI	1,695	34.9
Federal	616,900	38.0

these countries define liabilities and financial assets relative to Ontario, the information does provide a useful level of comparison.

CONSEQUENCES OF HIGH INDEBTEDNESS

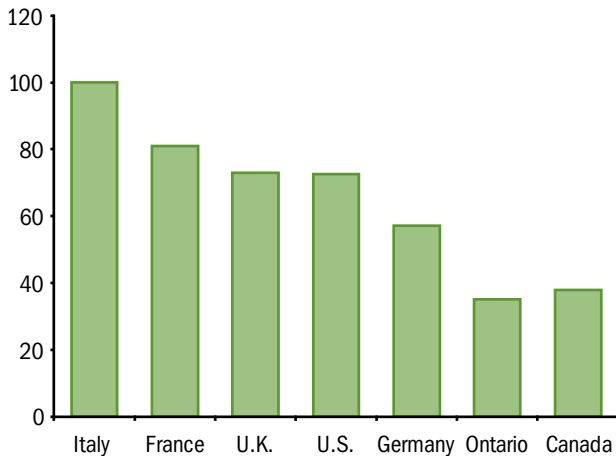
As any householder knows, there are consequences to high levels of indebtedness. The same applies to governments, including the following:

- Debt Costs Take Funding Away from Other Government Programs**—As provincial indebtedness grows, so does the cash needed to pay the interest costs to service the debt. Higher interest costs consume a greater proportion of government resources, limiting the amount the government can spend on other things. To put this “crowding out” effect into perspective, the government currently spends more on debt interest than it does on post-secondary education, and these interest costs are growing.

The government's debt-servicing cost in the 2008/09 fiscal year was \$8.5 billion and rose to \$9.5 billion in 2010/11. It is projected to rise to \$16.3 billion by the time the province

Figure 6: Comparison of Net Debt-to-GDP Ratio of Ontario and Selected Industrialized Countries, September 2011 (%)

Source of data: 2010/11 Province of Ontario Annual Report and Consolidated Financial Statements, and Office of the Auditor General of Ontario



balances its books in 2017/18. As a percentage of total provincial revenues, debt-servicing cost will rise from 8.9% in 2010/11 to an estimated 11.5% by 2017/18. In other words, by 2017/18, it is estimated that 11.5 cents of every taxpayer dollar will go towards paying only the annual interest on the debt.

- **Higher Sensitivity to a Rise in Interest Rates**— Over the last few years, governments generally have been able to use low interest rates to finance higher debt loads. For example, Ontario was paying an average effective interest rate of about 8% in 2000, but that had dropped to less than 5% in 2011. However, higher debt levels increase the province’s sensitivity to any rate increases. For example, in its 2011 Ontario budget, the government noted that, at its current debt level, a 1% increase in rates would add an additional \$500 million to its interest costs.
- **Credit Ratings and Investor Sentiment**— Credit-rating agencies assess a government’s creditworthiness largely based on its capacity to manage its debt, and they consider such factors as that government’s economic resources, institutional strengths, financial health,

and susceptibility to major risks. This rating has an impact on the cost of future government borrowings because, generally speaking, a lower credit rating means investors will demand a greater risk premium in the form of higher interest rates before they are willing to purchase that jurisdiction’s debt.

With respect to Ontario’s credit rating, one TD Canada Trust banking analyst noted in March 2011 that “there is little evidence that bond investors are getting nervous about Ontario’s fiscal situation or that rating agencies will be downgrading Ontario from its longstanding AA-rating.” However, analysts also warn that the government’s large borrowing requirements, along with its increasing reliance on foreign investors, does raise the risk of a credit-rating downgrade. Any such change in the credit rating would force Ontario to pay higher interest on its future borrowings.

CONCLUSION

A government’s debt has been described as a burden placed on future generations, especially debt used to finance operating deficits. Debt used to finance infrastructure investments is more likely to leave behind investments that future generations can benefit from.

It is important to note that while the government has presented a plan to eliminate the annual deficit by 2017/18, no clear strategy or forecast has been articulated for paying down its existing and future debt.

Once annual deficits are no longer the norm, one strategy for paying down debt is to hold the line on any future debt increases and use the additional revenues generated by a growing economy to start to reduce the debt. In any case, regardless of what strategy is contemplated, we believe the government should provide legislators and the public with long-term targets and a strategy for how it plans to address the current and projected debt burden.

Update on the Workplace Safety and Insurance Board

In our *2009 Annual Report*, we suggested that the government reconsider the exclusion from the province's consolidated financial statements of the financial results of the Workplace Safety and Insurance Board (WSIB). The exclusion of the WSIB's financial results is based on its classification by the government as a "trust." However, given its significant unfunded liability and other factors, we questioned whether the WSIB was operating like a true trust for financial-statement purposes as prescribed by accounting standards of the Public Sector Accounting Board.

The WSIB's unfunded liability as of December 31, 2008, totalled \$11.5 billion. It had grown to \$11.8 billion as of December 31, 2009, and to \$12.4 billion by December 31, 2010. This compares to an unfunded liability of \$5.9 billion in 2006. If the WSIB had been included in the government reporting entity for the 2010/11 fiscal year, Ontario's deficit would have been approximately \$330 million higher than reported, and the province's net debt and accumulated deficit would have increased by almost 5% and more than 7%, respectively. Clearly, the inclusion of the WSIB in the province's financial statements would have a material impact on the province's consolidated financial statements.

In Chapter 4 of this Annual Report, we follow up our 2009 review of the WSIB's unfunded liability and provide an update on actions taken by the WSIB and the government following our 2009 review. According to information we received from the WSIB and the Ministry of Labour, and discussions we had with senior WSIB management, a number of initiatives are under way to address its unfunded-liability situation. For instance, the WSIB launched an independent funding review, led by an external academic, that is seeking advice from the various stakeholders on how best to address the unfunded-

liability situation. As well, legislation has been passed that, subject to proclamation, would require that the WSIB reach a prescribed level of funding within a specified time frame. The funding and time frame are to be established by regulation that will take the results of the current independent funding review into consideration.

As a result of these initiatives to address WSIB's unfunded liability, we agree for the time being with the government that the WSIB can retain its "trust" status. However, we will continue to monitor the progress being made toward addressing the significant unfunded liability and, if we believe it is insufficient, we will re-evaluate our position.

Update on the Pension Benefit Guarantee Fund

The Pension Benefit Guarantee Fund (PBGF) guarantees the payment of certain pension benefits when eligible private-sector defined-benefit plans are terminated under conditions specified in the *Pension Benefits Act* (Act). Under the Act, the PBGF is funded through premiums paid by private-sector pension plan sponsors. Participation in the PBGF is mandatory for many defined-benefit plans registered in Ontario. The PBGF is intended to be self-financing, with funding in the form of annual payments based on per-member and risk-related fees.

As with the WSIB, the PBGF is classified as a trust in the province's consolidated financial statements. This means its assets, liabilities, and operating results are excluded from the accounts of the province, but must be disclosed in the notes to the province's consolidated financial statements.

Recent corporate insolvencies and bankruptcies arising from the economic downturn and other factors have led to greater claims on the PBGF. As a result, the PBGF reported unfunded liabilities of \$102 million as of March 31, 2008, and \$47 million as of March 31, 2009, as shown in Figure 7. These

Figure 7: PBGF Financial Position, 2007/08–2010/11 (\$ million)

Source of data: PBGF

	2007/08	2008/09	2009/10	2010/11
revenue	75,169	123,974	555,806 ¹	67,105
expenses ²	64,546	69,107	406,641	176,671
recoveries			(1,529)	(42)
excess/(deficiency) of revenue over expenses	10,623	54,867	150,694	(109,524)
fund surplus/(deficit) at beginning of year	(112,841)	(102,218)	(47,351)	103,343
fund surplus/(deficit) at end of year	(102,218)	(47,351)	103,343	(6,181)

1. Includes a \$500-million grant from the province

2. Most relate to claims for pension payments on terminated pension plans

unfunded liabilities existed despite a \$330-million interest-free loan from the province in the 2003/04 fiscal year, to be repaid in \$11-million annual installments over 30 years.

In 2009, the government amended the *Pension Benefits Act* to clarify that the PBGF is a self-sustaining fund, independent of the government. The amendments allow, but do not require, the government to provide grants or loans to the PBGF. The amended act also emphasized that the PBGF's liabilities are limited to its assets.

On March 25, 2010, the Legislative Assembly approved a \$500-million grant to the PBGF to help stabilize its financial position and cover the costs of recent plan windups. As a result of this grant, the PBGF reported a surplus of \$103 million as of March 31, 2010. As of March 31, 2011, notwithstanding the previous year's \$500-million government cash infusion, it reported an unfunded liability of \$6 million as a result of expenses exceeding revenues by \$109 million. Therefore, the government's previous infusion has already been fully depleted.

An independent actuary appointed by the government to review the stability and the financial status of the PBGF noted in June 2010 that in the absence of an increase in private-sector member assessments, the Fund would require an upfront reserve (net of current claims as of January 2010) of between \$680 million and \$1.023 billion to cover expected future claims. The actuary determined that in order to be considered self-sufficient over

the long term and cover existing loan repayments and expected future claims plus expenses, the PBGF would require a 450% increase in the employer- and employee-assessment rates to fund benefits at the current maximum coverage level of \$1,000 per month per employee.

In August 2010, the government also announced a four-part strategy to further mitigate risks and enhance the sustainability of the PBGF as follows:

- build reserves through the \$500 million grant, provided in March 2010;
- raise future PBGF revenues by increasing assessments in 2012;
- reduce the level of risk to the PBGF by extending the eligibility period for covering new plans and benefit improvements from three to five years; and
- reduce the PBGF's exposure by strengthening pension funding rules.

While we acknowledge that the government has taken steps to attempt to place the PBGF on a more stable financial footing, we believe that the PBGF did not meet the criteria to retain its "trust" classification for the 2010/11 fiscal year, given its history of requiring government funding to meet its financial obligations and the actuary's suggestion that this dependency will likely continue in the future. In our opinion, if the government chooses to step in periodically to provide financial resources to this organization, then it does not meet the definition of a "trust," nor the intent of the accounting standard

that allows standalone trusts to be excluded from a government's financial statements.

However, this year we concluded the impact of excluding the PBGF from the government's consolidated financial statements was not significant enough to affect our March 31, 2011, audit opinion. We will continue to recommend that the Ministry of Finance include the PBGF in the province's consolidated statements until such time as there is significant improvement, without government assistance, in the financial position of the PBGF.

MINISTRY RESPONSE

The Ministry appreciates the Auditor General's recognition of the government's four-part strategy to strengthen the sustainability of the PBGF, including measures to increase the fund's revenues and limit its liabilities.

In the Ministry's view, these proposals establish a stable financial basis for the fund, permitting it to maintain its trust status and eliminating the need for consolidation.

Review of the 2011 Pre-Election Report on Ontario's Finances

The *Fiscal Transparency and Accountability Act, 2004* (Act) requires the Minister of Finance to issue a report on Ontario's finances in advance of a provincial election. The purpose of this report is to provide the public with detailed information on the province's estimated future revenues, expenses, and projected surplus or deficit for the next three fiscal years. The Act requires the Auditor General to review the government's report to determine if it is reasonable, and to release a report describing the results of this review.

As a provincial general election had been called for October 6, 2011, the government released its

2011 Pre-Election Report on Ontario's Finances on April 26, 2011. The fiscal plan on which the pre-election report was based was set out in the 2011 Ontario Budget.

As required by the Act, the report provided information on:

- the macroeconomic forecasts and assumptions used to prepare the government's fiscal plan;
- an estimate of Ontario's revenues and expenses, including estimates of the major components of the revenues and expenses;
- details about the budget reserve required to provide for unexpected adverse changes in revenues and expenses; and
- the ratio of provincial debt to Ontario's gross domestic product.

A key principle of the Act is that Ontario's fiscal policy be based on cautious assumptions. Overall, we concluded that the government based its estimates of revenues and interest on the public debt on prudent and cautious assumptions. However, we concluded that many of the assumptions underlying its estimates for program expenses (that is, expenses excluding interest on the public debt and reserves) were optimistic and aggressive rather than cautious. This was especially the case for public-sector salaries and for health-care costs, which together account for the majority of program expenses.

We cautioned that since the pre-election report is essentially a forecast, actual results will undoubtedly differ from its estimates. Given that many of the assumptions underlying the expense projections are optimistic rather than cautious, there is a heightened risk that actual expenses will be higher than estimated. Unless revenue growth is higher than expected to compensate for higher expenses, annual deficits may also turn out to be higher than planned. In that case, the government will need to consider additional changes in policy or operations to achieve the fiscal targets set out in the 2011 Budget.

Future Public Accounts Issues

THE IMPORTANCE OF PUBLIC-SECTOR ACCOUNTING STANDARDS

In Chapter 2 of my 2008 and 2010 Annual Reports, I discussed the importance of governments adhering to generally accepted accounting standards established by an independent standard-setting body in order to produce credible financial statements and information on which the public can rely.

Accounting standards specify when transactions are to be recognized and how they are to be measured and disclosed in financial statements. In order to be authoritative, accounting standards should be established by a recognized professional standard-setting body through an organized, open, and transparent public process.

In Canada, the Public Sector Accounting Board (PSAB) of the Canadian Institute of Chartered Accountants (CICA) is the authoritative body that establishes accounting standards for the public sector. PSAB standards represent generally accepted accounting principles for governments in Canada and are a primary source of guidance for public-sector accounting.

PSAB emphasizes “due process” in setting its standards in order to maintain objectivity and ensure that the views of all interested parties are heard and considered. In developing or revising an accounting standard, PSAB typically follows a five-step process:

- basic research;
- approval of a project proposal;
- issuing a statement of principles to a designated group of accountants and non-accountants for initial feedback;
- issuing one or more public exposure drafts and soliciting comments from all interested individuals or organizations; and
- approving and publishing a final standard.

PSAB has been under significant pressure recently from certain stakeholders. Some governments, for instance, have expressed concerns that PSAB standards do not adequately take into account the unique challenges facing governments when they make decisions on financial reporting, budgeting, and fiscal policy. While PSAB must ensure that new accounting standards take all of these concerns into consideration, it is also constrained by the need to ensure such standards are consistent with its conceptual framework.

PSAB’s conceptual framework consists of a set of overarching and interrelated objectives, fundamental principles, and definitions that establish how assets, liabilities, revenues, and expenses arise, and how they are to be measured and disclosed. The conceptual framework was designed to help develop accounting standards that will consistently produce financial statements that most fairly reflect the results of an entity’s operations and its financial position at the end of a reporting period. Accounting-standard-setting bodies around the world use such conceptual frameworks to ensure that any proposed accounting standards are theoretically sound. PSAB is currently undertaking a review of its conceptual framework, which is discussed later in this chapter.

RECENT PSAB ACHIEVEMENTS

PSAB resolved a number of significant financial accounting and reporting issues in the 2010/11 fiscal year. These include *Government Transfers*, addressed in new standard PS3410, and *Financial Instruments*, addressed in new standard PS3450. Both are discussed below.

One key message we want to convey to readers through this discussion is that the public interest has been well served by PSAB’s role in setting independent and conceptually based accounting standards for governments. Since its establishment in 1981 and its gradual acceptance by Canadian governments as the authoritative issuer of public-sector accounting standards, PSAB has contributed

enormously to improving the completeness, relevance, reliability, and comparability of Canadian government financial statements.

We want to acknowledge that the province's consolidated financial statements, in all material respects, have consistently complied with PSAB standards and that all governments over the years have been diligent in their efforts to improve the clarity and completeness of their statements and annual reports. We believe it is critical that Ontario continue to prepare its financial statements in accordance with PSAB standards so that legislators and the public can rely on the reported annual surplus or deficit as being a fair reflection of what has actually transpired with respect to the government's management of the public purse for the year.

RATE-REGULATED ASSETS AND LIABILITIES

Current Situation

Over the last three years, we have raised concerns about the appropriateness of recognizing rate-regulated assets and liabilities in the government's consolidated financial statements. Rate-regulated accounting practices were developed to recognize the unique nature of regulated entities such as electricity generators, transmitters, and distributors. Under rate-regulated accounting, a regulator established under legislation such as the Ontario Energy Board approves the prices that a regulated entity can charge customers and often allows regulated entities to defer (record as an asset) certain costs for recovery in future periods that, under normal generally accepted accounting principles (GAAP), would be expensed in the year incurred.

In Ontario, there are three major provincially owned organizations in the electricity sector—Ontario Power Generation Inc. (OPG), Hydro One Inc. (Hydro One), and the Ontario Power Authority (OPA)—that use rate-regulated accounting. The financial position and operating results of these three organizations are included in the govern-

ment's consolidated financial statements. The net effect of including the impact of rate-regulated accounting in the 2010/11 fiscal year was to decrease the reported deficit by \$23 million. While this year's deficit impact was quite small, the impact can also be quite large, as was the case in the 2009/10 fiscal year, when its net effect was to reduce the reported deficit by \$1.1 billion.

Up to now and including the 2010/11 fiscal year, the use of rate-regulated accounting by certain rate-regulated entities was allowed under Canadian GAAP. Specifically, PSAB's accounting standards allowed OPG and Hydro One, which are defined as government business enterprises, to be consolidated without their accounting policies being adjusted to remove the impact of rate-regulated accounting. Given PSAB's position, we accepted this accounting treatment. However, from a theoretical viewpoint, we continued to question whether rate-regulated assets and liabilities met the definition of *bona fide* assets or liabilities for the purposes of the government's consolidated financial statements. In the case of the OPA, which does not meet the PSAB criteria of being a government business enterprise, the impact of rate-regulated accounting on the OPA's results should have been removed before the OPA was included in the consolidated statements. In this case, not making the adjustment did not have a material effect on the province's reported results and therefore did not affect our audit opinion.

Looking Forward

The era of rate-regulated accounting appears to be coming to a close, at least for jurisdictions such as Canada that are converting to international accounting standards. Last year, both the International Accounting Standards Board (IASB) and the CICA's Accounting Standards Board issued exposure drafts that, if approved, would have allowed rate-regulated entities to continue recognizing regulatory assets and liabilities under certain conditions. However, while the recommendations of these exposure drafts were overwhelmingly

supported by the utility industry, the majority of accounting bodies and standards-setters who responded disagreed with the recommendations. Accordingly, the IASB has deferred the current project, and it is unclear if and when any future project on rate-regulated accounting will be initiated. The CICA's Accounting Standards Board recently indicated that it would not consider any "local" amendments to International Financial Reporting Standards (IFRS) to allow for rate-regulated accounting in Canada. Instead, the treatment of all assets and liabilities in future will have to follow normal generally accepted accounting principles, and rate-regulated assets and liabilities will no longer be considered acceptable.

The accounting standard-setter in the United States, the Financial Accounting Standards Board, is not going along with the views of its international counterparts. For now, it has decided not to adopt IFRS, and it will continue to allow rate-regulated accounting.

Ontario's Ministry of Finance contends that the province's rate-regulated assets and liabilities meet PSAB's standards without reference to any of the rate-regulated provisions in the *CICA Handbook*. As the Ministry is aware, we do not agree with this position.

In its March 31, 2011 Annual Report and Consolidated Financial Statements, the government specifically commented on this issue. The note entitled Future Changes to Accounting Standards stated:

At present, IFRS does not address rate-regulated accounting and it is uncertain if or when such standards might be introduced by the IASB. The government plans to provide direction to certain controlled rate-regulated entities to ensure that the financial reports of these entities follow accounting standards that it believes best represent the economic substance of transactions and best serve the information needs to different users.

We noted that the government has recently directed Hydro One to prepare its future financial statements in accordance with U.S. GAAP through the passage of regulation 395/11 under the *Financial Administration Act*. We want to reiterate that it is not the impact of this decision on Hydro One's financial statements that is our direct concern—rather, we are concerned about what effect these developments may have on the province's consolidated financial statements.

As the auditors of the province's consolidated financial statements, we have concerns about Hydro One's use of U.S. GAAP and about the future disposition of the rate-regulated assets and liabilities of OPG and the OPA. The province uses Canadian GAAP in preparing its statements. If Canadian GAAP does not allow rate-regulated assets and liabilities to be recorded, there may be an issue in next year's audit if such assets and liabilities are nevertheless included in the province's consolidated financial statements due to the consolidation of OPG, Hydro One, and the OPA in those results, and if that inclusion has a material impact.

We are also concerned about the province using legislation to override Canadian GAAP—a theme that we have raised in our last two Annual Reports. This year, the government passed a regulation requiring Hydro One to use U.S. GAAP to allow it to continue to include the impact of rate-regulated activities in its future financial statements. This represents a departure from the historical tradition in Ontario of complying with Canadian accounting standards.

MINISTRY RESPONSE

The Ministry recognizes the challenges in the accounting-standards-setting environment to achieve consensus on the required approach for rate-regulated accounting. Given the deferral by the standards-setters to resolve this issue, the government directed Hydro One to follow U.S. GAAP to allow it to continue to account for these rate-regulated assets and liabilities as it

has historically been able to do under Canadian GAAP. This decision is consistent with actions by both the Canadian Securities Administrators and the Ontario Securities Commission that have enabled rate-regulated utilities to submit their financial statements on a U.S. GAAP basis until 2014.

The government looks forward to the standards-setters undertaking actions to complete their efforts to resolve the outstanding rate-regulated accounting concerns and update the standards accordingly.

ACCOUNTING FOR GOVERNMENT TRANSFERS

The Government Transfers project was initiated by PSAB a number of years ago to address several accounting issues related to monetary transfers from one level of government to another, including:

- accounting appropriately for multi-year funding provided by one government to another;
- clarifying the authorization needed for transfers to be recognized;
- clarifying the degree to which stipulations imposed by a transferring government affect the timing of transfer recognition in the accounts of both the transferring and recipient governments; and
- appropriately accounting for transfers that are to be used to acquire or construct tangible capital assets.

One of the most difficult areas to address was how recipients should account for multi-year transfers. For instance, if the federal government made a lump-sum transfer near the end of the fiscal year to a province that was to be used to fund services over several years, should the province immediately recognize the full grant as revenue or should the grant be taken into revenue only as it is being spent on the services for which it was provided? A similar issue arose with respect to capital transfers. A number of

stakeholders took the view that a capital transfer should be recognized as revenue when the recipient government incurred the expenditure that made it eligible to receive the grant. However, other stakeholders said PSAB standards should allow for such transfers to be brought into revenue over time as the tangible capital asset acquired or constructed with the transferred funds is amortized.

After substantial discussion, consideration of respondents' views, and the issue of several documents for comments, PSAB approved a new Government Transfers standard in December 2010. Under the new standard, a recipient government must recognize a transfer as revenue when the transfer has been authorized and has met all eligibility criteria, with one exception. This requirement does not apply when the transferring government creates a liability for the recipient government by imposing stipulations on the use of the transfer or on the actions the recipient needs to take to keep the transfer. As well, the standard recognizes that actions and communications by the recipient that restrict the use of the funds for a specific future purpose can create a liability. In practice, whether the facts and circumstances surrounding a particular transfer support the recognition of a liability is a matter of professional judgment. If a transfer is deemed to create a liability for the recipient government, the transfer is recognized as revenue offsetting the expenditure of the funds as the liability is settled over time.

FINANCIAL INSTRUMENTS

Financial instruments—including derivatives such as foreign-exchange forward contracts, swaps, futures, and options—are used to manage financial risks. Currently, PSAB guidance on accounting for the use of derivatives is limited to their application in hedging foreign-currency risks, such as government debt denominated in foreign funds. Accordingly, Ontario and all other governments in Canada provide details on their financial risks, the use of financial instruments such as derivatives to

mitigate these risks, and the current fair value of their reported debt in the notes to their financial statements.

In January 2005, the Accounting Standards Board (AcSB) of the Canadian Institute of Chartered Accountants (CICA) approved three new accounting standards titled “Financial Instruments,” “Comprehensive Income,” and “Hedges.” These private-sector standards underscored the need to address these same issues from a public-sector perspective. Accordingly, PSAB created a task force to consider how governments should account for their financial instruments. One of the key issues the task force needed to address was whether changes in the market or fair value of derivative contracts should be reflected in a government’s financial statements and, in particular, whether they should affect the measurement of the government’s annual surplus or deficit.

A few of the milestones and decision-points over the life of the project are highlighted below:

- The PSAB task force issued a statement of principles on financial instruments in June 2007 that set out suggested principles for the recognition and measurement of financial instruments consistent with the direction provided by the AcSB.
- Governments, in response to PSAB’s proposed standard, raised concerns that reflecting fair-value changes that do not result in any money actually coming in or going out was not reflective of the inflows and outflows of economic resources associated with the delivery of services to the public. A key point raised by this group was that most governments enter into derivative contracts to hedge their foreign-currency or interest-rate risks, and therefore hold these contracts until they mature, at which time any gains or losses arising during the period the derivative was held would net to zero.
- PSAB responded to stakeholder concerns in September 2009 with a revised proposal for a Financial Instruments standard recommending

that all unrealized gains and losses from fair-value remeasurement of financial instruments be recorded in the statement of operations, but that these gains and losses should be reported separately from other government revenues and expenses. PSAB hoped that separate reporting of these remeasurement gains and losses would clearly distinguish their impact on any annual surplus or deficit and thus alleviate stakeholder concerns.

- Responses from all governments to this proposal continued to raise concern that the inclusion of unrealized market-value gains and losses in government financial statements would create volatility and not reflect the economic substance of government financing transactions. As well, we and others disagreed with the “two bottom lines” that the proposed standard would require including in a government’s consolidated statement of operations, and felt this would be confusing to users of the statements.

PSAB responded by proposing a new standard in November 2010. Its main requirements included recording derivatives at fair value and recording unrealized changes in their fair value in a new Statement of Remeasurement Gains and Losses. Unrealized gains and losses from fair-value remeasurement of financial instruments would not be recorded in the statement of operations. Consistent with the previous proposal, hedge accounting would no longer be required.

In response to this proposal, we indicated that our primary focus in assessing any proposed change to accounting standards is to consider its impact on the determination of a government’s annual surplus or deficit. Therefore, we said we firmly believed that measurable changes in the value of assets and liabilities that occur under a government’s watch should generally be included in their reported surplus or deficit in the period these changes occurred. However, we did not support reporting the annual changes in the values of financial instruments in a separate quasi-equity statement. In our view, the

addition of a separate statement of remeasurement gains and losses would diminish the value of a government's statement of operations. Also, adding yet another statement would do little to make a government's financial statements, which already tend to be quite complex, more understandable to the lay reader.

We proposed that any new financial instruments standard should recognize the fundamental difference between derivatives acquired to mitigate foreign-currency risk and those acquired to mitigate interest-rate risk. Specifically, we proposed that PSAB consider recording only foreign-currency derivatives at fair value because changes in the fair value of both the debt and the offsetting derivative would be recorded in the government's statement of operations and thereby affect the annual surplus or deficit appropriately. However, because changes in the fair value of interest-rate derivatives would result in only a one-sided valuation change being recorded in the statement of operations, we proposed including changes in their fair value only in the notes to the financial statements and not in the statement of operations.

However, after substantial discussion and consideration of respondents' views, PSAB approved the new Financial Instruments standard in March 2011, reflecting the proposals made in its November 2010 re-exposure draft. We appreciated the opportunity to present our views on this issue and, even though PSAB chose not to accept the alternative we had proposed, we accept the final standard and will continue to apply all of PSAB's standards in auditing the fairness of the province's consolidated financial statements.

Public Sector Accounting Board Initiatives

This section briefly outlines some of the other more significant issues that the Public Sector Accounting

Board (PSAB) of the Canadian Institute of Chartered Accountants (CICA) has been dealing with over the last year, which may in future affect the province's consolidated financial statements.

INTRODUCTION

As noted earlier, PSAB has the authority to set accounting and financial reporting standards for the public sector in Canada. In addition to issuing revised standards for financial instruments and government transfers discussed earlier in this chapter, some of the other more noteworthy financial accounting and reporting issues PSAB resolved during the past year include determining the appropriate accounting framework for government organizations and the accounting for foreign-currency translation. One of the more significant projects that PSAB is currently working on is a revision of its conceptual framework that supports the development of consistent accounting standards for the public sector in Canada.

STANDARDS

Government Not-for-profit Organizations

The CICA's Accounting Standards Board (AcSB) is responsible for establishing Canadian accounting and financial-reporting standards for private-sector profit-oriented enterprises and private-sector not-for-profit organizations. In response to the ongoing globalization of financial markets and the movement toward worldwide standards, the AcSB implemented a number of financial reporting changes this year.

International Financial Reporting Standards (IFRS) replaced the previous set of Canadian generally accepted accounting principles (GAAP) as the accounting framework used to prepare the financial statements of publicly accountable, profit-oriented enterprises. For enterprises that are not publicly accountable or profit-oriented and which did not wish to adopt IFRSs, the AcSB introduced two

additional accounting frameworks: “Accounting Standards for Private Enterprises” and “Accounting Standards for Private Sector Not-for-Profit Organizations.”

In September 2010, PSAB concluded that government not-for-profit organizations should apply the provisions of the *Public Sector Accounting Handbook (PSA Handbook)*. To ease the transition of these organizations into the *PSA Handbook*, PSAB introduced specific not-for-profit standards, known as the “4200 Series,” in the *PSA Handbook*. These new standards are for the most part similar to Canadian GAAP used previously by not-for-profit organizations. A not-for-profit organization can elect to follow the 4200 Series in the *PSA Handbook* or, alternatively, apply the provisions of the *PSA Handbook* without the 4200 Series. This requirement is effective for fiscal periods beginning on or after January 1, 2012.

Foreign-currency Translation

In June 2011, PSAB also issued a new accounting standard on foreign-currency translation to ensure consistency with its new standard on financial instruments. Although the revised standard addresses a number of issues, the most significant revision eliminates the current requirement to defer and amortize gains and losses resulting from foreign-exchange fluctuations. Similar to the new standard on financial instruments, unrealized foreign-exchange gains and losses will now be recorded separately from other revenues and expenses of a government or its organization, in the Statement of Remeasurement Gains and Losses. Only when the actual gains and losses from foreign exchange fluctuations are realized will they be recorded in the Statement of Operations and hence impact the surplus or deficit of the government or its organization. This revised standard is also effective for fiscal periods beginning on or after April 1, 2012, for government organizations and April 1, 2015, for governments.

Conceptual Framework

As indicated earlier, PSAB’s conceptual framework is a set of interrelated objectives and fundamentals that support the development of consistent accounting standards. It is the basis on which stakeholders such as those who prepare government financial statements, legislative auditors, and PSAB discuss and assess proposals to address emerging accounting issues. A key benefit of the framework is to instill discipline into the standard-setting process to ensure that accounting standards are objective, credible, and consistent.

PSAB formed the Conceptual Framework Task Force in response to concerns raised by several governments regarding current revenue and expense definitions, which they contend result in volatility in reported results and make budget-to-actual comparisons difficult. The objective of the Task Force is to review the appropriateness of the concepts and principles in the existing Framework for the public sector in the *PSA Handbook*. In April 2011, the Task Force began its review of the conceptual framework. The following August, it issued the first of two consultation papers to seek input from stakeholders on the key characteristics of public-sector entities and their accounting and reporting implications for general-purpose financial statements. The Task Force plans to issue a second consultation paper in the second quarter of 2012 that will likely discuss the following issues related to financial statements:

- users and what they need to have reported;
- the objectives of reporting in financial statements; and
- the qualitative characteristics of information to be reported.

The input received from the two consultation papers will then be considered in drafting a statement of principles for public comment.

Statutory Matters

Under section 12 of the *Auditor General Act*, I am required to report on any Special Warrants and Treasury Board Orders issued during the year. In addition, section 91 of the *Legislative Assembly Act* requires that I report on any transfers of money between items within the same vote in the Estimates of the Office of the Assembly.

LEGISLATIVE APPROVAL OF EXPENDITURES

Shortly after presenting its budget, the government tables detailed Expenditure Estimates in the Legislative Assembly outlining, on a program-by-program basis, each ministry's spending proposals. The Standing Committee on Estimates (Committee) reviews selected ministry estimates and presents a report on them to the Legislature. The estimates of those ministries that are not selected for review are deemed to be passed by the Committee and are so reported to the Legislature. Orders for Concurrence for each of the estimates reported on by the Committee are debated in the Legislature for a maximum of two hours and then voted on.

Once the Orders for Concurrence are approved, the Legislature provides the government with legal spending authority by approving a *Supply Act*, which stipulates the amounts that can be spent by ministry programs, typically those set out in the estimates. Once the *Supply Act* is approved, the individual program expenditures are considered to be Voted Appropriations. The *Supply Act* pertaining to the fiscal year ended March 31, 2011, received Royal Assent on March 30, 2011.

The *Supply Act* is typically not passed until well after the start of the fiscal year, but ministry programs require interim spending authority prior to its passage. For the fiscal year ending March 31, 2011, the Legislature authorized these payments by passing three acts allowing interim appropria-

tions: the *Interim Appropriation for 2010–2011 Act, 2009*; the *Supplementary Interim Appropriation Act, 2010*; and the *Supplementary Interim Appropriation Act, 2010* (No. 2). These three acts received Royal Assent on December 15, 2009, May 18, 2010, and December 8, 2010, respectively, and authorized the government to incur up to \$123.8 billion in public-service expenditures, \$3.7 billion in investments of the public service, and \$176 million in legislative office expenditures. All three acts were made effective as of April 1, 2010. On February 23, 2011, the Legislature also passed a motion of interim supply providing the legislative offices with temporary approval to incur the additional expenditures contained in the 2010/11 Estimates that were not authorized under the three interim acts.

The three interim acts, in conjunction with the motion of interim supply, provided the government with sufficient temporary appropriations to allow it to incur expenditures from April 1, 2010, to when the *Supply Act* received Royal Assent on March 30, 2011. As the legal spending authority under the interim acts was intended to be temporary, all three were repealed under the *Supply Act, 2011*, and the authority to incur expenditures provided under them was subsumed into the authority provided under the *Supply Act, 2011*.

SPECIAL WARRANTS

If the Legislature is not in session, section 1.0.7 of the *Financial Administration Act* allows for the issuance of Special Warrants authorizing the incurring of expenditures for which there is no appropriation by the Legislature or for which the appropriation is insufficient. Special Warrants are authorized by Orders-in-Council approved by the Lieutenant Governor on the recommendation of the government.

There were no Special Warrants issued for the fiscal year ended March 31, 2011.

TREASURY BOARD ORDERS

Section 1.0.8 of the *Financial Administration Act* allows the Treasury Board to make an order authorizing expenditures to supplement the amount of any voted appropriation that is expected to be insufficient to carry out the purpose for which it was made. The order may be made only if the amount of the increase is offset by a corresponding reduction of expenditures to be incurred from other voted appropriations not fully spent in the fiscal year. The order may be made at any time before the books of the government for the fiscal year are closed. The government considers the books to be closed when any final adjustments arising from our audit have been made and the Public Accounts have been tabled in the Legislature.

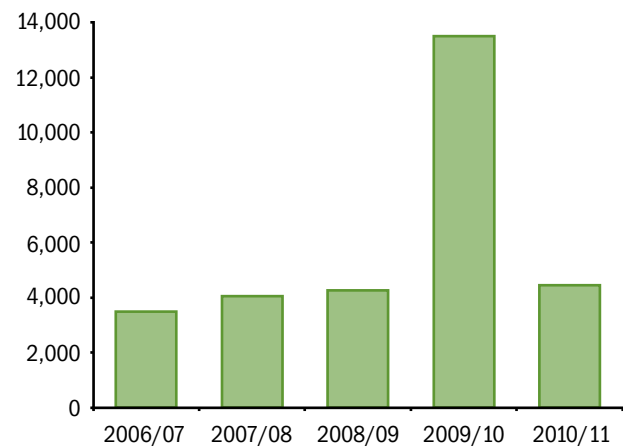
Even though the *Treasury Board Act, 1991* was repealed and re-enacted within the *Financial Administration Act* in December 2009, subsection 5(4) of the repealed act allows the Treasury Board to delegate to any member of the Executive Council or to any public servant employed under the *Public Service of Ontario Act, 2006* any power, duty, or function of the Treasury Board, subject to limitations and requirements that the Treasury Board may specify. This delegation under the repealed act will continue to be in effect until replaced by a new delegation. For the fiscal year ended March 31, 2011, the Treasury Board delegated its authority to ministers for issuing Treasury Board Orders to make transfers between programs within their ministries, and to the Chair of the Treasury Board for making transfers in programs between ministries and making supplementary appropriations from contingency funds. Supplementary appropriations are Treasury Board Orders in which the amount of an appropriation is offset by a reduction to the amount available under the government's centrally controlled contingency fund.

Figure 8 summarizes the total value of Treasury Board Orders issued for the past five fiscal years.

Treasury Board Orders increased significantly in the 2009/10 fiscal year, primarily in the Ministry of

Figure 8: Total Value of Treasury Board Orders, 2006/07–2010/11 (\$ million)

Source of data: Treasury Board



Finance and the Ministry of Energy and Infrastructure (now the two separate ministries of Energy and of Infrastructure), as a result of loans to the auto sector and infrastructure stimulus spending. Figure 9 summarizes Treasury Board Orders for the fiscal year ended March 31, 2011, by month of issue.

According to the Standing Orders of the Legislative Assembly, Treasury Board Orders are to be printed in the *Ontario Gazette*, together with explanatory information. Orders issued for the 2010/11 fiscal year are expected to be published in the *Ontario Gazette* in December 2011. A detailed listing of 2010/11 Treasury Board Orders, showing the amounts authorized and expended, is included as Exhibit 3 of this report.

TRANSFERS AUTHORIZED BY THE BOARD OF INTERNAL ECONOMY

When the Board of Internal Economy authorizes the transfer of money from one item of the Estimates of the Office of the Assembly to another item within the same vote, section 91 of the *Legislative Assembly Act* requires that we make special mention of the transfer(s) in our Annual Report.

With respect to the 2010/11 Estimates, there were no transfers made within the votes of the Office of the Assembly.

Figure 9: Total Value of Treasury Board Orders by Month in 2010/11

Source of data: Treasury Board

Month of Issue	#	Authorized (\$ million)
April 2010–February 2011	79	3,441
March 2011	19	692
April 2011	20	212
May 2011	2	109
June 2011	1	6
Total	121	4,460

UNCOLLECTIBLE ACCOUNTS

Under section 5 of the *Financial Administration Act*, the Lieutenant Governor in Council, on the recommendation of the Minister of Finance, may authorize an Order-in-Council to delete from the accounts any amounts due to the Crown that are the subject of a settlement or deemed uncollectible. The amounts deleted from the accounts during any fiscal year are to be reported in the Public Accounts.

In the 2010/11 fiscal year, receivables of \$432.1 million due to the Crown from individuals and non-government organizations were written off (the comparable amount in 2009/10 was \$410.3 million). The major portion of the writeoffs in the 2010/11 fiscal year related to the following:

- \$145.2 million for uncollectible receivables under the Student Support Program (\$316.7 million in 2009/10);
- \$118.8 million for uncollectible receivables under the Ontario Disability Support Program (\$5 million in 2009/10);
- \$71.9 million for uncollectible retail sales tax (\$21.4 million in 2009/10);
- \$65.1 million for uncollectible corporate tax (\$55.5 million in 2009/10);
- \$9.6 million for uncollectible tobacco tax (\$200,000 in 2009/10); and
- \$6.4 million for uncollectible employer health tax (\$5.4 million in 2009/10).

Volume 2 of the 2010/11 Public Accounts summarizes the writeoffs by ministry. Under the accounting policies followed in the preparation of the consolidated financial statements of the province, a provision for doubtful accounts is recorded against accounts receivable balances. Accordingly, most of the writeoffs had already been expensed in the government's consolidated financial statements. However, the actual deletion from the accounts required Order-in-Council approval.

Reports on Value-for-money Audits and Reviews

Our value-for-money (VFM) audits are intended to examine how well government, organizations in the broader public sector, agencies of the Crown, and Crown-controlled corporations manage their programs and activities. These audits are conducted under subsection 12(2) of the *Auditor General Act*, which requires that the Office report on any cases observed where money was spent without due regard for economy and efficiency or where appropriate procedures were not in place to measure and report on the effectiveness of service delivery. Where relevant, such audits also encompass compliance issues. This chapter contains the conclusions, observations, and recommendations for the value-for-money audits and one review conducted in the past audit year.

The ministry programs and activities and the organizations in the broader public sector audited this year were selected by the Office's senior management on the basis of various criteria, such as a program's or organization's financial impact, its perceived significance to the Legislative Assembly, related issues of public sensitivity and safety, and the results of past audits and related follow-up work.

We plan, perform, and report on our value-for-money work in accordance with the professional

standards for assurance engagements, encompassing value for money and compliance, established by the Canadian Institute of Chartered Accountants. Accordingly, our audits include such tests and other procedures as we consider necessary in the circumstances, including obtaining advice from external experts when needed.

Before beginning an audit, our staff conduct in-depth research into the area to be audited and meet with auditee representatives to discuss the focus of the audit. During the audit, staff maintain an ongoing dialogue with the auditee to review the progress of the audit and ensure open lines of communication. At the conclusion of the audit fieldwork, which is normally completed by late spring of that audit year, a draft report is prepared, reviewed internally, and then discussed with the auditee. Senior Office staff meet with senior management from the auditee to discuss the draft report and to finalize the management responses to our recommendations. In the case of organizations in the broader public sector, discussions are also held with senior management of the funding ministry. All responses are then incorporated into the report in each of the VFM sections.

Chapter 3

Section 3.01

Financial Services Commission of Ontario

Auto Insurance Regulatory Oversight

Background

The Financial Services Commission of Ontario (FSCO) is an arm's-length agency of the Ministry of Finance responsible for regulating the province's insurance sector, including auto insurance. FSCO also regulates pension plans, mortgage brokers, credit unions, caisses populaires, loan and trust companies, and co-operative corporations in Ontario.

FSCO's mandate is to provide regulatory services that protect the public interest and enhance public confidence in the regulated sectors through licensing, monitoring, and enforcement. FSCO's senior official, the Superintendent of Financial Services, is responsible for the general supervision of the regulated sectors as well as the administration and enforcement of the *Financial Services Commission of Ontario Act* and other related statutes.

The most significant piece of legislation for auto insurance is the *Insurance Act*, which establishes standards for the auto insurance industry and empowers FSCO to regulate insurer behaviour and investigate complaints about unfair practices.

FSCO's high-profile activities include ruling on applications for premium-rate changes by Ontario's 100 or so private-sector insurance companies. About 20 of these companies hold about 75% of the

market. Commission rulings must ensure that the proposed premiums are justified based on factors such as an insurance company's past and expected claim costs, its operating expenses, and what would be a reasonable profit.

In addition, FSCO periodically reviews the statutory accident benefits available to people injured in automobile accidents. It provides dispute resolution services, such as mediation, to settle disagreements between insurers and injured persons about the entitlement to and amount of statutory accident benefits. FSCO also administers the Motor Vehicle Accident Claims Fund, which compensates people injured in automobile accidents when there is no insurer to cover the claim. The Fund is mainly financed by revenues from fees for drivers' licence registrations and renewals.

In the 2010/11 fiscal year, FSCO spent a total of \$59 million. Expenditures for FSCO's Auto Insurance Division were approximately \$14 million, with 95% of that amount going to salaries and benefits. FSCO recovers all of its costs relating to the regulation of auto insurance from insurance companies operating in Ontario.

Auto Insurance in Ontario

Ontario has about 9 million licensed drivers and 7.5 million passenger cars and trucks. In the past

10 years, the number of people killed or injured in motor vehicle accidents in the province has declined by about 25%. In 2009, the latest year for which a breakdown exists, 535 people were killed in accidents and another 61,975 were injured. Approximately 60% of injuries were minor, including sprains, strains, and minor or moderate whiplash, while 39% were moderate to major, including fractures or internal organ damage. The remaining 1%—about 800 people—suffered catastrophic injuries, such as severe brain impairment or paraplegia, or required amputation.

Auto insurance has been compulsory in Ontario since 1979. In 1990, the province introduced a mixed no-fault/tort insurance system, requiring the payment of injury and property-damage claims by the insurance company of each vehicle involved in an accident, regardless of fault. Coverage levels for different types of injuries and death claims are set out in the Statutory Accident Benefits Schedule (SABS) under the *Insurance Act*. However, people experiencing serious injuries can also sue at-fault drivers for damage in excess of SABS benefits for economic loss and/or pain and suffering.

Despite the no-fault rules, Ontario law requires insurers to assign “fault” to a driver in an accident as set out in regulations to the Act, which can lead to increases in that driver’s premiums.

Ontario motorists are required to purchase insurance that includes:

- standard SABS coverage for medical benefits, attendant care, and disability income for people injured in an automobile accident as well as death and funeral benefits for those killed in an accident regardless of who was at fault;
- a minimum of \$200,000 in third-party liability coverage for personal and property claims as a result of lawsuits against the insured;
- direct compensation coverage for damage to a vehicle owned by the insured caused by another driver (no fault); and

- uninsured automobile coverage to protect against injuries and damage to a vehicle caused by an uninsured motorist.

Consumers can increase their third-party liability and SABS coverage and also purchase other optional insurance, such as caregiver coverage. Additional voluntary insurance coverage for the vehicle is also available, including collision coverage for damage to vehicles and comprehensive coverage for theft, vandalism, and other perils such as fire, flood, or hail. For example, FSCO informed us that 99% of Ontario drivers in the five years ending in 2010 purchased more than the mandatory \$200,000 minimum third-party liability coverage.

In the 2010 calendar year, Ontario drivers paid \$9.8 billion in auto insurance premiums. The total number of claims in 2010 was approximately 584,000, with claims costs totalling \$8.7 billion, broken down as follows:

- \$4.5 billion in SABS benefits;
- \$2 billion for third-party liability;
- \$900 million in direct compensation for property damage caused by other drivers; and
- \$1.3 billion for other property claims such as collision and comprehensive damage.

Audit Objective and Scope

Our audit objective was to assess whether FSCO had adequate systems and procedures in place with respect to its auto insurance responsibilities to:

- ensure compliance with relevant legislation and its own policies established to protect the public interest and to enhance public confidence in the auto insurance sector;
- administer the Motor Vehicle Accident Claims Fund in the public interest; and
- measure and report on the effectiveness of its regulatory oversight.

Prior to our fieldwork, we identified criteria to be used to address our audit objective. Senior

management at FSCO reviewed these criteria and agreed to them.

The scope of our audit included a review and analysis of FSCO's relevant files, policies, and procedures, as well as interviews with the appropriate staff. We also held discussions with, and obtained information from, a variety of organizations, including insurance companies, the Insurance Bureau of Canada (the national industry association representing some 90% of the private insurance market), and other stakeholders such as health-care providers, consumers, and lawyers with an interest in auto insurance.

We researched auto insurance regulatory legislation and operations in several other North American jurisdictions and visited the Manitoba Public Insurance Corporation, the Insurance Corporation of British Columbia, the Alberta Superintendent of Insurance, and the Alberta Automobile Insurance Rate Board to discuss their perspectives on regulating the auto insurance sector and the administration of insurance operations. We also engaged on an advisory basis the services of an independent expert with senior management experience in the insurance sector.

We also reviewed recent audit reports issued by the government's Finance and Revenue Audit Services Team related to FSCO and, as a result, we were able to reduce the scope of our examination over the Motor Vehicle Accident Claims Fund's contract with an independent claims adjuster.

Summary

The responsibility of the government includes balancing the need for a financially stable auto insurance sector with the need to ensure that consumers pay affordable and reasonable premiums and receive fair and timely benefits and compensation when they are involved in accidents. The Superintendent of Financial Services (Superintendent) is responsible for administering the legislation

and regulations that the government establishes to achieve these objectives. Claims payments are the largest driver of the cost of auto insurance premiums, and with the average injury claim in Ontario of about \$56,000 being five times more than the average claim in other provinces, Ontario drivers generally pay much higher premiums than other Canadian drivers do. Another reason claims costs in Ontario are higher is because Ontario's coverage provides for one of the most comprehensive and highest benefit levels in Canada.

Although the government has begun taking action to address the high cost of claims in Ontario, the following observations outline some of the challenges the Financial Services Commission of Ontario (FSCO) faces if it is to be more successful in proactively fulfilling its role of protecting the public interest and enhancing public confidence in the auto insurance industry.

- From 2005 to 2010, the total cost of injury claims under the Statutory Accident Benefits Schedule (SABS) rose 150% even though the number of injury claims in the same period increased only about 30%. Moreover, the number of injury claims in 2009, at almost 75,000, was 20% higher than the number of people reported by the Ministry of Transportation as having been injured in automobile accidents that year and FSCO had not analyzed the reasons for this significant difference.
- Between 2008 and 2009, SABS benefits payments rose 37% in the Greater Toronto Area (GTA), compared to 23% in other Ontario cities and just 14% in rural areas. According to FSCO this may be attributable in part to the concentration of plaintiff representor and health-care provider communities in the GTA. Accordingly, GTA vehicle owners pay higher premiums than motorists in other parts of Ontario.
- FSCO had not routinely obtained assurances from insurance companies—nor had it conducted any regular on-site compliance

reviews to ensure—that they have paid the proper amounts for claims or that they have handled claims judiciously. Without such assurances, the risk exists that consumers will not be treated fairly. There is also a risk that unnecessarily high claims costs could result in the need for insurers to raise premiums and may also help insurers obtain approval from FSCO for higher premium increases. FSCO has recently initiated action to address this.

- Industry estimates peg the value of auto insurance fraud in Ontario at between 10% and 15% of the value of 2010 premiums, or as much as \$1.3 billion. Unlike many other provinces and American states, Ontario does not have significant measures in place to combat fraud. The government and FSCO are awaiting the recommendations of a government-appointed anti-fraud task force expected in fall 2012.
- In approving premium rates for individual insurance companies, FSCO allows insurers a reasonable rate of return, which was originally set at 12.5% in 1988, based on the benchmark long-term bond rate of 10%, and revised to 12% in 1996. However, that profit margin has not been adjusted downward since that time, even though the long-term bond rate has been about 3% for the last couple of years and is projected to remain at a relatively low level for some time. Furthermore, FSCO needs to improve its documentation supporting its premium-rate-change decisions and approvals to ensure that it can demonstrate that it treats all insurers' requests consistently and that premium-rate changes approved are just and reasonable.
- Increasing demand and restraints on resources have caused significant backlogs in FSCO's mediation services for claimants in dispute with insurers, with resolutions taking 10 to 12 months rather than the legislated 60 days. It also did not capture information that would allow it to assess the reasons why the number

of applications for mediation has sharply risen—by 135% over the last five years, with about half of all injury claims ending up in mediation. Demand for mediation is highest in the GTA, where 80% of all mediation applications originate, even though the GTA accounts for just 45% of automobile accidents involving injuries.

- FSCO does not yet have any meaningful measures of its success in meeting its mandate to oversee auto insurance or of its customer service performance that could be publicly reported in its annual report and on its website.

We considered FSCO's first comprehensive review of the statutory accident benefits, which was completed in 2009, to have been a good measure to assess automobile injury claims, although we believe that such reviews should be conducted when circumstances warrant doing so rather than only at the legislated five-year frequency. As a result of the first review, the SABS was changed by the government in September 2010. FSCO advised us that it was too early to determine if the changes had mitigated the significant recent growth in the average claim cost and stabilized premiums.

Related areas that the government and FSCO needed to address include the following:

- The Motor Vehicle Accident Claims Fund had \$109 million less in assets as of March 31, 2011, than it needs to satisfy the estimated lifetime costs of all claims currently in the system. This unfunded liability is expected to triple by the 2021/22 fiscal year unless the revenues are significantly increased. For instance, the government would have to double the \$15 fee currently added to every driver's licence renewal to eliminate the unfunded liability.
- All provinces, including Ontario, require that insurers, rather than taxpayers, pay for the health-care-system costs of automobile-accident victims. The amount of assessment FSCO collects annually from insurers on behalf

of the Ministry of Health and Long-Term Care to cover these costs has not increased since 2006, even though health-care spending in Ontario has increased by about 25% and medically-related statutory accident benefit costs have increased by almost 120% over the same period. If Ontario's health-care assessment per registered vehicle were raised to the average of other provinces, the cost to the taxpayers of covering these health-care expenses would be reduced by more than \$70 million, but such a move would likely add almost \$10 to the annual insurance premium for each vehicle in Ontario.

OVERALL FSCO RESPONSE

FSCO welcomes the Auditor General's recommendations. While the effectiveness and administration of Ontario's auto insurance regulatory regime by FSCO is generally sound, the audit recommendations will strengthen the oversight of the auto insurance system.

The government has a challenging task in balancing the need for a financially stable auto insurance sector with the needs of consumers. FSCO supports the government in meeting this challenge by administering auto insurance legislation and regulations. FSCO plays an important role in ensuring that the pricing of auto insurance in Ontario remains reasonable through its rate regulation process and that individuals injured in auto accidents are treated fairly.

In 2009, FSCO completed its first comprehensive five-year review of Ontario's auto insurance system, which it presented to the government. The review assessed several systemic problems and, as a result of the first review, the government made significant regulatory changes in September 2010. FSCO continues to work on implementing a range of additional longer term projects announced by the government as part of its 2010 reforms.

Detailed Audit Observations

STATUTORY ACCIDENT BENEFITS CLAIMS COSTS

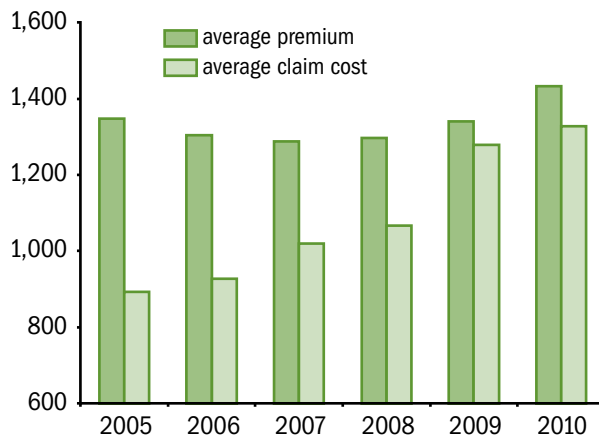
Past Reforms

Ontario's auto insurance program has undergone numerous changes since the introduction of a mixed no-fault/tort insurance system in 1990, with legislative reforms enacted in 1994, 1996, 2003, 2006, and 2010. These changes were made largely to address both the significant growth in the cost of Statutory Accident Benefits Schedule (SABS) payouts and the resulting increase in insurance premiums. In each case, however, the legislative reforms provided only temporary relief from higher premiums. As a result, we noted that Ontario's auto insurance system has a history of increasing claims costs, which insurance providers ultimately pass on to drivers through higher premiums. In our view, more timely changes could have been made and are still needed to control claims costs and premiums.

In 2003, the government amended the *Insurance Act* to require the Superintendent of Financial Services (Superintendent) to undertake a review of the effectiveness and administration of auto insurance at least every five years and make recommendations for improvement to the Minister of Finance. In 2008, FSCO undertook the first statutory five-year review, which led to a report to the Minister of Finance and to legislative changes in the SABS in September 2010. By that time, however, claims costs had already risen rapidly between 2005 and 2010, as shown in Figure 1. From 2005 to 2010, total claims costs in Ontario increased by 61%, from \$5.4 billion to \$8.7 billion. FSCO informed us that the primary cause for this escalating trend was increased SABS benefits costs, not the increase in the number of accident claims. Indeed, the injuries claim costs rose 150%, even though the number of injury claims increased by only 30% over the same period.

Figure 1: Ontario Average Premium and Claim Cost, 2005–2010 (\$ per insured private passenger vehicle)

Source of data: General Insurance Statistical Agency*



* The General Insurance Statistical Agency is a not-for-profit corporation established to compile auto insurance statistics on behalf of Superintendents in provinces where there is private-insurer delivery of auto insurance. Statistics reported include private passenger vehicles and exclude commercial vehicles.

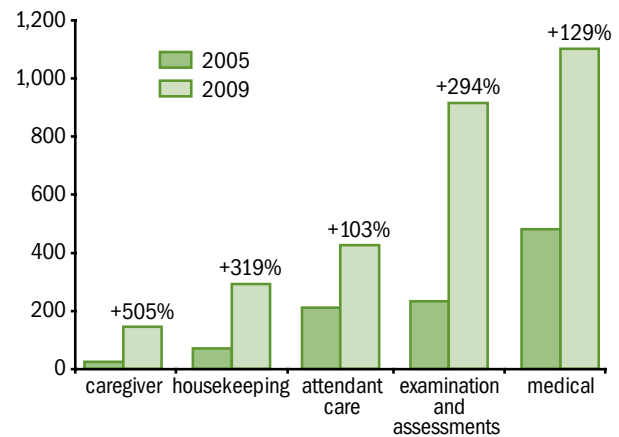
When we analyzed the \$8.7 billion in total claims costs for 2010, we found that SABS benefits costs accounted for \$4.5 billion, or more than half the total. That compares with 2005 SABS benefits costs of \$1.8 billion, or one-third of the total. Compared to the 150% increase in the SABS portion of total claims costs between 2005 and 2010, the other claims-costs components, including third-party liability and collision, rose by a more modest 16%, to \$4.2 billion from \$3.6 billion.

Over the same five-year period, the average SABS benefits cost per claim rose 92%, to \$56,092 from \$29,189. In its statutory five-year review, FSCO identified significant cost increases of between 103% and 505% in the key benefit components of the SABS, as illustrated in Figure 2.

FSCO attributed the cost increases of SABS benefits to what it called “over-utilization,” especially before the reforms of September 2010. Previously, there were few limits on treatment and assessment expenses, and those that existed were higher than needed. We were informed that providers of legal and health-care services may have benefited from the lack of properly defined limits by over-treating and over-assessing patients.

Figure 2: Increases in Ontario’s Statutory Accident Benefits Costs by Type of Benefit, 2005 and 2009 (\$ million)

Source of data: Financial Services Commission of Ontario



For example, the Insurance Bureau of Canada reported that as much as 30% to 40% of every dollar spent in 2007 to treat automobile-accident claimants in Ontario went to examinations and assessments by regulated health professionals prior to initiating benefits and treatment. According to FSCO, this level of assessment activity was inconsistent with that being incurred by the other provinces.

FSCO further informed us that a dramatic cost increase in SABS benefits in the Greater Toronto Area (GTA) was a major contributor to the overall increase in accident benefit costs in the province between 2008 and 2009. Over that single year, SABS benefits costs rose 37% in the GTA, compared to 23% in other Ontario cities and just 14% in rural areas. Accordingly, GTA drivers on average pay significantly higher premiums than motorists in rural Ontario.

2010 Auto Insurance Reforms

SABS benefits increase for more severe injuries. As a result, the government and FSCO need to ensure that the definitions of injuries are clear, so that insurance companies and claimants can agree on the associated benefits for the level of health care and amount of compensation to which claimants

are legally entitled. Where uncertainty exists, claimants may seek, typically with the assistance of legal professionals and health-care providers, to categorize their injuries as more severe to maximize benefits and compensation.

Following FSCO's statutory review of the SABS, which included public consultations, the government announced in November 2009 a package of 41 reforms that it said would provide more consumer choice and premium stability. The reforms would achieve these goals by controlling claims costs, responding to medical over-assessments and over-treatment of minor injuries, and simplifying the administration of the SABS, as well as making certain enhanced benefits optional at additional premiums. The reforms aimed at controlling claims costs included:

- introduction of a broader definition of minor injuries, called the interim Minor Injury Guideline, to replace the existing minor-injury guideline, called the Pre-approved Framework;
- introduction of an overall \$2,000 limit on the cost of all automobile-accident-injury assessments and a \$3,500 minor-injuries-benefits limit on the cost of all treatment services and assessments combined;
- lower standard medical and rehabilitation benefits for moderate to major injuries, along with lower coverage for attendant care and income replacement benefits; and
- elimination of housekeeping, home maintenance, and care-giving benefits for all but catastrophic claims.

No significant changes were made for claimants with catastrophic injuries, who continue to be eligible for a lifetime maximum of \$1 million for medical treatment and rehabilitation, and another lifetime maximum of \$1 million for attendant care.

Regulations to implement the new reforms took effect on September 1, 2010. At the time of our audit, FSCO and insurance industry representatives told us it was too soon to say if the reforms had been effective in limiting claims costs and stabil-

izing premiums. Most insurers we spoke with said it would take at least two years to determine the impact of the reforms.

However, FSCO said that it expected some of the reforms to lead to lower claims costs. For example, before 2010, under the Pre-approved Framework, only whiplash and whiplash-associated injuries were classified as minor injuries. As a result, fewer than 20% of injuries fell within this lower-cost framework. Under the new interim Minor Injury Guideline, minor injuries now include sprain, abrasion, laceration, strain, or minor whiplash. FSCO informed us that it expects 50% to 60% of all SABS benefits claims to fall under this new definition, which caps total payouts for minor injuries at \$3,500.

Some insurance companies have publicly voiced concerns about claimants seeking benefits to which they are not entitled. A common insurer complaint was that some health-care providers repeatedly sought for their clients approval from the insurer for treatment plans exceeding the \$3,500 limit for defined minor injuries under the interim Minor Injury Guideline. FSCO informed us that it was not surprised by this development, because it expected consumers and their representatives to test both the system and the resolve of the insurance companies.

If an insurance company suspects that a claimant's condition meets the definition of minor injuries, it can ask the claimant to undergo examination by the insurer's health-care professional. For example, one insurer said in an industry publication that it tracked approximately 500 claimants injured after the September 2010 rule changes and found that one-third of those who initially requested higher treatment benefits were placed under the \$3,500 limit because an insurer-requested examination determined that their injuries met the definition of a minor injury. Another insurer reported that medical examinations undertaken at its request determined that 80% of claimants who initially sought compensation beyond the \$3,500 cap were in fact not entitled to it.

FSCO informed us during our audit that it will monitor how all stakeholders, including insurers and health-care providers, apply the interim Minor Injury Guideline, and that their compliance with the new guideline is essential to lower the cost of accident benefits and ultimately stabilize premiums.

According to FSCO, consumers need a better understanding about treatment and rehabilitation options, as well as the risks of over-treatment. Although the Ministry of Finance recommended that health-care providers and insurance companies work together to improve consumer awareness and expectations regarding treatment and outcomes as part of the reforms to the SABS, no such action had been taken at the time of our audit.

FSCO also indicated that it expects to replace the interim Minor Injury Guideline in 2013 or 2014 with a more comprehensive evidence-based treatment protocol for such injuries, which will focus on more efficient and effective treatment outcomes.

Ongoing Due Diligence Claims Management

The insurance industry assesses its financial health in large part by a measure it calls the “incurred loss ratio.” The ratio is determined by dividing average claims costs per vehicle by average premiums. According to FSCO, any ratio with a value higher than 80% of total claims expenses compared to total premium revenues may well result in a loss for an insurance company when other administrative and overhead costs (minus investment income) are factored in—a situation that probably cannot continue for an extended period. Ontario’s incurred loss ratio has recently worsened, rising to 93% in 2010 from 66% in 2005.

In addition, according to FSCO’s records, the incurred loss ratios among the top 40 Ontario automobile insurers ranged from 65% to 176% in 2010. This may indicate that some insurers are better able to manage and limit their claims costs and insurance risks than others. Indeed, several stakeholders we interviewed said that insurance companies did not

always apply standard due diligence in adjusting or questioning benefit claims under the SABS.

FSCO informed us that it had expected the insurance companies to respond to its September 2010 reforms by more proactively challenging questionable claims. However, FSCO advised us that it soon identified actions by certain insurers as well as health-care providers that were inconsistent with the intent of the reforms. As a result, FSCO issued a bulletin in March 2011 reminding insurers of their responsibility to challenge questionable or inappropriate claims. According to the bulletin, FSCO was “aware that a small group of service providers and representatives were continuing to abuse the system.” The bulletin goes on to say that “insurers are expected to have and use policies and procedures that comply with best practices and legislative requirements when adjusting all claims.”

Following a government announcement in the March 2011 Budget, FSCO made it a strategic priority in June 2011 to assess how well insurance companies implemented the September 2010 reforms to ensure that consumers are being treated fairly and in accordance with the Act. FSCO intends in future to conduct compliance audits of insurance companies that appear higher-risk, although no dates have been set. FSCO last assessed insurance companies’ compliance with the SABS benefits using a self-assessment questionnaire to all insurance companies in 2006. On the basis of the responses, it made field visits to some insurers and reported on its findings in September 2007.

Auto Insurance in Other Provinces

All Canadian provinces have laws requiring mandatory auto insurance. Three of them (British Columbia, Saskatchewan, and Manitoba) deliver insurance through government-owned insurance corporations. In Quebec, the government insures against injuries and death while private insurers cover property damage, liability, and personal injury in accidents outside the province. Private-sector insurance companies serve the remaining six

provinces, including Ontario. Manitoba, Saskatchewan, and Quebec have no-fault insurance systems. Ontario and the six other provinces have a mixed no-fault/tort system in which benefits are available to injured accident victims from their own insurer regardless of fault, and people have the right to sue responsible parties for further damages.

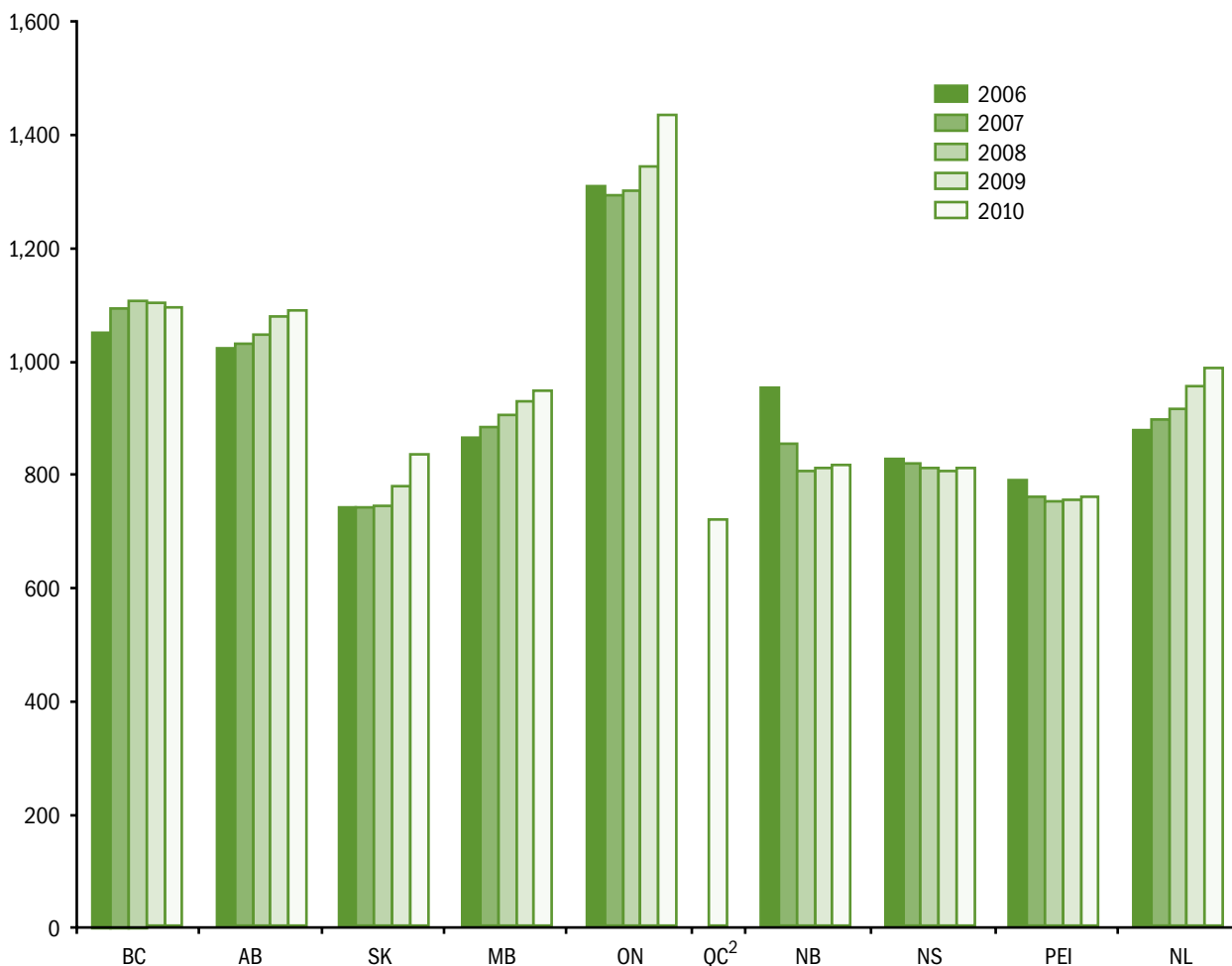
Although Ontario has one of the lowest per-capita rates of automobile-accident deaths and injuries in the country, it also has the highest average premium in Canada, as illustrated in Figure 3, which also shows that most other provinces generally experienced lower premium increases over the last five years—and some actually had premiums

decrease. Claims costs are another key comparison because they constitute the largest cost of any auto insurance system. Figure 4 shows that Ontario has the highest average total claim cost per insured vehicle of any province.

Although health-care costs and income replacement and standard accident benefits levels vary somewhat across Canada, it could also be argued that the average benefit claim cost for automobile-accident injuries should be reasonably similar regardless of whether the comparison is made between the GTA and other cities or between Ontario and other provinces. However, although in 2005 accident benefits cost the same (about

Figure 3: Provincial Comparison of Average Premiums, 2006–2010¹ (\$ per insured private passenger vehicle)

Source of data: General Insurance Statistical Agency and provincial insurance corporations



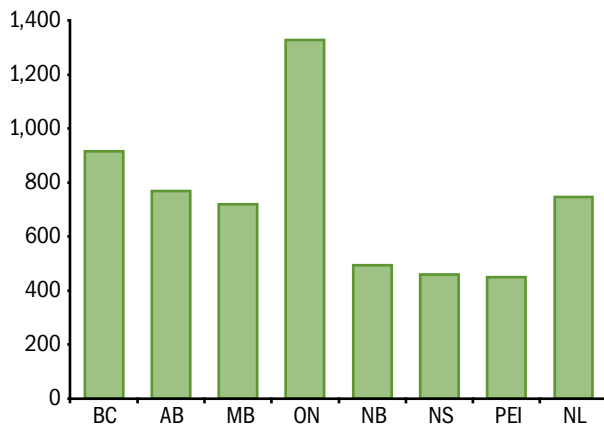
1. Differences in each province's auto insurance coverage and other factors will impact premiums. This comparison does not attempt to adjust for any of these differences.
2. Quebec not available 2006–2009.

\$30,000 per claim on average) in the GTA and the rest of the province, by 2009 the GTA cost per claim had risen to \$60,500—about one-third higher than the \$45,900 cost per claim for the rest of the province. In addition, as Figure 5 indicates, on average Ontario’s claims costs under the SABS are significantly higher than the statutory accident benefits

claims costs incurred by other provinces, with most provinces paying out less than 25% of Ontario’s benefits. This is at least partly due to Ontario accident benefits and the limits on payouts under the SABS, which are generally as high as or higher than most other provinces, as illustrated in Figure 6.

Figure 4: Provincial Comparison of Average Total Claim Costs, 2010* (\$ per insured private passenger vehicle)

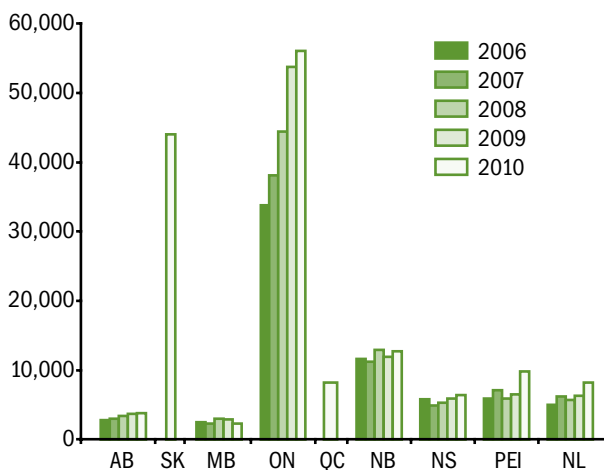
Source of data: General Insurance Statistical Agency and provincial insurance corporations



* Saskatchewan and Quebec not available.

Figure 5: Provincial Comparison of Average Costs per Claim for Statutory Accident Benefits, 2006–2010* (\$)

Source of data: General Insurance Statistical Agency and provincial insurance corporations



* British Columbia not available; Saskatchewan and Quebec 2006–2009 not available.

RECOMMENDATION 1

In order to ensure that the Financial Services Commission of Ontario (FSCO) can effectively monitor Ontario’s auto insurance industry, particularly claims costs and premiums, and recommend timely corrective action to the Minister of Finance when warranted, FSCO should:

- implement regular interim reviews of the Statutory Accident Benefits Schedule to monitor trends such as unexpected escalating claims costs and premiums between the legislated five-year reviews, in order to take appropriate action earlier, if warranted;
- monitor ongoing compliance with the interim Minor Injury Guideline, expedite the work to develop evidence-based treatment protocols for minor injuries, and identify and address any lack of clarity in its definitions of injuries;
- implement its plans as soon as possible to obtain assurance that insurance companies are judiciously administering accident claims in a fair and timely manner; and
- examine cost-containment strategies and benefit levels in other provinces to determine which could be applied in Ontario to control this province’s relatively high claims costs and premiums.

FSCO RESPONSE

Ontario’s auto insurance system is complex and FSCO agrees that the system would benefit from more frequent reviews.

In addition to the five-year review, FSCO conducts a legislated review every three years of the risk-classification and rate-determination

Figure 6: Provincial Comparison of Maximum Statutory Accident Benefits, as of June 2011 *

Source of data: Financial Services Commission of Ontario and each province's auto insurance provider or regulator

Benefit Type	Ontario Maximum Benefits with Private Insurers	Range of Maximum Benefits—Other Provinces with Private Insurers	Range of Maximum Benefits—Other Provinces with Publicly Operated Insurance
medical	\$50,000 for 10 years (\$1 million over lifetime for catastrophic injury)	\$25,000 for four years to \$50,000 for four years	\$150,000 over lifetime to unlimited benefit over lifetime
attendant care	\$36,000 for two years (\$1 million over lifetime for catastrophic injury)	included under medical benefits	included under medical benefits to \$4,142 per month with no lifetime limit
income replacement—partial disability	70% of gross income to a maximum of \$400/week, maximum 104 weeks	\$0 to \$250/week for up to 104 weeks	between 75% of gross income (to a maximum of \$300/week for 104 weeks) and 90% of net income (up to \$83,000)
income replacement—full disability	partial disability payments continued for lifetime	\$400/week for up to 104 weeks to \$250/week continued for lifetime	partial disability payments continued for lifetime
death benefit	\$25,000 to spouse and \$10,000 to each dependent	spouse: \$10,000–\$50,000 each dependent: \$1,000–\$6,000	spouse: between \$5,000 plus \$145/week for 104 weeks and \$415,000 each dependent: between \$1,000 plus \$35/week for 104 weeks and \$54,817

* Includes lowest and highest maximum statutory accident benefits provided by the group. Only Ontario and provinces with publicly operated no-fault insurance have catastrophic injuries benefits; however, tort compensation is available in B.C. and the provinces with private insurers, as well as in Ontario.

regulations. As well, FSCO participates in a review of the adequacy of the Statutory Accident Benefits every two years. FSCO believes these three statutory reviews could be combined into one comprehensive review that takes place on a more frequent basis than every five years and will communicate this to the Ministry of Finance. As part of a more comprehensive and frequent review, FSCO would also examine cost containment strategies and benefit levels in other provinces and would provide this analysis to the government.

FSCO believes that the development of an evidence-based treatment protocol for minor injuries is an important step in ensuring that the treatment provided to individuals injured in auto accidents in Ontario reflects the current medical science. FSCO will be issuing a Request for Proposal for consulting services to develop a new treatment protocol and will be requiring

that this work be completed in two years instead of the planned three-year time frame.

FSCO also recognizes the importance of making insurance companies more accountable for the administration of statutory accident benefits claims in a fair and timely manner. During the summer of 2011, FSCO introduced a new requirement that insurance companies provide CEO attestations that they have controls, procedures, and processes in place to ensure compliance with legislative requirements around the payment of such claims.

FRAUD IN AUTO INSURANCE

Ontario's Experience

It is a federal Criminal Code offence to defraud or attempt to defraud an insurance company, with conviction carrying large fines and/or a prison term

of up to 10 years. Auto insurance fraud can involve claimants in a legitimate minor accident who misrepresent the injury or damage to get higher compensation; service providers who claim for unnecessary services or for services not rendered; and staged accidents and faked injuries. According to the Insurance Bureau of Canada and FSCO, a significant amount of fraud involves false claims for physical injury and accident benefits authorized by health-care service providers.

It is impossible to give a precise figure for the value of auto insurance fraud in Ontario, but recent insurance industry estimates indicate that the problem is serious and suggest that fraud-related costs may have accounted for between 10% and 15% of auto insurance premiums in 2010, or up to \$1.3 billion. Stated another way, fraud-related costs account for up to 15 cents of every dollar of premiums paid.

Another indicator of possible fraud in the system is the recent significant discrepancy in the number of injury claims reported by the General Insurance Statistical Agency compared to the number of injuries reported by the Ministry of Transportation. Over a one-year period in 2009, the number of injury claims increased 13% and the average cost of claims rose 32%, although the number of reported injuries in Ontario from automobile accidents decreased by 1%. Moreover, there were almost 75,000 injury claims filed—20% more than the 62,000 injuries from automobile accidents actually reported at the time of the accidents. Before 2009, the number of injury claims was below or slightly above the Ministry of Transportation reported injuries. FSCO has not analyzed the reason for these significant discrepancies and increases, and whether they may be partly attributable to fraud.

Our discussions with insurance industry representatives in Ontario and other provinces indicated that the problem of fraud is worse in Ontario than elsewhere in Canada, and it has been growing since the mid-1990s. Even a decade ago, the Insurance Bureau of Canada reported that Ontario had the

highest fraud rate of the nine provinces that participated in a 2001 study.

Insurers and their customers are the victims through increased premiums when auto insurance fraud is perpetrated. However, the decision to investigate fraud is left to each insurer. Most, if not all, insurers as well as the Insurance Bureau of Canada have their own investigators. FSCO, on the other hand, has had a minimal role in fraud identification, investigations, and prosecutions.

If an insurance company decides to take action against someone it suspects of fraud, it may contact FSCO directly or pass information on to the Insurance Bureau of Canada for further review and analysis. The Insurance Bureau of Canada may in turn forward the case to FSCO.

FSCO's Investigations Unit, which comprises nine investigators who are primarily former police officers, is responsible for investigating all financial-services companies and individuals regulated by FSCO and not just automobile insurers. As a result, the unit's investigation of fraud against individual auto insurance companies is not its primary activity. FSCO relies on the Insurance Bureau of Canada or insurance companies to provide the information and evidence necessary to launch an auto insurance fraud investigation and win a successful conviction. FSCO itself has no jurisdictional authority to prosecute fraud under the Criminal Code; that authority belongs to the Ministry of the Attorney General. FSCO does have the authority under the *Insurance Act* to prosecute provincial offences such as health-care fraud in the auto insurance sector through the *Provincial Offences Act*. It may take action on any of the following offences:

- charging for services not provided;
- charging, paying, and/or accepting referral fees; and
- making a false or misleading statement to an insurer in order to obtain payment for goods and services.

Fines range from a maximum \$100,000 on a first conviction to a maximum \$200,000 for subsequent convictions. FSCO investigators have limited

ability to collect information from a health-care professional or clinic owner. Therefore, FSCO relies on insurance companies to provide the evidence that is needed to prosecute. In contrast, FSCO has significant authority over insurance companies, which are required by law to furnish FSCO with full information. FSCO advised us that because the burden of proof is high and its investigative powers are limited, its chances of winning a prosecution against a clinic owner are relatively low.

We noted that despite the recent increase in public awareness of health-care fraud, there has been no increase in the number of cases being forwarded to FSCO. FSCO received 16 complaints against health-care professionals and clinic owners between 2008 and the first half of 2011 but had obtained convictions only against three health-care clinic owners between 2007 and 2010, resulting in fines totalling \$202,000.

More recently, insurance companies have begun to deal with fraud in civil rather than criminal court. In 2010, several insurers sued selected health clinics over alleged fraud related to auto insurance claims. One insurance company alleged it paid out at least \$1.2 million to three clinics owned by the same individual for medical services that were never provided. Other legal action alleged that invoices were submitted from health-care clinics totalling over \$1 million for treatment allegedly provided by persons who did not work at the clinic or who had left prior to the treatment being billed. At the time of our audits, these suits, some seeking restitution for several million dollars, were still pending.

Anti-fraud Measures outside Ontario

The Insurance Bureau of Canada issued a report in February 2011 on “Preventing Auto Insurance Fraud in Ontario” to the Ontario Minister of Finance. In it, the Insurance Bureau concluded that fraud is a “serious” problem in Ontario and recommended several measures to help address the issue and reduce claims costs. We noted that the majority of these recommendations reflected actions taken

by U.S. jurisdictions over the past decade to curb fraud. The recommendations included:

- establishment of a bureau of insurance fraud investigations and prosecutions under the *Insurance Act* that would be administered by FSCO;
- increased criminal and civil penalties for fraud;
- civil immunity for persons or organizations reporting suspicious activity;
- mandatory notification of health-care fraud convictions to relevant professional colleges and the Ministry of Health and Long-Term Care;
- creation of a joint Ontario government-insurance industry fund to finance fraud investigations and prosecutions, and to provide cash rewards to people providing information leading to a conviction of insurance fraud;
- mandatory criminal background checks for any director, officer, or owner of an independent health clinic before granting a license to operate; and
- establishment of a public-education campaign on insurance fraud.

All 50 U.S. states have enacted laws defining insurance fraud as a specific crime, and 41 have established Insurance Fraud Bureaus. Insurers in these jurisdictions must comply with fraud-reporting requirements before regulators will consider their applications for premium increases. Twenty states require insurers to forward all suspicious claims to a state Insurance Fraud Bureau. Other anti-fraud measures taken by one or more U.S. states include:

- rewards of up to \$25,000 for information about fraudulent acts;
- public education and advertising campaigns such as Virginia’s fraud awareness website www.stampoutfraud.com and Pennsylvania’s www.helpstopfraud.org.
- a requirement that accident reports list all passengers involved in an accident and not just the driver; and

- withholding benefits from anyone convicted of insurance fraud.

We found in our discussions with two government-operated insurance corporations in other provinces that their monopoly offered several distinct advantages in the fight against fraud, including:

- their ability to publish an annual top-10 list of auto insurance frauds in their province;
- operation of a special unit composed of former police officers to investigate alleged fraudulent claims, along with funding for Crown prosecutors dedicated to handling insurance fraud; and
- employment of extensive data-mining techniques and fraud analytics of claims data to identify potential fraud. Each corporation maintains a central database of all claims in the province, making it possible to identify unusual claims or trends that require further investigation.

FSCO, by contrast, is a regulator rather than an insurer and thus has no first-hand knowledge of auto insurance fraud in this province. Information about the occurrence and extent of fraud in the auto insurance sector is proprietary information belonging to insurance companies. Insurers in Ontario have historically been reluctant to acknowledge publicly any incidences of fraud, or to share this information with government organizations, including FSCO. Most of the recommendations in the Insurance Bureau of Canada's report are beyond FSCO's ability to implement without government approval. In its 2011 Budget, the government announced measures to address auto insurance fraud. One measure included the establishment of an auto insurance anti-fraud task force. Task-force members were appointed in July 2011 with a deadline to issue a final report with recommendations by fall 2012. In addition, the government announced the recently-created Health Claims for Auto Insurance (HCAI) system will be used to detect potential fraud. FSCO and insurance companies established HCAI on February 1, 2011, an online database and

billing portal requiring health-care providers to submit billings for injury claims centrally before they are forwarded to insurers for payment.

RECOMMENDATION 2

To reduce the number of fraudulent claims in Ontario's auto insurance industry and thereby protect the public from unduly high insurance premiums, the Financial Services Commission of Ontario (FSCO) should use its regulatory and oversight powers to:

- help identify potential measures to combat fraud, including those recommended by the Insurance Bureau of Canada and those in effect in other jurisdictions, assess their applicability and relevance to Ontario, and, when appropriate, provide advice and assistance to the government for their timely implementation; and
- ensure development as soon as possible of an overall anti-fraud strategy that spells out the roles and responsibilities of all stakeholders—the government, FSCO, and insurance companies—in combatting auto insurance fraud.

FSCO RESPONSE

FSCO shares the Auditor General's concerns about fraudulent auto insurance claims. The Ministry of Finance's Auto Insurance Anti-Fraud Task Force will identify measures to combat fraud. FSCO supports and is working with the Task Force's steering committee and working groups. FSCO will implement any changes in regulatory responsibilities arising from the Task Force's recommendations.

RATES FILINGS AND APPROVALS

All automobile insurers are required under the *Insurance Act* and the *Auto Insurance Rate Stabilization Act* to obtain approval from FSCO's Superintendent

of Financial Services for the premiums they charge and for any changes to the authorized rates. The Superintendent is required to reject any application where rates:

- are not just and reasonable in the circumstances; or
- would impair the financial solvency of the insurer; or
- are excessive in relation to the financial circumstances of the insurer.

Proposed premium rate changes by insurers are ultimately a business decision based on factors that include past and anticipated claims costs, operating costs, and profit levels. Insurance companies are not required to submit rate applications at any specific interval; instead, they submit when they determine that an adjustment, increase, or decrease is appropriate. The main type of filing, a major filing for private passenger auto insurance, must be certified by a qualified actuary, a business professional who uses mathematics to provide expert assessments of the financial impact of risk and uncertainty as it relates to insurance premiums, expected claims, and reserves.

Approval of Rates

In order to determine whether the proposed rate is justified, FSCO conducts its own actuarial reviews using benchmark assumptions. FSCO informed us that, in so doing, it recognizes that actuaries use a degree of acceptable professional judgment in determining assumptions in their assessments and may come to different conclusions. FSCO also considers other factors, such as the actuaries' assumptions that cause differences, rate stability for consumers, and the actual rates charged in the market compared to other insurers, in determining whether the proposed rate is justified and reasonable. As a result, FSCO may approve an insurer's proposed rate increase even if it is up to three percentage points higher than FSCO's calculated rate. During the audit, we noted that this practice of permitting a three-percentage-point margin was

not documented in FSCO's filing policies, although it subsequently added this practice to its rates approval policies when we brought this to FSCO staff's attention.

Between 2006 and 2010, FSCO reviewed and approved 293 major filings, as follows:

- approval of the full request in 65% of filings submitted by automobile insurers;
- approval of a lower-than-requested rate in 25% of filings; and
- approval of a higher-than-initially-requested rate in 10% of filings.

It is important that FSCO be consistent in its granting of approvals; otherwise, it may provide a competitive advantage to one insurer over another or may be seen as providing unequal treatment to companies and consumers. It is also important, particularly when FSCO's conclusions are significantly different from those of the insurers' actuaries, that FSCO clearly document the rationale for its decisions in order to demonstrate fairness and consistency. We noted that for approvals granted for a lower-than-requested rate, in some instances the rate approved still exceeded FSCO's calculated rate by more than 3% and the reasons for the approvals were not adequately documented. In one case, the file did not clearly indicate why an insurer received permission for an increase that was eight percentage points higher than indicated by FSCO's own actuarial determination. In this case, we estimate that the additional percentage increase allowed could result in additional annual premium income of \$25 million for the insurer.

In the cases where FSCO authorized a higher-than-initially-requested rate, we also generally found inadequate documentation to justify FSCO's decision to grant a higher-than-initially-requested increase. For example, we were informed that FSCO approved a rate higher than initially proposed by an insurer on grounds that the insurer had or could have financial solvency issues, and it was important to protect the company's clients over the long term by granting a higher premium than had initially been requested. However, we noted that FSCO

requested the insurer to increase its rates even though there were no financial solvency concerns identified by the Office of the Superintendent of Financial Institutions, a federal regulator. The insurer agreed to the request. FSCO had no formal policy on approving the rates of companies with financial solvency concerns or on providing guidance on if and when companies should be asked to resubmit their filings for a higher rate increase than initially requested.

We acknowledge, however, that according to FSCO, no auto insurance companies operating in Ontario have declared bankruptcy since 2002 or defaulted for financial reasons on their claims payouts.

Review of the Profit Provision

When determining whether to approve a rate filing, FSCO conducts its assessment by factoring in a reasonable profit for the insurance company based on a 12% return on equity (ROE). A study conducted in 1988 set the ROE at 12.5% based on its relationship to the long-term Canada Bond rate, which was 10% at the time. The ROE was last changed to 12% in 1996, and we were advised that FSCO has not since conducted a comprehensive review of what it considers a reasonable profit for insurance companies operating in Ontario. Given that long-term Canada Bond interest rates were substantially lower at the time of our audit, standing at about 3%, have been low for some time, and are forecasted to stay low for some time, the current 12% ROE could be higher than appropriate, assuming that FSCO still considers the long-term bond rate to be an appropriate benchmark. In any case, given that it has been 15 years since the 12% ROE was established, we believe that a reassessment is long overdue.

Approved Premium Rate Implementation

To inform consumers of approved premium rate changes, FSCO publicly reports on a quarterly basis all insurers' rate filing approvals, listing the overall

average percentage rate change to the authorized rates. Consumers renewing their auto insurance at the same time might attempt to compare their actual rate change to their insurer's approved rate change as published by FSCO, but it is unlikely that the overall average approved rate change would be exactly the same because premiums also reflect such variables as the claims experience of the group classification and location. As a result, consumers are unsure if the new rate they are paying is in keeping with that insurer's overall rate approval.

Consumers can complain to FSCO if they are paying an incorrect rate, and FSCO will follow up with a review of the complaint and the approved rates on file. An investigation will take place where warranted. FSCO informed us that between the 2005/06 and 2009/10 fiscal years, only five of the 22 incorrect rate application cases that it investigated were initiated by the public and other sources, while the remaining 17 were self-reported by insurers. We were advised that when FSCO establishes that there has been an error, it follows up to ensure that the consumer has received a refund and any applicable interest, and may conduct an on-site review of the insurer to assess procedures and the accuracy of approved rates.

In the four-year period from 2005/06 through 2009/10, FSCO levied four fines against insurance companies totalling approximately \$250,000 for rate errors. Such errors can have a significant financial impact on consumers—we noted examples of overbilling that totalled between \$1 million and \$11 million.

For all rate approvals, FSCO requires insurers to update their rate manuals and provide FSCO with a certificate signed by a senior officer attesting that they will charge the approved rates and change their information systems accordingly. However, FSCO did not have any procedures for periodically checking that insurers were charging the approved rates. FSCO had not considered the option of requiring insurance companies to provide attestations from third parties, such as their auditors, that the approved rates were actually being applied correctly.

RECOMMENDATION 3

To ensure that the Financial Services Commission of Ontario (FSCO) fairly and consistently authorizes auto insurance company premium rate changes while protecting consumers, FSCO should:

- update and document its policies and procedures for making rate decisions—particularly for applications that differ from its own assessments—and for properly assessing rate changes in light of actual financial solvency concerns of insurance companies;
- review what constitutes a reasonable profit margin for insurance companies when approving rate changes, and periodically revise its current assessment to reflect significant changes; and
- establish processes for verifying or obtaining assurance that insurers actually charge only the authorized rates.

FSCO RESPONSE

FSCO operates one of the most robust premium rate approval processes in North America and fully supports further strengthening of its process. In particular, FSCO acknowledges the need to update policies and procedures to support decisions regarding rate filings.

As part of deciding if rates are “just and reasonable,” FSCO determines whether the rate charged is adequate to cover all claims costs and expenses. In addition, case law requires a balancing of interests in the interpretation of “just and reasonable.”

Last year, FSCO also identified the need to complete a review of an appropriate profit provision. It will finalize the process and retain a consultant to provide expert analysis on this issue.

FSCO ensures that consumers are issued refunds where an insurer has charged the incorrect rate. FSCO plans to enhance its current processes for verifying or obtaining assurances from insurers that they are charging only authorized rates.

DISPUTE RESOLUTION SERVICES

According to FSCO, the mandate of its Dispute Resolution Services Branch is to provide a fair, timely, accessible, and cost-effective process for resolving claimant disputes with insurers involving the entitlement to and/or the amount of statutory accident benefits. Common examples of disputes mediated include those in which applicants seek greater medical benefits, higher income-replacement compensation, more in housekeeping and/or home-maintenance costs, or attendant care benefits.

Mediation through FSCO is a legislated mandatory first step under the *Insurance Act*, and neither party can proceed to FSCO’s arbitration process or court unless mediation occurs first. Mediation services are free for consumers, but the insurance companies pay \$500 for each hearing.

The *Insurance Act* requires that mediation be completed within 60 days of the filing of the application unless both parties agree to an extension. FSCO’s internal service standards require that a mediation application be assigned to a mediator within three weeks of receipt and that a mediator file within seven days following the mediation process a report that lists issues settled and any that remain in dispute. These services are intended to help insurance companies and claimants resolve disputes quickly and cost-effectively and to ensure that entitled claimants receive any medical benefits and compensation owing within a reasonable time.

We found that FSCO was unable to meet its service standards due to the large volumes of mediation applications filed and its limited staff resources. In the 2010/11 fiscal year, no mediations were completed within 60 days of filing, and most applications were dealt with between 10 and 12 months after the date of filing. It also took approximately 15 weeks—instead of three—to assign an application to a mediator. However, once the mediation process was completed, the mediators met the requirement of issuing a report within seven days in 95% of cases.

FSCO attributed the delays to the dramatic increase in mediation applications over the last five fiscal years. Figure 7 shows that the number of mediation case hearings increased by 135% during this period, while the number of mediation applications pending increased by 645%. FSCO informed us that it expected the mediation backlog would continue to increase, because it was projecting more than 36,000 new applications in the 2011/12 fiscal year, up 18% from 2010/11.

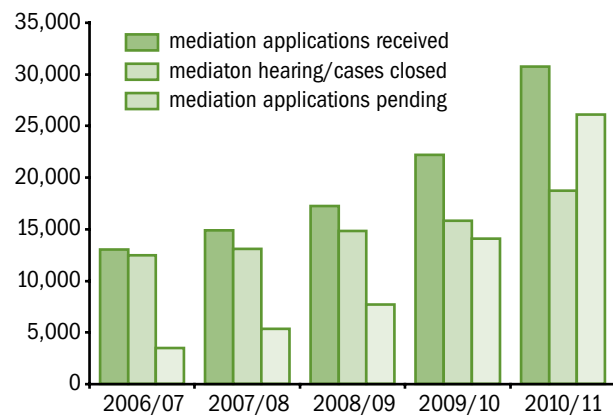
FSCO has implemented measures over the last five years to improve its productivity and help address the growing backlog of mediation applications, and it is now completing 50% more cases with no staff increases. In addition, changes to the regulations under the Act imposed a new requirement in September 2010 stipulating that an applicant may not file for mediation if he or she failed to attend an insurer's medical assessment (40% of applicants have historically failed to attend such assessments).

At the end of our fieldwork, FSCO informed us that it was seeking approval to hire external mediation service providers to supplement its own workforce and help address the existing and anticipated backlog caused by government hiring restrictions which do not allow it to take on more staff.

The current rate of injury claims that result in mediation stands at about 50% of all claims. We believe that this high rate could indicate significant dissatisfaction by claimants with the handling of claims by insurers and/or lack of clarity from FSCO in the guidance and manner in which statutory accident benefits are administered. It could also suggest, in part, that a burgeoning industry providing legal consulting services to claimants is encouraging them to challenge insurers for increased benefits and compensation through the mediation process. This may be the case particularly in the Greater Toronto Area, where about 80% of all mediation applications originate, even though only 45% of automobile accidents involving injuries occur in the GTA.

Figure 7: Growth in Mediation Applications, 2006/07–2010/11

Source of data: Financial Services Commission of Ontario



FSCO and the insurance companies we spoke to cited several factors they said led to the increasing demand for mediation, including over-utilization of benefits, the impact of recent legislative changes, people seeking more compensation during tough economic times, and the fact that 99% of claimants who dispute their insurer's decision about their claim use a legal service and seek monetary settlements instead of health-care and support benefits. It is also possible that insurance companies are being tougher in assessing claims as they respond to their growing incurred loss ratios and declining revenues from interest-bearing investments during this recent economic downturn, and to pressure from FSCO on insurers to fight fraud.

The actual reasons for the higher number of mediation cases cannot be determined from the information FSCO captures. Although FSCO captures mediation details in individual reports, there is no attempt to evaluate and summarize this information because it is considered to be confidential. Therefore, FSCO does not regularly assess the nature of the disputes, the initial positions of the parties, the details of solutions to resolved matters, and the details of those that were not resolved. This information would help FSCO identify matters of frequent dispute and systemic issues.

We found that FSCO tracks the disputed issues at mediation only by benefit type. From 2006 to

2010, FSCO's records indicated that the top issues in dispute were medical benefits, cost of examinations, housekeeping and/or home maintenance, attendant care, and income replacement. However, this information is not sufficiently detailed to permit an investigation of the root causes of cases that go to mediation. We were advised that FSCO consulted with its mediators on possible improvements to the system, policies, and guidelines to reduce backlogs in 2007 and 2009, but no regular process existed at the time of our audit to obtain mediators' opinions on possible systemic problems and possible improvements and clarifications to SABS guidelines and policies to reduce the demand for mediation.

RECOMMENDATION 4

To ensure that the Financial Services Commission of Ontario meets its mandate to provide fair, timely, accessible, and cost-effective processes for resolving disputes over statutory accident benefits, it should:

- improve its information-gathering to help explain why almost half of all injury claimants seek mediation, as well as how disputes are resolved, and to identify possible systemic problems with its SABS benefits policies that can be changed or clarified to help prevent disputes; and
- establish an action plan and timetable for reducing its current and growing backlog to a point where it can provide mediation services in a timely manner in accordance with legislation and established service standards.

FSCO RESPONSE

FSCO captures information about disputes submitted for mediation, collects aggregate statistical information, and compiles reports on profiles of applications received, types of benefits mediated, workload analysis, processing time, and whether mediation fully or partially settled disputes, or failed to settle them. FSCO

will look at additional data collection that might assist in identifying ways to reduce the high demand for dispute resolution services.

FSCO has implemented a number of measures and initiatives that have increased productivity and has managed to close 50% more files during the last five years. Since completion of the audit field work, additional initiatives have been developed and will be implemented through the fall and winter. FSCO has engaged the Ministry of Finance in developing an action plan to address the backlog.

PERFORMANCE MEASURES

In its annual business plan submitted to the Minister of Finance, FSCO established three performance measures for its regulatory responsibilities over the auto insurance industry, as follows:

- average number of days taken to approve private automobile premium-rate applications, compared to its target of 45 days;
- percentage of mediation reports completed within seven days of conclusion of mediation, compared to its target of 94%; and
- weighted ratio of administrative costs to dollars paid out of the Motor Vehicle Accident Claims Fund, compared to its target of 28%.

In the five fiscal years ending in 2010/11, FSCO generally met these publicly stated targets. However, in our view, these targets do not report on its success in protecting the public interest with respect to auto insurance or provide useful insight into its regulatory oversight responsibilities and activities. As well, there are no performance targets regarding the financial health of insurance companies. In particular, the targets include no benchmarking of the cost-effectiveness of auto insurance in Ontario. In addition, the target established for mediation services does not reflect the overall timeliness of service levels. As discussed in a previous section, FSCO generally meets the seven-day

target for issuing a report following a mediation. However, it is of greater importance to consumers to note that FSCO takes between 10 to 12 months to complete a mediation hearing once an application has been received, instead of the legislated requirement of 60 days.

The *Financial Services Commission of Ontario Act* requires FSCO to file its annual report within a reasonable time after the close of each fiscal year to the Minister, who then tables it in the Legislative Assembly. As of July 2011, however, FSCO's annual report for the year ending March 31, 2010, had not been tabled by the Minister of Finance and thus had not been made public. We also noted that FSCO does not report publicly on its performance. For example, it does not make public its annual business plan, and its latest annual report does not include objective and outcome-based performance measures, targets, or details about its accomplishments in meeting stated goals and targets.

We did note, however, that FSCO does make public its Statement of Priorities as required under the *Financial Services Commission of Ontario Act*. In it, FSCO sets out its proposed priorities and initiatives to meet changing economic and marketplace conditions in the coming year as well as its accomplishments from the previous year.

RECOMMENDATION 5

In order to provide the public, consumers, stakeholders, and insurers with meaningful information on its auto insurance oversight and regulatory activities, the Financial Services Commission of Ontario should report timely information on its performance, including outcome-based measures and targets that more appropriately represent its key regulatory activities and results.

FSCO RESPONSE

FSCO agrees that the public, consumers, and stakeholders should be provided with more

meaningful information on its performance in the oversight of the auto insurance system. In its 2011 Statement of Priorities, published in June 2011, FSCO indicated that it will develop improved performance measures and establish standards against which it can be judged in all of the sectors it regulates. The existing measures will be reviewed and updated.

MOTOR VEHICLE ACCIDENT CLAIMS FUND UNFUNDED LIABILITY

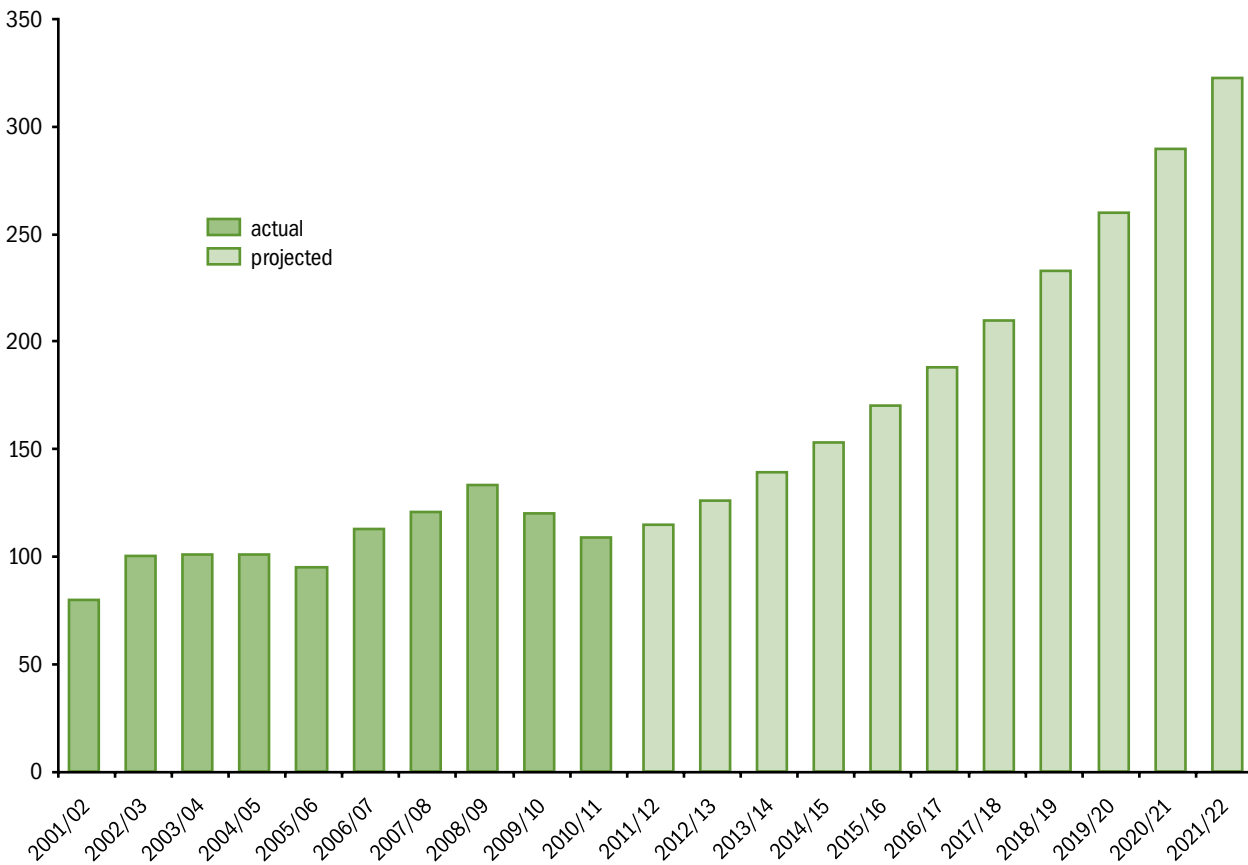
The Motor Vehicle Accident Claims Fund (Fund) is generally considered the “payer of last resort.” It compensates victims of automobile accidents caused by uninsured motorists, drivers of stolen vehicles, or hit-and-run drivers, when no other automobile or liability insurance is available to pay a claim. Victims can apply to the Fund, which pays statutory accident benefits and any tort judgments. The Fund operates under the authority of the *Motor Vehicle Accident Claims Act* and is administered by FSCO. The Fund also contracts with an independent adjuster to investigate claims and handle statutory accident benefit claims payments. Payments by the Fund rose from \$17.9 million for 553 claims in the 2006/07 fiscal year to \$21 million for 585 claims in 2010/11.

According to FSCO's consulting actuary, as of March 31, 2011, the Fund's assets were substantially less than what is needed to satisfy the estimated lifetime costs of all claims currently in the system, resulting in an unfunded liability. As Figure 8 indicates, the Fund's unfunded liability was \$109 million as of March 31, 2011, but FSCO forecasts that it will grow to \$323 million by the 2021/22 fiscal year unless the Fund receives significant additional revenue.

The Fund is supported primarily by a fee on the issuance or renewal of each Ontario driver's licence, which works out to be \$15 paid every five years. In 2010/11, the Fund received \$28.7 million in fees.

Figure 8: Motor Vehicle Accident Claims Fund Actual and Projected Unfunded Liability, 2000/01–2021/22 (\$ million)

Source of data: Financial Services Commission of Ontario



The fee was last increased in September 2004 by \$10 on a driver's licence five-year renewal. Our discussion with management noted that there is no plan or timetable in place to eliminate the unfunded liability in a reasonable amount of time. We estimate that the Fund would need an additional \$30 million per year—that is, double the current annual fee revenue—for the next 10 years to eliminate the existing and projected unfunded liability. This could require FSCO to seek Ministry of Finance approval for doubling the current \$15 driver's licence renewal fee.

RECOMMENDATION 6

To ensure that the Motor Vehicle Accident Claims Fund (Fund) is sustainable over the long term and able to meet its future financial obligations, the Financial Services Commis-

sion of Ontario should establish a strategy and timetable for eliminating the Fund's growing unfunded liability over a reasonable time period and seek government approval to implement this plan.

FSCO RESPONSE

We acknowledge the Auditor General's findings regarding the unfunded liability of the Motor Vehicle Accident Claims Fund (Fund). FSCO's current 10-year projections suggest that the current positive cash balance should adequately provide for the Fund's statutory payment obligations to claimants for at least the next eight years through to the 2019/2020 fiscal year. Cash flow studies are done annually and the next

one will be done in August 2012 to re-assess the 10-year cash flow projections.

In the past, the government has taken appropriate and timely steps to address the Fund's needs. FSCO will continue its regular engagement with the Ministry of Finance on the Fund's evolving financial status to ensure that statutory payment obligations to Fund claimants are met.

OTHER MATTER

Assessment of Health-system Costs

The *Insurance Act* was amended in 1996 to require all automobile insurers operating in Ontario to pay an annual "assessment of health-system costs" to recover the costs to the province of providing medical care to people injured through someone else's fault. The government of the day initially set the assessment at about \$80 million a year for the entire industry to help defray costs incurred by the Ministry of Health and Long-Term Care that ought to be paid by insurers. FSCO is responsible for collecting the assessment from insurers, with each insurer paying a pro-rated share of the total.

In 2005, our audit of the recovery of health costs resulting from accidents led us to conclude that the Ministries of Health and Finance did not have satisfactory policies and procedures in place to monitor the adequacy of the initial \$80-million annual assessment. Subsequently, the government increased the annual assessment in September 2006 to about \$142 million.

The Health and Finance Ministries reported in our 2007 follow-up that they had established a joint working group that year to conduct further analysis to ensure that future assessment amounts adequately cover the cost of health care provided to individuals injured in automobile accidents. The ministries also said at the time that it would take some time to develop the appropriate mechanism.

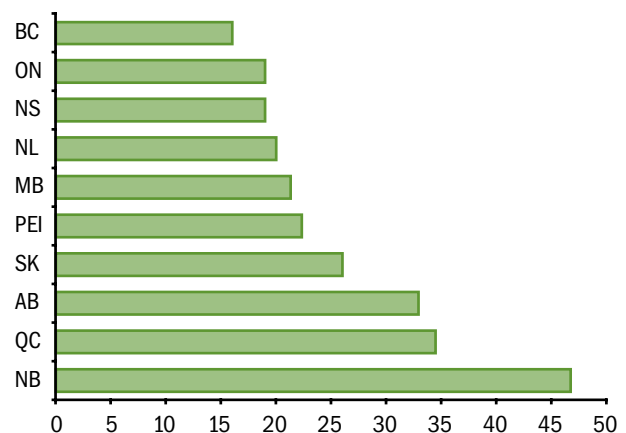
However, the Ministry of Finance informed us that no progress had been made in this area as of July 2011 and that the government was not considering any increase in the assessment.

We also noted that overall health-care spending by the Ministry of Health and Long-Term Care has increased by about 25% since the assessment was last adjusted in the 2006/07 fiscal year. In addition, medically-related SABS benefits costs have increased by almost 120% over the same period, although some of the medical costs, such as physiotherapy and massage therapy, may be unrelated since they may not normally be covered by the Ministry of Health and Long-Term Care.

We compared Ontario's assessment of health-system costs to those of other jurisdictions and found that Ontario's is among the lowest in Canada when measured on a per-registered-vehicle basis, as illustrated in Figure 9. If Ontario's assessment per registered vehicle were raised to the average of other provinces, the assessment would increase by 50%, or about \$70 million, to \$214 million. Assuming that the insurance industry was successful in passing this cost on to vehicle owners, this change would likely add almost \$10 to the insurance premium for each vehicle in Ontario.

Figure 9: Provincial Comparison of Assessments of Health-system Costs on Auto Insurance Industry, 2011 (\$ per registered vehicle)

Source of data: Office of the Auditor General of Ontario, provincial finance ministries, and Public Accounts



RECOMMENDATION 7

In view of the fact that it has been five years since the last review of the assessment of health-system costs owed by the auto insurance sector despite the significant increase in health-care costs related to automobile accidents over the same period, the Financial Services Commission of Ontario should work with the Ministry of Finance, the Ministry of Health and Long-Term Care, and the insurance industry to review the adequacy of the current assessment amount.

FSCO RESPONSE

FSCO agrees with the Auditor General's recommendation that health-care assessments paid to the government by auto insurance companies would benefit from more regular review. The responsibility for initiating the review rests with the government. FSCO will ensure that the Ministry of Finance is aware of the auditor's recommendation and will support the Ministry of Finance in any future review as requested.

Electricity Sector— Regulatory Oversight

Background

Electricity is an essential commodity required for the well-being of Ontario's economy and the day-to-day activities of its citizens. That, along with the electricity sector's status as a near-monopoly, necessitated a system of oversight and regulation to ensure sustainability and cost-effectiveness in the generation and delivery of electricity to meet the needs of consumers, business, and industry. Ontario's electricity sector serves 4.7 million customers and is composed of several key entities, as illustrated in Figure 1.

The Ontario Energy Board (Board) was originally established in 1960 to set rates for the sale and storage of natural gas and to approve pipeline construction projects. Over time, its powers and responsibilities evolved through legislation. In 1973, it became responsible for reviewing and reporting to the Minister of Energy on electricity rates charged by the old Ontario Hydro, a function that it performed until the late 1990s, when Ontario Hydro was split into several successor companies.

Today, the Board still regulates the province's natural-gas sector, but devotes most of its time to oversight of the electricity sector in Ontario. The Board is required to oversee the sector through effective, fair, and transparent processes, in accord-

ance with the *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998*. The objectives of the Board include protecting the interests of consumers, facilitating the maintenance of a financially viable electricity sector, and promoting efficiency and cost-effectiveness in the sector. The Board's key functions with respect to fulfilling these objectives include:

- setting prices for electricity and its delivery;
- monitoring electricity markets and licensing participants;
- approving the annual expenditure and revenue requirements of the Ontario Power Authority and the Independent Electricity System Operator; and
- reviewing and setting regulatory policies.

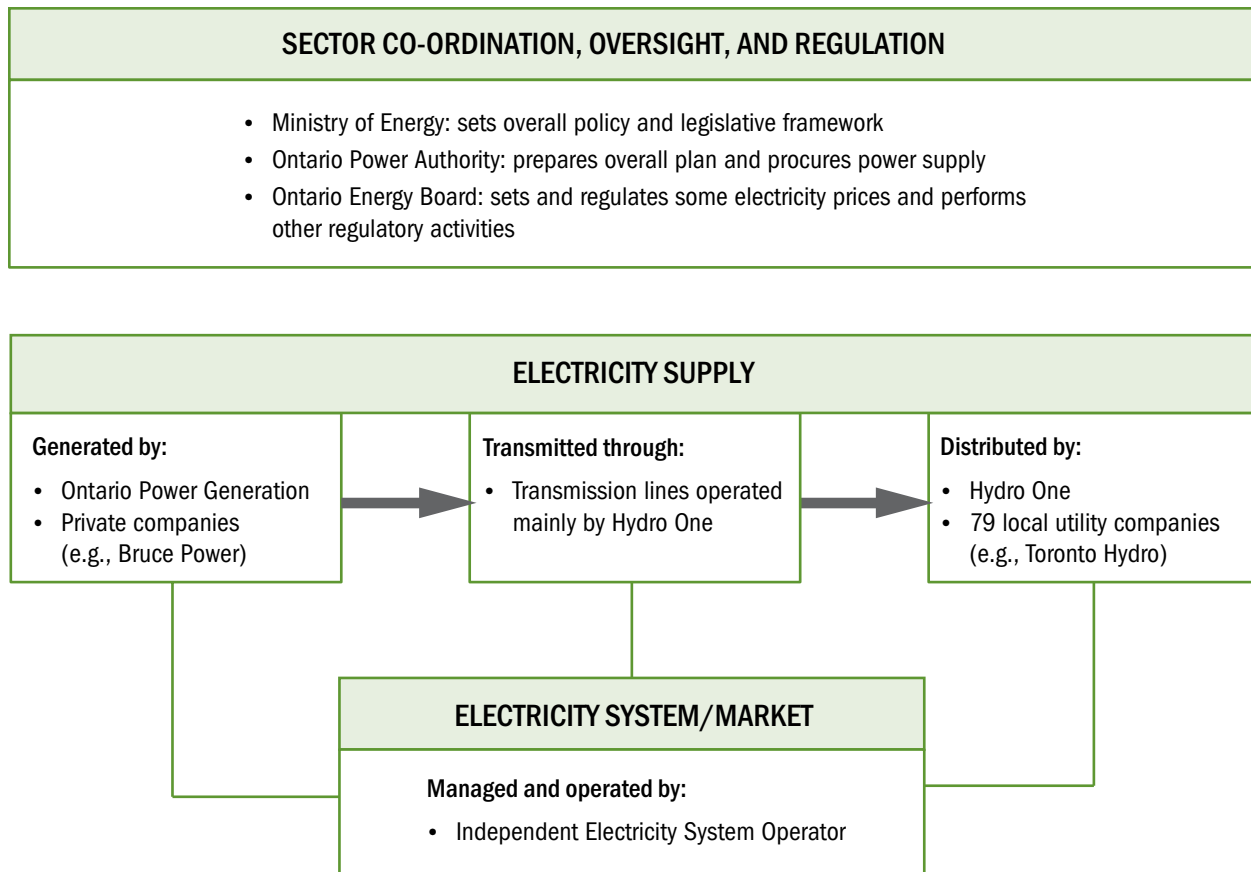
The Lieutenant Governor-in-Council appoints members to the Board. At the time of our fieldwork, the Board had eight members—seven full-time and one part-time—supported by a staff of about 170. Board operating costs were \$34.8 million in the 2010/11 fiscal year, with 80% of that paid by regulated electricity entities and 20% by the natural-gas sector.

Audit Objective and Scope

The objective of our audit was to assess whether the Ontario Energy Board (Board) had adequate

Figure 1: Selected Key Roles of Entities in Ontario's Electricity Sector

Prepared by the Office of the Auditor General of Ontario



systems and procedures in place to protect the interests of electricity consumers and ensure that the electricity sector provides reliable and sustainable energy at a reasonable cost.

A secondary and equally important objective of our report was to look at the regulatory context of the charges on Ontario electricity bills and explain what these charges relate to. In keeping with our aim to inform readers in the simplest terms possible, we use the terms “ratepayer,” “customer,” and “consumer” interchangeably in this audit report.

The scope of our work included a review and analysis of rate applications and filing guidelines and interviews with members and appropriate staff at the Board. We also met with staff from other provincial agencies, including the Ministry of Energy, the Ontario Power Authority, the Independ-

ent Electricity System Operator, Ontario Power Generation, and Hydro One.

We also spoke with various participants and stakeholders in the electricity market, including local distribution companies and intervenors, to get their perspective on their interactions with the Board as well as its regulatory processes. Intervenors are individuals or groups representing consumers or other interested parties who actively advocate on their behalf in the hearing processes. In addition, we researched the operations of electricity regulators in other Canadian jurisdictions and engaged an independent consultant with expert knowledge of electricity regulation across Canada to assist us on an advisory basis. The Board follows a quasi-judicial process to make its rate-setting decisions. These decisions and the judgment of the Board panels were not a subject of this audit.

Before beginning our work, we developed audit criteria that we used to achieve our audit objective. These were discussed with and agreed to by the Board's senior management.

Summary

A key role of the Ontario Energy Board (Board) as regulator of the electricity sector is to protect consumers while providing a reasonable rate of return for the industry by setting just and reasonable prices. This role is especially important given that electricity prices for the average consumer have increased 65% since the restructuring of the electricity sector in 1999, and prices are expected to rise another 46% in the next five years.

We observed that Board staff undertook to provide Board members with useful analyses and other information to assist them in their deliberations. As well, the Board has undertaken a number of initiatives to educate consumers about the charges on their electricity bills, including an on-line bill calculator that has garnered industry recognition. However, we identified certain factors that could limit the Board's ability to perform its regulatory duties to the extent that consumers and the electricity sector might reasonably expect. Among our observations:

- The Board is not responsible for ensuring that electricity bills as a whole are just and reasonable, insofar as its jurisdiction extends to only about half of the total charges on a typical bill. The Board's role is largely limited to setting rates for the nuclear power and some of the hydro power produced by Ontario Power Generation (OPG), along with transmission, distribution, and certain other charges. The other half of power bills is based on government policy decisions over which the Board has no say. For example:
 - About 50% of the electricity sold to residential customers comes from suppliers

who signed long-term contracts with the government or the Ontario Power Authority, and the price of this power accounts for 65% of the cost of the electricity component on the typical bill. However, the Board has no regulatory oversight role with respect to this portion of the electricity charge. Rather, it regulates only electricity from certain OPG nuclear and hydro plants, which constitutes about one-third of the electricity charges on a typical bill.

- The debt retirement charge that consumers pay each month was originally created by the government in 1999 to help pay off the estimated "residual stranded debt" of \$7.8 billion that remained after the old Ontario Hydro was broken up. The Board has no oversight role with respect to this charge or how long it is to be applied to consumers' electricity bills.
- The Board has regulatory oversight over only about \$190 million of the close to \$900 million collected from ratepayers to administer and operate the electricity market and to meet other legislated requirements.
- In areas where it does have jurisdiction, the Board sets rates using a quasi-judicial process that requires utilities and other regulated entities, such as OPG and Hydro One, to justify any proposed rate increases in a public hearing. Many small and mid-sized utilities said that this process costs ratepayers an average of between \$100,000 and \$250,000 per application—or as much as half the revenue increase sought in the first place by these utilities. These costs are generally incurred once every four years and are recovered from consumers over the next four-year period.
- Individuals or organizations wishing to participate in the hearings on behalf of consumers can obtain intervenor status, and can qualify for reimbursement of their expenses by utilities and other regulated entities. However,

many of these utilities and other regulated entities cited the high cost of providing the large quantities of detailed information requested by intervenors and called for better co-ordination by the Board to manage these requests.

- In monitoring utilities for compliance with its guidelines and reporting requirements, the Board identified a number of significant deficiencies in the utilities' record-keeping and reporting practices. This could be an indication of inaccuracies in the information the Board uses to make decisions. However, the Board does not consistently follow up to ensure that the noted deficiencies were corrected by the utilities.
- Consumers can purchase their electricity either through their utility at the Regulated Price Plan prices set by the Board or through an electricity retailer at a price set by the retailer. Some 15% of residential customers, looking for price protection and stability on their power bills, signed fixed-price contracts with electricity retailers. However, we found that these consumers could be paying anywhere from 35% to 65% more for their electricity than they would pay had they not signed those contracts. In the last five years, the Board has received more than 17,000 complaints from the public; the overwhelming majority of them have been against electricity retailers. Issues included misrepresentation by sales agents and even forgery of signatures on the contracts. Although the Board follows up on complaints, the number of enforcement actions taken against retailers has been very limited.
- The Board has a well-structured performance-reporting process, but its performance measures need to be more results-based rather than process-oriented.

Detailed Audit Observations

OVERVIEW OF THE ONTARIO ENERGY BOARD AND THE ELECTRICITY SECTOR

The Ontario Energy Board (Board) was founded in 1960 to regulate the natural-gas sector in Ontario. In 1973, its role was expanded to include the electricity sector. A significant shift in the Board's mandate came when the government enacted the *Energy Competition Act, 1998 (Act)*, which broke up the old Ontario Hydro into several successor companies and sought to introduce competition to the electricity sector.

The Act mandated the Board to protect the interests of consumers while simultaneously ensuring a financially viable electricity industry. More detail about legislative and policy changes since 1999, and the impact of these changes on the electricity sector and the Board, is shown in Figure 2.

IMPACT ON CONSUMERS

Ontario consumers have experienced significant electricity-cost increases over the past decade as a result of major changes to the province's electricity sector. Since 1999, the average residential consumer using 800 kilowatt hours (kWh) per month has seen a 65% increase in his or her power bill. The Ministry of Energy predicted in its 2010 Long-term Energy Plan that residential electricity bills will rise another 46% over the next five years to help pay for upgrades to Ontario's existing nuclear and natural-gas generation capacity and its transmission and distribution facilities, and to help finance new and cleaner renewable-energy generation.

A summary of the impact on energy bills of the major policy changes since 1999 is shown in Figure 3.

UNDERSTANDING ELECTRICITY BILLS

In 2004, the government passed a regulation requiring electricity bills for low-volume consumers

Figure 2: Government Legislation and Policy Changes in the Electricity Sector, 1998–2011

Prepared by the Office of the Auditor General of Ontario

Legislation/Policy and Year	Impact
<i>Energy Competition Act, 1998</i>	<ul style="list-style-type: none"> • Breaks up Ontario Hydro into several companies • Ontario Energy Board (Board) assumes responsibility for regulating three Ontario Hydro successor companies and local distribution companies
<i>Electricity Pricing, Conservation and Supply Act, 2002</i>	<ul style="list-style-type: none"> • Caps electricity price at 4.3¢/kWh, for two years, effective May 1, 2002 • Freezes transmission and distribution rates until at least May 1, 2006
<i>Ontario Energy Board Consumer Protection and Governance Act, 2003</i>	<ul style="list-style-type: none"> • Creates a management committee to oversee Board activities • Strengthens Board powers to protect and educate consumers
<i>Ontario Energy Board Amendment Act (Electricity Pricing), 2003</i>	<ul style="list-style-type: none"> • Replaces 4.3¢/kWh price cap as of April 1, 2004, with 4.7¢/kWh for the first 750 kWh/month, and 5.5¢/kWh beyond 750 kWh/month • Allows local distribution companies to recoup costs by lifting freeze imposed by <i>Electricity Pricing, Conservation and Supply Act, 2002</i>
<i>Electricity Restructuring Act, 2004</i>	<ul style="list-style-type: none"> • Amends <i>Ontario Energy Board Act, 1998</i> and <i>Electricity Act, 1998</i> • Board assumes responsibility for Market Surveillance Panel • Establishes Ontario Power Authority (OPA) to ensure adequate, reliable, and secure electricity supply in Ontario
Minister's Directive to Board (2004)	<ul style="list-style-type: none"> • Develops smart-meter implementation plan
Minister's Directive to OPA (2006)	<ul style="list-style-type: none"> • Develops plan to replace coal-fired generation with cleaner sources as soon as possible
<i>Green Energy and Green Economy Act, 2009</i>	<ul style="list-style-type: none"> • Establishes responsibility for Board and other entities to achieve objectives of conservation, promotion of renewable energy, and technological innovation
Harmonized Sales Tax (2010)	<ul style="list-style-type: none"> • Adds 8% to total electricity bill effective July 1, 2010
<i>Energy Consumer Protection Act, 2010</i>	<ul style="list-style-type: none"> • Requires that Ontarians be provided with the information they need about electricity contracts and prices and that consumers be protected by fair business practices effective January 1, 2011
Ontario Clean Energy Benefit (2011)	<ul style="list-style-type: none"> • 10% discount on electricity bill for five years from January 1, 2011

(residential and small-business consumers) to show four categories of charges: Electricity, Delivery, Regulatory, and Debt Retirement. The regulation also specifies how these categories of charges are to be explained on or with the bill. A sample bill for an average Toronto Hydro residential consumer with an 800 kWh monthly consumption (or about 830 kWh when adjustment due to loss in the distribution system is included) is shown in Figure 4.

The various charges break down as follows:

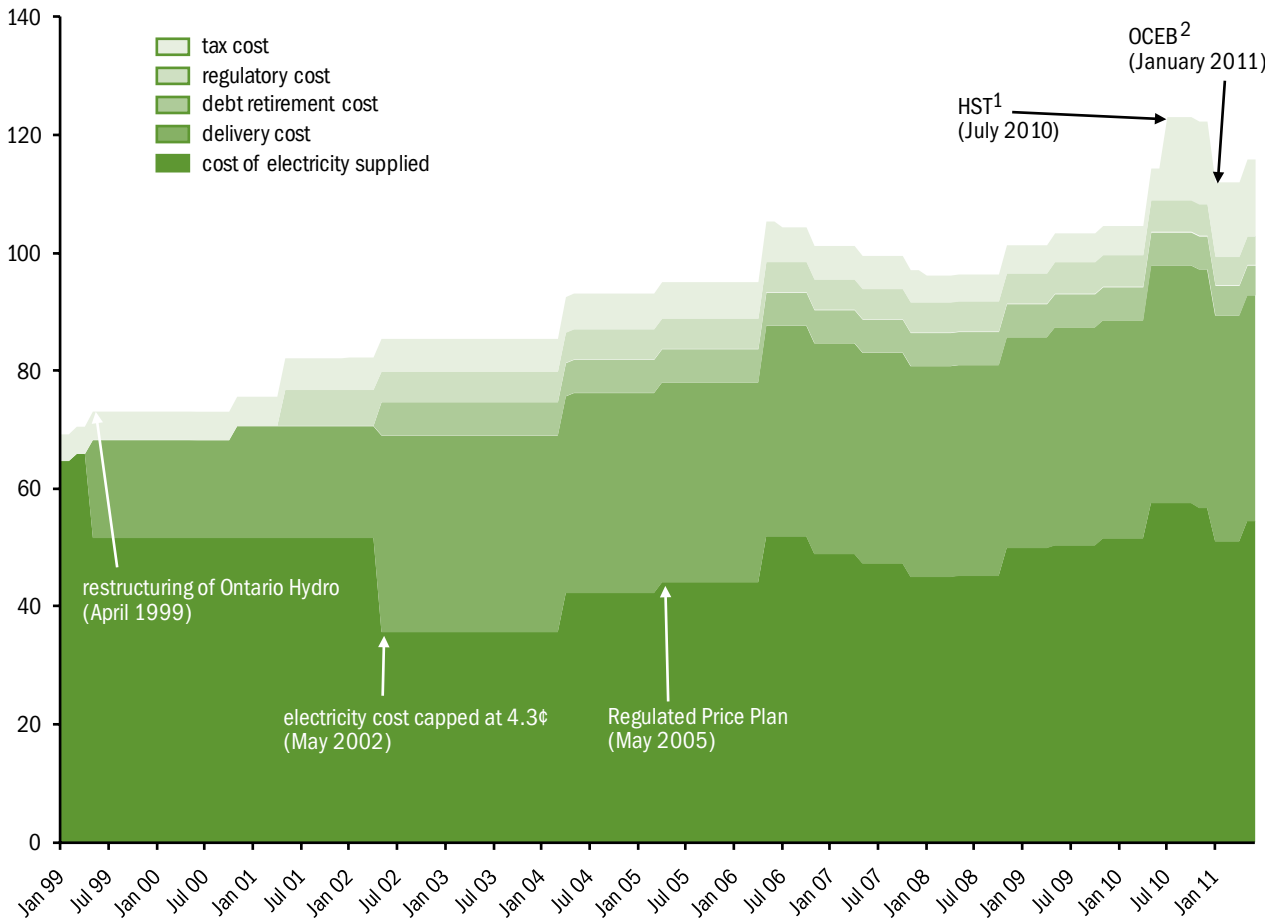
- “Electricity” is the cost of the actual power consumed, which the province obtains primarily from Ontario Power Generation (OPG) and from suppliers who have signed contracts with the government or the Ontario Power Authority (OPA). The presentation of this

charge on bills varies, depending on whether the consumer buys from a utility or has signed a contract with a retailer. In Ontario, 85% of residential consumers purchase their electricity from local utilities and pay what is known as Regulated Price Plan (RPP) prices, while the remaining 15% purchase their electricity from electricity retailers.

RPP prices are set by the Board. Time-of-use RPP prices—where the price of electricity varies depending on when during the day the consumer uses power—apply if the consumer's utility has migrated to time-of-use billing. Otherwise, two-tiered RPP pricing—where the price of electricity varies depending

Figure 3: Electricity Costs for Average Toronto Consumer Using 800 kWh of Electricity a Month, 1999–2011 (\$)

Prepared by the Office of the Auditor General of Ontario



1. Harmonized Sales Tax: additional 8%

2. Ontario Clean Energy Benefit: 10% discount over the next five years

on how much power the consumer uses per month—applies.

Consumers with retail contracts pay the price stipulated in their contracts plus a Global Adjustment—mostly consisting of the difference between the market price and the price paid to generators as set by the Board for OPG or under contract with the government or the OPA. The Global Adjustment has been rising steadily over the last few years and is expected to continue to rise as a result of investments in existing generation capacity and renewable power generation. The RPP prices calculated by the Board include a forecast of the Global Adjustment. RPP consumers

therefore do not see a separate Global Adjustment charge on their electricity bills.

- “Delivery” is the cost of transmitting and distributing electricity from the generator to the consumer. Transmission is handled primarily by Hydro One over high-voltage wires connecting generators across the province to local utilities, which handle distribution to homes and businesses. Delivery rates vary across the province, with rural and remote locations generally paying higher rates.
- “Regulatory” is the cost to operate the electricity system and maintain the reliability of the provincial grid. This includes the operational costs of the Independent Electricity System

Figure 4: Monthly Electricity Bill Comparison (Regulated Price Plan vs. Retail Contract Consumer)

Source of data: Ontario Energy Board website, August 2011

Monthly Bill Statement	
Toronto Hydro-Electric System Limited - Main	
Account Number: 000 000 000 000 0000	
Meter Number: 00000000	
Your Electricity Charges	
Electricity (what is this charge?)	
Off-Peak @ 5.900 ¢/kWh	31.34
Mid-Peak @ 8.900 ¢/kWh	13.30
On-Peak @ 10.700 ¢/kWh	15.99
Delivery (what is this charge?) 40.50	
Regulatory Charges (what is this charge?) 5.95	
Debt Retirement Charge (what is this charge?) 5.60	
Total Electricity Charges	\$112.68
HST	14.65
Subtotal	\$127.33
Ontario Clean Energy Benefit (-10%) (what is this?)	(-12.73)
Total Amount	\$114.60

Monthly Bill Statement	
Electricity Retail Contract	
Account Number: 000 000 000 000 0000	
Meter Number: 00000000	
Your Electricity Charges	
Electricity (what is this charge?)	
Supplied By: your selected retail company Phone No.: 000.000.0000	
Global Adjustment (what is this charge?)	30.80
800 kWh @ 8 ¢/kWh	66.41
Delivery (what is this charge?) 40.50	
Regulatory Charges (what is this charge?) 5.70	
Debt Retirement Charge (what is this charge?) 5.60	
Total Electricity Charges	\$149.01
HST	19.37
Subtotal	\$168.38
Ontario Clean Energy Benefit (-10%) (what is this?)	(-16.84)
Total Amount	\$151.54

Operator (IESO) and the OPA, charges to partly offset the higher cost of providing electricity to rural and/or remote areas, and a charge to cover administrative costs of local utilities.

- “Debt Retirement Charge” is mandated by the government to help pay off the residual stranded debt of the old Ontario Hydro that could not be funded by other revenues. This charge will be collected from consumers until, in the opinion of the Minister of Finance, the debt has been eliminated.
- “Ontario Clean Energy Benefit” is a 10% discount on the total electricity bill that applies for five years starting January 1, 2011, to help offset price increases. The annual cost of this rebate is estimated at \$1.1 billion and is

funded by taxpayers through the Ministry of Energy’s annual appropriation.

REGULATORY OVERSIGHT OF ELECTRICITY

The Ontario Energy Board (Board) is mandated to regulate the electricity sector in Ontario. However, its authority to review and regulate is limited to only about half the charges on the average residential or small-business bill, as illustrated in Figure 5.

What the Board Does—and Does Not—Regulate

For the electricity component of a bill, the Board regulates the cost of power from certain OPG assets

such as nuclear and large hydro generating plants; however, the costs of power from OPG's other generation assets, as well as the costs of electricity supplied under contracts negotiated by the OPA and under power agreements with non-utility suppliers, are not subject to Board regulation. Every six months, the Board reviews the RPP electricity prices being paid by residential and small-business consumers and, if necessary, adjusts them to ensure that they reflect the cost of supplying electricity to those consumers.

The Board regulates the entire delivery component (that is, all of the transmission and distribution charges).

For the regulatory component, the Board regulates the operational costs of the IESO and the OPA, but there are other regulatory costs that it does not regulate.

The debt retirement charge is not subject to Board regulation.

CHARGES SUBJECT TO REGULATORY OVERSIGHT

The old Ontario Hydro followed a relatively straightforward rate-setting process, calculating rates on a cost-recovery basis. It was not required to consider whether the costs incurred were reasonable or whether all costs were being billed to

consumers over an appropriate time period. The current system is more complicated. It requires that the Board set just and reasonable rates, with the result that the Board's information needs are more complex than those during the time of the old Ontario Hydro. Such rate-setting oversight involves assessing projected operating costs as well as recovering the cost of capital investments.

In the case of such infrastructure investments, the Board must determine whether these capital costs are fairly distributed between current and future consumers. It must also examine the costs of building or acquiring different types of electricity assets, and how long they will last. Regulated entities investing in such assets are entitled to a reasonable rate of return on their investment, and their returns are largely guaranteed once the Board approves their rates. For proposed capital investments, the Board must satisfy itself that the investments are needed. For example, is more investment required to maintain or enhance the system's reliability, when should new electricity generators be connected to the transmission system given forecasted future demand, and how should new initiatives such as the smart grid be implemented?

In fulfilling its rate-setting role, the Board follows a quasi-judicial process that is open to public participation. The Board advised us that it takes seriously the need for its adjudication decisions to

Figure 5: Percentage of Electricity Bill Regulated by the Board, 2010 (average utility customer consuming 800 kWh a month at a cost of \$116) (%)

Prepared by the Office of the Auditor General of Ontario

Bill Component	Costs Included	Regulated by Board	Not Regulated by Board	Portion of Bill
electricity	OPG generation assets, Non-Utility Generators (NUGs), OPA Renewable and other contracts	19	37	56
delivery	distribution and transmission	33	—	33
regulatory	wholesale market service charge, rural remote rate protection, IESO and OPA operating costs, and other charges	3	3	6
DRC	debt retirement charge	—	5	5
Electricity cost before tax and benefit		55	45	100
HST	Harmonized Sales Tax (13%) effective July 2010			
OCEB	Ontario Clean Energy Benefit (-10%) reduction on bill effective January 2011			

be made—and to be seen to be made—independently and impartially. The hearing process must comply with statutory requirements and principles of administrative law.

The regulatory process the Board follows is summarized in Figure 6.

Applicants, including utilities, OPG, and Hydro One, are expected to provide sufficient detail about proposed rate increases to enable the Board to determine whether the proposed rates are just and reasonable, although the onus is on applicants to prove that the proposed increases are justified. In considering such applications, the Board examines the applicant’s forecasts, along with financial and operational details, in a public forum. Applicants must provide documentation to cover current operations and historical data going back three years. The Board aims to set rates that allow applicants to recover their ongoing operating costs and the cost

of capital expenditures over an appropriate time period and earn a reasonable rate of return. The rate of return set by the Board for 2011 was 9.58%.

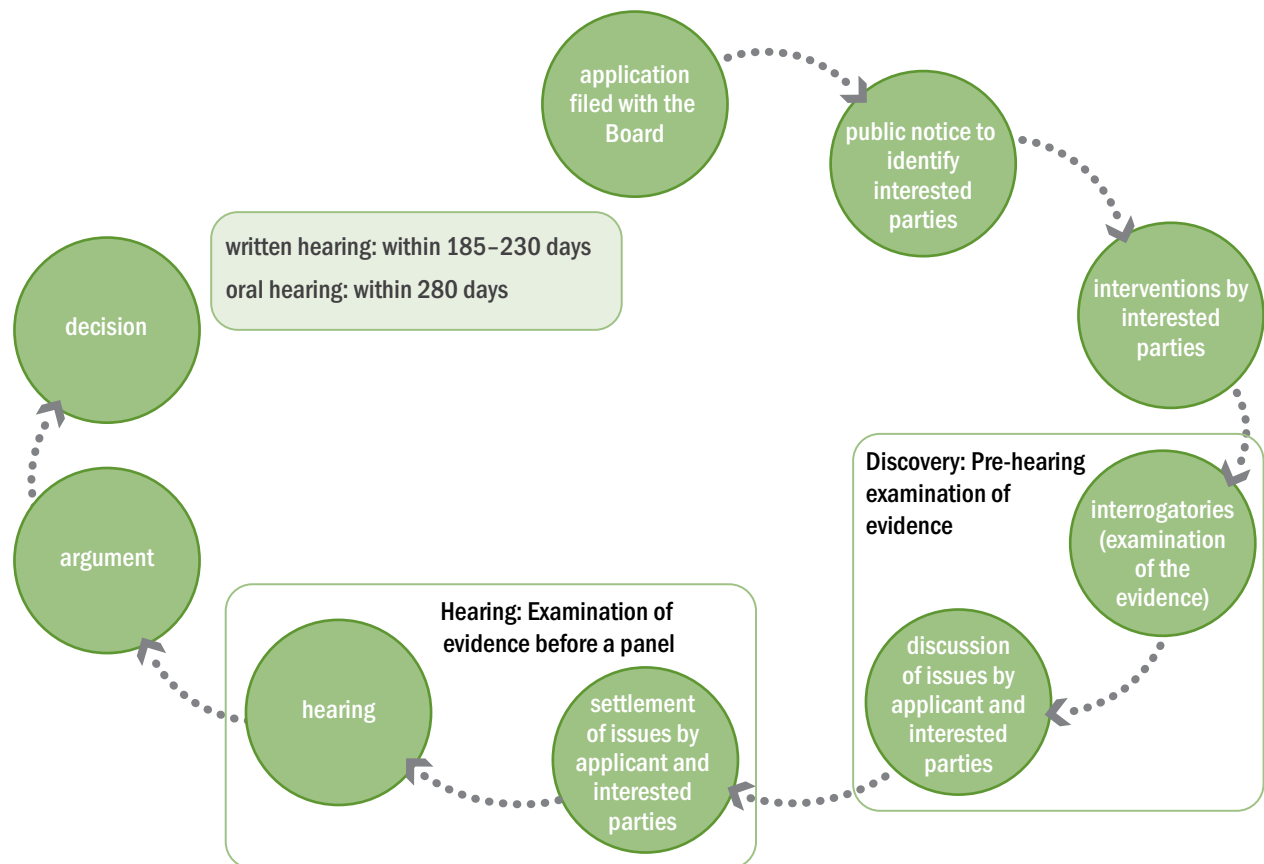
Rates and fees subject to regulation include the rate charged for power supplied by OPG’s nuclear and large hydro generating assets, IESO and OPA operating costs, and transmission and distribution charges.

Rates for distribution costs are set using a combination of two mechanisms, as follows:

- The Cost of Service (COS) review sets rates for each distributor every four years or whenever the Board deems necessary (the Board has also allowed distributors to apply for more frequent COS reviews). COS applications are detailed and require documentation and calculations supporting the applicant’s electricity demand forecasts, estimates of the cost to service this demand, and past operating revenue

Figure 6: Rate-setting Adjudication Process at the Board

Source of data: Ontario Energy Board



and costs. A typical COS application runs to between 800 and 1,200 pages for a small to mid-sized local utility.

- The Incentive Regulation Mechanism (IRM) is an annual process that, between COS reviews, adjusts rates. It does so by applying a formula that considers inflation and productivity. Other factors may also be considered in the annual rate adjustment on a case-by-case basis. A typical IRM application for a small to mid-sized utility would require 80 to 100 pages of documents, including a summary with all requested rate adjustments, the models used to calculate the new rates, and a list of all current rates and charges.

On average, the Board adjudicates 20 COS applications and 60 IRM applications each year for Ontario's 80 distribution utilities.

The rates for transmission (primarily through Hydro One) and OPG payments for its regulated assets are set using the COS mechanism, and the IESO and OPA operating costs are subject to annual reviews by the Board.

As mentioned in our Audit Objective and Scope section, the individual Board decisions were not a focus of this audit, but we did observe that Board staff undertook to provide Board members with useful analyses and input to assist them with their deliberations.

Complexity and Cost of Regulatory Oversight

Regardless of their size, all utilities are expected to meet the same filing guidelines. We found that this "one-size-fits-all" approach to rate-setting is a costly exercise that seems to focus as much on getting complete records into the public forum as on ensuring that the process has the information it needs to set just and reasonable rates. In addition, all costs of the regulatory process must be recovered from consumers through rate increases.

The Board cited customer-service-quality statistics for utilities that had gone through COS

reviews in 2008 or 2009 as evidence that utilities can cope with these requirements. However, staff of distribution utilities told us that meeting filing requirements required significant overtime. In addition, small and mid-sized utilities often had to engage costly external consultants to help complete their applications. Meeting the documentation requirements has been particularly challenging for the smaller utilities, some of which have fewer than 2,000 consumers and only five or fewer administrative staff. We further noted that the Board used to provide utilities with rate-application templates but no longer does so, providing them instead with models, suggested data formats, and filing guidelines, which, we were advised, were more complicated to use than the templates.

The average cost of filing a COS rate application is approximately \$100,000 for a small utility and \$250,000 for a mid-sized one, representing between 15% and 55% of the revenue increase these utilities are seeking in the first place. Most of these costs relate to consulting and legal services to assist with preparation of evidence to meet Board filing requirements, to answer questions from intervenors, and to pay intervenor billings. The cost of a rate application for the biggest utilities can run to \$1 million or more. The impact of this cost ranges from about \$1 per consumer for the largest utilities to as much as \$40 per consumer for the smaller ones. These amounts are recovered from ratepayers over a four-year period.

The Board had not analyzed the cost/benefit impact of its current regulatory requirements in protecting consumers. The Board did acknowledge the problems faced by smaller utilities in dealing with filing requirements but said that every consumer in Ontario deserved the same level of protection.

Intervenors

Intervenors are individuals or groups of individuals who actively participate in the regulatory processes. Intervenors may include consumers, consumer and trade associations, environmental groups, public

interest groups, and affected individuals. The costs of their participation in the regulatory process are borne by the regulated entities and, eventually, consumers. Intervenor costs can range from \$10,000 for a small utility with one intervenor to over \$1 million for a larger applicant with more intervenors.

Prior to the start of proceedings, intervenors may apply to the Board to have their costs paid by the rate applicants. A Board panel rules on a case-by-case basis whether intervenors are eligible for an award of reasonably incurred costs, which include time spent reviewing evidence and participating in hearings, and travel and accommodation expenses. Because the focus of our audit was not on individual Board decisions or judgment, our observations relate only to concerns we noted regarding the administrative processes—not to individual panel decisions or intervenor costs the Board had agreed to have applicants reimburse.

The intervenor community is composed of a small number of specialists, primarily lawyers, and we recognize that their knowledge and experience can add value to the process. However, it is also important that intervenors be integrated efficiently and effectively into the hearing process to ensure that the value they provide is not outweighed by the additional costs they impose on consumers, who ultimately pay for their services.

The rate applicants with which we met indicated that better co-ordination between Board staff and intervenors was needed to manage the heavy volume of questions and requests for information stemming from intervenors. The applicants also noted that there is significant overlap between the questions and requests from the intervenors and the Board staff; intervenors are recycling questions or requests for information from other rate cases and, in some instances, the name of the previous applicant had not even been removed from the questions; and the intervenor questions and requests were not always relevant or of significant importance to the current case. This last point was echoed by the Board in its 2011 OPG decision, which raised the concern that an inordinate focus

on lower-priority issues diminishes the time and resources available to pursue the more substantive, higher-priority issues. As well, intervenors bill for the time that their external consultants and legal advisors spend, and all such billings are eventually paid by electricity consumers.

Total intervenor costs over the last three years were \$16 million for the electricity sector. The reasonableness of intervenor cost claims can be challenged either by the Board or by the rate applicant, and there have been 17 claim reductions totalling about \$750,000 against intervenors over the last three years. However, utilities and other applicants advised us that they felt this did not reflect the full extent of questionable cost claims. They also said that they were generally unwilling to challenge intervenor billings because they did not want to incur the additional costs of such challenges.

RECOMMENDATION 1

To enhance the cost-effectiveness of its rate-setting process, the Ontario Energy Board should:

- work with the regulated entities to address their concerns about the cost and complexity of the current rate-setting filing requirements and the impact on their operations; and
- better co-ordinate and evaluate intervenor participation in the rate-setting process in an effort to reduce duplication and time spent on lower-priority issues.

BOARD RESPONSE

The Board is committed to improving the efficiency of its processes, which the Auditor General has recognized as being transparent and as benefiting from the work of staff and the contribution of intervenors. The rate-setting process requires appropriate information on the public record to support sound and responsible decision-making. We annually update our filing requirements for rate applications to ensure that only appropriate information is being requested.

We will continue to consult with the industry and other stakeholders to ensure that our rate-setting processes are as efficient as possible.

CHARGES NOT SUBJECT TO REGULATORY OVERSIGHT

Non-regulated Electricity Charges

In recent years, rates for the electricity component of the average bill that is supplied by unregulated sources have been significantly higher than rates for that supplied by regulated sources, which must be approved by the Board. As a result, although unregulated electricity accounts for only 50% of the total electricity supplied, the price of the unregulated electricity accounts for about 65% of the price paid by the average consumer. Accordingly, only about \$35 of every \$100 in the cost-of-electricity component on a typical bill is subject to rate regulation by the Board.

The unregulated sources are primarily suppliers under power contracts that have been signed by the OPA under the government's direction, because the province's long-term power-system plan has not been approved by the Board. On August 29, 2007, the Board received the OPA's application for review and approval of the Integrated Power System Plan (IPSP), the blueprint for electricity in Ontario. The IPSP must be approved by the Board before the plan can be implemented. However, the hearing was adjourned on October 2, 2008, pending new government targets requiring a revised IPSP, and the Board was directed by the Minister of Energy on February 17, 2011, to complete its review of the OPA's revised IPSP within 12 months of its submission. As of August 2011, the revised IPSP had not been submitted to the Board for review.

Over the last four years, the government has directed the OPA to enter into new long-term electricity-supply contracts in the absence of an approved IPSP, which would have set out guidelines for such transactions. According to the Board, these

contracts are outside the scope of its statutory mandate and regulatory powers, so any eventual approved IPSP would have no impact on procurement commitments already made by the OPA.

Non-regulated Regulatory Charges

There are a number of components in the regulatory charge, including service charges to cover the cost of administering the wholesale electricity market and maintaining the reliability of the overall electricity grid. These charges account for about half of the total regulatory charges collected. Other components include the operating costs of the IESO and OPA; the cost associated with funding government conservation and renewable-energy programs; a charge to subsidize consumers living in rural and/or remote areas; and a charge to help recover utility administration costs.

Most regulatory charges are not subject to any form of Board oversight. The exceptions are the costs to operate the IESO and OPA, which account for about \$190 million of the close to \$900 million in regulatory charges collected annually. The other charges either are prescribed by government regulation or consist of other costs not subject to Board oversight.

Market Surveillance Panel

As noted earlier, the only regulatory charges in an electricity bill whose rates the Board regulates are the fees that the IESO and OPA charge to cover their operating costs. The Board does not regulate any of the other costs of operating the wholesale market. The Market Surveillance Panel (Panel), which was transferred from the IESO to the Board in 2005, monitors wholesale market activities and reports on them to the Board twice a year. The Panel has consistently recommended that the IESO explore structural changes to the electricity market to reduce or eliminate what are known as "congestion management settlement credit (CMSC) payments" where they do not contribute to market efficiency. These

payments are a result of the current electricity market structure, which compensates generators or traders when, for example, transmission constraints curtail their ability to participate in the market.

From 2006 to 2010, the IESO paid more than \$420 million in constrained-off CMSC payments to generators and traders whose power cannot be fed into the grid because of the transmission system's capacity constraints. In its May–October 2010 report, the Panel reported that it had two ongoing investigations into these market activities. One was at the request of a market participant, and the other a formal investigation of potential “gaming” of the system to obtain increased CMSC payments.

The Board advised us that, although the Panel reports to the Board, it is up to the IESO to implement Panel recommendations. However, given that the Panel is required to report to the Board, we questioned why the Board would not be more proactive in ensuring that the IESO gives adequate priority to Panel recommendations. In March 2011 we noted that, for the first time since assuming responsibility for monitoring the market in 2005, the interim Chair of the Board asked the IESO to report back on its proposed response to certain Panel recommendations.

Non-regulated Debt Retirement Charge

When Ontario Hydro was broken up in 1999, the government created the Ontario Electricity Financial Corporation (OEFC) to assume its \$38.1-billion debt and other liabilities and provided it with \$18.5 billion in financial assets. The difference between the assets and debt, \$19.4 billion, came to be known as the “stranded debt.” The government established a long-term plan to repay most of it using future electricity revenues, including the profits of OPG and Hydro One in excess of the government's financing cost for its investment in the two entities.

However, the government also said at the time that these anticipated repayment streams would be insufficient for an estimated \$7.8-billion portion of

the stranded debt known as the “residual stranded debt.” In order to repay this amount, the government imposed a new debt retirement charge to be included on electricity bills and used to service the residual stranded debt.

The original 1999 plan estimated that the stranded debt would likely be retired by 2010. However, since then, the OEFC has faced a number of challenges in managing the stranded debt, which have included the impact of interest charges on the \$38.1 billion in assumed liabilities, volatility in OPG and Hydro One profits, and other government-mandated electricity expenditures. As a result, OEFC currently estimates that the stranded debt will be eliminated between 2015 and 2018. For additional information on the stranded debt and the debt retirement charge, see Section 3.04, Electricity Sector—Stranded Debt.

The Board has had no role in setting or otherwise regulating the debt retirement charge. However, given that the Board regulates the industry, consumers could reasonably assume that it is responsible for overseeing all facets of their electricity bill. To prevent this misconception, the Board should clearly spell out charges over which it has no power and identify which entities do have control over these charges.

RECOMMENDATION 2

To help ensure that the interests of consumers are protected with respect to those charges not subject to Ontario Energy Board (Board) oversight and regulation, the Board should:

- encourage the Ministry of Energy (Ministry) and the Ontario Power Authority (OPA) to consult with it on a more timely basis with respect to the interests of consumers in all energy-supply and pricing undertakings by the Ministry and the OPA;
- work more proactively with the Independent Electricity System Operator to address the high-priority recommendations from the Market Surveillance Panel; and

- clearly explain the reason for each charge on consumer power bills, identify the entity receiving the proceeds from each charge, and disclose whether the Board has any oversight role relating to the charge.

BOARD RESPONSE

The Board supports the objective of enhanced co-ordination among energy-sector agencies, while at the same time respecting both its own mandate and the authority and responsibilities of other agencies. The Board will work with the Independent Electricity System Operator to ensure that high-priority recommendations made by the Market Surveillance Panel are appropriately addressed in a timely manner. The Board has already developed several innovative consumer education tools (such as the on-line bill calculator) and will examine how to assist consumers further.

CONSUMER PROTECTION

Consumer Education

As noted previously, the government enacted a regulation in 2004 that required electricity bills issued to residential and small-business consumers to be broken down by electricity, delivery, regulatory, and debt retirement charges. However, these components typically have to be further divided into sub-components to be fully explained.

Given the increased complexity on residential electricity bills, consumers need additional sources of information to help them understand just what they are being asked to pay for. Such education is crucial as the sector continues to evolve and consumers are given more choices in how to manage their power costs. For example, they need to understand the risks and potential benefits of signing retail fixed-price contracts. They also need to understand the time-of-use system and how they may save money by adjusting their power-usage patterns.

Although the Board has indicated that consumer education is a responsibility it shares with other entities in the electricity sector, the Board has established a number of educational programs and communication tools, including consumer outreach programs, advertising campaigns, and on-line resource materials. The Board has also included a bill calculator function on its website that enables consumers to calculate a monthly estimated bill with their local utility or to compare how their charges would differ on a retail contract. This is a beneficial tool for consumers who want to understand the price differences between a retail contract and the Regulated Price Plan (RPP) before committing to a long-term fixed-price contract. A sample from the bill calculator is given in Figure 4.

Although we acknowledge that some of these programs have garnered recognition from industry associations, there is still room for improvement. For instance, in a focus group conducted in 2010, many participants said that they still did not understand the meaning of the charges on their electricity bills and were unaware of the Board's role in protecting them. In a 2010 stakeholder survey, respondents rated the Board poorly on its consumer and public education efforts, and similar results were noted in focus groups from previous years. A continuing lack of understanding of the nature of electricity charges by the general public clearly poses challenges for the Board in providing assurance to the public that the interests of electricity consumers are being protected.

We agree that consumer education is a responsibility that is shared with other entities in the electricity sector; however, the Board could use its authority over these entities to better influence them to meet their responsibilities.

Monitoring for Compliance

Regulated entities are required to adhere to the accounting, reporting, regulatory, and record-keeping requirements specified in the terms and conditions of their licences. Regulatory requirements

cover a wide range of activities, including conduct toward consumers by the regulated entities, billing practices and calculations, and related-party transactions.

The Board conducts compliance activities to ensure that regulated entities are adhering to their statutory and regulatory obligations, and it works to ensure that entities understand their obligations. It also investigates allegations of non-compliance, and undertakes enforcement action where it deems appropriate.

Three Board groups are responsible for compliance. The Regulatory Audit and Accounting Department focuses on ensuring that utilities use appropriate accounting policies and practices to generate reliable data for regulatory decision-making, and conducts audits to ensure that data collected from regulated entities is reliable to use in decision-making. The Regulatory Policy Group and the Consumer Protection Unit assess for compliance by monitoring the complaint process and identifying issues from other sources. They also conduct follow-up work, where warranted, on issues they have identified.

Compliance with Reporting Requirements

The Regulatory Audit and Accounting Department (Department) audits selected accounts and service-quality information reported by regulated entities. In the last three years, the Department has identified consistent deficiencies in utility record-keeping and reporting practices and persistent difficulties in meeting regulatory accounting and reporting requirements. Over the last two years, the Department has attempted to address some of these weaknesses by organizing three on-line training seminars for regulated entities.

In addition, local utility companies advised us that they had concerns about some of the reporting requirements. For example, they are not clear why some of the requirements even exist, or whether the Board uses the information it gets. They also noted issues with the required frequency of reporting, including a Board requirement that utilities report

certain information on a quarterly basis, including the number of consumers by rate class, the energy sales in kilowatt hours for each rate class, and the energy sales by electricity retailer. The utilities said that there is no need to report this information on a quarterly basis, because the industry does not change materially within such a short period of time. Instead, they said, it would be more cost-effective to report on an annual basis. Our review of the information collected by the Board also shows that the Board did not use this and other reported information on a quarterly basis.

The Board also collects, reviews, and analyzes information submitted by utilities to assess the reliability and quality of their service and to monitor their financial health. However, it has not clearly communicated to them why it needs the information and how the information is used. Such communication would help regulated entities understand the reporting requirements and ensure that they report correctly, which in turn could also enable the Board to identify systemic concerns that warrant its attention.

Compliance with Regulatory Requirements

In July 2009, the Board's compliance functions became the responsibility of its Regulatory Policy Group, which has not since conducted any proactive reviews of whether electricity utilities are complying with specific regulatory requirements. We noted that the current monitoring for compliance with codes and guidelines relies primarily on outside feedback, mostly customer complaints, and issues noted in the review of rate applications.

The last proactive reviews for conditions of service and affiliated relations (that is, related-party transactions) were conducted in 2007. These reviews noted a number of non-compliance issues. Among them:

- Some local utilities unduly transferred financial benefits to their affiliates. Examples included a \$1-million interest-free loan and inappropriate sharing of employees between the utility and the affiliate.

- The *Ontario Energy Board Act, 1998* (Act) bars distributors from carrying on certain activities. Some utilities' provision of municipal street lighting was in contravention of the Act.

Because the Board had not done any recent work relating to affiliate transactions, we conducted an analysis of affiliated loans currently reported by local utilities and selected 10 for follow-up. We noted three errors in the information provided to the Board regarding these loans, including mistakes in reported interest income, loan-related expenses, and loan balances. Although the Board agreed that these were indeed reporting errors, it also indicated that they were identified in the rate-setting applications and were therefore taken into consideration in the rate-setting process. However, because we looked at only one narrow area, it is possible that there are errors in other information reported to the Board. Without more proactive surveillance, such errors could be difficult to detect.

Consumer Complaints

The Board's responsibilities include responding to inquiries from electricity consumers about the Board and dealing with consumer complaints about regulated entities. Consumers can contact the Board by telephone, on-line, or in person. The number of complaints against regulated entities in the electricity sector grew from 1,400 in 2006 to 4,300 in 2010, and totalled 17,000 over the last five years. Complaints against electricity retailers account for between 70% and 90% of the total, with the remainder primarily about local utilities.

Common complaints include customers being switched to retail pricing without a contract, which can happen when a retailer obtains a customer's electricity account number; misrepresentation of identity by retailer agents claiming to work for the Board or the local utility; refusal to cancel contracts; misrepresentation about retail-contract pricing; and even forgery of signatures on the contracts.

The Board's Consumer Relations Group resolves most complaints by contacting the regulated entity

and by encouraging consumers to try to resolve the complaints directly with the company. Complaints that cannot be resolved in this way are escalated for review and follow-up by the Retail Markets and Compliance Management Group. The Board was unable to provide data from before 2006, but it said that in the last four years, 1,442 cases, representing about 11% of complaints against electricity retailers, were escalated for follow-up. In the last three years, 658 electricity retail contracts were cancelled through the complaint process and consumers received refunds worth more than \$700,000.

Given the continuing high number of complaints against electricity retailers, along with the costs involved in pursuing enforcement actions, it would be helpful for the Board to determine the underlying causes of these complaints and to determine whether appropriate mitigation measures can be implemented.

In 2010, the province passed the *Energy Consumer Protection Act* to ensure that Ontarians have the information they need about electricity contracts and electricity pricing, and that they can count on fair business practices. The new rules came into effect in January 2011, and the Board has contracted an external accounting firm to perform compliance audits on retailers with respect to the new requirements. The related costs of these audits (together with most of the costs of operating the Board's Consumer Protection Unit) are being allocated and charged back to retailers and marketers through the Board's cost-assessment process. This new allocation is effective as of April 1, 2011, in accordance with amendments to the Board's cost-assessment regulation.

Retail Contracts

In the current electricity market, consumers can purchase their supply of electricity for consumption either through their utility at the Regulated Price Plan (RPP) rates set by the Board or through an electricity retailer at a price set by the retailer. There are currently nine active retailers in Ontario,

and approximately 630,000 residential consumers (representing 15% of the total) have entered into contracts with them.

The Board licenses all retailers who sell electricity contracts in Ontario but does not set the prices they charge. The Board indicated that the existence of the retail sector and its ability to conduct door-to-door sales are matters for the government. The Board also indicated that there are inherent difficulties in taking enforcement action against door-to-door salespeople, given that there is always a question of “who said what.” However, because the Board licenses these entities, we believe that the public could reasonably expect it to play a more proactive role in protecting consumers from unfair business practices.

Consumer Desire for Price Protection

Consumers generally enter into retail contracts because they want price protection and stability in their electricity bills. However, such contracts do not actually offer protection against price increases. The potential protection they offer is applicable only to the “market price” portion of the electricity charge on the bill. They provide no protection against increases either in the Global Adjustment component of the electricity charge or in other costs. As noted earlier, the Global Adjustment has been rising steadily over the last few years with the cost of acquiring the electricity supply, even though the overall market price has been declining because of oversupply. Most consumers do not follow these developments, something that some retailers appear to have exploited to encourage consumers to sign a contract with them.

As the government moves forward with its long-term energy plan, Ontarians can expect continued increases in the cost of electricity. Most of these increases will be the result of upgrades to existing generating and transmission capacity, and commitments to purchase renewable energy through long-term contracts. As long as there is surplus capacity, the price increases associated with many of these

investments will likely be reflected in the Global Adjustment and not the market price. Accordingly, consumers with fixed-price contracts will have no protection from these increases even though such “fixed-price” protection was undoubtedly why consumers signed these contracts in the first place. In fact, the OPA is projecting electricity surpluses in the future that will put further downward pressure on the market price. Fixed-price contract holders will obtain no benefit from any such decreases because they will continue to pay their contracted price.

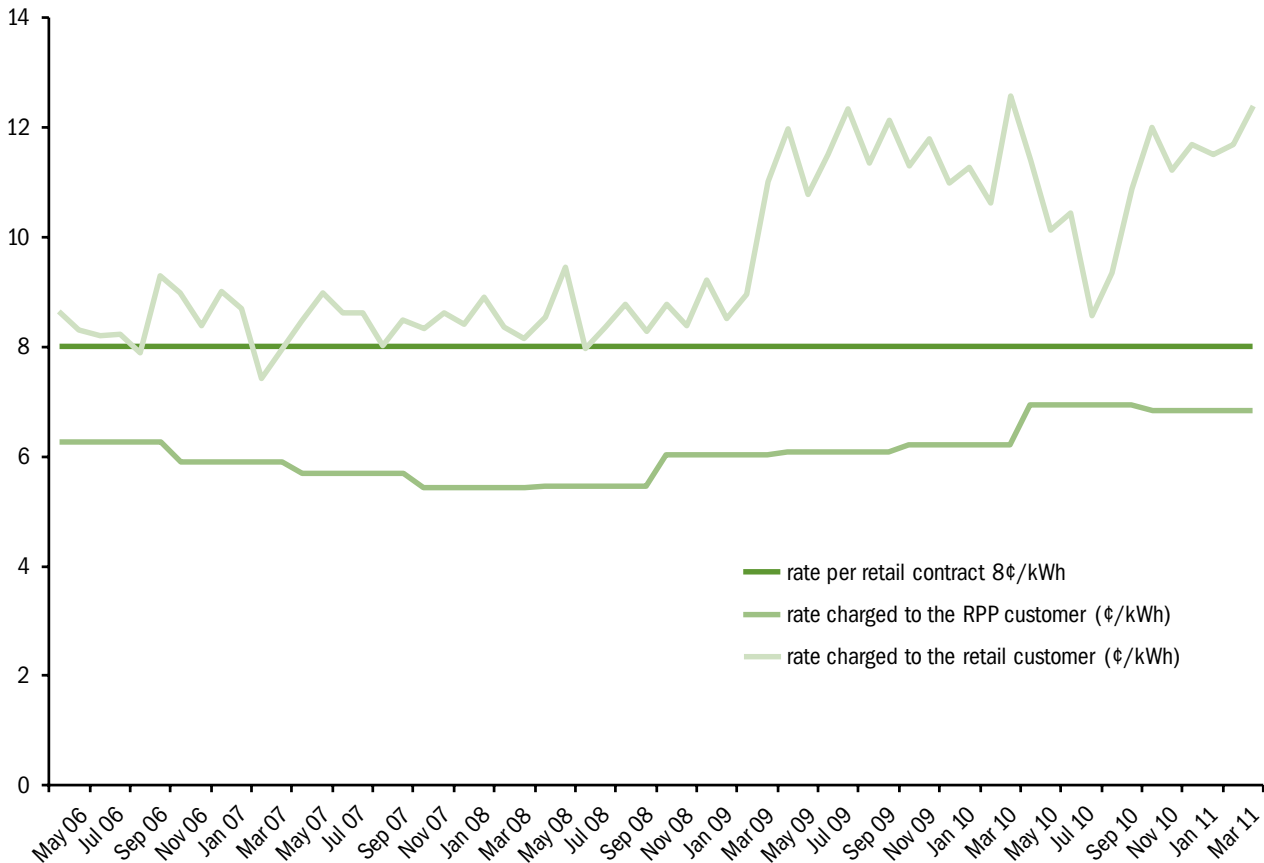
Effectiveness of Price Protection

We sampled customer bills from 2006 to 2009 from various retailers, and noted that retailers offered fixed electricity rates in the range of 8.49¢/kWh to 10.53¢/kWh. During this same period, the average market electricity rate ranged from 3.2¢/kWh to 5.2¢/kWh. The Board set the average RPP price, including both the market and Global Adjustment rates, at between 5.4¢/kWh and 6.3¢/kWh. Accordingly, our sample of retail-contract customers paid anywhere from 35% to 65% more for their electricity, before tax and other charges, than the highest RPP rate over the term of their contract.

For example, a consumer who committed to a five-year fixed-price electricity retail contract at 8¢/kWh would have actually seen more dramatic electricity price increases and price fluctuations on his or her electricity bill than a customer who stayed on the Board’s Regulated Price Plan, as shown in Figure 7. This effectively negates the main reason—price stability—that leads people to enter into such contracts in the first place. Over the term of a five-year contract, we estimate that under this scenario a customer using 1,000 kWh per month could pay about \$2,000 more for electricity than one on the RPP plan. As well, retailers have profited without facing some of the usual business risks because the utilities that supply electricity to the retailers’ customers are required to pay the retailers first and then attempt to collect from consumers.

Figure 7: Electricity Price Comparison (RPP vs. Retail-contract Price), 2006–2011

Prepared by the Office of the Auditor General of Ontario



As noted earlier, approximately 70% to 90% of all customer complaints in the electricity sector to the Board over the last five years were against retailers. The Board advised us that dealing with retailers choosing to conduct door-to-door sales is not within its authority; however, because it is responsible for licensing retailers, we believe that it has at least some responsibility to protect consumers from unfair practices by the retailers it licenses. To the extent that the Board's responsibility is shared with others, such as the Ministry of Consumer Services, it would be prudent to ensure that a co-ordinated and effective process is in place for resolving consumer complaints about these retailers.

Enforcement

In its compliance work, the Board has continually observed non-compliance with its regulatory and

reporting requirements by the regulated entities. Some of these instances of non-compliance might be addressed through better communication, such as the on-line training sessions put on by the Board's auditing group and the information bulletins it puts out. Adequate follow-up reviews are also required, to ensure that these and other remedial actions have been effective in ensuring compliance.

In addition, since assuming the increased responsibilities for regulating the electricity sector in 1999, the Board indicated that it made a deliberate and principled decision in the earlier stages of its activities to focus on voluntary compliance, recognizing that regulated entities required some time to understand and adapt to the legal and regulatory requirements and to correct their practices. We acknowledge that time is required for regulated entities to adapt to new regulatory requirements

and that the Board needed to work with these regulated entities to ensure that they understand and build up their capacity to meet these new requirements. However, a voluntary system is effective only if it leads to eventual compliance; if non-compliance is persistent, other remedial actions are required.

The Board clearly recognizes the importance of enforcement in effectively regulating the near-monopoly that is the electricity sector, because its business plans and annual reports acknowledge the importance of enforcement as a key part of an effective compliance function. That said, despite the high number of public complaints against electricity retailers, we noted little enforcement action against retailers with repeat offences. Since July 2003, the Board has issued only four enforcement orders in 2009 and just one in 2010. In total, three retailers were fined about \$500,000 and had special licence conditions imposed on them. The Board indicated that enforcement actions are a costly and resource-intensive process.

RECOMMENDATION 3

To ensure that consumers are protected and that they have the information they need to understand their electricity bills, the Ontario Energy Board should:

- review its current educational and communication programs and make the appropriate adjustments to meet consumer information needs;
- consider initiating limited proactive compliance reviews focusing on high-risk areas;
- work with utilities to streamline reporting requirements, including the timing and frequency of reporting; and
- determine whether appropriate deterrent actions in those areas that have generated frequent legitimate consumer complaints can be implemented.

BOARD RESPONSE

The Board appreciates the Auditor General's recognition of its consumer education materials, and it commits to enhancing them to meet changing consumer needs.

The Board agrees that proactive compliance is an important part of a robust monitoring and compliance program. The Board has included a commitment to this in each of its business plans since 2004 and has undertaken focused proactive compliance reviews based on a risk assessment that includes reviewing consumer complaints. The Board's compliance philosophy focuses on bringing industry players into compliance through a multi-faceted process that includes enforcement action where appropriate. With the passage of the *Energy Consumer Protection Act, 2010* (Act), the Board has established a Consumer Protection Business Unit that is focused on ensuring that industry licensees are adhering to consumer protection requirements. The Board has conducted detailed compliance inspections of all active retailers and has recently initiated enforcement actions relating to allegations of failure by retailers to meet the requirements of the Act and related regulatory requirements.

The Board has worked to streamline its reporting requirements and will further review them in consultation with the industry and other stakeholders. In the past two years, the Board has taken steps to assist distributors by enhancing its electronic filing system to facilitate reporting, as well as by providing definitions and guidance that promote a common understanding of the reporting requirements.

PERFORMANCE MEASURES

Performance indicators can be defined as measurable outcomes that are within an entity's control and clearly linked to its objectives. Since the 2004/05 fiscal year, the Board has developed and published an annual business plan with associated performance measures. The business plan identifies the Board's strategic objectives and the management initiatives to support them. It also sets out the activities that the Board intends to undertake over the next three years to achieve its objectives, and how it will measure its success. The Board's actual performance vis-à-vis these performance measures is independently reviewed by an external auditor.

We concluded that this process was well structured and offered the potential to be an excellent performance-reporting mechanism. However, to take full advantage of this process, the Board's performance measures need to be more results- or outcome-based, rather than process-oriented or output-based. For example, the Board's measures looked at whether "Regulated Price Plan prices have been adjusted as required" and whether "filing guidelines for cost-of-service applications will be updated." The challenge with process-oriented or output-based measures is that they often provide little evidence as to the actual achievement of the Board's strategic objectives. We acknowledge that in its 2011–2014 Business Plan, the Board recognized the value of moving toward outcome-based performance measures. However, no such measures had been developed at the time of our audit.

One of the Board's performance measures is its own internal costs, which have been increasing over the last 10 years although they have remained more stable over the last three years. In addition to the Board's operating expenses, the cost of regulation also includes such other expenses as the cost of intervenors and costs incurred by applicants seek-

ing approval for price increases. However, neither cost has been included in its cost calculations. Because all regulatory costs are ultimately passed on to the same electricity consumers that the Board is mandated to protect, we believe that these costs should also be reflected.

RECOMMENDATION 4

To improve the reporting of the effectiveness and costs of its regulatory activities, the Ontario Energy Board (Board) should develop more results-based or outcome-based performance measures that are aligned with its strategic objectives and mandate, and summarize and report all of the costs associated with the Board's regulatory processes.

BOARD RESPONSE

In its most recent business plan, the Board expressed its commitment to moving to outcome-based performance measures. The Board is working toward the establishment of a robust performance-assessment framework that will include the collection and assessment of indicators and data relating to the impact of its decisions and policy initiatives over time. The Board appreciates the Auditor General's conclusion that its current performance-measurement process is well structured and will continue to use that process in the interim to confirm achievement of its business-plan initiatives.

The Board will, in addition to reporting on its own costs, report on cost awards paid to intervenors. The Board will explore whether information on utility regulatory costs can be readily provided by the utilities at a cost that is commensurate with the benefits of enhanced reporting.

Electricity Sector— Renewable Energy Initiatives

Background

The government is responsible for setting the legislative and policy framework over the production, transmission, and sale of electricity in Ontario. The three key factors that impact its electricity policy-setting role are price, reliability, and sustainability.

The Ministry of Energy (Ministry) is responsible for providing the regulatory framework and implementing the government's electricity policies, and does this in part through its oversight of several government entities, including:

- the Ontario Power Authority (OPA), which plans and procures electricity supply to meet the province's power needs;
- the Ontario Energy Board (OEB), which regulates Ontario's electricity and natural-gas sectors;
- the Independent Electricity System Operator (IESO), which is responsible for the day-to-day operation of Ontario's electrical system;
- Ontario Power Generation (OPG), which generates electricity through its nuclear, thermal, and hydroelectric stations; and
- Hydro One, which distributes electricity across the province.

One cornerstone of the current government's energy policy is the development of a significantly

greater role for renewable energy in Ontario's electricity-supply mix. Renewable electricity refers to those sources of energy generated by natural processes. The four major forms of renewable energy are:

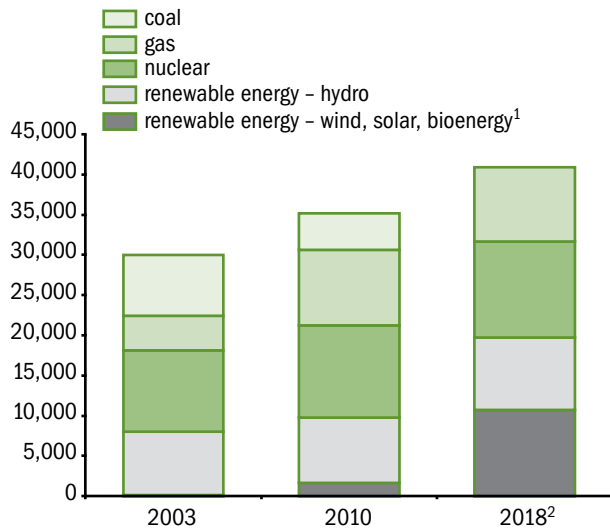
- hydro, generated from the movement of water;
- wind, generated by turbines from air currents;
- solar, generated by photovoltaic cells that capture energy from the sun; and
- bioenergy, generated by burning organic forestry residues and agricultural wastes.

The Ontario government has proposed an increased reliance on renewable energy sources, especially wind, solar, and bioenergy, partly to replace coal-fired generating plants by the end of 2014. The installed capacity from different energy sources between 2003 and 2018, as projected in the Ministry's Long-Term Energy Plan of November 2010, is shown in Figure 1.

In keeping with this priority, the government enacted the *Green Energy and Green Economy Act* (Act) in May 2009. The intent of the Act, which included new legislation and amendments to existing laws, was to attract investment in renewable energy, promote a culture of energy conservation, create a competitive business environment, increase job opportunities, and reduce greenhouse gas emissions.

Figure 1: Installed Capacity of Electricity Supply from Different Energy Sources (MW), 2003–2018

Source of data: Ministry of Energy



1. The expected electricity outputs from wind and solar are much lower than their installed capacity (see Figure 10).

2. Projected.

Both the Ministry and the OPA have played an active role in implementing the government's renewable energy policies. The Ministry's responsibilities have focused on the development of programs and policies to advance implementation of the Act, while the OPA has played a key role in planning and procuring renewable energy by contracting to buy power from developers of renewable energy projects.

Audit Objective and Scope

The objective of our audit was to assess whether the Ministry of Energy (Ministry) and the Ontario Power Authority (OPA) had adequate systems and procedures in place to:

- ensure that renewable energy resources are obtained in a cost-effective manner and within the context of applicable legislation and government policy; and

- implement a balanced and responsible plan with respect to renewable energy that provides Ontarians with a clean, reliable, affordable, and sustainable electricity system.

Senior management at the Ministry and the OPA reviewed and agreed to our audit objective and associated audit criteria.

We conducted our audit work at the Ministry and the OPA. We also visited the system control centre of the Independent Electricity System Operator (IESO) to help us better understand the operation of Ontario's electricity market.

In conducting our audit work, we reviewed relevant legislation, regulations, policies, and procedures; analyzed historical and projected electricity-related data collected by the OPA and the IESO; reviewed analyses conducted by the Ministry and the OPA; interviewed ministry and OPA staff; met with representatives from the IESO, the Ontario Energy Board, and Hydro One; and reviewed relevant literature and best practices in other jurisdictions. In addition, we engaged independent consultants with expert knowledge of Ontario's energy sector on an advisory basis.

We did not rely on the Ministry's internal audit service team to reduce the extent of our audit work because it had not recently conducted any audit work on renewable energy initiatives.

Summary

Historically in Ontario, electricity generation and transmission to residential and commercial users was largely the responsibility of Ontario Hydro, a Crown corporation, and after 1999, its successor companies. The responsibility for ensuring that these entities provided consumers with electricity that was both sustainable over the long term and reasonably priced fell to the Ministry of Energy (Ministry) and the Ontario Energy Board, an independent regulator. The *Green Energy and Green Economy Act, 2009* delegated a certain part

of the responsibility for dramatically increasing the province's renewable energy supply directly to the Minister of Energy. Under this legislation, the government created a new process to expedite the development of renewable energy by providing the Minister with the authority to supersede many of the government's usual planning and regulatory oversight processes.

As a result, the government has been able to further its renewable energy policy agenda without the delays that these processes can sometimes cause. This agenda has included generating significantly more energy from renewable sources to replace coal-sourced energy, given its environmental and health risks. It has also included creating jobs in a new “green” energy sector.

The government's renewable energy initiatives have been successful in rapidly increasing the amount of renewable power available over the next few years. At the same time, however, wind and solar renewable power will add significant additional costs to ratepayers' electricity bills. Renewable energy sources such as wind and solar are also not as reliable and require backup from alternative energy-supply methods such as gas-fired generation. The government was well aware that its renewable energy initiatives meant higher costs but felt that this was a more-than-acceptable trade-off given the environmental and health benefits, as well as the anticipated job-creation benefits.

Some of our observations relating to the implementation of the government's renewable energy policy were as follows:

- Ontario is on track to shut down its more than 7,500 megawatts (MW)—the capacity as of 2003—of coal-fired generation by the end of 2014. Coal-generated power is being replaced by nuclear power from refurbished plants and by an increase of about 5,000 MW of gas-fired generation, with the remainder resulting largely from bringing more renewable energy online. More significantly, actions taken by the OPA and the Ministry to implement the Minister's Directives are projected to increase renewable energy, mainly wind and solar power, to 10,700 MW by 2018.
- Because the ministerial directions were quite specific about what was to be done, both the Ministry and the OPA directed their energies to implementing the Minister's requested actions as quickly as possible. As a result, no comprehensive business-case evaluation was done to objectively evaluate the impacts of the billion-dollar commitment. Such an evaluation would typically include assessing the prospective economic and environmental effects of such a massive investment in renewable energy on future electricity prices, direct and indirect job creation or losses, greenhouse gas emissions, and other variables.
- In May 2009, when the *Green Energy and Green Economy Act* (Act) was passed, the Ministry said the Act would lead to modest incremental increases in electricity bills of about 1% annually—the result of adding 1,500 MW of renewable energy under a renewable procurement program called the Feed-in Tariff program and implementing conservation initiatives. In November 2010, the Ministry forecast that a typical residential electricity bill would rise about 7.9% annually over the next five years, with 56% of the increase due to investments in renewable energy that would increase the supply to 10,700 MW by 2018, as well as the associated capital investments to connect all the renewable power sources to the electricity transmission grid.
- The OPA was designated as the province's energy planner, responsible for submitting long-term plans to the Ontario Energy Board (OEB) for approval. However, the first long-term energy plan put forward by the OPA since its creation in December 2004 has not been approved by the OEB. Although the OPA did spend \$10.7 million to develop its first energy plan, which it submitted to the OEB for review in 2007, the government suspended the OEB's review of the plan in 2008. In 2010,

the Ministry released its own Long-Term Energy Plan to provide the OPA with sufficient context on the government's policy priorities and targets to guide it in its planning. From the public's perspective, this could lead to some ambiguity as to which entity is responsible for electricity planning in Ontario.

- Earlier procurement programs for renewable energy included competitive bidding and the Renewable Energy Standard Offer Program (RESOP), which were both very successful and achieved renewable generation targets in record time. In particular, RESOP received overwhelming responses. It was expected to develop 1,000 MW over 10 years, but it exceeded this target in a little more than one year. Although continuing the successful RESOP initiative was one option, the Minister directed the OPA to replace RESOP with a new Feed-in Tariff (FIT) program that was wider in scope, required made-in-Ontario components, and provided renewable energy generators with significantly more attractive contract prices than RESOP. These higher prices added about \$4.4 billion in costs over the 20-year contract terms as compared to what would have been incurred had RESOP prices for wind and solar power been maintained. The Ministry indicated that replacing RESOP with FIT successfully expedited its renewable energy program and promoted Ontario's domestic industry.
- Many other jurisdictions set lower FIT prices than Ontario and have mechanisms to limit the total costs arising from FIT programs. The OPA made a number of recommendations to lower Ontario's pricing structure. We were advised that the government opted for price stability to maintain the investor confidence required to attract capital investment to Ontario until the planned two-year review of the FIT program could be undertaken. Examples of proposed changes included the following:
 - In March 2009, before the passage of the *Green Energy and Green Economy Act*, the OPA proposed a reduction of 9% to FIT prices for electricity generated from ground-mounted solar projects, in line with similar practices in some other jurisdictions. This could have reduced the cost of the program by about \$2.6 billion over the 20-year contract terms. The government did not apply this reduction. The Ministry informed us that such a predetermined price reduction ran counter to the government's goals of maintaining policy and price stability for the initial two-year period.
 - In February 2010, the OPA recommended cutting the FIT price paid for power from microFIT ground-mounted solar projects after the unexpected popularity of these projects at the price of 80.2¢ per kilowatt hour (kWh), the same price as was being paid for rooftop solar projects, became apparent. This price would provide these ground-mounted solar project developers with a 23% to 24% after-tax return on equity instead of the 11% intended by the OPA. The recommended price cut was not implemented until August 2010. In the five months from the time the OPA recommended the price cut in February 2010 to the actual announcement in July 2010, the OPA received more than 11,000 applications from developers. Because the government decided to grandfather the price in order to maintain investor confidence, all of these applications, if approved, would qualify for the higher price rather than the reduced one. We estimated that, had the revised price been implemented when first recommended by the OPA, the cost of the program could have been reduced by about \$950 million over the 20-year contract terms.
 - The Ministry negotiated a contract with a consortium of Korean companies to build renewable energy projects. The consortium

will receive two additional incentives over the life of the contract if it meets its job-creation targets: a payment of \$437 million (reduced to \$110 million, as announced by the Ministry in July 2011 after the completion of our audit fieldwork) in addition to the already attractive FIT prices; and priority access to Ontario's electricity transmission system, whose capacity to connect renewable energy projects is already limited. However, no economic analysis or business case was done to determine whether the agreement with the consortium was economically prudent and cost-effective, and neither the OEB nor the OPA was consulted about the agreement. On September 29, 2009, the ongoing negotiations with the consortium were publicly announced, and Cabinet was briefed on the details of the negotiations and the prospective agreement in October 2009. The formal agreement was signed in January 2010.

- Surplus generating capacity is necessary to meet periods of peak demand, which, in Ontario, occur in the summer. Therefore, to ensure system reliability, all jurisdictions will have surplus power from time to time. Ontario deals with surplus-power situations mainly by exporting electricity to other jurisdictions at a price that is lower than the cost of generating that power. Given that demand growth for electricity is expected to remain modest at the same time as more renewable energy is being added to the system, electricity ratepayers may have to pay renewable energy generators under the FIT program between \$150 million and \$225 million a year not to generate electricity.
- Ontario's electricity transmission and distribution systems already operate at or near capacity. A higher-than-anticipated number of renewable energy projects under the FIT program are awaiting connection to the distribution grid. As of April 1, 2011, about 10,400 MW, representing more than 3,000

FIT applications, cannot be accommodated into the existing power grid.

- Recent public announcements stated that the *Green Energy and Green Economy Act, 2009* was expected to support over 50,000 jobs, about 40,000 of which would be related to renewable energy. However, about 30,000, or 75%, of these jobs were expected to be construction jobs lasting only from one to three years. We also noted that studies in other jurisdictions have shown that for each job created through renewable energy programs, about two to four jobs are often lost in other sectors of the economy because of higher electricity prices.
- Renewable energy sources such as wind and solar provide intermittent energy and require backup power from coal- or gas-fired generators to maintain a steady, reliable output. According to the study used by the Ministry and the OPA, 10,000 MW of electricity from wind would require an additional 47% of non-wind power, typically produced by natural-gas-fired generation plants, to ensure continuous supply.

OVERALL MINISTRY RESPONSE

The Ministry of Energy (Ministry) welcomes the Auditor General's recommendations and remains committed to providing quality policy advice and implementing the government's decisions in a manner that is cost-effective and promotes system reliability and sustainability.

The *Green Energy and Green Economy Act, 2009*, enacted by the Ontario Legislature and authorizing the creation of a Feed-in Tariff (FIT) program, represents a fundamental shift in Ontario's electricity policy direction. This directional shift is consistent with some 88 jurisdictions worldwide that have also implemented FIT programs.

Ontario's FIT program was designed to meet three key policy objectives:

- Reduce our environmental footprint (greenhouse gas emissions) by bringing more renewable energy online and supporting the phase-out of coal by 2014.
- Better protect the health of Ontarians by eliminating the harmful emissions from burning coal. In fact, an Ontario independent study in 2005 found that coal-fired generation costs \$4.4 billion annually when health and environmental costs are taken into consideration.
- Create green energy jobs and attract scarce investment capital to Ontario amidst a global recession.

The uptake of Ontario's FIT program has been successful largely due to the government's decision to set attractive FIT prices and instill investor confidence by not reducing prices or making major policy or program changes prior to the mandatory two-year review.

Planning for a stable supply of electricity is a complex exercise requiring compliance with North American standards. Prudent planning requires providing significantly more generating capacity than peak demand. By 2016, energy supply and demand are projected to match closely as nuclear units are taken offline for refurbishment.

The Ministry will continue to work closely with the Ontario Power Authority to balance energy supply and demand in the next Integrated Power System Plan and make adjustments as necessary to ensure reliability.

OVERALL OPA RESPONSE

The OPA supports the Auditor General's recommendations with respect to the ongoing development and administration of renewable energy programs in the province. The Ontario FIT program—the first of its kind in North America in scope, comprehensiveness, and magnitude—was designed and launched in 2009 in a particular set of economic and policy

circumstances. The OPA worked to diligently and effectively implement the program within short timelines. Consistent with the OPA's own internal audit, the Auditor General did not find any significant issues with the administration of the FIT program. From the outset, a mandatory review was built in, at the two-year mark, to provide a period of program stability as well as to recognize that the program would need to evolve as both technology and markets matured over time. This review, under way in fall 2011, provides an opportunity to consider many of the issues raised in the audit.

The Auditor General also identifies the importance of sector-wide collaboration and coordination for renewable energy development. The OPA works closely with the Ministry of Energy, Hydro One, the Independent Electricity System Operator, local distribution companies, and the Ontario Energy Board on renewable energy development—for example, through the Renewable Energy Supply Integration Team—and will continue to do so. This includes finding ways to more effectively communicate with the public on the costs of renewable energy and other types of electricity generation. Finally, the OPA is encouraged that the Auditor General recognizes the contribution that renewable energy is making to support the reduction of greenhouse gases in Ontario's electricity system.

Detailed Audit Observations

SIGNIFICANT RENEWABLE ENERGY COMING ON-LINE

Building clean, affordable, reliable, and sustainable sources of electricity is a top priority for the Ontario government. As part of its goals of protecting the environment and the health of Ontarians, the government has committed to closing all coal-fired

plants by the end of 2014. Ontario is on track to meet this commitment. Of the 19 units operated at five coal-fired plants across Ontario in 2003, the Ministry indicated that eight units had been closed since that year and two more were to be shut down later in 2011. As a result of these closures, the installed capacity of coal-fired generation in Ontario has been decreasing. It is anticipated that more than 7,500 MW of coal-fired installed capacity in 2003 will be replaced by nuclear power from refurbished plants and an increase of about 5,000 MW of gas-fired generation, with the balance coming from new renewable energy sources (see Figure 1).

Specifically, with the passage of the *Green Energy and Green Economy Act, 2009*, Ontario has made progress in bringing more renewable energy on-line. According to the Ministry, the installed capacity of cleaner renewable energy such as wind, solar, and bioenergy has increased from about 160 MW in 2003 to about 1,700 MW in 2010, and is expected to increase further to 10,700 MW by 2018 (see Figure 1).

COST IMPACT OF RENEWABLE ENERGY ON CONSUMERS

Rising electricity costs have in the last few years been a concern for Ontarians, who saw their power bills rise an average of 26% between 2008 and 2010, mainly as a result of capital investments, refurbishment of generating infrastructure, and the imposition of the Harmonized Sale Tax (HST). The government responded with a 10% reduction, called the Ontario Clean Energy Benefit, on the monthly electricity bills of households and small businesses that took effect on January 1, 2011, and that is to last for five years.

At the same time, mounting concerns about the impact of conventional power generation on the environment and public health have led many to give serious consideration to environmentally friendly renewable energy as an alternative. On the other hand, renewable energy sources, particularly wind and solar, cost much more than conventional

energy sources. Accordingly, electricity bills are projected to rise even further as more renewable energy projects start commercial operations in the next few years. The following section deals with some of the key factors affecting the cost of electricity in Ontario.

Hourly Ontario Electricity Price (HOEP) and Global Adjustment (GA)

There are five parts to the typical electricity bill: electricity charge, delivery charge, regulatory charge, debt retirement charge, and HST. The electricity charge accounts for the biggest single portion of the bill, and it consists of two key components:

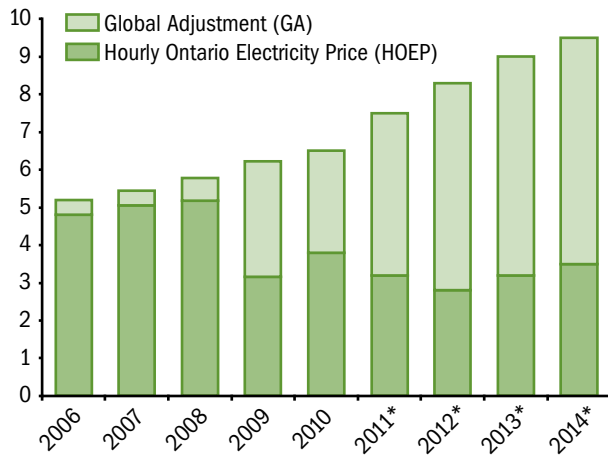
- The Hourly Ontario Energy Price (HOEP) is an hourly market price based on supply and demand for electricity as determined by a competitive process in which generators bid to supply electricity into the market.
- The Global Adjustment (GA) is the difference between the market price (HOEP) and the guaranteed prices paid to regulated and contracted generators. It also accounts for the cost of the OPA's conservation programs. Guaranteed prices are paid to generators, including, but not limited to, nuclear and hydroelectric generators administered by the Ontario Power Generation (OPG), non-utility generators administered by the Ontario Electricity Financial Corporation, and gas-fired and renewable energy generators contracted by the OPA.

The OPA has entered into a number of fixed-price contracts, resulting in higher-than-market electricity prices. Following passage of the *Green Energy and Green Economy Act* in 2009, the OPA was directed to significantly expand renewable energy by offering very attractive contract prices to developers of renewable energy projects. These contracts are expected to lead to significantly higher electricity charges through the GA portion of the electricity bill. Figure 2 shows that:

- The sum of the HOEP and the GA, representing the biggest part of electricity bills,

Figure 2: Electricity Charge, 2006–2014 (¢/kWh)

Source of data: OPA and IESO



* Projected.

increased by 25% between 2006 and 2010, and is expected to rise another 43% by 2014 due to rapid growth in the GA.

- By 2014, the GA is expected to be 6¢ per kilowatt hour (kWh)—almost two-thirds of the electricity charge—and will be almost two times more than that year’s projected HOEP.

Based on our analysis of OPA data, renewable energy contracts will contribute significantly to increases to the Global Adjustment. As illustrated in Figure 3, the total GA is expected to increase tenfold province-wide, from about \$700 million in 2006 to \$8.1 billion in 2014, when the last coal-fired plants are phased out. Almost one-third of this \$8.1 billion is attributable to renewable energy contracts.

Public Awareness of the Cost Impact of Renewable Energy

The OPA indicated that consumers have to be advised, through appropriate channels, of the expected electricity-price increases arising from a large number of contracts to buy green energy at fixed rates that are significantly higher than market prices. However, a number of consumer surveys conducted by the government in spring and fall 2010 indicated that although consumers generally supported renewable energy, they were

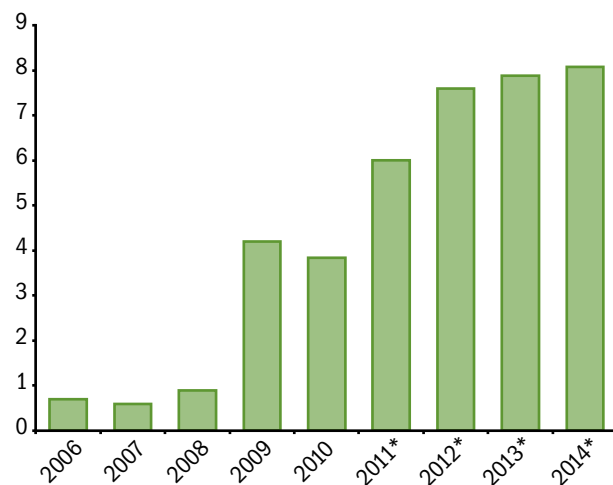
for the most part unaware of its impact on prices. Specifically:

- An OPA survey showed that only 14% of respondents thought renewable energy would lead to electricity price increases, while 60% disagreed that “green energy sources like wind and solar are too expensive and unreliable.”
- Ministry surveys found that only a minority of respondents linked recent price increases to the cost of renewable energy, although many respondents did say that they were prepared to pay “modest” increases for renewable electricity.
- Hydro One surveys found that consumers supported spending to connect renewable energy to the power grid, but were less inclined to support electricity bill increases associated with these investments. About half said they were willing to pay for such investments, but only 27% would agree to an increase in their electricity bills of more than 5%.

In May 2009, when the *Green Energy and Green Economy Act* was passed, the Ministry said it would lead to modest incremental increases in electricity bills of about 1% annually as a result of adding 1,500 MW of renewable energy under a renewable energy program called Feed-in Tariff (FIT) and implementing conservation initiatives. In November

Figure 3: Total Global Adjustment, 2006–2014 (\$ billion)

Source of data: OPA and IESO



* Projected.

2010, the Ministry's Long-Term Energy Plan (LTEP) included electricity-price forecasts based on the effects of all investments in Ontario's electricity system. According to the LTEP, a typical residential electricity bill would rise about 7.9% annually over the next five years, with 56% of the increase due to investment in new, cleaner renewable energy that would increase the supply to 10,700 MW by 2018 as well as the associated capital investments to connect renewable power sources to the transmission grids.

Because the forecasts in the LTEP were not specific to renewable energy, we asked the Ministry for a detailed breakdown and analysis showing the impact of all renewable energy initiatives on various components of residential, industrial, and commercial electricity bills. As Figure 4 illustrates, the impact of renewable energy on monthly electricity charges is expected to increase for all sectors between 2010 and 2018, especially the large commercial and industrial sectors. However, the Ministry did not have a similar breakdown for the impact of renewable energy on monthly delivery and regulatory charges. We also noted that although the LTEP and the related pamphlet did inform the public that renewable energy would increase their electricity bills, the cost impact of renewable energy by sector was not disclosed in detail. The Ministry informed us that the forecasts in the LTEP were based on all-in total costs, which

are more important to the public than cost data relating to the different sources of energy, such as renewable energy.

In addition to the forecasts in the Ministry's LTEP and contained in Figure 4, in April 2010, the OEB completed an analysis predicting that a typical household's annual electricity bill will increase by about \$570, or 46%, from about \$1,250 in 2009 to more than \$1,820 by 2014. More than half of this increase would be because of renewable energy contracts.

RECOMMENDATION 1

To ensure that electricity ratepayers understand why their electricity bills are rising at a much higher rate than inflation, the Ministry of Energy (Ministry) and the Ontario Power Authority (OPA) should work together to increase consumer awareness of the concept of the Global Adjustment and make more information available on the cost impact of its major components.

MINISTRY RESPONSE

The Ministry agrees that consumer awareness of electricity costs, and the factors that affect those costs, is vital.

The Ministry will seek to build on its extensive public education and awareness actions to

Figure 4: Monthly Electricity Charge Related to Renewable Energy in Different Sectors

Source of data: Ministry of Energy

Economic Sector	Examples	Assumed Electricity Consumption (kWh/month)	Renewable Energy-related Electricity Charge (\$)	
			2010 (Actual)	2018 (Projected)
residential	n/a	800	2	31
small commercial	convenience store, small dry cleaner, restaurant, small retail store	12,000	38	500
large commercial	supermarket, shopping mall, large office building, hotel	130,000	385	5,000
industrial	paper and pulp, automobile, mining, cement, iron and steel manufacturing, chemical products, petroleum (i.e., refineries)	61,200,000	200,000	2,400,000

date. In 2011, these actions included providing the following focused information about changes to electricity prices to all of Ontario's electricity consumers:

- the “Electricity Prices Are Changing” pamphlet, sent to all Ontario households; and
- a quarterly electricity bill insert titled “Ontario Clean Energy Benefit,” detailing changes to electricity bills.

The Ministry will continue to work with the Ontario Energy Board, local distribution companies, the OPA, and its other partners to seek opportunities to further increase public awareness about energy prices. The Ministry will also explore options for an integrated media campaign, which could include web postings and fact sheets and other opportunities.

OPA RESPONSE

The OPA agrees with this recommendation. Information about the Global Adjustment (GA) and the relationship between the OPA's contracts and the GA is currently available on the OPA website. The OPA has started work to simplify this information and co-ordinate with other electricity organizations to provide comprehensive, consistent information about the total cost of electricity. The OPA maintains updated cost forecasts and has substantially completed an update of the Integrated Power System Plan, which will contain a detailed cost and bill-impact analysis. As the province's electricity planner, the OPA could be the logical source of independent and credible information on costs.

DEVELOPMENT OF ENERGY PLAN AND RENEWABLE ENERGY POLICY

The OPA was created in December 2004 by the *Electricity Restructuring Act*. One of its key objectives is to ensure the adequacy and reliability of

Ontario's electricity supply through planning and procurement. Under the legislation, the Ministry and the OPA would continue to provide the government with advice on the development of renewable energy, but the Minister essentially had the authority to direct the OPA, which minimized the need for an analysis of different policy options and an assessment of the cost-effectiveness of alternative approaches.

Integrated Power System Plan (IPSP)

The OPA has since its inception had the statutory responsibility to develop an Integrated Power System Plan (IPSP) and procurement processes for electricity. The IPSP is to represent Ontario's 20-year plan to achieve the province's energy goals. The OPA is required to submit the IPSP and the related procurement processes every three years to the Ontario Energy Board (OEB), which then must review the proposed IPSP to ensure that it is economically prudent and cost-effective. However, the OEB has never approved the first IPSP put forward by the OPA after the OPA's creation in December 2004 because of frequent changes to government policy and planning requirements, as illustrated in Figure 5.

The OEB's review and approval process of the OPA's first IPSP, submitted in August 2007, was suspended the following year at the direction of the Minister, who asked the OPA to revise the IPSP. The suspension of the independent regulator's review meant that there would be no independent assessment to ensure that decisions were made in an economically prudent and cost-effective manner.

In November 2010, the Ministry released a document called the Long-Term Energy Plan (LTEP) that specified Ontario's energy goals and supply-mix to 2030. The Ministry indicated that the LTEP, along with a February 2011 supply-mix directive, provided sufficient context to guide the OPA in planning and developing a revised IPSP. However, OPA staff acknowledged that the existence of two plans—the Ministry's and its own—could lead some

Figure 5: Key Developments in Ontario’s Long-term Energy Planning, 2006–2011

Source of data: Ministry of Energy and OPA

Date	Events
June 2006	Minister issues first supply-mix directive, which calls for renewable energy capacity of 15,700 MW by 2025, and instructs OPA to develop Integrated Power System Plan (IPSP) and maximize the contribution from renewable energy sources.
Aug. 2007	OPA submits first IPSP, designed to help achieve goals set in the June 2006 supply-mix directive, to OEB for review and approval.
Sept. 2008	Minister issues a new supply-mix directive, suspending OEB review and approval process of current IPSP and requiring OPA to submit a revised IPSP to OEB within six months.
Mar. 2009	OPA does not revise IPSP as per the September 2008 supply-mix directive, saying in a letter to OEB that it would wait before issuing revised IPSP due to “significant evolution” in the policy environment.
May 2009	<i>Green Energy and Green Economy Act, 2009</i> is passed to accelerate significant additions of renewable energy through creation of a Feed-in Tariff (FIT) program to promote renewable energy, in particular wind and solar power.
Sept. 2009	Minister issues a directive requiring OPA to develop the FIT program.
May 2010	OPA Board of Directors notes that a new IPSP is likely needed due to significant changes that have occurred since original IPSP was filed in 2007.
Nov. 2010	Ministry releases Long-Term Energy Plan (LTEP), a high-level document highlighting Ontario’s energy goals and supply-mix to 2030.
Feb. 2011	Minister issues a new supply-mix directive, which calls for renewable energy capacity of 19,700 MW by 2018, and instructs OPA to develop a new IPSP based on the Ministry’s LTEP.

to conclude that the OPA has only limited authority as an energy planner and that the Ministry’s LTEP is Ontario’s “true” plan for the future.

Renewable Energy Initiatives

In June 2006, the Minister issued the first supply-mix directive to increase the province’s renewable energy capacity to 15,700 megawatts (MW) by 2025, representing an increase of about 90% over the actual installed capacity of 8,200 MW in 2006. In February 2011, the Minister issued a new supply-mix directive that further increased the renewable energy target to 19,700 MW, but stipulated that it be achieved seven years earlier than the date set in the 2006 directive. In order to achieve these aggressive new targets, both the Ministry and the OPA expeditiously implemented the actions the Minister requested in his ministerial directives. Several renewable energy initiatives were introduced, as illustrated in Figure 6.

Although the Ministry consulted with stakeholders in developing the supply-mix directives, the LTEP, and the *Green Energy and Green Economy Act*, billions of dollars were committed to renewable energy without fully evaluating the impact, the trade-offs, and the alternatives through a comprehensive business-case analysis. Specifically, the OPA, the OEB, and the IESO acknowledged that:

- no independent, objective, expert investigation had been done to examine the potential effects of renewable-energy policies on prices, job creation, and greenhouse gas emissions; and
- no thorough and professional cost/benefit analysis had been conducted to identify potentially cleaner, more economically productive, and cost-effective alternatives to renewable energy, such as energy imports and increased conservation.

Figure 6: Summary of Renewable Energy Initiatives in Ontario

Source of data: Ministry of Energy and OPA

Launch Date	Program/ Initiative	Acquisition Method	Description	Capacity as of April 1, 2011 (MW)		
				Committed ¹	Non-committed ²	Total Capacity
OPA-contracted Renewable Energy Sources						
June 2004 June 2005 Aug. 2008	Renewable Energy Supply (RES I, II, and III)	request for proposals (competitive)	based on confidential pricing proposals from bidders	1,570	–	1,570
Nov. 2006	Renewable Energy Standard Offer Program (RESOP)	standard offer (pre-set price)	initiated by ministerial direction to remove obstacles for small renewable projects by setting fixed contract prices and simplifying contract rules and processes	916	–	916
Dec. 2007	Hydroelectric Energy Supply Agreement (HESA)	negotiation (non-competitive)	initiated by ministerial directions that required OPA to enter into hydroelectric contracts	2,062	–	2,062
May 2009	Hydroelectric Contract Initiative (HCI)					
Oct. 2009	Feed-in Tariff (FIT) and microFIT	standard offer (pre-set price)	initiated by ministerial direction to replace RESOP by setting higher contract prices, with a focus on creating jobs and green economy	3,675	10,408	14,083
Jan. 2010	Korean consortium ³	negotiation (investment arrangement)	privately negotiated contract between the Ministry and the Korean consortium	2,500	–	2,500
Uncontracted Renewable Energy Sources						
	uncontracted hydroelectric facilities ⁴	n/a	managed by private developers and/or OPG	5,938	–	5,938
Total				16,661	10,408	27,069

1. Includes all projects that were offered contracts or have executed contracts, either under construction or in commercial operation.

2. Includes all projects that have submitted applications, either under review or waiting for review. Does not include projects that have been rejected or withdrawn.

3. Considered as committed since the Green Energy Investment Agreement was signed in January 2010.

4. Estimated by subtracting 2,062 MW (HESA and HCI) from approximately 8,000 MW (total hydroelectric capacity) because no complete listing exists of uncontracted hydroelectric facilities.

Electricity Supply and Demand in Ontario

According to the OPA, Ontario's electricity generation capacity has been much higher than demand in recent years. Electricity demand has declined since 2005 due to the economic downturn, conservation, and declines in the auto, pulp, and paper industries, while supply increased mainly because

of the addition of renewable energy and gas-fired resources. The OPA noted that demand is expected to remain flat or decline due to continued conservation efforts and uncertain or slow economic recovery, while supply is expected to increase as a result of significantly more renewable energy coming on-line.

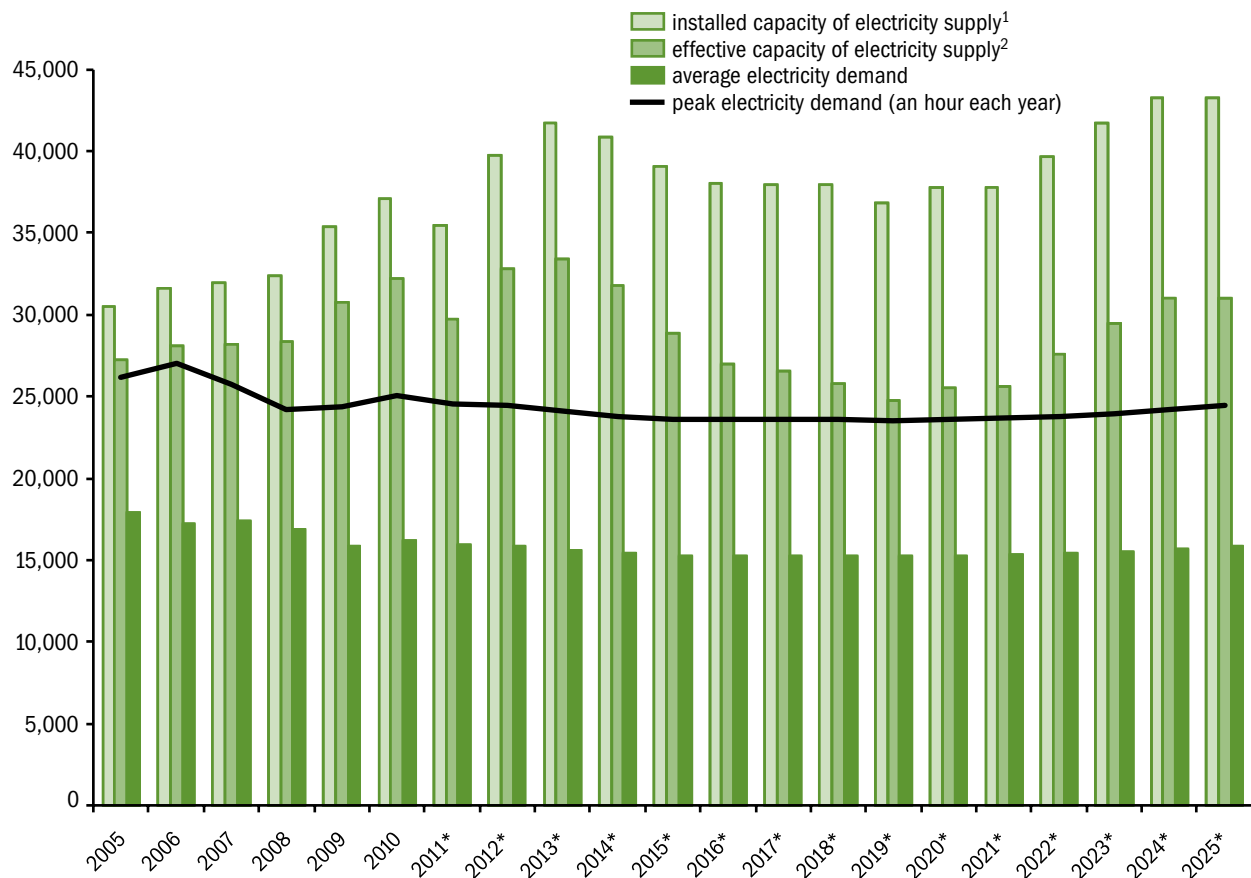
Our analysis of actual and projected data from the IESO and the OPA shows that from 2005 to 2025, installed and effective capacity will continue to exceed both average demand and peak demand. The OPA did advise us that Ontario will face significant energy uncertainty beyond 2015 as a result of the increasing supply of renewable energy, the phasing out of coal by the end of 2014, and the refurbishment of nuclear units. Figure 7 shows that Ontario will experience a temporary supply reduction from 2016 to 2020, when all coal-fired plants will be closed and some nuclear units will be taken out of service for refurbishment. The expected increase in renewable energy sources such as wind and solar will not effectively address the temporary supply reduction. According to the OPA, renewable

energy sources are not always available during peak demand periods due to their intermittency and low effective capacity.

As illustrated in Figure 7, average demand is expected to drop from about 18,000 MW to 16,000 MW and peak demand from about 26,000 MW to 24,000 MW. In the same period, installed capacity (the maximum amount of electricity that can be produced by generators) is expected to rise from about 30,000 MW to 43,000 MW, and effective capacity (the portion of installed capacity that can be depended upon to produce electricity) is expected to grow from about 27,000 MW to 31,000 MW. An OEB analysis completed in April 2010 also concluded that, by 2016, electricity supply will far exceed demand. Despite these anticipated

Figure 7: Ontario’s Installed and Effective Capacity, and Average and Peak Electricity Demand, 2005–2025 (MW)

Source of data: OPA and IESO



* Projected. Significant uncertainty is expected beyond 2015.

1. Installed capacity is the maximum amount of electricity that can be produced by generators.

2. Effective capacity is the portion of installed capacity that can be depended on to produce electricity.

surpluses, renewable energy generators who have contracts with the OPA will get paid even though Ontario does not need their electricity.

It is critically important that peak demand (the highest demand, generally occurring once a year for about one hour in July or August) is met reliably. Otherwise, the OPA said, the shortfall between available supply and peak demand could lead to blackouts. Although Ontario has sufficient generation capacity to meet even peak summer demand, the OPA indicated that it is required to plan for a 17% reserve margin in excess of peak demand to ensure system safety and reliability and to offset unexpected events such as changes in demand and equipment failure. The North American Electric Reliability Corporation monitors whether this requirement is being met.

We noted that the August 14, 2003, blackout in Ontario and the U.S. Northeast—the biggest ever in North American history—was not caused by any electricity shortfall in Ontario. According to a joint Canada–U.S. task force, it was actually triggered by an unexpected electricity shutdown in Ohio that led to a cascade of shutdowns.

Figure 7 shows that Ontario’s effective capacity is expected to grow from about 27,000 MW to 31,000 MW between 2005 and 2025. However, we noted that Ontario rarely needs that much effective capacity to meet peak demand throughout the year. For example, the last time that demand in Ontario reached 27,000 MW was in August 2006—and then only for two hours in a single day. Since 2007, Ontario has not experienced a single day in which demand exceeded 26,000 MW, and it experienced only two days of demand greater than 25,000 MW in 2010. Even on July 21, 2011, one of the hottest days on record in the Greater Toronto Area and many other Ontario cities, demand was about 25,000 MW—well below the all-time high of 27,000 MW reached in August 2006.

Roles of the OPA and the OEB

Even after the breakup of the former Ontario Hydro, Ontario’s electricity sector continued to have a system of checks and balances in place with two expert agencies playing key roles—the OPA as energy planner and the OEB as regulator. This arrangement was intended to ensure that decisions are made transparently and objectively; that consumers get reliable, affordable, and sustainable power; and that any energy plan is economically prudent and cost-effective. With the *Green Energy and Green Economy Act, 2009* (Act) giving the Minister the authority to direct certain aspects of planning and procurement of electricity supply through ministerial “directives” and “directions,” the frequent exercise of this authority has created some ambiguity regarding the original mandates of the OPA and the OEB from the planning and oversight perspective.

The OPA: Planning and Procurement

The OPA is designated as Ontario’s energy planner, with the authority to procure electricity supply. However, the Minister has the authority to issue “directives” (which require Cabinet approval) to the OPA regarding the supply mix. The Minister can also issue “directions” (which do not require Cabinet approval) on specific electricity-related initiatives, such as renewable energy projects. Since the creation of the OPA in December 2004, 22 of the 48 directives and directions issued to it by the Minister were partly or fully related to renewable energy.

The introduction of the Act has affected the OPA’s role as Ontario’s energy planner. Specifically:

- Before the Act was passed, the Minister had the authority to issue directions without Cabinet approval to the OPA to procure electricity supply. However, this direction-making authority was to expire once the OEB approved the OPA’s first long-term plan, or IPSP, which would have specified the procurement processes that the OPA would use. In essence, the OPA currently has no

independent authority to procure electricity supply until the OEB approves its IPSP, except pursuant to the authority given to the OPA through ministerial directions. However, as noted earlier, the first IPSP developed by the OPA has never been approved by the OEB.

- Under the Act, the Minister has the authority to issue directions related to renewable energy without Cabinet approval, and this direction-making authority will not expire after an IPSP has been approved. Under this authority, the Minister can direct certain aspects of the OPA's procurement of renewable energy, including price and whether to use competitive or non-competitive procurement.

The OPA did acknowledge that, as Ontario's energy planner, it requires some level of independence to allow it to objectively and proactively develop alternative options and ideas instead of relying exclusively on ministerial directions.

The OEB: Regulatory and Oversight

The OEB is an independent regulatory agency mandated to protect the interests of consumers with respect to the price, adequacy, reliability, and quality of electricity service. It is also responsible for promoting economic efficiency and cost-effectiveness in the generation, transmission, and distribution of electricity. Under the *Green Energy and Green Economy Act, 2009* (Act), the OEB was also given a new objective: the promotion of renewable energy, including the timely connection of renewable energy projects to transmission and distribution systems.

The ministerial direction-making authority has limited the OEB's ability to carry out its regulatory and oversight role on behalf of consumers with respect to renewable energy. The OEB advised us that other than the review of the IPSP, it has no oversight responsibility over any procurement of renewable energy, which has become an increasingly important part of Ontario's electricity-supply mix. Because the OEB has not yet approved any IPSP, it

has had no oversight role with respect to renewable energy since the creation of the OPA in 2004. Had the OEB's review and approval responsibilities with respect to the OPA's first IPSP not been suspended, the impact of any ministerial directions would have been analyzed as part of the OEB's review of the IPSP. Many directions related to the procurement and pricing of renewable energy have been issued since 2008 in the absence of an approved IPSP, and the OEB has had no oversight role whatsoever. A report in 2009 by the Environmental Commissioner of Ontario raised concerns that the OEB will not be able to examine the economic prudence and cost-effectiveness of any electricity-related initiatives introduced through ministerial directions in the absence of an approved IPSP.

Although the OEB has played an oversight role in the connection of renewable energy to the grid by evaluating construction, expansion, and reinforcement projects of transmission and distribution systems, its limited involvement in reviewing the procurement and pricing of renewable energy has limited the effectiveness of its normal role in protecting the interests of consumers with respect to prices and overall cost-effectiveness in the electricity sector. For example, in December 2007 the Minister directed the OPA to enter into contracts for certain hydro projects that would have the "potential to add a new supply of clean, renewable power at an acceptable price to Ontario ratepayers." In January 2010, the OPA was advised that the estimated cost for one of these projects had increased substantially, from \$1.5 billion to \$2.6 billion, and there was no guarantee that the cost would not continue to rise. Given the estimated \$1.1-billion cost increase, the OPA expressed concerns about whether the project would provide value for ratepayers. In February 2010, at the OPA's request, a direction was issued by the Minister, who acknowledged the cost overrun but instructed the OPA to proceed anyway. The direction noted that the Minister was satisfied that the project remained consistent with government priorities. The Ministry informed us that under the existing regulatory and legislative framework, the

OEB would not have had any oversight role with respect to this particular project.

RECOMMENDATION 2

To ensure that senior policy decision-makers are provided with sound information on which to base their decisions on renewable energy policy, the Ministry of Energy and the Ontario Power Authority should work collaboratively to conduct adequate analyses of the various renewable energy implementation alternatives so that decision-makers are able to give due consideration to cost, reliability, and sustainability.

MINISTRY RESPONSE

The Ministry will continue to build on its effective collaborative working relationship with the OPA to provide decision-makers with the best advice, giving due consideration to cost, reliability, and sustainability. In developing the Feed-in Tariff (FIT) program, the Ministry worked closely with technical experts in the electricity sector to harness the best policy and technical advice. The expert group met regularly from fall 2008 to summer 2009 to design the implementation of FIT.

The Ministry will continue to build upon its existing policy advisory practices, including seeking advice and working in co-operation with the OPA, as well as the Independent Electricity System Operator, Hydro One, and Ontario Power Generation; developing policy options and costs; and considering international practice, experience, and the perspectives brought by non-governmental organizations.

OPA RESPONSE

The OPA agrees with this recommendation and will continue to provide the Ministry with expert professional advice on the development of renewable energy as well as other types of generation. The OPA has substantially com-

pleted an update of the Integrated Power System Plan (IPSP) and plans to file the document with the Ontario Energy Board in fall 2011. Cost, reliability, and sustainability of renewable energy and other sources of generation are assessed in the updated IPSP.

PROCUREMENT OF RENEWABLE ENERGY

Procurement Methods

There have been three forms of procurement processes for renewable energy: competitive (request for proposals), non-competitive (negotiations), and standard offer (pre-set price), as illustrated in Figure 6. Initially, Ontario solicited renewable energy projects mainly through competitive requests for proposals from private developers. In recent years, renewable energy has often been procured through standard-offer and non-competitive processes in response to ministerial directions. Prices for renewable energy, especially under the FIT program, have been between two and 10 times higher than those of conventional energy sources, such as nuclear, natural gas, and coal. Generators of renewable energy will be paid guaranteed prices over the contract terms, which range from 20 years for electricity from wind, solar, and bioenergy, to 40 years for hydroelectricity.

Request for Proposals and Standard-Offer Program

The first competitive procurement initiative adopted by the government to acquire renewable energy was several requests for proposals (RFPs) inviting potential developers to bid on renewable energy projects. The OPA indicated that the competitive process usually provides the best value and is the preferred option, barring other policy priorities, to ensure that contracted prices are cost-effective and reflect current market costs. Three RFPs for Renewable Energy Supply (RES)

Figure 8: Prices of Renewable Energy Sources under Different Procurement Methods, as of April 2011 (¢/kWh)

Source of data: Ministry of Energy and OPA

	Renewable Energy Supply (RES I, II, III) ¹	Renewable Energy Standard Offer Program (RESOP)	Feed-in Tariff (FIT) and microFIT ²	Korean Consortium ³
	June 2004, June 2005, Aug. 2008	Nov. 2006	Oct. 2009	Jan. 2010
solar (rooftop)		42.00	53.90–80.20	
solar (ground-mounted)		42.00	44.30–64.20	44.30 + 2.60
wind (offshore)		11.00	19.00	
wind (onshore)	9.51	11.00	13.50	13.50 + 0.50
hydroelectric	7.85	11.00	12.20–13.10	
bioenergy	8.23	11.00	10.30–19.50	

1. Weighted averages of all projects.

2. Prices vary depending on project size, with smaller projects typically qualifying for higher prices.

3. Standard FIT prices apply to phase 1 and phase 2 projects, plus additional payment called Economic Development Adder (EDA) as stated in the original Green Energy Investment Agreement (GEIA). Subsequent to our audit fieldwork, the GEIA was amended in July 2011, and the EDA was reduced to 1.43¢/kWh for solar power and 0.27¢/kWh for wind power.

programs were issued: RES I in June 2004, RES II in June 2005, and RES III in August 2008.

However, the complexity and cost of developing competitive RFPs was seen as favouring larger projects at the expense of smaller ones. To remove these barriers to small projects, the Minister issued a direction in 2006 to the OPA to develop a Renewable Energy Standard Offer Program (RESOP) that would offer smaller renewable energy projects a standard pricing regime while providing for simplified regulations, including eligibility and contracting.

Prices under RESOP were about 16% to 40% higher than the competitive prices under the RFPs, as illustrated in Figure 8. The OPA indicated that RESOP would not be successful if the standard prices were not set high enough to attract investment in renewable energy projects. On the other hand, the OPA did acknowledge that the standard-offer process might have had some unintended consequences arising from an absence of the competitive tension that encourages innovative solutions, and it did ultimately result in high prices and oversubscription.

The Ministry and the OPA indicated that both RES and RESOP were successful. For example, RES I substantially increased the number of wind turbines, from 10 in 2003 to more than 200 in 2006, an increase in capacity of about 300 MW. RES II, which had been intended to attract 1,000 MW of renewable energy, had twice as many applications as expected because of developers' interest in the guaranteed high prices.

Feed-in Tariff (FIT) Program

Both RES and RESOP proved to be immediate successes, with high response rates and generation targets being met in record time. In particular, RESOP, which offered very attractive contract prices to renewable energy generators, received overwhelming responses. When RESOP was launched in November 2006, it was expected to develop 1,000 MW over 10 years. In May 2008, the OPA indicated that RESOP had exceeded all expectations and achieved more than 1,000 MW of contracted projects in a little more than a year. Although continuing the successful RESOP initiative was one option, the Minister directed the OPA in September 2009 to replace RESOP with a new standard-offer program

called Feed-in Tariff (FIT), which was wider in scope, required made-in-Ontario components, and provided renewable energy generators with significantly more attractive contract prices than RESOP, as illustrated in Figure 8. These higher prices added about \$4.4 billion in costs over the 20-year contract terms as compared to what would have been incurred had RESOP prices for wind and solar power been maintained. The Ministry indicated that replacing RESOP with FIT successfully expedited its renewable energy program and promoted Ontario's domestic industry.

According to the Ministry, RES and RESOP were replaced with FIT following a government policy decision to expand more rapidly the procurement of renewable energy in order to create jobs and protect the environment.

Determination of FIT Prices

The FIT program aims to encourage development of renewable energy projects by a diverse range of developers, including homeowners, farmers, small businesses, and community groups, by offering long-term, fixed prices for the electricity they generate. Launched in October 2009, FIT garnered an overwhelming response, receiving applications for a total capacity of about 14,000 MW at the end of the first quarter of 2011. The FIT program has two streams: the comprehensive FIT stream for projects over 10 kW and the simplified microFIT stream for those under 10 kW. Both offer prices that vary depending on energy sources (wind, solar, hydro, and bioenergy), project sizes (microFIT projects below 10 kW qualify for higher prices), and deployment methods (rooftop or ground-mounted solar, onshore or offshore wind), as illustrated in Figure 8.

FIT prices were based on several factors, including prior experience in Ontario and other jurisdictions, feedback from stakeholders, and cost assumptions for capital, operations and maintenance, connection, term of contract, generating capacity, and construction lead time. Ontario's FIT prices were originally designed with the intention of allowing a reasonable rate of return, defined as

11% after-tax return on equity, for developers of all types of renewable energy projects. However, we noted that:

- There was minimal documentation to support how FIT prices were calculated to achieve the targeted return on equity, because of the numerous changes to the financial model and assumptions used by the OPA.
- There has been a lack of independent oversight on the reasonableness of FIT prices. Although the OEB has historically been mandated to oversee and approve electricity prices, it has no role or legislative responsibility to review or approve FIT prices. The OPA informed us that the first review of FIT prices will be conducted in-house by OPA staff, supported by consultants as needed, during fall 2011. However, the Ministry indicated that the government has not decided whether to involve an independent third party in the review.

The OPA said it initially developed Ontario's FIT prices based on the long-established and successful FIT programs in Germany and Spain. We noted that the internal rates of return offered to the developers in these countries varied depending on project risks and ranged from just 5% to 7% in Germany to between 7% and 10% in Spain. When Ontario's FIT prices were first developed in spring 2009, they were already higher than those of Germany and Spain, which have both significantly dropped their FIT prices since then due to lower component costs arising from technological advances. However, Ontario's prices have remained unchanged, except for a drop in the rate for small ground-mounted solar projects. According to the Ministry and the OPA, it was a deliberate decision by the government to maintain price stability in order to retain investor confidence and offer very attractive prices to investors in order to encourage the start-up of a "green" industry in Ontario.

Revision of FIT Prices

By July 2010, less than a year after the launch of FIT, the OPA had received more than 16,000 applications, about 13,500 of which were for ground-mounted solar projects. According to the OPA, this overwhelming response highlighted the unexpected popularity of microFIT ground-mounted solar projects at the price of 80.2¢/kWh, the same price that was being paid for rooftop solar projects. The original FIT price of 80.2¢/kWh would provide developers of these ground-mounted solar projects with a 23% to 24% after-tax return on equity instead of the 11% intended by the OPA. Therefore, in July 2010 OPA proposed cutting the price by about 27%, from 80.2¢/kWh to 58.8¢/kWh.

The proposed price cut brought a strong response during a 30-day round of consultations. Many developers objected to the proposed 58.8¢/kWh price and demanded that the OPA grandfather the 80.2¢/kWh price for those applications already filed. In August 2010, the OPA issued a more modest price cut of about 20%—to 64.2¢/kWh instead of 58.8¢/kWh—and agreed to pay 80.2¢/kWh for all applications received by the OPA up to then, including those still awaiting approval. The OPA applied the price cut only to new applications in order to ensure price and policy stability and prevent any potential lawsuits. We also noted that the price cut had limited impact because it was not done in a timely way. Specifically:

- The OPA had proposed since February 2010 that immediate action be taken to reduce the FIT price for ground-mounted solar projects. The OPA informed us that the price cut was not announced until July 2010, five months later, because the government needed time to analyze the situation. Due to this delay, the OPA received more than 11,000 applications from February to June 2010, all of which qualified for the full price rather than the reduced one because of the decision to grandfather the price in order to maintain investor confidence.
- The number of applications for ground-mounted solar generation dropped signifi-

cantly, from more than 2,000 in June 2010 to fewer than 200 in August 2010, and remained stable at that level thereafter. Because the OPA grandfathered the original price of 80.2¢/kWh for all applications already filed, the reduced price of 64.2¢/kWh applied only to new applications received after the announcement of the price cut in August 2010 (about 200 per month).

In addition, we noted that the revised price of 58.8¢/kWh originally proposed by the OPA would have provided developers with an 11% after-tax return on equity intended for all renewable energy projects. However, the revised price went from 58.8¢/kWh to 64.2¢/kWh without adequate documentation to support how the OPA arrived at the higher price. The OPA indicated that 64.2¢/kWh was a reasonable price based on justifications provided by developers and other stakeholders. We estimated that, had the OPA been successful in making the price cut to 58.8¢/kWh when it was initially recommended, electricity ratepayers would have saved about \$950 million over the 20-year contract terms, while developers would still have received their 11% after-tax return.

Cross-jurisdictional Comparison of FIT Prices

Our research found that Ontario's FIT prices were generally higher than those of other jurisdictions, especially for solar projects, as illustrated in Figure 9. According to the Ministry, Ontario's prices were set higher than elsewhere to create investor confidence and more quickly attract investment capital amidst a global recession. A unique feature of Ontario's FIT program, the domestic content requirement, also led to higher prices because the cost of Ontario-made generation components is higher than that of comparable equipment made in lower-cost jurisdictions such as China.

Our research also noted that many jurisdictions have mechanisms in place to control the increase of FIT prices. For example, Germany reduces prices automatically by a certain percentage every year for new projects, while Spain regularly revises its prices

Figure 9: Comparison of FIT Prices as of April 2011 (¢/kWh in Canadian \$)¹

Prepared by the Office of the Auditor General of Ontario

	Solar (Rooftop)	Solar (Ground-mounted)	Wind (Offshore)	Wind (Onshore)	Hydroelectric	Bioenergy
Canada						
Ontario	53.90–80.20	44.30–64.20	19.00	13.50	12.20–13.10	10.30–19.50
United States						
Michigan	33.54–47.91	33.54–47.91	4.31–15.91	7.67–11.98	9.29–15.33	7.47–14.28
Vermont	28.75	28.75	13.42–19.16	13.42–19.16	–	11.50
Washington ²	14.37–28.75	14.37–28.75	14.37	14.37	–	14.37
Wisconsin	23.96	23.96	6.32–8.82	6.32–8.82	8.82	5.83–14.85
Europe						
Denmark	–	–	10.80	10.80	–	5.40
Germany	29.24–39.80	29.24–39.80	18.01	12.62	4.81–17.55	10.68–16.00
Spain	37.31	37.31	10.14	10.14	10.80	18.09
Asia						
South Korea	63.33	63.33	9.51	9.51	6.52	5.46
Australia						
Australian Capital Territory	46.33	46.33	–	–	–	–
New South Wales	20.27	20.27	–	–	–	–
Queensland	44.60	44.60	–	–	–	–
South Australia	44.60	44.60	–	–	–	–
Victoria	60.82	60.82	–	–	–	–
Western Australia	40.55	40.55	–	–	–	–

1. Prices vary depending on project size, with smaller projects typically qualifying for higher prices. Prices were converted to Canadian currency based on the average exchange rates in April 2011.

2. These base rates are increased if the components are manufactured in Washington.

based on pre-set capacity targets. Washington State has imposed an annual maximum payment per contractor, while several American and Australian states set caps on capacity that, when reached, result in termination of a FIT program.

In Ontario, the government chose to maintain price stability until the two-year program review could be undertaken rather than incorporating any price or capacity adjustment mechanisms such as the following:

- The initial FIT prices proposed by the OPA in March 2009, prior to the passage of the *Green Energy and Green Economy Act*, included an automatic 9% drop in the contract price for every 100 MW of power contracted from

ground-mounted solar projects. However, the OPA informed us that the Minister removed this adjustment, fearing that it would discourage manufacturing investments and hamper the development of renewable energy. We estimated that if this adjustment had been implemented as first proposed, the cost of the FIT program could have been reduced by about \$2.6 billion over the 20-year contract terms.

- The absence of caps or limits to the number of contracts signed under Ontario's FIT program led to the current oversubscription. The OPA informed us that it designed the FIT program at a time when no long-term energy plan was in place and it was unsure about the quantities

of power the FIT program was intended to procure. The OEB indicated that ceilings, caps, or other measures must be in place to minimize the risk of higher consumer prices and less-than-optimal deployment of resources.

Both the Ministry and the OPA were aware of the high FIT prices in Ontario and of the price reduction and program-control mechanisms in other jurisdictions. However, the Ministry indicated that the government's decision was not to change prices before the first planned review of the FIT program—targeted to take place in fall 2011, two years after the program's introduction—so as to create stability and instill investor confidence.

However, we noted that in October 2010, the OPA did recommend that instead of reviewing the FIT program in fall 2011 and making incremental changes as issues arise, an “immediate program review” should be conducted to ensure that priority issues are addressed more fully and that ad hoc changes are avoided to preserve the credibility and stability of the FIT program. One of the top-priority issues identified by the OPA was the significant reduction in the cost of solar technologies—about 50% since 2009—as the technology matured and improved. The OPA specifically recommended reducing FIT prices for solar projects to reflect current market conditions and introducing a plan to signal further price reductions in future. However, the OPA informed us that no decision had been forthcoming regarding its concern about the very generous prices being offered to investors in renewable energy projects.

FIT Contract Term: Additional Contract Payment

A situation called curtailment occurs when the Independent Electricity System Operator (IESO) instructs generators to reduce all or part of their output in order to mitigate an oversupply of electricity. Compared to other renewable energy contracts such as RES and RESOP, the FIT contract has a unique feature that offers renewable energy generators an “Additional Contract Payment” to compensate them for any revenue lost as a result

of curtailment instruction. Accordingly, electricity ratepayers still have to pay renewable energy developers even when those generators are not producing electricity during periods of curtailment.

The IESO has not yet curtailed renewable energy generators under the FIT program because no FIT projects have been on-line, and therefore no “Additional Contract Payment” has been triggered or included in electricity bills to date. However, the OPA and the IESO acknowledged that when more renewable energy projects under the FIT program are added to the grid, the power surplus will grow and such curtailments will be likely (see “Operational Challenge: Surplus Power” later in this report).

There has been inadequate assessment of the potential costs of curtailing renewable energy, even though there is a strong likelihood of curtailment in the future for these energy sources. For example, the OPA has performed several scenario analyses, but none included the impact of curtailing renewable energy. The OPA indicated that its plans are based on situations where supply equals demand, but not where there are surpluses and where the curtailment of renewable energy may be required.

The OPA also noted that the calculation of curtailment costs depends on a number of factors and assumptions that could be very volatile. The only analysis on curtailment we found was done by the IESO in 2009. It estimated that the substantial addition of renewable energy would result in curtailment of between 2,000 and 2,500 hours per year and that the cost of paying renewable generators for not producing electricity could range from \$150 million to \$225 million a year. However, these projections were based on 2008 data and we were advised that no updated projections had been done since then.

Agreement with the Korean Consortium

While the FIT program was intended to provide a channel for renewable energy investments by homeowners, farmers, small businesses, and community groups, the Ministry was also negotiating with a

consortium of Korean companies under separate terms to build more renewable energy projects.

The consortium, led by two large Korean companies, approached the Ministry in June 2008 and proposed to make a major investment in Ontario's renewable energy sector. This led to ongoing talks between the Ministry and the consortium and the signing of a memorandum of understanding in December 2008. In June 2009, the Minister travelled to Korea for more discussions; six months later, the Minister, on behalf of the government, signed the \$7-billion Green Energy Investment Agreement (GEIA) with the consortium. The consortium committed to build 2,000 MW of wind projects and 500 MW of solar projects in Ontario in five phases by 2016, with the equipment to be manufactured in this province.

Neither the OEB nor the OPA was consulted about the agreement. The OPA was not involved until summer 2009, when the Ministry inquired about available transmission capacity to accommodate consortium projects. On September 29, 2009, the ongoing negotiations with the consortium were publicly announced, and Cabinet was briefed on the negotiations and prospective agreement shortly thereafter. We were advised that Cabinet had subsequent briefings prior to finalization of the agreement in January 2010. In April 2010, the Ministry directed the OPA to negotiate with the consortium on the Power Purchase Agreements (PPAs), which outline contractual obligations and payment terms for each renewable energy project to be developed by the consortium. As of April 2011, details of the PPAs had not yet been finalized. Subsequent to our audit fieldwork, six PPAs were signed in August 2011.

The draft PPAs with the consortium are substantially similar to FIT contracts, but the consortium will receive two additional incentives: priority access to Ontario's transmission system; and, originally, an additional \$437 million on top of the standard FIT prices, contingent on the fulfillment of the consortium commitment to build four manufacturing plants in Ontario. Subsequent to our audit

fieldwork, the Ministry renegotiated the GEIA with the consortium, which had requested a one-year commercial operation date extension for phases one and two of its projects because of challenges in completing its regulatory and environmental studies. In July 2011, as a result of the date extension and other changes, the Ministry amended the GEIA to reduce the additional \$437 million payment to \$110 million.

According to the Ministry, the consortium agreement is neither a non-competitive procurement nor a sole-source deal. Instead, it is an "investment arrangement" with an objective of establishing a sound green energy sector in Ontario since no other company has proposed to invest in Ontario's renewable energy sector at the size and scale of the consortium and its partners. However, we noted that the normal due diligence process for an expenditure of this magnitude had not been followed. For large projects such as the consortium agreement, we expected but did not find that a comprehensive and detailed economic analysis or business case had been prepared. According to the Ministry, the decision to enter into the agreement with the consortium was made by the government. Although the Cabinet was briefed about the agreement, the Ministry indicated that there had been no formal Cabinet approval because it was not required.

RECOMMENDATION 3

To ensure that the price of renewable energy achieves the government's dual goals of cost-effectiveness and encouraging a green industry, the Ministry of Energy and the Ontario Power Authority should:

- work collaboratively to give adequate and timely consideration to the experiences of other jurisdictions and lessons learned from previous procurements in Ontario when setting and adjusting the renewable contract prices;
- work with the Independent Electricity System Operator to assess the impact of

curtailing renewables as part of its energy planning in order to identify ways to optimize the electricity market; and

- ensure that adequate due diligence is undertaken, commensurate with the size of electricity-sector investments.

MINISTRY RESPONSE

The Ministry will continue to take into consideration the experiences of other jurisdictions while ensuring that the program remains stable and sustainable. As planned, the Ministry will undertake a mandatory two-year review of the Feed-in Tariff (FIT) program (as required in the Minister's FIT direction) in conjunction with the OPA. The review will examine potential FIT price reductions, as well as FIT support programs, contract rules, and how the program is meeting the government's policy objectives. Recommendations for improving the FIT program will be made to the Minister.

The Ministry will continue to work with the Independent Electricity System Operator (IESO) during the development of new rules and tools to better integrate renewable energy sources into the market. This ongoing work includes more precise forecasting of load and intermittent generation and the ability to dispatch (turn down or off) renewable energy facilities such as wind that until now have been able to run whenever they were available to.

In order to fulfill the Ministry's key objectives of electricity reliability, sustainability, and cost-effectiveness, the Ministry agrees to continue to provide a full analysis of new investments, including through the Integrated Power System Plan, which is to be updated every three years. This will ensure that system planning continues to reflect the most up-to-date and accurate information and challenges affecting the system. The Ministry will continue to work collaboratively with the IESO, OPA, and all partners

in the sector to ensure the system is capable of meeting new challenges.

OPA RESPONSE

A mandatory two-year review of the FIT program will be carried out in the near future. Experience from other jurisdictions and previous Ontario procurements will be considered as part of the review.

A reliable and sustainable electricity system will from time to time have surplus power. A key objective of the OPA, the Ministry, and the IESO is to strike the right balance between ensuring that clean, reliable electricity facilities are built and are available when required, and ensuring that ratepayer value is maximized. For the last two years, the OPA has been working with the IESO and other stakeholders on the issue of potential surplus energy and curtailment for renewable energy and other types of generation. This process has included looking at the appropriate contractual options available to curtail resources when necessary at the lowest possible cost to ratepayers. The FIT contracts do contain curtailment provisions. The OPA and IESO have been actively collaborating on aligning other renewable energy contracts to make operators more responsive to market rules.

The OPA will continue to perform due diligence with respect to the design of plans and the execution of contracts on behalf of electricity ratepayers, and will continue to provide the Ministry and other sector stakeholders with updated plans and status and outlook reports.

Co-ordination and Planning for the Procurement of Renewable Energy

The development of renewable energy initiatives involves planning and co-ordination with other parties, including the Ministry of the Environment, the Ministry of Natural Resources, federal agencies,

and municipalities. We noted several instances where renewable energy initiatives led to potentially unnecessary compensation and potential lawsuits because of conflicts with environmental impact and planning decisions. Among them:

- In June 2009, the Ministry of the Environment changed the regulations governing the placement of wind turbines, affecting some onshore wind contracts already awarded by the OPA. One developer filed a claim against the OPA and, in order to avoid litigation, the OPA agreed to settle by paying the developer up to \$2.4 million.
- In June 2010, the Ministry of the Environment proposed a policy relating to offshore wind turbines. In February 2011, the government decided to suspend all offshore wind projects pending completion of independent scientific research. Although this decision affected all offshore wind projects under FIT, the OPA was not informed of the decision until three days before the public announcement. Affected developers felt that they had been incurring costs in good faith even though the government was planning to suspend offshore projects, resulting in ongoing negotiations since then between the developers and the OPA.
- In October 2010, the Ministry cancelled a signed contract with a private-sector developer to build a 900 MW gas-fired project in the GTA because decreased electricity demand, the supply of more than 8,000 MW of new and cleaner power, and increased conservation efforts had made it unnecessary. The OPA has been negotiating with the developer to reach agreement over the amount of possible compensation to be paid for the cancellation of the signed contract.

RECOMMENDATION 4

To avoid unintended costs arising out of changes to regulatory requirements and changes to supply and demand situations, the Ontario Power

Authority and the Ministry of Energy should work collaboratively with other ministries and agencies to ensure that they are made aware on a timely basis of anticipated policy and regulatory changes.

MINISTRY RESPONSE

The Ministry agrees that close collaboration with other ministries and agencies on proposed policy and regulatory changes is vitally important.

The government carefully considered, supported by scientific research, its policy decision to create uniform provincial standards for placement of wind turbines away from homes. The government considered this policy choice to be better than having each municipality decide the setback distances in an ad hoc way.

With respect to the offshore wind development, the Ontario government and the U.S. Department of Energy have worked collaboratively on developing wind resources in the Great Lakes. The collaboration involves joint scientific research to inform the creation of a uniform regulatory framework and policies. It is necessary to suspend further offshore projects until the scientific research is completed.

The Ministry will continue to build on its existing practice of ensuring strong and regular staff connections between relevant ministries, recognizing that it can inform agencies or other parties of new policy direction only after a duly authorized decision is made.

OPA RESPONSE

The OPA agrees with this recommendation and continues to work closely with Hydro One and the Independent Electricity System Operator to assess and manage the impacts of new generation on the electricity system.

RELIABILITY OF RENEWABLE ENERGY

Solar and wind energy are by their nature intermittent, and the growing contribution of these unpredictable resources to the energy-supply mix has increased uncertainty and created challenges for the Independent Electricity System Operator (IESO). It has to balance supply and demand to ensure that renewable energy can be efficiently integrated into the operation of Ontario’s power system without compromising the reliability, stability, and efficiency of the system.

The power-generating capacity of a power plant can be measured in two ways: “capacity factor” (the ratio of the actual output of a power plant in a given period to the theoretical maximum output of the plant operating at full capacity) and “capacity contribution” (the amount of capacity available to generate power at a time of peak electricity demand, which is usually in July and August).

The power-generating capacity of current wind and solar technology is much lower than other energy sources, as illustrated in Figure 10. Wind generators operate at 28% capacity factor but have only 11% availability at peak demand due to lower wind output in the summer. Solar generators operate at just 13% to 14% capacity factor on average for the year but have 40% availability at peak demand in the summer.

We analyzed the performance of all wind farms in Ontario in 2010 based on IESO data. Although the average capacity factor of wind throughout the year was 28%, it fluctuated seasonally, from 17% in the summer to 32% in the winter. It also fluctuated daily, from 0% on summer days, when electricity demand was high, to 94% on winter days, when demand was lower.

Our analysis also indicated that wind output was out of phase with electricity demand during certain times of day. For example, during the morning hours, around 6:00 a.m., wind output usually decreased just as demand was ramping up. Throughout the day, demand remained high but wind output typically dropped to its lowest level

Figure 10: Capacity Factors (Expected Output) and Capacity Contributions (Output during Peak Electricity Demand), by Energy Source (%)

Source of data: OPA and IESO

	Capacity Factor	Capacity Contribution
nuclear	84	95–100
coal	66	90–100
hydroelectric	90	71
bioenergy	75–85	65–100
natural gas	85	50–100
solar	13–14	40
wind	28	11

for the day. During the evening hours, around 8:00 p.m., when demand was ramping down, wind output was rising, and it remained high overnight until early morning. This somewhat inverse relationship between daily average wind output and daily average demand was particularly pronounced in the summer and winter months.

The OPA has recognized that the lack of correlation between electricity demand and intermittent renewable energy has created operational challenges, including power surpluses and the need for backup power generated from other energy sources. The IESO has been working through its Renewable Integration Project to mitigate these challenges by engaging stakeholders and establishing technical working groups to discuss design principles, forecasting, and future markets for renewable energy.

Operational Challenge: Surplus Power

The IESO informed us that increasing the proportion of renewable energy in the supply mix has exacerbated a challenge called surplus base-load generation (SBG), a power oversupply that occurs when the quantity of electricity from base-load generators is greater than demand for electricity. Base-load generators are designed to run at a steady output 24 hours a day to meet the constant

need or minimum demand for electricity. Ontario's base-load fleet includes nuclear units, certain hydro stations, and intermittent renewable energy sources such as wind. The IESO informed us that Ontario did not have any SBG days from 2005 to 2007, but experienced four such days in 2008, 115 days in 2009, and 55 days in 2010. The jump in SBG days was attributed to several factors, including an increase in wind power and a drop in electricity demand.

Given that electricity demand is expected to remain relatively flat for at least the next few years as more renewable energy comes on-line, there will almost certainly be more SBG days in the years to come, creating operational challenges and costs that will ultimately be borne by electricity ratepayers.

In 2008, the IESO forecast that, because most generators cannot ramp wind power up or down in response to demand, SBG hours will increase significantly over the next decade. The vast majority of new renewable energy in the next few years is expected to come from wind generators, which typically have their highest output overnight and early morning, when SBG events are more prevalent.

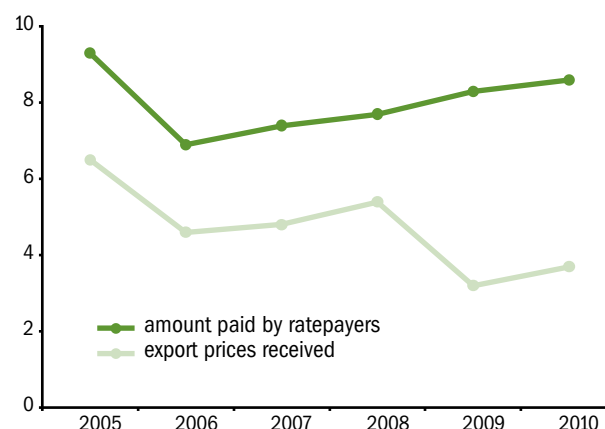
Since the prevalence of SBG events could threaten the reliability of the electricity system, the IESO has been taking action to ease the power surplus. However, there are technical difficulties and cost implications of these actions. Among them:

- Storing surplus power is difficult because of the seasonal nature of renewable energy and the need for unrealistically large storage capacity.
- Exporting surplus power is, according to the OPA and the IESO, a common and preferred way to mitigate power surpluses. Since 2006, Ontario has been a net exporter. The IESO indicated that although it is difficult to quantify, the increase in renewable energy has led to an increase in exports and put downward pressure on export prices. We noted that:
 - In 2010, 86% of wind power was produced on days when Ontario was already in a net export position.

- The price Ontarians pay for electricity and the price Ontario charges its export customers—which are determined by the interaction of supply and demand in the electricity market—have in recent years been moving in opposite directions. Although export customers paid only about 3¢/kWh to 4¢/kWh for Ontario power, electricity ratepayers of Ontario paid more than 8¢/kWh for this power to be generated, as illustrated in Figure 11.
- Based on our analysis of net exports and pricing data from the IESO, we estimated that from 2005 to the end of our audit in 2011, Ontario received \$1.8 billion less for its electricity exports than what it actually cost electricity ratepayers of Ontario.
- A study in September 2009 also noted that Denmark, which relies heavily on wind power, has been faced with a similar situation and exported large amounts of surplus power to Norway and Sweden in order to balance domestic supply with demand.
- Reducing hydro power can be done by diverting, or spilling, water from hydro generators. The IESO informed us that although the magnitude and timing of spill activities have not been well documented, Ontario

Figure 11: Electricity Charge Paid by Ratepayers in Ontario vs. Export Price Received by Ontario from Other Jurisdictions (¢/kWh)

Source of data: IESO



spilled water to reduce electricity supply on 96 days in 2009 and 10 days in 2010. Because the overall cost to produce hydro power is often lower than that of all other types of power, reducing hydro power to “make room” for wind and solar power is an expensive mitigation strategy to reduce surplus power, particularly as hydro, wind, and solar power are all considered renewable energy sources.

- Reducing nuclear power is viewed as a last resort because nuclear units are designed to run constantly and produce at maximum capacity. Ramping nuclear units up and down involves significant costs and can lead to equipment damage. If a nuclear unit is shut down, it typically takes 48 to 72 hours to restart it. With nuclear energy accounting for the majority of Ontario’s electricity, such downtime is risky and costly. The IESO requested that nuclear generators shut down or reduce electricity supply 205 times in 2009 and 13 times in 2010.
- Reducing renewable power can be an efficient way to reduce supply. Wind generators can be brought on-line or off-line quickly—an ideal characteristic to address surpluses. Although this helps to address the degree to which the electricity system is overloaded, it may not result in cost savings because if the IESO instructs wind generators to shut down under a surplus-power situation, the generators still get paid under the FIT program (see the section titled “FIT Contract Term: Additional Contract Payment” earlier in this report).

Operational Challenge: Backup Power Requirement

To maintain reliability, there is always a need for backup power generation in the event that a generator must shut down unexpectedly. However, intermittent renewable energy sources such as wind and solar require fast-responding backup power and/or storage capacity to keep the supply of

electricity steady when the skies are cloudy or the wind dies down. The OPA informed us that because viable large-scale energy storage is not available in Ontario, wind and solar power must be backed up by other forms of generation. This backup power is generated mainly from natural gas, because coal will be phased out by the end of 2014. The backup requirements have cost and environmental implications. For example:

- The IESO confirmed that consumers have to pay twice for intermittent renewable energy—once for the cost of constructing renewable energy generators and again for the cost of constructing backup generation facilities, which usually have to keep running at all times to be able to quickly ramp up in cases of sudden declines in sunlight levels or in wind speed. The IESO confirmed that such backups add to ongoing operational costs, although no cost analysis has been done.
- The use of gas-fired backup generation will reduce the net contribution of renewable energy to environmental protection, as indicated by studies from other jurisdictions (see the “Environmental and Health Impacts” section later in this report).

Despite these concerns, the cost and environmental impacts of such backup generation capacity were not formally analyzed to ensure that this information would be available to policy decision-makers. We noted that:

- Prior to the passage of the *Green Energy and Green Economy Act* in 2009, the Ministry did not quantify how much backup power would be required. It was not until February 2011 that the Minister issued a new supply-mix directive that asked the OPA to consider backup options, such as converting coal-fired plants to gas-fired operation, importing power from other jurisdictions, and developing storage systems. The OPA has not yet made any recommendations to the Ministry.
- The only analysis on backup power that the Ministry cited was a study done by a third

party engaged by the OPA as part of its 2007 IPSP development. The study noted that 10,000 MW of wind would require an extra 47% of non-wind sources to handle extreme drops in wind. We noted that the third party who carried out this study also operated an Ontario wind farm, raising questions about the study's objectivity. In spite of this, the OPA and the Ministry did not confirm or update this study's projections and did not determine how much backup power would be required.

According to the OPA, a new IPSP will assess the operational challenges of surplus power and backup requirements. At the time of our audit, the new IPSP was still under development.

RECOMMENDATION 5

To ensure that the stability and reliability of Ontario's electricity system is not significantly affected by the substantial increase in renewable energy generation over the next few years, the Ontario Power Authority should continue to work with the Independent Electricity System Operator to assess the operational challenges and the feasibility of adding more intermittent renewable energy into the system, and advise the government to adjust the supply mix and energy plan accordingly.

MINISTRY RESPONSE

The Ministry agrees that system reliability and stability is a key element in energy system planning. The Ministry will work collaboratively with the IESO, the OPA, and all partners in the sector to ensure that the system is capable of meeting new challenges.

Ontario, as part of the North America-wide interconnected network, is required to plan for an agreed-to level of reliability, which is developed and monitored by the North American Electric Reliability Corporation. A focus of this requirement is on the ability to reliably meet annual peak electricity demand. A system

that fails to do so would create reliability risks with other interconnected systems.

We note that the increases in renewable energy generation do not increase greenhouse gas emissions. Without renewable energy generation, the gas-fired generation would have to run more frequently, resulting in higher greenhouse gas emissions.

OPA RESPONSE

The OPA agrees with the recommendation and is working with the IESO to improve the integration of renewable energy and to explore how changes to the supply mix and to contractual requirements could maximize the benefits of intermittent generators for the Ontario electricity grid and ratepayers. The OPA will continue to provide advice for the government's consideration in determining the supply mix. Ongoing planning has already contributed to greater understanding of the issues and solutions required to integrate renewable energy.

DELIVERY OF RENEWABLE ENERGY

As a result of the *Green Energy and Green Economy Act, 2009* and the FIT program, there has been enormous demand for connecting renewable energy to Ontario's electricity grid. As a result, additional transmission and distribution developments are required to facilitate the connection and delivery of renewable energy resources.

Impact of Renewable Energy on Transmission and Distribution Systems

Because the FIT program has created many new points of generation, especially in northern Ontario, significant investments are required to update and expand transmission and distribution systems to get the electricity from numerous remote and widely dispersed renewable energy generators

to population centres in southern Ontario. Costs associated with these investments are paid by electricity ratepayers through increases in the delivery charges on electricity bills. Specifically:

- The Ministry's Long-Term Energy Plan identified five priority transmission projects, including three designed to accommodate renewable energy, at an estimated total cost of about \$2 billion. According to the OPA, the three priority projects were intended to accommodate 1,900 MW of renewable energy at an estimated cost of between \$450 million and \$850 million, and also to contribute to system reliability and increase transmission capability. Hydro One indicated that the actual timing and cost of these priority projects is uncertain, because they depend on complex and often lengthy approval processes by the OEB, the Ministry of the Environment, and others. There may also be unexpected capital expenditures due to unforeseen technical problems, because new technology is required for transmission and distribution systems to support renewable energy.
- In addition to the three priority projects, the Bruce–Milton line is expected to go into service in December 2012 to deliver 1,500 MW of nuclear power and 1,700 MW of renewable energy in southern Ontario. The cost of this line was initially estimated at \$635 million, but the estimate was raised in March 2011 to \$755 million. Hydro One attributed the \$120-million cost overrun to delays in project approvals and higher-than-anticipated labour and material costs. The overrun could increase further by the time Bruce–Milton is complete. The three other priority projects could face similar cost overruns if similar labour and material cost pressures arise.
- Hydro One files applications with the OEB to seek approval to recover the costs of transmission and distribution charges on electricity bills. Its most recent distribution rate application estimated that investments of

\$169 million in 2010 and \$296 million in 2011 would need to be recovered from electricity ratepayers for the cost of connecting renewable energy to the distribution systems and modernizing the electricity grid.

Apart from the cost implications, the OPA was aware that only limited capacity was readily available to FIT when the program was launched. To date, Ontario's existing transmission and distribution systems have already been operating at or near capacity, but there has been a higher-than-anticipated number of FIT projects attempting to connect into the system. The capacity limitation has hindered the timely connection of renewable energy to the grid and kept the FIT program from achieving its full potential.

As of April 1, 2011, more than 3,000 FIT applications with a total capacity of about 10,400 MW could not be accommodated by the existing transmission infrastructure and were awaiting connection. Of the 10,400 MW awaiting connection, only about 2,400 MW will be accommodated by the future transmission capacity of the Bruce–Milton line and the three other priority projects. The remaining 8,000 MW will not be connected unless new lines are built or existing ones upgraded. Most of this is from FIT applications prior to June 2010, and these have been awaiting an Economic Connection Test (ECT) to determine whether it is economical to build additional transmission infrastructure. Therefore, connecting renewable energy projects to the grid is subject to both technical and economic considerations, and there is no guarantee that every project will be connected. However, the Ministry informed us that the requirement to conduct the ECT process was superseded by the Long-Term Energy Plan (LTEP) in November 2010. Therefore, as of April 2011, the OPA had not yet started the first ECT, which was to have been conducted in August 2010 and every six months thereafter on a rotating basis.

Allocation of Capacity to Korean Consortium

As noted earlier, the Ministry signed an agreement with a consortium of Korean companies that agreed to develop 2,500 MW of renewable energy resources in Ontario in five phases by 2016. Besides paying the consortium contract prices higher than the standard FIT prices if it meets its job-creation targets, another aspect of the consortium agreement is its impact on transmission capacity for other renewable energy projects. In April 2010, the Minister directed the OPA to give priority to connecting the consortium projects to the grid when assessing the availability of already-limited transmission capacity. This commitment to the consortium affected the FIT contract allocation process and the timely connection of renewable energy from other generators. Specifically:

- When the OPA evaluated the FIT applications and the availability of transmission capacity, it had to consider the locations and sizes of the consortium projects and their transmission requirements. According to the OPA, the required Economic Connection Test was delayed because the OPA could not start to assess the transmission availability until the consortium finalized the connection points for phases two and three of its projects.
- Two of the three priority transmission projects were selected partly because they were expected to meet the timing requirements of the consortium agreement. Specifically, the OPA's forecasts of the likely locations of the consortium projects indicated that 1,323 MW of the existing transmission capacity and about 1,177 MW of the future transmission capacity from the Bruce–Milton line and the other three priority projects will be made available to the consortium.

Planning of Transmission Systems

Planning and co-ordinating the timelines of transmission development is not unique to the FIT program; its open nature, however, has created uncertainties and challenges for the OPA.

The OPA can identify the capacity and connecting points of renewable energy generators as well as the future needs and locations of transmission lines only after it receives the FIT applications. The OPA noted that this has created a new challenge, which it has dubbed “chicken and egg”: transmission capacity requirements cannot be known in the absence of renewable energy generators, and renewable energy generators cannot go forward in the absence of transmission capacity. In essence, new transmission projects cannot be built unless there are proven needs and firm commitments from renewable energy developers, but renewable energy developers are not willing to invest money to build generators without the presence of adequate transmission capacity because of the risk that they will not be connected to the grid. This situation will affect the timeliness of connecting renewable energy to the system because the lead time for transmission projects, about five to seven years, is much longer than the two-to-three-year lead time for renewable energy projects.

RECOMMENDATION 6

To provide investors who have submitted applications for Feed-in Tariff (FIT) projects with timely decisions on whether their projects can be connected to the grid and to ensure that adequate transmission capacity is available for approved projects, the Ontario Power Authority should work with the Ministry of Energy and Hydro One to:

- identify practical ways to deal on a timely basis with the FIT investors who have been put on hold; and
- prioritize the connection of approved FIT projects to the grid.

MINISTRY RESPONSE

The Ministry continues to work closely with the OPA, Hydro One, and local distribution companies to improve connection access for FIT and microFIT projects.

The province's Long-Term Energy Plan identifies five priority transmission projects, which have been identified in large part on the basis of their ability to allow greater renewable connection.

Recently, the Minister of Energy asked Hydro One to expedite infrastructure upgrades for up to 15 of the most severely constrained hydro transformer stations to enable the connection of more microFIT projects. The Minister also issued a directive to the OPA in August 2011 directing the OPA to provide connection options to constrained microFIT proponents.

In addition, working to prioritize and effectively connect FIT and microFIT projects will be a key focus of the two-year review of the FIT program.

OPA RESPONSE

The OPA agrees with this recommendation. The OPA has continued to work closely with the Ministry and Hydro One to improve connection access for FIT and microFIT projects. In August 2011, for example, the OPA began to implement a ministerial directive that allows microFIT proponents to select from various options to relocate constrained projects to areas where connection is possible. Prior to developing the FIT program, the Renewable Energy Supply Integration Team was established by the OPA, the Ontario Energy Board, and Hydro One to provide advice and co-ordinate and streamline activities related to the expansion of renewable energy, including connecting renewable generators to the transmission and distribution systems. The OPA will continue to work with sector partners and the Ministry on connection issues.

SOCIO-ECONOMIC, ENVIRONMENTAL, AND HEALTH IMPACTS OF RENEWABLE ENERGY

Socio-economic Impacts

The *Green Energy and Green Economy Act, 2009* (Act) was intended to support new investment and economic growth in Ontario through the creation of a strong and viable renewable energy sector.

Job Creation in Ontario

The Ministry said the Act is expected to support over 50,000 direct and indirect jobs over three years in transmission and distribution upgrades, renewable energy, and conservation. We questioned whether the job projection information was presented as transparently as possible. For example:

- A majority of the jobs will be temporary. The Ministry projected that of the 50,000 jobs, about 40,000 would be related to renewable energy. Our review of this projection suggests that 30,000, or 75%, of these jobs would be construction jobs and would last only from one to three years, while the remaining 10,000 would be long-term jobs in manufacturing, operations, maintenance, and engineering. However, the high proportion of short-term jobs was not apparent from the Ministry's public announcement.
- The 50,000-job projection included new jobs but not those jobs that would be lost as a result of promoting renewable energy. Experience in other jurisdictions suggests that jobs created in the renewable energy sector are often offset by jobs lost as a result of the impact of higher renewable energy electricity prices on business, industry, and consumers, as indicated in Figure 4. In addition, the closure of Ontario's coal-fired plants by the end of 2014 will lead to job losses, but these were not factored into the Ministry's job projections. Ontario Power Generation, which operates the coal-fired plants, informed us

that the extent of job losses depended on the Ministry's plan: about 2,300 jobs would be lost if the Ministry closed all coal-fired plants, but 600 of these could be saved if certain coal-fired plants are converted to biomass or gas-fired operation. The Ministry's Long-Term Energy Plan noted that Ontario will continue to explore the opportunities for using biomass along with natural gas in the coal-fired plants.

Experiences in Other Jurisdictions

We noted that Ontario's job projections were not consistent with the experiences of other jurisdictions that have a longer history with renewable energy. Studies from these countries highlighted issues with renewable energy that included job losses and high costs per "green" job. We questioned whether the experiences of other jurisdictions had been taken into consideration, and the Ministry confirmed that it had not estimated the potential job losses and the cost per renewable-energy-related job in Ontario. In particular, Ontario's FIT program was modelled on the FIT programs in Germany and Spain, and their job-related experiences could well be relevant to Ontario. For example, we noted the following studies conducted over the past three years:

- A 2009 study conducted in Germany noted that job projections in the renewable energy sector conveyed impressive prospects of gross job growth but omitted such offsetting impacts as jobs lost in other energy sectors and the drain on economic activity caused by higher electricity prices. The study found that the cost of creating renewable-energy-related jobs was up to US\$240,000 per job per year, far exceeding average wages in other sectors.
- A 2009 study conducted in Spain found that for each job created through renewable energy programs, about two jobs were lost in other sectors of the economy.
- A 2009 study conducted in Denmark noted that a job created in the renewable sector does

not amount to a new job but, rather, usually comes at the expense of a job lost in another sector. The study also found that each job created under renewable energy policies cost between US\$90,000 and US\$140,000 per year in public subsidies—or about 175% to 250% of the average wage paid to manufacturing workers in Denmark.

- A 2011 study conducted in the United Kingdom (after the FIT program was launched in Ontario) reported that about four jobs were lost elsewhere in the economy for every one new job in the renewable energy sector, primarily because of higher electricity prices.

In November 2010, similar concerns were raised about the Ontario job projections in a report by the Task Force on Competitiveness, Productivity and Economic Progress of the Rotman School of Management at the University of Toronto. The report noted that it is unclear what the jobs estimate includes, because it has offered neither a definition of green jobs nor a transparent calculation of how the 50,000 figure was arrived at. The report also said that it is unclear whether the 50,000 estimate is a gross or net number of jobs. The report further noted that even if 50,000 new jobs were created, the higher energy costs attributable to renewable energy might result in job losses elsewhere in the economy, particularly in industries that use large quantities of energy. Another recent study in Canada estimated that each new job to be created as a result of renewable energy programs would cost \$179,000 per year.

RECOMMENDATION 7

To ensure that the provincially reported estimate of jobs created through the implementation of the renewable energy strategy is as objective and transparent as possible, the analysis should give adequate consideration to both job-creation and job-loss impacts, as well as job-related experiences of other jurisdictions that have implemented similar renewable energy initiatives.

MINISTRY RESPONSE

The Ministry's calculation of 50,000 jobs relied on standard Ontario government methodology, including standard investment and job multipliers. The figure of 50,000 jobs has always been characterized by the Ministry as a mix of long-term and short-term jobs.

Lessons learned from other jurisdictions with respect to job-creation and job-loss impacts will be taken into account where they may be comparable or instructive to Ontario, taking into account the fact that renewable-energy-program administration rules vary, as does the composition of the economies.

Environmental and Health Impacts of Renewable Energy

Ontario's 2007 Climate Change Action Plan outlined "coal phase-out, renewables, and other electricity initiatives" as measures to help Ontario achieve its greenhouse gas reduction targets, which call for reductions below 1990 levels of 6% by 2014, 15% by 2020, and 80% by 2050.

The Ministry's 2010 Long-Term Energy Plan reiterated the commitment to improve the health of Ontarians and to fight climate change by investing in renewable energy and phasing out coal, which is the largest source of greenhouse gases and accounts for a number of health and environmental problems.

Environmental Concerns

The Ministry indicated that renewable energy will help reduce greenhouse gases by displacing gas-fired generation. However, as noted earlier, any significant increase in intermittent renewable energy requires backup power by either coal- or gas-fired plants because wind and solar power have relatively low reliability and capacity. In Ontario's case, because coal-fired plants are being phased out by the end of 2014, this backup will need to come from

gas-fired plants. Although gas-fired plants emit fewer greenhouse gases than coal-fired plants, they still contribute to greenhouse gas emissions. Our review of experiences in other jurisdictions showed that the original estimated reduction in greenhouse gases had not been reduced to take into account the continuing need to run fossil-fuel backup power-generating facilities. For instance:

- A 2008 study in the United Kingdom found that power swings from intermittent wind generation need to be compensated for by natural-gas generation, which has meant less of a reduction in greenhouse gases than originally expected.
- A 2009 study in Denmark noted that although the country is the world's biggest user of wind energy, it has had to keep its coal-fired plants running to maintain system stability.
- The German government also had to build new coal-fired plants and refurbish old ones to cover electricity requirements that could not be met through intermittent wind generation.

According to the Ministry, Ontario is unique in its commitment to phase out coal by the end of 2014: other jurisdictions did not make that commitment. The Ministry has not yet quantified how much backup power will be required from other energy sources to compensate for the intermittent nature of renewable energy, and accordingly has no data on the impact of gas-fired backup power plants on greenhouse gas emissions.

Health Concerns

In recent years, there have been growing public-health concerns about wind turbines, particularly with regard to the noise experienced by people living near wind farms. In May 2010, Ontario's Chief Medical Officer of Health issued a report concluding that available scientific evidence to date did not demonstrate a direct causal link between wind turbine noise and adverse health effects. However, the report was questioned by environmental groups, physicians, engineers, and other professionals, who

noted that it was merely a literature review that presented no original research and did not reflect the situation in Ontario. We also noted that only a limited number of renewable generators were in operation in Ontario when the report was prepared in spring 2010, a few months after the launch of the FIT program.

One of the provisions of the Act was the establishment of an academic research chair to examine the potential effects of renewable energy generators on public health. In February 2010, an engineering professor from the University of Waterloo was appointed to this position but, as of July 2011, there had been no report on the results of any research conducted to date.

RECOMMENDATION 8

To ensure that renewable energy initiatives are effective in protecting the environment while having minimal adverse health effects on individuals, the Ministry of Energy should:

- develop adequate procedures for tracking and measuring the effectiveness of renewable energy initiatives, including the impact of backup generating facilities, in reducing greenhouse gases; and
- provide the public with the results of objective research on the potential health effects of renewable wind power.

MINISTRY RESPONSE

The Ministry agrees that the impacts of increasing the share of renewable energy in Ontario's energy mix should be quantified where possible and underpinned by objective research. For example, a 2005 independent study, *Cost*

Benefit Analysis: Replacing Ontario's Coal-Fired Electricity Generation, found that if health and environmental impacts were accounted for, the total cost of coal-fired generation would be \$4.4 billion per year. This study helped reaffirm the province's decision to phase out coal and to increase the share of renewable energy in Ontario's energy mix.

The Ministry will continue to rely on the Chief Medical Officer of Health to provide objective advice on the potential health impacts of renewable energy generators. The Chief Medical Officer of Health's recent review found that the scientific evidence does not demonstrate any direct causal link between wind turbine noise and adverse health effects.

The Ministry will continue to work with other ministries to promote further scientifically based information about the impacts of renewable energy. For example, the Ministry of the Environment has appointed an independent research chair for a five-year term to undertake research on the health impacts of renewable energy generators. Considerable work is well under way by the chair and his team to address the important technological, health, and safety aspects of the renewable energy technologies.

OPA RESPONSE

Ongoing plans, including the Integrated Power System Plan, identify the environmental emissions from planned resources, and they clearly identify a reduction in emissions over the time that the OPA has been involved in planning and procuring resources and through the planning horizon.

Electricity Sector— Stranded Debt

Background

We provided updates in past Annual Reports on the electricity sector's stranded debt, defined as that portion of the total debt of the old Ontario Hydro that could not be serviced in a competitive market environment when the electricity sector was restructured 12 years ago. We provide another such update this year, along with information on the Debt Retirement Charge (DRC), a component of nearly every Ontario ratepayer's electricity bill.

Detailed Review Observations

HOW DID THE STRANDED DEBT ARISE?

With passage of the *Energy Competition Act, 1998* (which included the *Ontario Energy Board Act, 1998* and the *Electricity Act, 1998*), the Ontario government launched a major restructuring of the province's electricity industry.

The two most significant aspects of this restructuring were the creation of competitive wholesale and retail markets for electricity that opened May 1, 2002, and the breakup of Ontario Hydro into five

successor companies on April 1, 1999. The new entities and their functions were:

- Ontario Power Generation (OPG) for electricity generation;
- Hydro One for wholesale power transmission and retail distribution;
- the Electrical Safety Authority for electrical inspection;
- the Independent Electricity Market Operator to manage the power grid and the wholesale electricity market; and
- the Ontario Electricity Financial Corporation (OEFC) to manage the legacy debt and other liabilities not transferred from the old Ontario Hydro to successor companies.

The intent of restructuring was to have the new entities operate in a commercial manner, with a strong financial footing that would make them more efficient and effective and lead to prices that were as low as possible for consumers.

Under the old monopolistic rate-regulated system, Ontario Hydro tried to set electricity prices at a level that ensured all costs, including principal and interest payments on debt, were eventually recovered from customers. With the introduction of competition, however, Ontario Hydro's commercial successor companies no longer have the assurance that they can recover all costs, especially those

incurred in previous years and still outstanding, through free-market electricity rates.

One of the most critical steps in the restructuring process was to determine the fair market value of the Ontario Hydro assets transferred to the new entities. Both Ontario Hydro and the government, assisted by private-sector investment firms and other experts, recognized that the market value of these assets in a competitive environment would be significantly less than the amounts recorded in Ontario Hydro's books. It was anticipated that in a competitive market, revenues and profits generated by the successor companies would not be sufficient either to justify the existing recorded asset values or to service Ontario Hydro's substantial outstanding debt.

On April 1, 1999, the Ministry of Finance determined that Ontario Hydro's total debt and other liabilities stood at \$38.1 billion, which greatly exceeded the estimated \$17.2-billion market value of the assets being transferred to the new entities. The resulting shortfall of \$20.9 billion was determined to be "stranded debt," representing the total debt and other liabilities of Ontario Hydro that could not be serviced in a competitive environment.

Responsibility for servicing and managing the legacy debt of Ontario Hydro, which includes the stranded debt, was given to the OEFC, whose opening balance sheet reflected a stranded debt or unfunded liability of \$19.4 billion. This amount represented the difference between the \$18.7-billion value of assets assumed by the OEFC and the \$38.1 billion of Ontario Hydro legacy debt and other liabilities that the OEFC also took on. It should be noted that the stranded-debt figure of \$19.4 billion listed as an unfunded liability in the OEFC's April 1, 1999, financial statements does not agree exactly with the total of \$20.9 billion in Figure 1 because of certain accounting adjustments, consisting mainly of \$1.2 billion in deferred debt costs.

Because the OEFC had neither the assets nor the expected revenue streams from the value of the other Ontario Hydro successor companies to fully service the debt obligations it had assumed, the

Figure 1: Financial Impact of the Restructuring of the Electricity Sector (\$ billion)

Source of data: Ministry of Finance

Former Ontario Hydro debt and liabilities	38.1
<i>less</i>	
Value of new generation and service companies	17.2
<i>equals</i>	
Stranded debt	20.9
<i>less</i>	
Expected dedicated revenue streams	13.1
<i>equals</i>	
Residual stranded debt	7.8

Electricity Act provided for other revenue streams, and the government developed a long-term plan to provide the OEFC with revenue streams to service the existing debt and ultimately retire the stranded debt. A key government policy decision at the time was that all electricity-sector debt would be repaid by the electricity sector and ratepayers rather than from general tax revenues.

To service and retire the \$20.9 billion in stranded debt, the government established a long-term plan wherein the burden of debt repayment would be borne partly through dedicated revenues from the electricity-sector companies—OPG, Hydro One, and Municipal Electrical Utilities (MEUs)—and partly by electricity consumers. This would be broken down for the electricity sector as follows:

- The electricity companies would make payments in lieu of taxes (PILs) to the OEFC. PILs are equivalent to the corporate income, property, and capital taxes paid by private corporations. Before April 1, 1999, these companies were not required to make any of these payments.
- The cumulative annual combined profits of OPG and Hydro One in excess of the government's \$520-million annual interest cost of its investments in the two companies would go toward repaying stranded debt.

As of April 1, 1999, the present value of these two dedicated revenue streams was estimated at

\$13.1 billion. The estimated balance remaining on the \$20.9-billion stranded debt, amounting to \$7.8 billion, was called the “residual stranded debt,” and the *Electricity Act* provided for a new Debt Retirement Charge (DRC) to be paid by electricity consumers until the residual stranded debt was retired. In essence, this was the estimated portion of the stranded debt that could not be serviced by the estimated present value of the two dedicated revenue streams from the electricity companies.

This structure was intended to achieve the elimination of the stranded debt in a prudent manner, and to distribute the burden of debt repayment between electricity consumers and the electricity sector (OPG, Hydro One, and MEUs).

Figure 1 illustrates the significant determinations made at the time of restructuring.

PROGRESS IN RETIRING THE STRANDED DEBT

Figure 2 illustrates the progress made in reducing the total stranded debt as reflected in the OEFC’s audited financial statements. It should be noted that the OEFC’s financial statements currently report only the total outstanding stranded debt and not the residual stranded debt, which is a component of total stranded debt. This is consistent with the *Electricity Act, 1998*, which requires that the outstanding amount of the residual stranded debt need only be determined and disclosed “from time to time,” as discussed later in this section.

Progress in retiring the overall stranded debt over this period has been slower than anticipated, due primarily to the lower-than-expected profitability of Hydro One and, particularly, OPG. The lower their respective earnings, the lower the PILs they make to the OEFC, and the less they contribute to the electricity-sector dedicated income payments. The uncertainty inherent in forecasting the financial performance of the electricity sector becomes apparent on examination of the actual revenues produced by this sector. As reported in the OEFC’s audited financial statements, PILs revenues have

Figure 2: Progress in Repayment of the Stranded Debt, 1999/2000–2010/11 (\$ billion)

Source of data: OEFC

Fiscal Year End	
at April 1, 1999	19.4
1999/2000	20.0
2000/01	20.0
2001/02	20.1
2002/03	20.2
2003/04	20.6
2004/05	20.4
2005/06	19.3
2006/07	18.3
2007/08	17.2
2008/09	16.2
2009/10	14.8
2010/11	13.4

varied from a low of \$321 million in the 2010/11 fiscal year to a high of \$949 million in 2005/06, while electricity-sector dedicated income has ranged from \$0 in 2001/02, 2003/04, and 2008/09 to a high of \$771 million in 2010/11.

As we reported in last year’s Annual Report, some of the factors that have affected OPG’s profitability over the past 11 years include the following:

- Electricity-generation projects such as the Niagara tunnel project have had cost overruns, with costs being almost double their original estimates and completion dates running years behind schedule.
- Investment returns on the \$11-billion nuclear removal and waste management funds, reflected in OPG’s financial statements, have been volatile. Canadian accounting standards require OPG to reflect unrealized gains and losses in its net income.
- There has been public and political pressure to keep electricity rates low, which impacts the profitability of the sector.

As well, OPG’s future profitability and, consequently, the pace of the reduction of the recorded stranded-debt balance may be impacted

by uncertainty about which costs the Ontario Energy Board (OEB), which regulates rates, will allow OPG to pass on to its customers. In a recent application, for example, OPG sought a 6.2% rate increase for power produced by its major generating stations. However, the OEB granted just 1%. At the time of this writing, OPG was appealing parts of the OEB decision, but should it lose the appeal and be unable to reduce costs, OPG will experience lower profitability.

THE RESIDUAL STRANDED DEBT AND THE DEBT RETIREMENT CHARGE (DRC)

In recent months, issues surrounding the electricity Debt Retirement Charge (DRC) have been raised both in the Legislature and in the media. These issues have included questions such as:

- Are there any restrictions on what the DRC can be used for?
- How is the residual stranded debt determined?
- How long will the DRC remain on electricity bills?

Accordingly, we decided to incorporate a review of the DRC in this year's update. Because charges of this nature typically need to have underlying legislation or regulations that authorize their collection, a key aspect of our work was a review of the underlying legislation with respect to the levying and use of the DRC. We also wanted to provide the Legislature and the public with information that could help answer the above questions.

What Can the DRC Be Used For?

Collection of the DRC began on May 1, 2002, the day the electricity market opened to competition. The rate was established at 0.7¢ per kilowatt hour (kWh) of electricity and remains the same today. Currently, the OEFC collects more than \$900 million a year in DRC revenue, and, as of March 31, 2011, approximately \$8.7 billion in DRC revenue had been collected.

In announcing the DRC in 2000, the then Minister of Energy said that the objective of it was to pay down the estimated \$7.8-billion residual stranded debt: "All revenues from the DRC will go directly to the Ontario Electricity Financial Corporation to be used exclusively to service the residual stranded debt. Once the residual stranded debt has been retired, the DRC will end."

Although this reference implies that the DRC must be used only to pay down the residual stranded debt, it is the underlying legislation that dictates the collection and usage of the DRC and that drives the actions of both the OEFC and the responsible Minister with regard to compliance.

Section 85 of the *Electricity Act, 1998* (Act), which is titled "The Residual Stranded Debt and the Debt Retirement Charge," gives the government the authority to implement the DRC, and this same section specifies when it is to end. The OEFC's 2010 Annual Report states that the Act "provides for the DRC to be paid by consumers until the residual stranded debt is retired. The debt repayment plan estimates residual stranded debt will likely be retired between 2015 and 2018"; and its 2011 Annual Report states that the OEFC "receives the Debt Retirement Charge paid by electricity consumers at a rate of 0.7 cents/kWh until the residual stranded debt is retired." Given that the wording in section 85 was, in our view, open to interpretation in several areas, we engaged external legal counsel to assist us. The following comments and observations take into consideration the opinion of our external legal advisers with respect to the interpretation of this section.

Although DRC funds collected are separately disclosed in the OEFC's financial statements, they are not segregated or separately accounted for with respect to the residual stranded debt, but are combined with the OEFC's other revenue sources and used for general corporate purposes. Our view, which is supported by legal advice, is that section 85 does allow DRC funds to be used for any purpose that is in accordance with the objectives and purposes of the OEFC. In essence, and notwithstanding

the comments made by the then Minister when tabling the original legislation, section 85 does not restrict the application of the DRC to being used only to service the outstanding residual stranded debt. This means that the OEFC, in comingling the DRC funds collected with its other sources of revenue and in using all funds collected to carry out its legislated objects, has complied with the underlying legislation with respect to the DRC.

However, as discussed later in this section, we believe that the Minister does have certain additional responsibilities under section 85 with respect to when the collection of the DRC will end.

How Is the Outstanding Residual Stranded Debt Determined?

The Act does not specify precisely how the determination or calculation of the outstanding amount of the residual stranded debt is to be done, only that it be done “from time to time.” However, the Act states that the government, by regulation, may establish what is to be included in the calculation of the residual stranded debt. As yet, though, no such regulation has been made. With respect to how to calculate the outstanding residual stranded debt at any one time, we believe that there are several possible approaches, including the following:

- Have the initial \$7.8-billion residual stranded debt less the DRC collected to date equal the remaining residual stranded debt.
- Treat the initial \$7.8-billion debt like a mortgage or loan, in which each DRC payment would go to paying interest and paying down the principal.
- Apply DRC revenues to the payment of a portion of the OEFC’s operating expenses, in addition to interest and financing costs, because there are administrative costs associated with running the OEFC.
- Consider the residual stranded debt to be retired only when the OEFC’s assets, which include the present value of projected revenue

streams from the electricity sector, equal its liabilities.

The last approach was essentially the method used in the original 1999 calculation of the estimated stranded debt and residual stranded debt. We understand that it has continued to be used by the OEFC since that time. In effect, under this methodology, low past profitability or estimated future profitability in the electricity sector would result in more of the stranded debt being paid by electricity consumers through DRC payments, whereas high past profitability or estimated future profitability would reduce the amount of DRC payments needed from consumers.

Although the definition of residual stranded debt in section 85 does not include interest or other OEFC expenses, and notwithstanding the lack of specific statutory guidance as to how the residual stranded debt is to be calculated, we believe that the legislation does provide the Minister with a fair degree of latitude in determining how the residual stranded debt is to be calculated and reported. The legislation also allows, but does not require, the government to make regulations governing determinations of the stranded debt and the residual stranded debt for the purposes of section 85.

When Does Collection of the DRC End?

Section 85 requires that the Minister of Finance determine the total stranded debt, determine “from time to time” the residual stranded debt, and make these determinations public. When the Minister determines that the residual stranded debt has been retired, collection of the DRC must cease. Since passage of the Act over a decade ago, the Minister has made no such public determination of the outstanding amount of the residual stranded debt, and the DRC has continued to be collected.

From our perspective, the key question is what “from time to time” means. Can it be totally open-ended and left solely up to the discretion of the government of the day as to when such a determination will be made and the DRC collected

indefinitely until that time? Or, if not, what would be a reasonable time frame within which the Minister should make a determination of the outstanding amount of the residual stranded debt to meet the requirements of section 85?

Our view is that it is certainly reasonable for the Minister not to have made a determination of the outstanding amount of the residual stranded debt obligation in the initial years after collection of the DRC began. However, we believe that the intent of section 85 is that the Minister must provide a periodic update to the consumers paying the DRC with respect to the status of this particular charge on their electricity bills.

Given that the DRC has been collected from electricity consumers for almost a decade and that more than \$8 billion in DRC revenue has been collected during that time, our view is that the Minister should make a formal determination of the outstanding amount of the residual stranded debt in the near future and make this determination public. Consideration should also be given to that part of section 85 that allows the government to establish and clarify, by regulation, when such a determination will be made and how the amount of the outstanding residual stranded debt is to be calculated.

MINISTRY OF FINANCE RESPONSE

The Ministry of Finance (Ministry) concurs with the Auditor's report with respect to the Ontario

Electricity Financial Corporation (OEFEC) being in compliance with the *Electricity Act, 1998* (Act) in the use of Debt Retirement Charge (DRC) revenues. DRC revenues are used by the OEFEC to perform its objectives under the Act, including servicing and retiring its debt and other liabilities. The OEFEC's expenses included interest payments of about \$1.6 billion in the 2010/11 fiscal year. Since March 31, 2004, the OEFEC has had seven consecutive years of paying down its unfunded liability (often called the stranded debt), for a paydown from \$20.55 billion as at March 31, 2004, to \$13.448 billion as at March 31, 2011—a reduction of about \$7.1 billion. Also, as provided for under the Act, the Ministry will be moving forward with proposed regulations under the Act on the determination of stranded debt and residual stranded debt.

The determination of residual stranded debt from time to time is subject to estimation and forecast uncertainty because a residual stranded debt calculation includes forecasting what future dedicated revenues to the OEFEC will be. Such revenues depend on the financial performance of OPG and Hydro One, as well as other factors such as assumptions about future tax and interest rates.

This uncertainty has been reflected in the OEFEC's 2011 annual report, which includes, as in previous years, an estimate of when the DRC is likely to end: sometime between 2015 and 2018.

Chapter 3

Section 3.05

Ministry of Natural Resources
Ministry of Northern Development, Mines and Forestry

Forest Management Program

Background

Ontario's forests cover more than 700,000 square kilometres or about two-thirds of the province. More than 80% of the forests are on Crown land, and their management (that is, their harvesting, renewal, maintenance, and so on) is governed mainly by the *Crown Forest Sustainability Act, 1994* (CFSA). The CFSA is designed to provide for the long-term sustainability of Ontario's Crown forests and the management of Crown forests in such a way that they meet the social, economic, and environmental needs of present and future generations. In addition, the Ministry of Natural Resources (MNR) has standing authority under Ontario's *Environmental Assessment Act* regarding recurring forest management activities on Crown land, subject to conditions, which MNR must adhere to.

Ontario's forest industry is an important source of employment in the province, especially in northern communities. In the 2008/09 fiscal year, employment within the industry was estimated at 166,000 jobs. According to Statistics Canada, in the 2009 calendar year, the value of Ontario's forestry-sector products (that is, the province's pulp and paper, sawmill, and engineered wood and value-added wood products) was estimated to be approximately \$12 billion. In recent years, the industry has

experienced a significant decline due mainly to the increase in the value of the Canadian dollar and the recent economic downturn in the United States, which has affected demand for forest products made in Ontario. As a result, many mills in the province have closed, either permanently or temporarily, resulting in a reduction in timber harvest levels and associated forest management activities.

As shown in Figure 1, most forest management activities on Crown land occur in an area of about 365,000 square kilometres known as the Area of the Undertaking (AOU). Forest management activities

Figure 1: Area of the Undertaking (AOU)

Source: Ministry of Natural Resources



are generally not approved in the land north of the AOU, where access is limited. Most of the land south of the AOU is privately owned. Productive forest within the AOU covers about 262,000 square kilometres; only about 190,000 square kilometres of this area are eligible for forest management activities, with the rest comprising provincial parks, private lands, and areas where forest management activities cannot reasonably take place due to the terrain.

The Area of the Undertaking is divided into 41 units, known as Forest Management Units (FMUs). Thirty-eight of the 41 FMUs are managed by forest management companies operating under a Sustainable Forest Licence (SFL). Under an SFL, which may be granted for up to 20 years, the SFL holder is responsible for preparing a Forest Management Plan (FMP) and implementing the plan by building access roads, harvesting trees, renewing/maintaining the forest, monitoring its forest management activities, and reporting the results of its monitoring to the province. The remaining three FMUs are managed by the Crown. Forest Resource Licences (FRLs), which allow an individual or company to harvest in an FMU, are also granted by the province. Before an FRL can be issued, the individual or company must come to an agreement with the holder of the SFL. The FRL holder will generally not be responsible for any forest renewal/maintenance activities subsequent to harvesting, because this responsibility typically remains with the SFL holder. The province has granted nearly 4,000 FRLs, which have a maximum term of five years.

In October 2009, the province realigned the responsibilities of the management of Crown forests between two ministries—MNR and the Ministry of Northern Development, Mines and Forestry (MNDMF). MNR, for the most part, is responsible for the overall stewardship of Ontario's Crown forests. Its key responsibilities include approving FMPs prepared by SFL holders, overseeing the forest renewal and other activities of these companies, and public reporting on the health and sustainability of the Crown forests. MNDMF is responsible mainly for the business and economic aspects of

forestry. Its primary responsibilities include providing the forest industry with access to Crown timber by granting SFLs, and the pricing, promotion, and marketing of Crown timber.

Audit Objective and Scope

The objective of our audit was to assess whether the Ministry of Natural Resources and the Ministry of Northern Development, Mines and Forestry (Ministries) had adequate systems, policies, and procedures in place to ensure compliance with legislation, regulations, and policies and to reliably measure and report on their effectiveness in ensuring the long-term sustainability of Ontario's Crown forests.

Senior management at both Ministries reviewed and agreed to our audit objective and associated audit criteria.

Our audit included visits to the Ministries' head offices, to all three regional MNR offices, and to five of MNR's district offices (collectively, these district offices oversee 30% of the province's Crown forests), where we interviewed staff and reviewed pertinent files. We also visited MNR's Ontario Forest Research Institute in Sault Ste. Marie and its Centre for Northern Forest Ecosystem Research in Thunder Bay and met with researchers who are supporting the sustainable management of Ontario's forests. We met with the Ontario Forest Industries Association, the Wildlands League (a chapter of the Canadian Parks and Wilderness Society), and the Environmental Commissioner of Ontario to obtain their perspectives on forest management in Ontario. As well, we visited two sawmills, a paper mill, and a Crown forest managed by a licensee in northern Ontario to gain familiarity with their operations. To obtain a perspective on forest management practices in other provinces, we visited British Columbia and Alberta and met with representatives from their respective forest ministries.

In recent years, the Internal Audit Services responsible for both Ministries had issued a number

of reports on various aspects of the Ministries' forestry program. We considered the relevant issues noted in these reports in determining the scope and extent of our audit. In addition, the *Crown Forest Sustainability Act, 1994* requires that each managed Crown forest undergo an independent audit by a registered professional forester every five years. At the time of our fieldwork, such audits had been recently completed on 12 Crown forests. Where appropriate, we incorporated the results of these audits into our audit work.

Summary

Before the enactment of the *Crown Forest Sustainability Act, 1994* (CFSA), the province was directly responsible for managing Ontario's Crown forests, including regeneration. Under the CFSA, licensed forest management companies became responsible for overall forest sustainability planning and for carrying out all key forest management activities, including harvesting and forest renewal, on behalf of the Crown. The province's role in ensuring the sustainability of Crown forests has increasingly become one of overseeing the activities of the private-sector forest management companies. Such oversight is vital given that forests take upwards of 70 years to re-grow and these companies have little immediate financial incentive to carry out appropriate renewal activities.

Overall, we concluded that improvements are needed if the Ministry of Natural Resources (MNR) and the Ministry of Northern Development, Mines and Forestry (MNDMF) are to have adequate assurance that the key objective of the CFSA—to provide for the long-term sustainability of Ontario's Crown forests—is being achieved. Specifically, we noted the following:

- The province considers a one-hectare harvest block to have successfully regenerated if it is stocked with a minimum of 1,000 trees (that is, 40% of what the harvest block can accom-

modate). Harvest blocks are also held to a silviculture success standard, which is a measure of whether the appropriate or preferred trees have grown back. In the 2008/09 fiscal year (the latest period for which information was available at the time of our audit), we noted that about a third of the licensed forest management companies had not reported the results of their forest management activities, and MNR had not followed up with these companies. The two-thirds that had reported indicated that although 93% of the total area that had been assessed by the companies had met the province's minimum 40% stocking standard, only 51% of the total area assessed had achieved silviculture success.

- MNR's 40% stocking standard has not changed since the 1970s. Several other jurisdictions in Canada hold the industry to higher standards. In fact, we noted that one MNR region, on its own initiative, held companies managing Crown forests in its jurisdiction to a higher stocking standard.
- Before planting, seeding, or even natural regeneration can take place, it is often necessary to prepare a site to allow for regeneration to take place under the best possible conditions, thereby increasing the likelihood of success. It is also often necessary to subsequently tend the site, usually by spraying to kill off competing vegetation, to further increase the likelihood of regeneration success. On average, between the 2004/05 and 2008/09 fiscal years, only about a third of the area targeted for regeneration either naturally or by direct seeding or planting was prepared and/or subsequently tended. Moreover, the average decreased over that five-year period. In accordance with the CFSA, all Crown forests are subjected to an Independent Forest Audit (IFA) once every five years. Several of the more recent IFA reports completed in the 2008 and 2009 calendar years expressed concern about inadequate site preparation

or about non-existent or inadequate tending practices that were leading to reductions in growth, yield, and stand densities, as well as to an increase in the time required for stands to reach free-to-grow status (meaning that the trees are free of insects, diseases, and high levels of competing vegetation).

- We noted that Forest Management Plans had been completed in accordance with the requirements of the CFSA and reviewed and approved by MNR staff. However, MNR had not ensured that the most accurate and up-to-date information on forest composition, wildlife habitat, and the protection of these habitats was made available at the time the plans were prepared.
- With respect to the province's monitoring of the forest industry, we noted the following:
 - MNR did not maintain a complete list of all active harvest blocks in its compliance system to ensure that all harvest blocks could be identified for possible inspection, and not all of MNR's district offices used a risk-based approach for selecting blocks for inspections. Where problems were noted, repeat offenders often did not receive appropriate remedies such as a penalty or a stop-work order.
 - The forest industry is required to report its renewal activities annually to MNR. To verify the accuracy of the reporting, MNR implemented a Silviculture Effectiveness Monitoring program. However, its district offices were not completing many of the required "core tasks" in the program. Where problems were noted, little follow-up action was being taken.
 - We noted that a good process was in place to select the team that conducted the Independent Forest Audits, but that deficiencies detected during such audits were not being addressed in some cases.
 - The average annual harvest in the last five years has been only about 63% of what was

planned, and has decreased from almost 80% of planned in the 2004/05 fiscal year to about 40% of planned in the 2008/09 fiscal year. The shortfall is usually due to existing licensees with sole rights to harvest Crown timber not having a market for the timber. There are indications that other companies that currently do not have access to timber in Ontario's Crown forests can market Ontario wood. A November 2009 competition for unused Crown wood initiated by MNDMF resulted in the allocation of approximately 5.5 million cubic metres of timber that otherwise would not have been harvested. About 25% of the winning proponents were new mills that plan to invest in the province as a result of this competition. At the time of our audit, MNDMF had no plans to hold similar competitions in the near future. In fact, we noted that MNDMF does not monitor on an ongoing basis whether there is excess supply of Crown wood that could be reallocated to others who might be able to market the timber.

- Measures and controls did not fully ensure that Crown forest revenue was appropriately calculated and received on a timely basis and that trusts established to fund forest renewal expenditures incurred by forest management companies were adequately administered and funded.

MNR could also enhance the usefulness of the information presented in its annual report on forest management by comparing actual levels of key forest management activities—such as harvesting, regeneration (whether occurring naturally or assisted by planting or seeding), site preparation, and tending—to planned levels and providing explanations for significant variances.

OVERALL MINISTRIES' RESPONSE

MNR and MNDMF collectively aim to ensure that the management of Ontario's forests provides healthy, sustainable forested ecosystems; enables a thriving and viable forest sector; and supports the livelihood of forest-dependent communities. The ministries work together in delivering on the requirements of a rigorous legislative and policy framework governing the management and use of Ontario's forests. This framework is regularly reviewed and assessed.

Monitoring of approved operations and the results of management activities are essential components of Ontario's forest management framework. Monitoring is undertaken by forest companies, the ministries, and independent auditors to ensure that policies are effective and forest management objectives are being achieved.

MNR and MNDMF recognize the need to consider new opportunities, and they have responded with the *Ontario Forest Tenure Modernization Act* to modernize forest tenure and pricing, a provincial wood supply competitive process to ensure that the best use is made of our available forest resources, and the revision of forest management guides to incorporate the latest scientific information.

MNR and MNDMF are committed to the continuous evaluation and improvement of the forest management program. The ministries appreciate the review undertaken by the Office of the Auditor General of Ontario and are committed to responding to the recommendations to improve the forest management program in Ontario.

Detailed Audit Observations

SUSTAINABLE FOREST MANAGEMENT

Before the enactment of the *Crown Forest Sustainability Act, 1994* (CFSA), the Ministry of Natural Resources (MNR) was responsible for the direct management of Ontario's Crown forests, including regeneration. Under the CFSA, licensed forest management companies, rather than MNR, became directly responsible for forest sustainability planning and harvesting and are required to carry out forest renewal on behalf of the Crown. MNR's role in ensuring the long-term health of Crown forests has progressively become one of setting renewal standards and targets for forest management companies to meet, and overseeing the activities of these companies.

It is critical for MNR to capably oversee the forest industry and ensure that the private-sector forest management companies are managing Crown forests in accordance with standards that ensure those forests' long-term health. Setting appropriate renewal standards and effective oversight are all the more important in the case of forest renewal; with forests taking upwards of 70 years to re-grow, these companies have little immediate financial incentive to carry out appropriate renewal activities.

Forest Renewal

Regeneration Standards

Under the CFSA, all areas harvested (excluding certain areas, such as roads) are required to be regenerated. Forests can regenerate naturally; they can also be regenerated by direct seeding or by planting trees. For each harvest block within a harvest area, the Ministry has two key standards with respect to forest regeneration—overall regeneration success, and the success of silviculture, which is the practice of controlling the establishment, growth, composition, health, and quality of forests to meet

diverse needs and values. In a typical harvest area within the province, a one-hectare harvest block can accommodate approximately 2,500 trees spaced about two metres apart. The province considers the harvest block to have successfully regenerated if it is stocked with a minimum of 1,000 trees (40% of what the harvest block can accommodate) that have been declared free-to-grow (that is, the trees have good growth rates and are free from any insects, diseases, and high levels of competing vegetation). Harvest blocks are also held to a silviculture success standard, which is a measure of whether the appropriate or preferred trees have grown back.

Forest management companies are required to report regularly to MNR the results of the assessments completed on areas harvested seven to 10 years previously within Forest Management Units (FMUs) and whether these areas have achieved the province's stocking and silviculture standards. In the 2008/09 fiscal year (the latest year for which information was available at the time of our audit), we noted that about a third of the forest management companies had not reported the results of their forest management activities in 2008/09, and MNR had not followed up with the companies that had not reported. The two-thirds that had reported indicated that although 93% of the total area that had been assessed by the companies had met the province's minimum 40% stocking standard, only 51% of the total area assessed had achieved silviculture success.

The province's minimum 40% stocking standard has been in place since the 1970s. Several other provinces within Canada hold the forest industry in their respective jurisdictions to much higher stocking standards. In the 2009/10 fiscal year, one MNR region took the initiative of incorporating a higher minimum stocking standard in Forest Management Plans for FMUs within its jurisdiction and also began requiring that the trees be well dispersed—specifically, that at least 75% to 80% of the harvest block be covered. The province's current stocking standard does not require this. At the time of our

audit, we were informed that MNR was in the process of reviewing the 40% stocking standard, because it felt that new science-based standards were needed in order to “raise the bar” and result in better renewal practices.

Forest Regeneration

Although assisted regeneration (direct seeding or planting) is a more expensive procedure than natural regeneration, on certain sites it is generally regarded as a more reliable option that yields a greater likelihood of establishing the desired species. A particular benefit of planting versus natural regeneration is that seedlings are germinated in greenhouses before planting, thereby providing a head start on regeneration. In addition, planting also allows greater control of stocking density. Before planting, seeding, or even natural regeneration can take place, it is often necessary to prepare a site to allow for regeneration to take place under the best possible conditions, thereby increasing the likelihood of success. Site preparation may consist of raking, tilling, or removing debris and undesirable competing vegetation. After planting or seeding, tending (that is, weeding and thinning) is usually required for some time to further increase the chance of silviculture success.

On average, between the 2004/05 and 2008/09 fiscal years, only about a third of the areas regenerated either naturally or by direct seeding or planting were site prepped and/or subsequently tended. During this period, there was a declining trend reported by forest management companies in the level of both site preparation (from 39% to 29%) and tending (from 45% to 35%) relative to natural and assisted regeneration.

Forest regeneration activities prescribed in Forest Management Plans (FMPs) vary in intensity from inexpensive treatments such as natural regeneration following harvest to more costly treatments that involve site preparation, tree planting, vegetation management, and pre-commercial thinning. The FMPs prescribe preferred and alternative

treatments and give industry the option to carry out whatever treatments it considers appropriate. Forest management companies could, for the most part, avoid the more expensive and intensive treatments, opting for lower-end regeneration activities, and still be in compliance with their respective FMPs. However, continued use of lower-end practices could yield poor regeneration results, especially with respect to establishing the desired species.

In accordance with the CFSA, all FMUs are subjected to an Independent Forest Audit (IFA) every five years. The audit examines the effectiveness of both MNR and forest management companies in achieving the FMU's planned objectives and provides an assessment of forest sustainability for that FMU. Several of the more recent IFA reports completed in 2008 and 2009 expressed concerns with respect to inadequate site preparation or tending practices that lead to reductions in growth, yield, and stand densities and an increase in the time required for stands to reach free-to-grow status. For example, the most recent IFA report on a forest that has since reverted to the Crown reported the following:

Underachievement of many planned renewal activities during the term was partially due to the reduced harvest level during the term but was largely due to selecting new less intensive treatments for many stands (for example, many areas planned for “Intensive” treatments—site preparation, planting and tending—were simply direct planted—a “Basic” treatment).

RECOMMENDATION 1

To better ensure that the province's Crown forests are successfully regenerated after harvesting, the Ministry of Natural Resources (MNR) should:

- follow up with those forest management companies that have not regularly reported on the results of their forest management

activities in meeting the province's stocking and silviculture standards; and

- conduct scientific studies and research into practices in other jurisdictions to ensure that the stocking standard is adequate to ensure that forest management companies are held to a regeneration standard that will successfully renew harvested areas with the desired species.

Where forest management companies opt for lower-end regeneration activities, MNR should, as part of its review of Forest Management Plans, ensure that there is adequate justification for these less-expensive treatments and assess whether the treatments will achieve planned renewal objectives.

MNR RESPONSE

MNR agrees that timely reporting is an essential component of monitoring the achievements of forest management companies in meeting the province's regeneration standards. Forest management companies are required to report annually to MNR on the results of any assessments that they have completed; however, companies are not required to conduct these assessments annually. Flexibility is provided in the system to allow a company to accumulate larger blocks that are assessed once every few years and in time for the preparation of the next Forest Management Plan (FMP). Because of this, it is expected that not all companies will report each year. MNR will review its procedures for obtaining reports on the results of companies' regeneration assessments to ensure that where surveys are completed, the results are submitted on an annual basis. MNR will also follow up with any companies that have not regularly reported to ensure that they have a reasonable rationale for not doing so.

Silviculture treatments that are necessary to successfully renew the forest and achieve the desired future forest condition are prescribed in

an FMP. MNR will review its approach for determining minimum stocking levels set in FMPs and incorporate any necessary changes into the appropriate guidance documents. As part of its next update of the *Forest Management Planning Manual*, MNR will ensure that there is clear direction for the provision of information to demonstrate that actual silviculture activities are consistent with the approved FMP. Justification will be required where the level of less-intensive treatments deviates from planned levels in a given period. MNR will continue to monitor the effectiveness of natural regeneration and other less-expensive treatments as part of the ongoing Silviculture Effectiveness Monitoring program. The results of the provincial Silvicultural Effectiveness Monitoring program will be analyzed to determine where improvements are needed in the existing silviculture framework.

Forest Management Plans

As noted earlier, the *Crown Forest Sustainability Act, 1994* requires that an approved Forest Management Plan (FMP) be in place for each FMU. FMPs are intended to safeguard the long-term sustainability of Crown forests and maintain biodiversity (that is, a variety of different plant and animal life). FMPs specify planned operations, including construction of access roads, levels of harvest and the associated levels of renewal, and maintenance over a 10-year term. Accurate and up-to-date information on forest composition and wildlife habitat at the time the FMP is prepared is a key requirement for ensuring the sustainability of Crown forests.

Forest Resource Inventory

A forest resource inventory (FRI) provides information on, among other things, the composition, age, height, and stocking of individual species of trees within a forest. In our *1994 Annual Report*, we commented that “an essential first step in any forest

management process is a complete, accurate, and up-to-date forest inventory for each forest management unit.” As well, in 2006, a task force implemented by the then-Minister of Natural Resources aimed at streamlining processes in the forestry sector noted that a current FRI is needed to effectively carry out business, and that inaccurate values information leads to amendments and increased costs. MNR’s standing approval under the *Environmental Assessment Act* for forest management activities also requires that an up-to-date FRI for each FMU be available for use in forest management planning. According to MNR, it takes three years to produce an FRI for an area, with the production predominantly entailing the taking of digital aerial imagery and the interpretation of that imagery using field data from surveys of a sample of plots.

Realizing that its FRIs were becoming outdated, MNR allocated \$7.5 million in the 2006/07 fiscal year and since then has allocated \$10 million per year to enhance and update the province’s FRIs using the latest technology. The current FRIs are, on average, 18 years old and therefore often do not contain accurate or complete information on the composition of forests within individual FMUs. FMUs are required to maintain a planning inventory for each FMP that contains updated forest description information from forest management activities and natural changes to the forest. However, given that the basis of the planning inventories is the FRI, it is still essential for forest management planning that MNR has a complete and accurate FRI. MNR had initially intended to use the updated FRIs in forest management planning by 2010, but its current target is to have the new FRIs in place for forest management planning by 2014.

Detection of Forest Resource Values

Another requirement of the standing approval is that MNR maintain the most relevant and current information on such forest-related values as species-at-risk habitats, other species habitats, tourism values, and cultural and heritage values. To this

end, MNR maintains a values information system, which it is responsible for updating. Sustainable Forest Licence holders also have access to the system and use it to create value maps for use in FMPs and to adjust their operations according to any updated information.

MNR's district offices receive funding every year to enable the collection of this data, but the amount of the funding provided is not consistent. We noted, for example, that funding to district offices in one region increased five-fold when FMPs within these districts came up for review. In other years, the funding was negligible. To facilitate the ongoing collection of data on values and hence enable more timely revisions to annual forest management operations—especially with respect to wildlife habitats, which change continuously—the 2006 MNR task force recommended that “funding for values data collection projects, including entry of data into the corporate data repository, should generally be provided to MNR Districts on an ongoing annual basis rather than be tied to the preparation of an FMP.” MNR has yet to act on this recommendation.

The *Endangered Species Act, 2007* (ESA) lists many endangered and threatened species that need protection. MNR has determined that 42 of them are dependent on the province's Crown forests and are also likely to be affected by forest management operations. We noted that for approximately 15% of these species, no provincial prescriptions (that is, documents specifying the way the species should be protected—for example, by setting up buffer zones between the species and forest management operations) had been developed at the time of our audit. Leaving development of such prescriptions up to the industry risks inconsistencies among FMUs. We also noted that one district had identified habitats for a number of the forest-dependent species-at-risk listed in the ESA in Crown forests in its jurisdiction, but these had not been entered in MNR's values information system.

Update of Silviculture Guides

MNR has produced silviculture guides on managing different species of trees in different regions. These guides are used by the forest industry when preparing FMPs. MNR's standing approval under the *Environmental Assessment Act* requires that MNR review these guides every five years to ensure that they reflect the most current scientific knowledge regarding the management of the different species of trees. MNR reviewed these guides in 2005 and concluded that, with only one exception, all of them required revision. At the time of our audit, MNR was still in the process of revising the guides.

RECOMMENDATION 2

In order that Forest Management Plans meet their objectives in ensuring the future sustainability of Crown forests, the Ministry of Natural Resources (MNR) should ensure that accurate and up-to-date information on forest composition and wildlife habitat and the protection of these habitats is made available at the time the plans are prepared. MNR should also update any silviculture guides used in forest management planning on a more timely basis.

MNR RESPONSE

MNR acknowledges the importance of using accurate and up-to-date information in the preparation of Forest Management Plans (FMPs) and makes significant ongoing investments in information and systems to support planning. In 2005, MNR assumed full responsibility for the production of the Forest Resources Inventory (FRI), and production to provide updated FRIs for use in the preparation of FMPs is on schedule.

Values information, collected by MNR districts, is documented, and known values are verified during surveys that are conducted for purposes other than forest management (for example, moose aerial inventory surveys). The

collection of values information is continually augmented by district staff and industry partners during regular fieldwork. The planning system requires the immediate implementation of prescriptions to protect any newly identified values that may be affected by planned forest operations.

Protecting species at risk and their habitats has always been an integral part of forest management activities in Ontario. Specific provincial direction exists for 54 of the 65 species listed in the *Endangered Species Act, 2007* (ESA) that are likely to be affected by forest management operations—or 83%. Direction for two further species is being developed. The development of additional habitat regulations and policy direction is ongoing as necessary to address outstanding species and any new species that may be listed under the ESA.

MNR agrees that the standards and guidelines in its forest management guides, including the silviculture guides, must be based on the most recent scientific understanding of sustainable forest management practices. Following the 2005 review of the silviculture guides, work began immediately to address the three key items identified as requiring an update. Once that background research was completed, scoping of the new revised silviculture guide began in fall 2009. The silviculture guide revision project is now well under way, with completion anticipated in late 2013.

Monitoring

To assess compliance with approved FMPs and to evaluate progress with respect to forest regeneration, forest management operations carried out by the forest industry are subject to monitoring on three fronts:

- compliance monitoring—that is, the inspection of forest management operations to

ensure that the operations conform to the approved plans or permits;

- silviculture effectiveness monitoring, which is conducted to determine if forest renewal operations undertaken by the forest industry are yielding the desired outcomes; and
- Independent Forest Audits (IFAs), which provide an independent assessment of sustainable forest management practices of FMUs.

We noted the following with respect to the monitoring of forest management operations within the province.

Inspection and Enforcement

In Ontario, the forest industry and the Ministry of Natural Resources (MNR) are jointly responsible for ensuring that forest management operations (for example, construction of access roads, harvesting, and forest renewal/maintenance) comply with applicable legislation, regulations, and policies that are intended to ensure the sustainable management of Crown forests. In general, FMPs require Sustainable Forest Licence holders to inspect all harvest blocks and report to MNR all suspected incidents of non-compliance within their FMU. MNR then confirms the suspected non-compliance(s) and determines the appropriate remedial action. MNR inspectors, in addition to verifying all non-compliance(s) reported by the industry, also carry out random and planned inspections. All inspections conducted by MNR and the forest industry are documented in inspection reports. These reports are stored in a web-based system. Summaries of inspections are included in the provincial *Annual Report on Forest Management*.

Inspections

Although the forest industry is generally required to inspect all blocks harvested, MNR does not have adequate procedures for ensuring that the industry has carried out the required inspections. We noted that MNR's database did not contain a complete listing of all active harvest blocks; instead, it listed only those harvest blocks that had been inspected

by forest management companies. As a result, MNR cannot readily compare all active harvest blocks with those that have been inspected and follow up with companies regarding blocks that have not been inspected.

Because the system provides for self-reporting by the industry, there is a risk that not all non-compliances will be reported. Between the 2005/06 and 2009/10 fiscal years, MNR inspected an annual average of approximately 25% of the harvest blocks. We noted that during this period, the average compliance rate on inspections carried out by the forest industry was approximately 96%, with the average compliance rate on MNR's inspections being about 87%.

Although overall, MNR inspections yield a lower compliance rate, we noted that three of the five MNR districts we visited did not follow a risk-based approach in selecting which harvest blocks to inspect. The other two districts used risk assessment procedures to select harvest blocks for inspection. For example, one district had a good process that ranked blocks about to be harvested using criteria such as compliance history, public safety, and non-uniform boundary configurations; the district inspects 100% of the blocks deemed to be of high risk, 30% of blocks deemed to be of moderate risk, and only 10% of blocks deemed to be low risk. Adopting a similar risk-based approach in the selection of blocks for inspection across all regions would allow district offices to make the best use of limited resources.

Enforcement

When incidents of non-compliance (for example, access roads that are too wide, wasteful harvest practices, or operations taking place within a protected area) are detected on inspections of harvest blocks by either the SFL holder or MNR, remedial actions available to MNR include written warnings; orders to stop, repair, or comply; administrative penalties; offence charges; and, as a last resort, suspension or cancellation of licences.

On average, non-compliance problems were corrected nine months after the inspection date for inspections done between the 2005/06 and 2009/10 fiscal years. When we reviewed a sample of non-compliance issues detected by the district offices we visited, we noted much longer delays in resolving these issues: in one case, 22 months after the inspection date. As of February 2011, there were 280 unresolved non-compliance issues province-wide, and these had been outstanding on average for nearly 23 months. Some of these non-compliance issues have remained unresolved because the forest management companies are no longer operating. MNR does not have a target for the time it should take to resolve non-compliance issues from the date of inspection.

Our analysis also revealed that over the period from the 2004/05 fiscal year through the 2010/11 fiscal year, there was a significant variance among MNR district offices (ranging from 0% to 80%) in the application of remedies when non-compliance issues had been detected. Although the industry does self-correct certain non-compliance issues, and remedies in these cases are not required, the significant variance indicates that in many situations, remedial actions are not being consistently applied. In our testing, we noted that six forest management companies had more than 160 non-compliance issues collectively over the same six-year period, but no remedial action had been taken by the applicable district offices.

We noted that repeat offenders often receive verbal or written warnings instead of remedies that might act as more of a deterrent—such as an administrative penalty or, where repeat violations are serious, cancellation of the licence. Administrative penalties account for fewer than 20% of the remedial actions applied by MNR over the five-year period from 2004/05 through 2008/09, and in only 5% of the cases have the companies been charged with an offence. Also, in the same five-year period, MNR cancelled only one Forest Resource Licence due to non-compliance. When we reviewed a sample of companies with repeat offences, we

noted that one company had 29 non-compliance issues (about a third of which involved wasteful practices) over five years, but MNR applied the administrative penalty in only one of those instances. In another case, a licensee had 15 non-compliance issues, which included operating within a protected area and not following the annual work schedule submitted to MNR. Instead of administrative penalties, MNR gave verbal or written warnings in only four of these instances, and two of the 15 non-compliance issues remained outstanding two years after being detected.

RECOMMENDATION 3

To improve its monitoring of forest management companies' operations for compliance with applicable legislation, regulations, and policies, the Ministry of Natural Resources (MNR) should:

- review its current compliance database to ensure that appropriate linkages are made to complete harvest block listings so that all harvest blocks can be identified for possible inspection; and
- provide guidance to its district offices in adopting a risk-based approach for selecting blocks for inspection.

MNR should also ensure that its district offices are more consistent and effective in the use of appropriate remedies to encourage compliance, especially for repeat offenders.

MNR RESPONSE

MNR agrees with the recommendation and will review its current compliance system to ensure that appropriate linkages are made to the Forest Management Plan harvest block data so that all harvest blocks can be identified for possible inspection.

MNR continues to evaluate and improve its program for monitoring forest management companies' operations for compliance. In 2010, MNR updated the *Forest Compliance Handbook*

directive and procedures to provide clearer direction on the application of remedies. The program for monitoring forest management companies' operations for compliance is being considered as part of MNR's corporate review of natural-resource compliance monitoring. The corporate review process will lead to the development of a consistent ministry-wide approach to risk-based compliance monitoring. From this project, MNR will develop appropriate guidance on risk-based planning for consideration in the monitoring of forest operations.

Silviculture Effectiveness Monitoring Program

The forest industry is required to report its renewal activities annually to MNR. In 2006, to verify the accuracy of the reporting and to assess the effectiveness of industry renewal activities in establishing new forests, MNR implemented the Silviculture Effectiveness Monitoring (SEM) program. The SEM program consists of a number of "core tasks" that MNR's district offices are to carry out to assess industry renewal efforts. These core tasks include surveying a sample of areas declared free-to-grow (that is, where trees have successfully regenerated and no further silviculture activities are required) by the industry, conducting field visits on a sample of sites where silvicultural activities have been reported to have been carried out by forest management companies, and mapping areas not yet considered free-to-grow. In the district offices we visited, we noted that the SEM program was not being carried out consistently. In the 2008/09 and 2009/10 fiscal years, these districts on average completed only 40% of the core tasks. In one region, some core tasks were not carried out at all. With respect to the delivery of the SEM program, we also noted the following:

- One of the key core tasks is to conduct field surveys on 10% of the areas declared free-to-grow by the industry seven to 10 years after a site has been harvested. This independent

oversight is essential if MNR is to have at least some assurance that self-regulation by the industry with respect to successful regeneration is being accurately reported. In our sample, we noted that this core task had not been conducted in one FMU, and that the minimum 10% sample size was not met for over half the remaining FMUs. Another core task is to conduct field surveys on at least 5% of the areas declared free-to-grow, generally 12 to 15 years after a site has been harvested. We noted that the districts we visited did not complete this task for 40% of the FMUs we sampled. In many cases, the districts that did perform the required survey did not meet the minimum 5% sample size.

- The district offices generally took no follow-up action on areas found not to have met the free-to-grow standards.
- Within the SEM program, there are no prescribed penalties that the districts can apply to encourage compliance.

RECOMMENDATION 4

To ensure that the Silviculture Effectiveness Monitoring (SEM) program adequately assesses the effectiveness of industry-reported renewal efforts in regenerating Crown forests, the district offices of the Ministry of Natural Resources (MNR) should complete all core tasks as outlined in the program and follow up with forest management companies on sites found not to have met the free-to-grow criteria to ensure that the companies subsequently took appropriate remedial regeneration measures.

To further enhance the effectiveness of the SEM program, MNR should consider prescribing penalties that district offices can apply to encourage compliance.

MNR RESPONSE

MNR will take steps to improve the completion rate of the core tasks prescribed under the SEM

program. MNR recognizes that determining the success rates of renewal efforts is a key component in an effective monitoring system.

MNR will undertake a review of the SEM program and examine methods to allow earlier identification of sites that may not be regenerating as originally planned. MNR will evaluate enhancements to the program to ensure that when remedial regeneration measures are required, appropriate incentives are in place to ensure that the measures are completed by the forest management company.

Independent Forest Audits

As noted earlier, every FMU in Ontario is subjected to an Independent Forest Audit (IFA) at least once every five years. The IFA is a requirement of the *Crown Forest Sustainability Act, 1994* (CFSA), one of the conditions of MNR's standing approval under the *Environmental Assessment Act*, and a condition of all Sustainable Forest Licences (SFLs). The IFA's purpose is to assess:

- compliance with the CFSA;
- compliance with the FMU's Forest Management Plan;
- a comparison of planned versus actual forest management activities;
- the effectiveness of forest management activities in achieving planned objectives; and
- where applicable, a licensee's compliance with the terms and conditions of its SFL.

An SFL is generally granted for a term of 20 years. Every five years, based on the IFA's results, the Ministry of Northern Development, Mines and Forestry (MNDMF) decides whether or not the licensee has complied with the terms and conditions of its SFL and, if serious difficulties are noted, can decide not to extend the SFL's term for another five years beyond the remaining term.

The CFSA requires that the team conducting the IFA be independent of the licensee and of MNR, and specifies that at least one registered professional

forester must be a team member. All IFA auditors are selected by a committee that is independent of the government and that verifies the auditors' qualifications. To further ensure the independence of the IFA process, the funds to pay for the IFAs come from the Forestry Futures Trust (discussed later in this report), to which all SFL holders contribute. We concluded that this was a sound process and should ensure that IFAs are conducted by auditors who are independent of the SFL holder and MNR.

Since the inception of the IFAs in 1996, four SFL holders have been found to be in non-compliance with the terms of their licence or the CFSA. The non-compliance issues related to poor planning, areas that were insufficiently regenerated, and poor reporting of regeneration data. In none of these cases was the normal five-year extension to the existing term of the licence added, but the SFL holder was allowed to continue managing the Crown forest until the next IFA.

Upon the completion of an IFA, MNR or MNDMF and the SFL holder must submit an action plan to address reported deficiencies within two months of receiving the final report and a status report two years after submitting the action plan. In general, the action plans and status reports address recommendations related to forest management planning, plan implementation, monitoring, and achievement of forest sustainability. We noted that a number of the action plans and status reports for IFAs conducted between the 2004/05 and the 2008/09 fiscal years had not been completed by the forest management companies on a timely basis. Action plans were up to 16 months late, and status reports were up to 18 months late. At the time of our audit, some of these documents were still outstanding.

Several of the IFA reports that we reviewed from the 2008 and 2009 calendar years also expressed concern regarding action items from previous IFAs: in some instances, the action items were either never undertaken or only partly completed, whereas in other instances, the action items did not fully address the IFA's original recommendation. MNR indicated that the delay in completing the

action plans might have partially been due to the licence holder changing or to the overlapping workload of SFL holders also having to prepare Forest Management Plans.

RECOMMENDATION 5

The Ministry of Natural Resources should ensure that action plans and status reports that address the recommendations of the Independent Forest Audits are completed on a timely basis and ensure that it assesses the extent to which previous recommendations were satisfactorily addressed.

MNR RESPONSE

MNR acknowledges the need to improve the timeliness of action plan and status report submissions in response to IFAs. Additional measures will be taken to ensure timely action plans and status reports, recognizing that these reports can be difficult to produce on the timelines prescribed when there has been a change in ownership of the company or when a practical approach to address a particular recommendation is difficult to determine. The requirements, timelines, and process for assessing the status of previous recommendations are outlined in the Independent Forest Audit Process and Protocol, which is being formally reviewed in 2011. The results of the review will inform ongoing improvements to the IFA process, including the process in place to assess the extent to which previous recommendations by auditors have been addressed.

Planned versus Actual Harvest

As noted earlier, the *Crown Forest Sustainability Act, 1994* (CFSA) requires that an approved Forest Management Plan (FMP) be in place for each Forest Management Unit (FMU). The FMPs, which are renewed every 10 years, must be certified by a

registered professional forester, who can work for the company managing the FMU. The FMP should set goals for forest sustainability and biodiversity. Based on the set goals, the FMP stipulates planned harvest and renewal levels aimed at ensuring the health of Crown forests so they can provide sustainable benefits (such as timber and commercial products, wildlife habitats, and recreational opportunities) for the people of Ontario.

As Figure 2 shows, between the 2004/05 and 2008/09 fiscal years (the latest periods for which information was available at the time of our audit), actual harvest was significantly below planned harvest. During this period, the average annual planned harvest was about 290,000 hectares. However, the average annual harvest in these five years was only about 180,000 hectares, or approximately 63% of what was planned, with a decrease from almost 80% of planned in 2004/05 to about 40% of planned in 2008/09.

Figure 3 shows that in the 2008/09 fiscal year, actual harvest was less than 50% of the planned harvest in about two-thirds of the FMUs.

Under-harvesting over an extended period may have a negative impact on forest health and biodiversity. Ordinarily, natural disturbances, such as fires, insects, and windstorms, would do the job of regenerating forests. But where possible, the province suppresses such natural disturbances by,

for example, putting out forest fires and taking measures to control insect damage. The planned harvest and regeneration levels that are set in FMPs are intended to emulate the effects of these natural disturbances. Over the long term, the combination of continued under-harvesting and the suppression of natural disturbances can create an age-class imbalance—leaving only trees that are either very young or very old—in the province’s forests. Older trees yield less timber, meaning that a much larger area needs to be harvested to produce the desired volume of timber. In a 2004 report titled Provincial Wood Supply Strategy, MNR noted that an age-class imbalance already existed in more than half the forests in the province, and that this situation would create a gap in the provincial wood supply in the future.

In recent years, the competitiveness of the province’s forest industry has declined, due partially to the increase in the value of the Canadian dollar. The economic troubles in the United States, along with an associated reduction in housing starts and in the consumption of goods and services, have also negatively affected Ontario’s forest products industry in recent years. In those FMUs where licensees have sole rights to harvest Crown timber but do not have a market for that timber, the actual harvest tends to fall well short of the planned harvest.

Figure 2: Planned vs. Actual Harvest, 2004/05–2008/09 (hectares)

Source of data: Ministry of Natural Resources

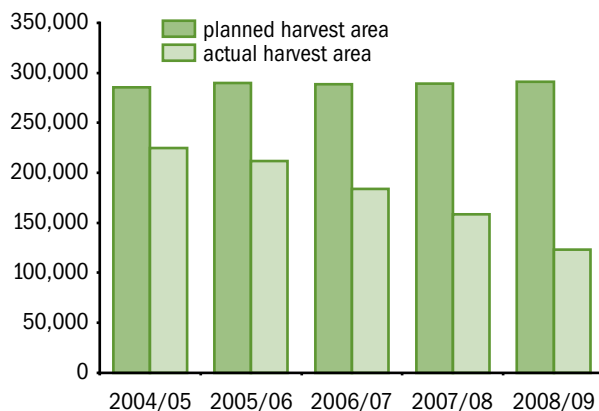
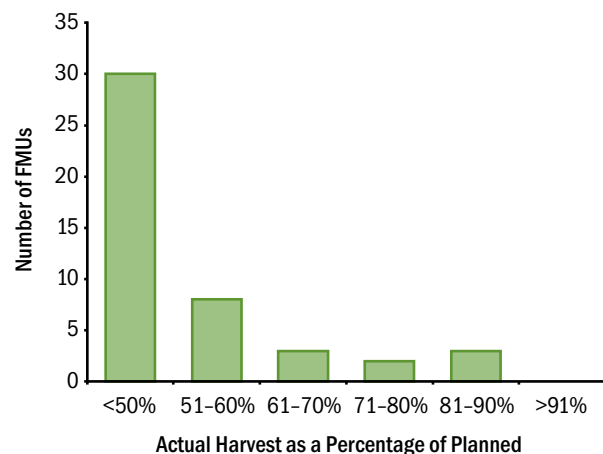


Figure 3: Actual Harvest vs. Planned, by Forest Management Unit (FMU), 2008/09

Source of data: Ministry of Natural Resources



British Columbia government officials informed us that in 2003 the province took back approximately 20% of its timber that was previously committed in long-term timber licences and now competitively reallocates the majority of this timber periodically to other market entrants. In addition, for timber that is still committed in long-term licences, the province takes back the unused portion of the annual allowable cut (which in Ontario is called the planned harvest) over a five-year period and often competitively reallocates this timber to companies that are able to use the wood.

There are indications that other companies that currently do not have access to timber in Ontario's Crown forests can market Ontario wood. In January 2009, to attract new investment in the forest industry, the province initiated a staged competition for Crown wood committed to long-term SFL holders that, according to FMPs, could have been harvested but was not being used by the licensees. The wood supply included merchantable wood (also called round-wood) and unmerchantable fibre (such as branches and the tops of trees). The first stage of the competition was a Request for Expressions of Interest (RFEI), which was issued on January 20, 2009. In response to the RFEI, MNR received 131 submissions with proponents that were collectively interested in five times the wood supply that was considered available. Given this overwhelming interest, the province issued a Request for Proposals (RFP) for this unused Crown wood in November 2009. In response to the RFP, more than 100 proposals were received—many from new companies or mills that proposed to use the unused Crown wood to produce value-added products such as biofuel. At the time of our audit, nearly half these proposals had been approved, and the Ministry of Northern Development, Mines and Forestry (MNDMF) was in the process of putting in place agreements with the winning proponents for the utilization of approximately 5.5 million cubic metres of Crown timber that otherwise would not have been harvested. About 25% of the winning proponents were new mills that would be mak-

ing investments as a result of their success in this competition.

At the time of our audit, MNDMF had no plans to hold similar competitions in the near future, nor did MNDMF have a mechanism for monitoring, on an ongoing basis, any excess supply of Crown wood that could be reallocated. In 2010, MNDMF developed a province-wide wood supply and commitment database to identify excess supply that could be reallocated to existing and new processing facilities that have no access to Crown wood. However, MNDMF informed us that this database was only for use in the provincial wood supply competition discussed above and was not designed for ongoing use. Even though MNDMF requires that mills submit annual reports on wood utilization, this information is not used to update the database so that wood usage can be monitored on an ongoing basis to identify any excess supply.

In June 2011, the government passed the *Ontario Forest Tenure Modernization Act, 2011* (OFTMA), which allows the province to establish Local Forest Management Corporations (LFMCs)—Crown agencies that are governed by a predominantly local board of directors and that are responsible for managing Crown forests and overseeing the marketing and sale of timber in a given area. LFMCs would permit other companies access at a competitive price to Crown timber previously committed in long-term licences. However, the legislation allows the piloting of only two such corporations within the next five years. The government also amended the CFSA to give the Minister of Northern Development, Mines and Forestry the authority to cancel existing SFLs. MNDMF informed us that it planned to establish the two pilot LFMCs by 2013 and that, in the meantime, it has no alternative under existing legislation other than to renew SFLs that come up for renewal even if it believes that the SFL holder will not harvest the allowable cut.

RECOMMENDATION 6

To help ensure that forests are being managed on a sustainable basis and that harvest operations are carried out in accordance with approved plans, the Ministry of Northern Development, Mines and Forestry should:

- enhance its ability to monitor on an ongoing basis the excess supply of Crown wood that can be reallocated to new companies that can use or market the wood; and
- conduct research into successful practices used in other jurisdictions to address significant variances between planned and actual harvests.

MNDMF RESPONSE

Ensuring that planned harvest volumes are harvested and utilized for the benefit of Ontario is a key responsibility of MNDMF. As part of this responsibility, it is essential to determine whether unused wood supply allocations are the result of short-term market fluctuations or are systemic, requiring reallocations. MNDMF identified significant volumes of unused wood supply in the province and determined that wood supply allocations were no longer functioning as intended and therefore were no longer benefiting Ontario. A two-pronged strategy was developed to address this issue. To deal with immediate concerns, within the parameters of existing legislation and regulations, a provincial Crown Wood Supply Competitive Process was implemented with a goal to allocate unutilized wood to new and existing companies that would use the wood. In the longer term, MNDMF has undertaken an initiative to modernize its tenure and pricing system in an effort to allow better access to Ontario's wood supply, thereby improving the likelihood that planned harvest volumes will be used.

The Tenure and Pricing Modernization team has conducted extensive research in areas such

as economic models, practices in other jurisdictions, anti-wood-hoarding mechanisms, and conditions for competition. The Tenure and Pricing Modernization initiative is well under way and is expected to yield long-term benefits for the management of Ontario's forests. In the interim, while the results of the wood supply competition are being implemented and the longer-term Tenure Modernization outcomes are being determined, MNDMF continues to carry the responsibility to ensure that planned harvests are used. New tools have been developed and are currently in use to monitor wood supply use and to identify surpluses.

CROWN FOREST REVENUE

Stumpage Fees

In accordance with the CFSA, the province receives direct payments from the forest industry in the form of a stumpage fee for every cubic metre of timber harvested. In the 2010/11 fiscal year, the province collected \$94 million in stumpage fees. The fee has the following three charges:

- *A price charge that consists of two components:*
 - *a minimum charge per cubic metre of timber harvested, depending on the species, quality, and intended usage (for instance, pulp versus veneer) of the wood:* this charge, which is adjusted annually, is designed to provide a minimum royalty to the province for the use of Crown wood; and
 - *a residual value charge that varies depending on the market price of wood products:* this charge is designed to provide an additional royalty to the province for the use of Crown wood.
- *A forest renewal charge to provide funding for forest regeneration:* this charge varies depending on the tree species and its anticipated renewal cost. The vast majority of the forest renewal levy is held in the Forest

Renewal Trust and can be used only in regenerating Ontario's Crown forests. SFL holders are reimbursed from these accounts as they carry out eligible silviculture activities on Crown forests.

- A *Forestry Futures Trust charge applied at \$0.48 per cubic metre of timber harvested*: Funds accumulated in this trust mainly support the silviculture activities required to renew forests damaged by fire, disease, or insect infestation. The trust also funds renewal activities where a licensee becomes insolvent, as well as expenditures related to IFAs.

Figure 4 shows the allocation of the total stumpage fee into the different components, as well as disbursements out of the two trusts in the 2010/11 fiscal year.

Wood Measurement

For the purpose of calculating the stumpage fee, nearly all Crown timber harvested is measured by the mills that receive the timber, and these mills provide information on the species of trees and the respective volumes received to MNDMF. Because stumpage fees are not collected on undersized or defective wood, MNDMF applies factors to the volume of timber reported by the mills to estimate the percentage of defective or undersized wood received. These factors are usually determined by checking the number of undersized logs in a sample of loads that mills have received. We noted that there was no overall provincial guidance on how these factors should be determined, and all three regions used different methods for determining the factors. For instance:

- The minimum sample volume used by one region to determine the defect factor was 50 cubic metres, whereas another region used 1,000 cubic metres.
- Each region had a different method of determining the undersize factor: one region calculated the factor based on its own sampling, another combined its own sampling with the

Figure 4: Allocation of Stumpage Fees and Trust Disbursements, 2010/11 (\$ million)

Source of data: Ministry of Northern Development, Mines and Forestry

	Stumpage	
	Fees	Disbursements
minimum and residual value charges	27	n/a
Forest Renewal Trust	44	35
Forestry Futures Trust	23	18
Total	94	53

mills' sampling, and the final region used only the mills' sample to determine the factor.

- All three regions used different averages of sample data to determine the defect factor—from a three-year rolling average of sample data to an average of all sample data within the region's database.

According to MNDMF guidelines, a scaling audit is to be performed on all mills every five to seven years. Such an audit verifies that the mills have adequate procedures for ensuring the accurate measurement of the Crown timber they receive. We noted that MNDMF has carried out an average of 10 such audits annually in the last nine years. At this rate, given that there are more than 200 mills within the province that receive and measure Crown timber, MNDMF would take more than 20 years to audit all mills—far longer than its internal guideline requires.

Information System

We analyzed the data between the 2005/06 and 2010/11 fiscal years in the information system used by MNDMF to calculate stumpage fees and noted some examples of the system not having the necessary controls to ensure that stumpage fees are calculated correctly and that invoices are appropriately processed. For instance:

- In our testing, we noted that a number of factors had been entered incorrectly within the system. We also noted that some factors within the system did not add up to 100%. For

example, a mixed-load factor estimated the volume of different species for only 87% of a given mixed load. As a result, MNDMF would not receive fees for 13% of a load if the mixed-load factor applied.

- We noted that many factors had multiple effective and expiry dates, which could result in double billings.
- More than 500 invoices were processed for species that forest management companies did not have a licence to harvest. We also noted that MNDMF processed 3,300 invoices totalling \$5.4 million for species that the haulers were not authorized to haul.
- Harvest approvals were granted to 16 companies that did not have a current Forest Resource Licence, yet the system allowed the entering of these approvals.

Revenue Collection

As of March 2011, \$45 million of stumpage revenue was in arrears. On average, the amounts had been outstanding for approximately 19 months. About 40% of the total amount outstanding related to companies that had declared bankruptcy, and another 35% related to companies that had worked out a repayment plan with MNDMF. We noted that about a third of the companies on the repayment plan had failed to meet their repayment obligations.

The CFSA allows MNDMF to withhold licences or any approvals for harvest requested by the licensee if Crown charges are owed. In our sample, we saw no evidence that this was considered before approvals were granted to companies that were in arrears with respect to Crown charges.

RECOMMENDATION 7

To ensure that the province receives the proper amount of revenue for the use of Crown forest resources, the Ministry of Northern Development, Mines and Forestry (MNDMF) should:

- develop overall provincial guidance for establishing wood measurement factors to ensure consistency and accuracy among the regions when determining stumpage fees;
- increase the number of scaling audits performed each year to ensure that all mills are subject to the required audit every five to seven years in accordance with MNDMF guidelines; and
- design and implement system controls in the stumpage fee information system so that invalid licence holders, and mills and haulers that are not authorized to receive and transport wood, are identified for appropriate follow-up.

MNDMF should also formally assess the implications of renewing harvest licences where significant stumpage fees are outstanding.

MNDMF RESPONSE

MNDMF will review existing regional sampling plans to ensure that they meet requirements, as well as evaluate consistency across regions and adjust standards where appropriate. MNDMF procedural guidelines dictate that all major companies will be audited once every five years and all other companies will be audited on a rotating basis. MNDMF will complete a review of the current procedure and assess whether revisions that add clarity and definition to the requirements are needed. As part of this review, MNDMF will consider the recommendation that the number of scaling audits performed each year be increased to a level where all mills are subject to audit every five to seven years.

The current stumpage fee system provides information that would identify non-compliance issues relating to authorizations for the movement and measurement of Crown forest resources. MNDMF has begun to design additional controls to the system to ensure timely identification and notification to allow for appropriate

follow-up action by both the Ministry of Natural Resources (MNR) and MNDMF.

Collection of outstanding stumpage fees is a joint responsibility with MNR. When considering the renewal of harvest licences where significant stumpage fees are outstanding, the two ministries work together to ensure that appropriate measures are in place to collect outstanding stumpage fees before renewing the licence. There are many instances in which MNR and MNDMF have withheld licences and/or approvals until companies have agreed to various types of repayment agreements, including repayment schedules and holdback agreements. The two ministries will review processes to determine if improvements are necessary.

Forest Renewal and Forestry Futures Trusts

As previously mentioned, under the CFSA, two trusts—the Forest Renewal Trust and the Forestry Futures Trust—have been established to fund forest renewal expenditures incurred by forest management companies. A portion of the stumpage fees that licensees pay for harvesting Crown timber goes toward funding these two trusts. In our audit, we noted the following with respect to the administration and funding of the two trusts:

- District managers determine the forest renewal levy for each FMU to fund the Forest Renewal Trust. Although MNR has issued guidance to help districts determine the renewal levy for different species of trees, we found that renewal rates across district offices for the same species of trees varied widely, from about 13% to 538% of the average, depending on the species. We acknowledge that differing factors—such as distance to harvest blocks, differing renewal objectives in FMPs, and the type of seedlings required—may result in some variance in the renewal charge, but we still questioned the magnitude of the variances among different districts.
- SFLs require each licensee to maintain a minimum balance in the Forest Renewal Trust net of expenses so that the trust can maintain a minimum overall balance of \$95 million at the end of each fiscal year. The minimum balance is supposed to fund one year's forest renewal activities. However, we noted that this minimum amount was last set in 1994. In 2009, an MNR working group concluded that the minimum balance should be based on an estimate of what the actual annual forest renewal obligation would be, rather than on an arbitrary amount. At the time of our audit, MNR had not yet acted on this recommendation.
- As of March 31, 2011, we noted that five SFL holders had not maintained their minimum balance totalling \$4 million in the Forest Renewal Trust, contravening the terms of their SFLs. In 2008, a group of companies that had fallen far in arrears in maintaining their minimum balances declared bankruptcy, requiring MNR to obtain a Treasury Board approval for a \$19 million top-up for the Forest Renewal and Forestry Futures trusts.
- Before reimbursing any forest renewal expenses from the Forest Renewal Trust, MNR requires forest management companies to submit a list of invoices. MNR informed us that from the listings submitted, a sample of invoices over \$1,000 is verified. For all expenses over \$20,000, MNR procedures require that the expense be confirmed directly with the vendor. This is a good procedure, and our testing found that in 85% of our sample, MNR was able to provide evidence of this third-party verification.
- In the past, the Forestry Futures Trust has not been able to fund some of the initiatives that it was intended to fund. For example, one of the purposes of the trust is to fund costs associated with pest control. In the 2006/07, 2007/08, and 2009/10 fiscal years, aerial spray programs were conducted for jack pine budworm. But because the trust had

insufficient funds, part of the funding (about \$13 million) had to come out of the province's consolidated revenue fund. One reason for the shortfall could be that the Forestry Futures Trust charge of \$0.48 per cubic metre of timber harvested, which funds the trust, has not changed since its inception in 1994.

- MNR does not require SFL holders to provide any form of financial assurance that can be used to cover potential silviculture liabilities if a licensee becomes insolvent or surrenders its licence. One of the purposes of the Forestry Futures Trust as specified in legislation is to fund silviculture activities if a licensee becomes insolvent. However, as noted earlier, funding within the trust may not be sufficient to cover all potential silviculture liabilities. For example, in the case of one FMU where the SFL holder surrendered its licence, the province has been left with a significant silviculture liability that the trust may not be able to completely fund. In this regard, we noted that certain licensees in British Columbia are required to provide a security deposit of up to 100% of the expected silviculture cost of establishing a free-growing stand.

RECOMMENDATION 8

To ensure that the Forest Renewal Trust and the Forestry Futures Trust are sufficiently funded for their intended purposes, the Ministry of Natural Resources should:

- review the significant variances in renewal rates calculated by district offices for the same species of trees to ensure that such variances are justified;
- review the overall minimum balance that is to be maintained in the Forest Renewal Trust to ensure that the amount is a true reflection of the actual annual forest renewal obligation and ensure that licensees annually maintain their portion of the minimum balance;

- review the Forestry Futures Trust charge to ensure that it is sufficient to fund the initiatives that the trust is intended to fund; and
- consider requiring SFL holders to provide some form of financial assurance that can be used to cover potential silviculture liabilities if a licensee becomes insolvent or surrenders its licence.

MNR RESPONSE

MNR recognizes that ensuring there are sufficient funds in Forest Renewal Trust accounts is critical to achieving the effective regeneration of Ontario's Crown forests. The Forestry Futures Trust account is also critical to ensure that Ontario can respond to the varied purposes of the trust, such as regenerating forests following natural disturbances, responding to forest pest outbreaks, and maintaining the province's forest resource inventory. It is also recognized that the trusts alone will not be adequate to deal with more catastrophic events, such as larger insect infestations, swaths of trees blown down by wind, and the occurrence of wildfires like the ones experienced in summer 2011. In these cases, nature is expected to run its course. MNR is currently working on improvements to the procedures for setting renewal rates. MNR will improve its process for analyzing the regional variances in renewal rates to determine if this variability is justified in terms of differences in local operating conditions and Forest Management Plan objectives.

MNR has also begun developing a process for quantifying and maintaining a statement of outstanding silvicultural liabilities in order to evaluate the adequacy of the funds held in individual trust accounts. MNR monitors individual Forest Renewal Trust account balances monthly to ensure that there are sufficient funds in the accounts on March 31 of each year and has a process in place to collect a lump sum payment from those accounts that have not met

minimum balance requirements. The funding of silvicultural expenses resulting from insolvent licensees is currently addressed as one of the specified purposes of the Forestry Futures Trust. MNR is examining the funding model used to determine if it is adequate to meet the trust's purposes.

REPORTING

A requirement of MNR's standing approval under the *Environmental Assessment Act* is that MNR prepare an annual report on forest management and table the report in the provincial Legislature. Among other things, the standing approval requires that the annual report include information on the following key areas:

- area and volume of Crown forest resources harvested;
- government revenues from Crown charges;
- the amount of regeneration, tending, and protection activities; and
- silvicultural effectiveness.

MNR informed us that it takes approximately 18 months from the end of a given fiscal year to produce that year's report and that the time frame for tabling the report can vary. It compiles the information in the annual report from information it receives from the annual reports of individual FMUs. At the time of our audit, the most recent provincial annual report available was for the 2008/09 fiscal year; it had been tabled in the Legislature in April 2011. MNR expected to complete the 2009/10 annual report by October 2011 for subsequent tabling in the Legislature.

We reviewed the 2008/09 annual report and noted that overall, the information presented in the report met the requirements of the standing approval. However, the report presented only actual levels of forest management activities that took place in that fiscal year. We felt that the report's usefulness could be enhanced if it com-

pared the actual levels of the key forest management activities—such as harvesting, regeneration (whether occurring naturally or assisted by planting or seeding), site preparation, and tending—to planned levels and provided explanations for any significant variances. Annual reports on individual FMUs do contain comparisons of planned versus actual activities, and this information is publicly available. Nonetheless, it would be useful for MNR to summarize this information to facilitate province-wide comparisons. In this regard, we noted that both British Columbia and Alberta compare actual harvest levels with planned harvest levels in their public reporting.

RECOMMENDATION 9

To enhance the value of its annual report on forest management, the Ministry of Natural Resources should compare actual levels of key forest management activities—such as harvest and regeneration (that is, natural, planting, seeding, site preparation, and tending)—to planned or target levels and should provide explanations for any significant variances.

MNR RESPONSE

MNR recognizes the need to continually improve the reporting on the management and status of Ontario's forests. MNR constantly evaluates approaches to forest reporting to look for efficiencies, enhance understanding, and improve access to information by the public, partners, stakeholders, and staff. MNR is adopting a dynamic reporting cycle and instituting a more continual reporting of information through the Internet. Through these efforts, MNR will ensure that future annual reports on forest management will include an analysis on planned versus actual levels of key forest management activities.

OTHER MATTER

Licensing of Mills

According to the *Crown Forest Sustainability Act, 1994* (CFSA), all mills that consume more than 1,000 cubic metres of forest resources annually must have a forest resource processing facility licence. In March 2011, there were more than 200 mills licensed in Ontario.

To obtain a licence, mills are required by a regulation under the CFSA to submit a business plan to the Ministry of Northern Development, Mines and Forestry, which must be satisfied that the applicant has the ability to finance, operate, and manage the facility. Based on our testing, approximately 10% of the forest resource processing facility licences were issued to mills that had submitted business plans that did not demonstrate the applicant's ability to adequately finance the facility. We also noted one mill had been operating since 2008 without a licence.

Forest resource processing facilities are also required to submit an annual return that reports on the facility's operations. In our sample, two-thirds of the annual returns were either not submitted or not submitted on a timely basis.

RECOMMENDATION 10

The Ministry of Northern Development, Mines and Forestry should ensure that forest resource processing facility licences are granted only

to those forest resource processing facilities that demonstrate that they have sufficient financial resources to operate, and ensure that forest resource processing facilities submit the required annual returns on a timely basis.

MNDMF RESPONSE

The business plan requirement for licensing of mills in Ontario applies to a wide variety of facilities, from portable wood processors to full-scale pulp and paper mills. It also encompasses a variety of circumstances, such as the establishment of a new mill, expansion of an existing mill, or addition of a new product line. In all cases, the business plan submission must be adequate to satisfy MNDMF that the applicant has the ability to finance, operate, and manage the facility; in some circumstances, less information may be necessary to meet this threshold—for example, in the case of a long-established mill that is completing a minor expansion.

MNDMF will review the consistency of its approach for ensuring facilities have demonstrated sufficient financial resources. In addition, MNDMF will take measures to improve documentation of its assessment of sufficiency prior to issuing forest resource processing facility licences. MNDMF will implement processes to ensure timely submissions of required annual returns from forest resource processing facility licence holders.

Chapter 3

Section 3.06

Ministry of Health and Long-Term Care

Funding Alternatives for Family Physicians

Background

Ontario residents are eligible for provincially funded health coverage under the Ontario Health Insurance Plan (OHIP). The traditional method of compensating primary-care physicians (also known as family physicians) for providing medical services has been to pay them a standard fee for each service performed, known as OHIP fee-for-service payments. The medical services covered and the standard fees payable are detailed in OHIP's Schedule of Benefits.

Funding alternatives (known as alternate funding arrangements) for family physicians commenced years ago, but over the last decade the Ministry of Health and Long-Term Care (Ministry) has significantly increased its use of these arrangements in order to, among other things, improve patient access to care and provide income stability for physicians. Under many of the arrangements, instead of receiving a fee for each service performed, physicians are paid an annual fee (called a capitation fee) to provide any of a specific list of services to each patient who agrees to see the physician as his or her regular family physician. (Such patients are considered to have “enrolled with” the physician.) Services not covered by the capitation fee, including services provided to patients who are not enrolled, may generally be billed on a fee-for-

service basis. By 2011, there were 17 types of alternate funding arrangements for family physicians, each with a different payment structure; 12 of these arrangement types were for physicians who treat a specialized population, such as maternity and palliative patients.

Alternate funding arrangements are generally established and modified by the Physician Services Agreement between the Ministry and the Ontario Medical Association, which bargains on behalf of physicians in Ontario. This agreement—which has been negotiated every four years, starting in 2000—details the services that physicians are required to provide and the compensation that the province will pay for the services rendered.

By the end of the 2009/10 fiscal year, more than 7,500 of the province's almost 12,000 family physicians were participating in alternate funding arrangements, and more than nine million Ontarians had enrolled with these physicians. Total funding to all family physicians increased by 32%, from \$2.8 billion to \$3.7 billion, between the 2006/07 and 2009/10 fiscal years. Of the \$3.7 billion in total payments made to the province's family physicians in the 2009/10 fiscal year, more than \$2.8 billion was paid to physicians participating in alternate funding arrangements, with \$1.6 billion of this amount related to non-fee-for-service payments, such as annual capitation payments.

Audit Objective and Scope

This year, our office performed two audits on funding alternatives (known as alternate funding arrangements) for physicians. The audit discussed in this section focused on the arrangements for family physicians, and the audit in Section 3.07 focused on those for specialists. Our audit objective was to assess whether the Ministry has implemented systems and processes to monitor and assess whether alternate funding arrangements provide Ontarians with timely access to family physicians in a cost-effective manner. Ministry senior management reviewed and agreed to our audit objective and associated audit criteria.

Given the number of different alternate funding arrangements available for family physicians, our audit focused primarily on the Family Health Group (FHG) and Family Health Organization (FHO) arrangements, and to a lesser extent on the Family Health Network (FHN) arrangement. In the 2010/11 fiscal year, these three types of arrangements accounted for over 90% of family physicians participating in an alternate funding arrangement and over 90% of enrolled patients.

Our audit work was conducted primarily at the Kingston and Toronto offices of the Ministry's Primary Health Care Branch. In conducting our audit, we reviewed relevant documents, analyzed information, interviewed appropriate ministry staff, and reviewed relevant research from Ontario and other jurisdictions. In addition, we employed a number of computer-assisted audit techniques to analyze patient-enrolment data, medical-claims data, and physician-registration records. As well, we reviewed and, where warranted, relied on the work completed by the Ministry's internal audit service team.

Summary

The Ministry has made progress in its goal of increasing the number of Ontarians who have a family physician by encouraging physicians, through financial incentives, to switch from the traditional fee-for-service compensation model to alternate funding arrangements (mostly involving multi-physician practices). More than 90% of family physicians participating in these arrangements receive payments based on how many enrolled patients they have, as well as additional incentives and bonuses not available to physicians paid under the traditional fee-for-service model. Payments to family physicians through these arrangements more than doubled, from about \$750 million in the 2006/07 fiscal year to over \$1.6 billion in the 2009/10 fiscal year. During this time, the number of physicians participating in alternate funding arrangements increased by 11%, yet the number of patients enrolled in participating physicians' practices increased more substantially, by 24%, to more than nine million Ontarians.

Although the Ministry intended alternate funding arrangements to be more generous than the traditional fee-for-service model, the Ministry has not tracked the full cost of each alternate funding arrangement since the 2007/08 fiscal year. At that time, most family physicians participating in these arrangements were being paid at least 25% more than their counterparts compensated on a fee-for-service basis. In 2009/10, 66% of family physicians participated in an alternate funding arrangement, and these physicians received 76% of the total amount paid to all family physicians. Although the Ministry has some initiatives under way, it has not yet conducted any formal analysis of whether the expected benefits of these more costly alternate funding arrangements have materialized.

The types of payments made under alternate funding arrangements are numerous and complicated, which has made it challenging for the Ministry to monitor physician compensation paid

through these arrangements or the extent to which the physicians have actually provided services required by their particular arrangements. The Ministry needs better information to determine whether the alternate funding arrangements are providing Ontarians with improved access to family physicians in a cost-effective manner and to be well prepared for the upcoming negotiations with the Ontario Medical Association in 2012.

Some of our more significant observations include the following:

- Along with alternate funding arrangements, the Ministry has established other initiatives to help people find a family physician. The Ministry estimated—on the basis of a survey it commissioned—that these initiatives have resulted in almost 500,000 more Ontarians having a family physician in 2010 than in 2007. However, the survey also found that patients generally indicated that the wait times to see a physician had not changed significantly over the last few years.
- Based on data from the 2007/08 fiscal year (the latest available at the time of our audit), family physicians paid through the Family Health Group (FHG) and the Family Health Organization (FHO) alternate funding arrangements earned on average \$376,000 to \$407,000 (from which they pay overhead expenses), which was over 25% more than what, on average, family physicians were being paid under the traditional fee-for-service model.
- The Ministry had adequate controls to ensure that no patient was enrolled with more than one family physician and was generally up to date on processing patient enrolments and de-enrolments with physicians.
- Of the 8.6 million patients enrolled with either an FHO or an FHG, 1.9 million (22%) did not visit their physician's practice in the 2009/10 fiscal year, yet the physicians in these practices received a total of \$123 million just for having these patients enrolled. Further, almost half of these patients visited another physician, and OHIP also paid for those visits.
- Although many more Ontarians are enrolled with multi-physician practices under the new alternate funding arrangements than in the 2006/07 fiscal year, the wait time to see a family physician if they become sick has not changed as a result. Based on ministry survey results, while more than 40% of patients got in to see their physician within a day, the rest indicated that they had to wait up to a week or longer.
- The annual capitation fee for each enrolled patient under an FHO arrangement can be 40% higher per patient than the capitation fee for patients enrolled under a Family Health Network (FHN) arrangement, because almost twice as many services are covered under the FHO arrangements. Nevertheless, in the 2009/10 fiscal year, 27% of all services provided to FHO patients were not covered by the arrangement, and the Ministry paid an additional \$72 million to the physicians for providing these services. Thirty percent of these services were for flu shots and Pap-smear technical services, yet the Ministry had not assessed whether it would be more cost-effective to have the annual capitation payment also include coverage for these and other relatively routine medical services.
- Capitation rates in Ontario, similar to those in other Canadian provinces, are based only on the patient's age and sex, and do not consider the patient's health condition and health-care needs. As a result, the physician is paid the same for healthy patients (who require few or no medical services during the year) as for patients of the same age and sex who have multiple medical conditions. This situation can encourage physicians to de-enrol patients requiring more medical care, because a physician can receive more funding for providing these patients with medical services under the traditional fee-for-service payment model.

OVERALL MINISTRY RESPONSE

The Ministry of Health and Long-Term Care (Ministry) welcomes the advice contained in this value-for-money audit. The audit acknowledges the progress achieved in increasing the number of Ontarians who have access to a family doctor. As the audit notes, large-scale changes to the traditional payment methods for family physicians were accompanied by a range of incentives and bonuses.

Primary-health-care reform has been a significant government priority since the mid-1990s. In its reform initiatives, the Ministry has worked collaboratively with the Ontario Medical Association (OMA) to develop and promote alternate funding arrangements for family physicians that address patient-access issues. Since 1998, the Ministry, in co-operation with the OMA, has established new alternative funding models, and amended existing models, to promote family-physician participation and desired outcomes within the primary-care sector. As of September 2011, the success of these models has been great: 7,739 Ontario doctors, in 731 groups, are now providing primary health care to 9.6 million enrolled Ontario residents. Many of these groups are also participating in Ontario's Family Health Teams, and are now working with nurses, nurse practitioners, social workers, and others. Early evaluation results indicate that Ontario residents are pleased with these changes. However, as the Ministry moves forward in its primary-care reform initiatives, there is a need to balance the needs of the province's physicians with those of the patients, as well as the need to be accountable to taxpayers.

Certain aspects of the agreements reflect early thinking on how incentives might encourage participation by family physicians as well as enhance and improve preventive and comprehensive primary health care. A thorough formal evaluation of these models will provide an opportunity to adjust the models based on

experience and study. The stability provided by our success in attracting large numbers of physicians to these arrangements will also provide us with an opportunity to implement more complete and effective administrative and contract-monitoring mechanisms.

Detailed Audit Observations

OVERVIEW

The Ministry's goals for alternate funding arrangements for family physicians include:

- improving patient access to care;
- promoting preventive care and chronic disease management;
- providing income stability for physicians; and
- providing expenditure predictability for the government.

To meet these goals, various alternate funding arrangements for family physicians have been negotiated between the Ministry and the Ontario Medical Association. Unlike traditional fee-for-service payments to physicians, these funding arrangements generally require physicians to provide at least some patient care outside of regular business hours, such as evening hours. As well, most of these funding arrangements require physicians to work in groups of three or more, to better ensure that a physician is available when a patient needs access to care.

Physicians can choose whether or not to participate in an alternate funding arrangement, and also have the option of changing to a different alternate funding arrangement or going back to traditional fee-for-service payments. Therefore, to encourage physicians to join and remain in alternate funding arrangements, the Ministry has negotiated arrangements with different payment types. Selected payment types are shown in Figure 1. A few of the arrangements, such as the Family Health

Figure 1: Selected Types of Payments under Alternate Funding Arrangements for Family Physicians

Prepared by the Office of the Auditor General of Ontario

Type of Payment	Description
base capitation	a fixed amount paid for each enrolled patient, based on age and sex, for providing services listed in the contract, regardless of the number of services performed or the number of times the patient visits the physician (for example, base capitation for FHOs ranges from about \$58 to \$521 per patient, and for FHNs from about \$52 to \$367)
access bonus	a portion of the base capitation that is reduced when enrolled patients seek care for services listed in the alternate funding arrangement from a physician outside the group the patients are enrolled with
comprehensive care capitation	a fixed amount paid for each enrolled patient, based on age and sex, for being responsible for a patient's overall care and co-ordinating medical services, such as referrals to other health-care providers
complex capitation	a fixed amount paid for enrolling a "hard-to-care-for" patient
enhanced fee-for-service	physicians bill OHIP and are paid at a rate higher than the traditional fee-for-service value for each patient service provided; the amount in excess of the traditional fee-for-service value is referred to as a "top-up" payment
fee-for-service	physicians bill OHIP and are paid the established fee per the OHIP fee schedule for each service provided to a patient
incentives	additional payments to physicians to provide specific services, such as patient care on weekends, preventive care, and diabetes management; encourage certain activities (e.g., enrolment of certain types of patients, such as hard-to-care-for patients); and compensate physicians for continuing medical education courses
shadow billing	physicians who receive base capitation funding can bill OHIP and be paid a percentage of the traditional fee-for-service amount for patient services listed in the alternate funding arrangement; physicians are generally eligible for either shadow billing or enhanced fee-for-service
telephone health advisory service	amount paid to physicians to be on call to provide after-hours telephone health advice for their enrolled patients

Group arrangement, still pay physicians primarily on a fee-for-service basis, but at a rate higher than the traditional fee-for-service value; this approach is called enhanced fee-for-service. However, since such approaches provide neither physician income stability nor cost predictability, most of the funding arrangements, including the Family Health Organization and Family Health Network arrangements, pay physicians primarily through capitation. Under this approach, physicians receive a fixed annual amount (known as base capitation) for each enrolled patient (that is, each patient who signs a form to belong to the family physician's practice), based on the patient's age and sex, regardless of the number of times the patient visits his or her physician. This fixed annual amount pays for certain patient services, which are listed in each alternate funding arrangement contract (often called a "basket" of services). The listed services vary by funding arrange-

ment—for example, Family Health Organization and Family Health Network arrangements have different listed services—so the capitation rates paid under each arrangement differ.

Under the capitation-based arrangements, physicians are also allowed to bill OHIP for a portion, typically 10%, of the traditional fee-for-service value of the listed services whenever they actually provide each service to an enrolled patient. This approach, called shadow billing, provides the Ministry with information about the actual number of patients seen and clinical services provided. As well, physicians can bill the full traditional fee-for-service value for any services provided that are not listed in the contract (that is, not part of the "basket" of services), and for all services provided to non-enrolled patients. In addition, all alternate funding arrangements offer extra incentive payments and bonuses designed to encourage certain

physician activities, such as providing diabetes management and preventive care, including screening for breast and colon cancer.

Family physicians who choose to participate in an alternate funding arrangement sign a contract with the Ministry, the Ontario Medical Association, and the other physicians, if any, participating in the arrangement. Under these agreements, physicians working in groups may either be signatory physicians (who are paid by the Ministry for meeting the agreement's obligations) or contract physicians (who are paid either primarily by the Ministry or by the signatory physicians, depending on the alternate funding arrangement). Physicians are permitted to be a signatory in only one agreement and a contract physician in no more than three other agreements. As of March 31, 2011, about 40% of the groups used contract physicians, and about 25% of the contract physicians worked for more than one physician group.

Most family physicians participating in an alternate funding arrangement have chosen a Family Health Organization, Family Health Group or Family Health Network arrangement. These arrangements provide services to more than 90% of the enrolled patients, as shown in Figure 2. Physicians participating in these arrangements are compensated as shown in Figure 3.

The Ministry introduced Family Health Teams in 2005 to bring together various interdisciplinary health-care providers, such as nurses, social workers, and psychologists, to work with physicians to, among other things, co-ordinate and enhance the

quality of care for patients. While alternate funding arrangements pay for physician services, Family Health Team funding pays for other costs, such as the services of the interdisciplinary health-care providers, as well as related administrative and other overhead costs. As well, one-time funding is provided to Family Health Teams for office renovations and information technology. Physicians in certain alternate funding arrangements—including Family Health Organizations and Family Health Networks, but not Family Health Groups—may apply to the Ministry to establish a Family Health Team. However, since traditionally physicians paid through fee-for-service are required to pay for most of their own overhead costs, including nursing and other staff costs, many more physician practices apply to the Ministry for funding than are approved. (For example, the Ministry received more than 70 applications after its most recent announcement that 30 new Family Health Teams would be approved.) As of March 2011, more than 2,200 physicians from almost 240 physician groups were participating in 156 Family Health Teams, which received \$244 million in Ministry funding in the 2010/11 fiscal year. The Ministry expected that an additional 21 teams it had approved would be operational by fall 2011.

Alternate funding arrangements for family physicians are managed by the Ministry's Primary Health Care Branch. Other Ministry branches involved in administering the contracts include the Financial Management Branch, which is responsible for processing physician payments and conducting financial forecasting and reporting; the Health

Figure 2: Physicians and Patients in Alternate Funding Arrangements, as of March 31, 2011

Source of data: Ministry of Health and Long-Term Care

Alternate Funding Arrangement	# of Physician Groups/Practices	# of Physicians	# of Enrolled Patients	% of Enrolled Patients
Family Health Organization (FHO)	352	3,549	4,877,000	51
Family Health Group (FHG)	238	3,056	3,712,000	39
Family Health Network (FHN)	36	350	356,000	4
other alternate funding arrangements	73	745	584,000	6
Total	699	7,700	9,529,000	100

Data Branch, which is responsible for collecting statistics, analyzing trends, and calculating certain payments; the Registration and Claims Branch, which is responsible for, among other things, processing medical claims, patient enrolments,

and new physician registrations; and the Health Solutions Delivery Branch, which is responsible for developing information systems to support new types of payments or changes in payment rates.

Figure 3: Payment Methods for Selected Alternate Funding Arrangements for Family Physicians

Prepared by the Office of the Auditor General of Ontario

Type of Alternate Funding Arrangement	Start Date	How Physicians Are Paid
Family Health Organization (FHO)	2006	<p><i>Base and comprehensive care capitation, shadow billing, and incentives for enrolled patients</i></p> <p>Base capitation payment covers 118 listed services. Shadow billing is paid at 10% of the traditional fee-for-service value.</p> <p>Physicians also receive additional payments, including:</p> <ul style="list-style-type: none"> • fee-for-service payments for any service not listed in the contract and for all services provided to non-enrolled patients • incentive payments for services such as preventive care, diabetes management, after-hours services, and enrolling unattached patients • complex capitation payments for “hard-to-care-for” patients • payments for being on call to provide after-hours telephone health advice to enrolled patients • \$5,000 to \$11,000 per year if they work in rural communities <p>Funding of \$12,500 to \$25,000 per year is provided to practices with at least five physicians to hire an office administrator.</p>
Family Health Group (FHG)	2003	<p><i>Enhanced fee-for-service and incentives for ministry-assigned patients and enrolled patients, as well as comprehensive care capitation payments for enrolled patients</i></p> <p>Enhanced fee-for-service is 110% of the traditional fee-for-service amount.</p> <p>Physicians also receive additional payments, including:</p> <ul style="list-style-type: none"> • complex capitation payments for “hard-to-care-for” patients • incentive payments for services such as preventive care, diabetes management, after-hours services, and enrolling unattached patients • payments for being on call to provide after-hours telephone health advice to enrolled patients
Family Health Network (FHN)	2001	<p><i>Base and comprehensive care capitation, shadow billing, and incentives for enrolled patients</i></p> <p>Base capitation payment covers 56 listed services. The base capitation rate is lower than for Family Health Organizations, because fewer services are listed. Shadow billing is paid at 10% of the traditional fee-for-service value.</p> <p>As with Family Health Organizations, physicians also receive additional payments, including:</p> <ul style="list-style-type: none"> • fee-for-service payments for any service not listed in the contract and for all services provided to non-enrolled patients • incentive payments for services such as preventive care, diabetes management, after-hours services, and enrolling unattached patients • complex capitation payments for “hard-to-care-for” patients • payments for being on call to provide after-hours telephone health advice to enrolled patients • \$5,000 to \$11,000 per year if they work in rural communities <p>Funding of \$12,500 to \$25,000 per year is provided to practices with at least five physicians to hire an office administrator.</p>

INITIATIVES TO IMPROVE ALTERNATE FUNDING ARRANGEMENTS

Ministry initiatives to improve alternate funding arrangements for family physicians include negotiated changes to the Physician Services Agreement, as well as the following:

- Since 2006, the Ministry has had a telephone survey conducted to obtain patients' perspectives on, among other things, access to care provided by family physicians. About 2,100 Ontarians are surveyed every three months as part of this Primary Care Access Survey. The Ministry uses this information to develop strategies that will improve patients' access to care, such as helping patients find a family physician.
- In 2007, the Ministry created the Quality Management Collaborative (now part of Health Quality Ontario) to help Family Health Teams implement a team-based model of delivering primary health care. The organization's current objectives include using performance measurement to plan, test, and evaluate improvements in the organization and delivery of primary health care.
- In December 2008, the Ministry commissioned the Conference Board of Canada to conduct a five-year study on Family Health Teams to identify their successes and shortcomings. Each year, the Ministry has been receiving interim study results, which focus on areas such as team functioning, patient access, and chronic disease management. The Ministry indicated that it will use the final report—expected in 2013—to assist it in determining whether any changes should be made regarding Family Health Teams.
- In February 2009, the Ministry launched Health Care Connect to help patients who have no family physician find one. By March 31, 2011, more than 100,000 patients had registered with the program, and 60% of those registered had been matched with a

physician. The Ministry offers a bonus payment to family physicians participating in alternate funding arrangements who accept patients who have been identified by the program as complex-vulnerable (that is, harder to care for). Almost 8,000 patients had been identified as complex-vulnerable, and almost 6,000 of these had been matched with a physician. This initiative is ongoing.

ESTABLISHING ALTERNATE FUNDING ARRANGEMENTS

Alternate funding arrangements for family physicians are agreements negotiated between the Ministry and the Ontario Medical Association, which bargains on behalf of physicians in Ontario. Since 2000, negotiations have taken place every four years, with any new funding arrangements or changes to existing arrangements requiring the agreement of both the Ministry and the Ontario Medical Association. Standard contracts were initially developed for each alternate funding arrangement, but negotiated changes are generally in other documents, such as the 2004 and 2008 Physician Services Agreement. For example, the Physician Services Agreement contains information on new or additional fees (such as an increase to after-hours premiums and new fees for smoking cessation programs), as well as incentives and bonuses (such as bonuses for having patients participate in colorectal screening).

We inquired whether the Ministry conducted an in-depth analysis of the anticipated costs of the new alternate funding arrangements before it entered into negotiations with the Ontario Medical Association, so that the total costs and expected benefits could be compared with those of the traditional fee-for-service model. Such an analysis would also be useful in ensuring that the Ministry had a well-informed bargaining position. Although the Ministry indicated that such an analysis had been performed, it was unable to locate this analysis. However, the Ministry did have information on the

expected costs of changes (such as new incentives) to alternate funding arrangements.

Notwithstanding this, once the alternate funding arrangements had been negotiated, we would have expected the Ministry to periodically analyze these arrangements to determine which features best met the Ministry's goals, including patient access to care, and how the relative cost of the new arrangements compared with the traditional fee-for-service model. This information would also be useful in future negotiations with the Ontario Medical Association. We were informed that the Ministry last performed a cost comparison of the alternate funding arrangements in the 2007/08 fiscal year. At that time, the average gross income of family physicians paid solely on a fee-for-service basis was estimated to be about \$285,000, whereas physicians participating in a Family Health Organization (FHO) made about \$405,000, those in a Family Health Network (FHN) made about \$360,000, and those in a Family Health Group (FHG) made about \$375,000. From these amounts, physicians must pay the costs to run their practice, including any overhead costs—as well as, for FHOs and FHNs, amounts payable to participating contract physicians, if any.

The Ontario Medical Association informs family physicians about alternate funding arrangements that they may join. Family physicians or groups of physicians interested in joining an arrangement then contact the Ministry. The Ministry verifies the credentials of applying physicians and ensures that each physician is a signatory physician under only one agreement and is a contract physician under no more than three agreements.

Contracts, which set out the compensation arrangements as well as the services that are required to be provided, are signed by the signatory physicians who initially form the group and by representatives of the Ministry and the Ontario Medical Association. As well, all signatory and contract physicians participating in the group are required to sign a physician declaration form that, among other things, binds them to the terms of the

contract. In the sample of contracts we tested for physicians participating in an alternate funding arrangement between April and December 2010, we found that 13% of physicians in FHGs and 18% of physicians in FHOs had not signed either the contract or the declaration form. There is a risk that physicians who have not signed the contract and/or the declaration form may not fully understand their obligations and, for example, might not provide the level of patient services required under the alternate funding arrangement.

RECOMMENDATION 1

To help ensure that alternate funding arrangements for family physicians meet the goals and objectives of the Ministry of Health and Long-Term Care (Ministry) in a cost-effective manner, the Ministry should:

- periodically analyze the costs and benefits of existing alternate funding arrangements to determine whether the incremental costs of these arrangements are justified compared to the traditional fee-for-service model;
- when negotiating alternate funding arrangements with the Ontario Medical Association, ensure that it has good information on the relative costs and benefits of new arrangements being considered as compared to the traditional fee-for-service compensation model, so that it is able to take a well-informed bargaining position; and
- require all physicians to sign a contract before commencing participation in an alternate funding arrangement.

MINISTRY RESPONSE

The Ministry supports this recommendation, and as it moves forward to negotiate or renegotiate alternate funding arrangements, it will work toward full compliance with this recommendation.

The Ministry agrees with the need to evaluate the costs and benefits of existing alternate

funding arrangements to ensure that the goals established under primary-health-care reform, particularly improved access to comprehensive primary-care services, are being achieved. The Ministry will commission a formal external evaluation of the two main alternate funding arrangements: Family Health Groups and Family Health Organizations. The results of the evaluation will inform amendments to the alternate funding arrangements to maximize benefits of the models and improve patient access to quality comprehensive primary-care services in Ontario.

The Ministry will continue the practice that any new alternate funding arrangements, as well as any amendments to existing alternate funding arrangements, are fully costed prior to negotiations, and as negotiations proceed, with the Ontario Medical Association (OMA), to ensure that the Ministry is negotiating from a strong knowledge base. As was the practice in the negotiation of the 2008 Physician Services Agreement (PSA), the 2012 negotiations with the OMA will be based on an approved mandate with costed proposals and data to support proposed changes to physician payments. Further, as with the 2008 PSA, expenditures for new initiatives under future agreements will be tracked and compared to projected costs to identify issues for review by the Physician Services Committee.

The Ministry will implement procedures to ensure that payments under alternate funding arrangements do not commence until signed contracts are in place.

ENROLLED PATIENTS

By enrolling with a physician who is participating in an alternate funding arrangement, patients agree to seek treatment mainly from this physician or another physician working in the same family

practice, except in an emergency. Patients are not required to enrol, and family physicians are not supposed to refuse medical care to any of their patients who prefer not to enrol in the new arrangement.

In order to enrol with a family physician who is participating in an alternate funding arrangement, a patient must sign an enrolment form. Physicians forward the forms to the Ministry. The Ministry verifies that the patient has a valid Ontario health card and is therefore eligible for Ontario health insurance: if so, the Ministry records the patient's enrolment in its Client Agency Program Enrolment (CAPE) database, which lists all patients who have ever enrolled or de-enrolled with a family physician. If the patient was already enrolled with another physician, CAPE automatically changes the patient's enrolment to the new physician. Based on our analysis of the CAPE database, the Ministry's controls were adequate to ensure that no patient was enrolled with more than one physician as of April 2011.

At the time of our audit, the Ministry was processing more than 100,000 enrolment requests and 10,000 de-enrolment requests every month. We also noted that the Ministry was up to date on entering and removing patients from the CAPE database. However, procedures need to be enhanced to help identify enrolled patients who may no longer be seeing the physician they are enrolled with, even though this physician is still being paid for being their family physician. For example:

- There is no tracking of enrolled patients who rarely if ever visit the family physician they are enrolled with. We identified 1.9 million patients enrolled with either an FHO or FHG physician who had not visited their physician's practice at all in the 2009/10 fiscal year. Almost half visited another physician, who received a fee-for-service payment for the medical services provided. The physicians with whom the patients were enrolled received a total of \$123 million (after deducting the fees paid to the other physicians

visited) just for having these patients enrolled. The Ministry indicated that because capitation payments are based on the average level of physician services used by persons of the same age and sex, it expected payments for patients who seldom or never visited their physician to be offset by patients who require a high level of care.

- Although the Ministry identifies the total number of times in the month that a physician's enrolled patients seek services from outside their physician's practice, the Ministry does not track this information by patient. Of the patients who had made at least one visit to the FHO or FHG they were enrolled with, our analysis identified 400,000 patients who saw a family physician outside of their physician's practice more often than they saw a family physician in the practice with which they were enrolled during the 2009/10 fiscal year.
- Alternate funding arrangements require that enrolled patients reside within 100 kilometres of the physician's practice. However, the Ministry has no procedures for identifying and de-enrolling patients who move outside their physician's practice area. For example, patient address changes in the Ministry's registered persons database, which lists all persons eligible for Ontario health insurance, do not trigger a check of enrolled patients. Even if they did, the registered persons database is not always updated on a timely basis. For example, if a patient moves outside the country, the Ministry will be notified only if the patient fails to renew his or her photo health card (which could be up to five years after the move). Moreover, since 2.7 million enrolled patients still use the red-and-white health cards, which have no expiry date, it may be even more difficult to detect when they move. The Ministry indicated that patients are legally responsible for telling the Ministry if they no longer qualify for OHIP benefits—for example, when they move to another country.

Patients who move are unlikely to see the physician they are enrolled with, and if they see a physician closer to their new home who does not enrol the patient as part of an alternate payment plan, their former physician will still be paid the annual capitation fee, and the new physician will be remunerated through the traditional fee-for-service model, unless the Ministry is made aware that the patient has changed physicians. The Ministry indicated that physicians are contractually responsible for notifying the Ministry if a patient moves; however, we believe that physicians often would not know when a patient moves, especially given the number of patients who seldom or never see the physician they are enrolled with. The Ministry further indicated that physicians would de-enrol a patient if that patient saw another family physician, but given that almost half the patients who never saw the physician they are enrolled with did visit another physician, we questioned this assumption.

In April 2011, enrolled patients represented about 70% of the population in Ontario. However, we noted that many people didn't know that they were enrolled. In fact, the Primary Care Access Surveys conducted on the Ministry's behalf for the year ended September 30, 2010, indicated that only 32% of respondents believed they were enrolled with a family physician. Based on these results, we questioned whether patients understand what it means when their family physicians ask them to complete an enrolment form. There is also a risk that enrolment forms could be submitted by physicians for patients who have not agreed to enrol.

According to the enrolment form, either the patient or the physician can end the enrolment relationship. The patient can end his or her enrolment by notifying either the physician or the Ministry (through Service Ontario). Most de-enrolments are initiated by a physician, who must complete a form requesting that the Ministry de-enrol the patient. This form indicates only broad reasons

for the de-enrolment, such as “physician ended the patient enrolment.” De-enrolment requests from physicians may occur because de-enrolling the patient would be more lucrative for the physician—that is, the physician would be paid more money for the patient through traditional fee-for-service payments (which might be the case, for instance, if the patient visits the physician frequently).

Enrolment Size

The Family Health Network (FHN) and Family Health Organization (FHO) arrangements require each physician group to enrol a minimum number of patients. For groups with three to five physicians, the minimum enrolment size is 800 patients per physician. Individual physicians in a group are allowed to enrol fewer patients if other physicians in the same group enrol more (for example, for a three-physician practice to meet its minimum of 2,400 patients, two physicians might enrol 100 patients each and the third physician might enrol 2,200 patients). For all groups with more than five physicians, the minimum is 4,000 patients. For instance, in a 10-physician group, each physician would be required to enrol only 400 patients—a situation that could decrease access for people in the area who have no family physician. Family Health Groups (FHGs) have no minimum enrolment requirements.

Our analysis of the enrolment data indicated that:

- 93% of FHOs and FHNs with five or fewer physicians that had been in operation longer than one year had met the minimum requirement by enrolling 800 patients per physician; and
- the median number of enrolled patients per physician varied from about 1,025 to 1,400 depending on the arrangement type, as shown in Figure 4.

The actual number of patients these physicians see may be higher, because all participating phys-

icians can also provide primary-care services to patients who are not enrolled.

As is the case in many other jurisdictions, there is no limit on the number of patients an individual physician can enrol, and there are no guidelines on the optimal number of patients a family physician can reasonably expect to care for, whether the patients are enrolled with the physician or not. Although there is no maximum number, the FHO and FHN contracts state that if a physician group’s average number of enrolled patients exceeds 2,400 per physician, capitation payments are reduced by half for those patients above 2,400. Our analysis indicated that as of December 31, 2010, there were 12 physician groups, with a total of 38 doctors, that had enrolled more than 2,400 patients per physician.

Hard-to-care-for Patients

Some patients require more frequent visits to their family physician because of ongoing health issues. These patients are generally considered hard to care for, although the Ministry does not have a specific definition to identify such patients.

Under the alternate funding arrangements, although capitation rates generally get higher as patients get older, the rates are not adjusted based on a patient’s health needs. In 2009, a report by the Institute for Clinical Evaluative Sciences found that in comparison to physicians paid through enhanced fee-for-service arrangements, such as FHGs, physicians participating in Family Health Teams enrolled fewer sick patients and fewer patients who

Figure 4: Median Number of Enrolled Patients per Physician, as of December 31, 2010

Source of data: Ministry of Health and Long-Term Care

Type of Alternate Funding Arrangement	Median # of Enrolled Patients per Physician
Family Health Group (FHG)	1,200
Family Health Network (FHN)	1,025
Family Health Organization (FHO)	1,400

made frequent visits to their physician. The reason for this difference was not clear.

To encourage physicians to enrol hard-to-care-for patients, the Ministry offers short-term incentives. In order for physicians to earn these incentives, a person who does not have a family physician must first call the Ministry's Health Care Connect service, which helps people find a family physician. Health Care Connect evaluates the level of medical services the person requires to determine if he or she is a "complex-vulnerable" person (that is, hard to care for). If the person is so designated, the physician who enrolls this patient will receive a one-time signing bonus of \$350. In addition, during the first 12 months of enrolment, an FHO or FHN physician will receive an extra \$500 in total capitation payments for the patient, and an FHG physician will receive 150% of the value of any fee-for-service claim submitted for the patient.

After the first year, no additional bonuses or incentives are available to physicians caring for such patients. In the 2009/10 fiscal year, Health Care Connect co-ordinated the enrolment of 1,600 complex-vulnerable persons. At the time of our audit fieldwork, the Ministry had not monitored whether any of these patients are de-enrolled by their physicians once the short-term financial incentives end. However, the Ministry indicated that Health Care Connect had not notified the Ministry of any problems with previously matched complex-vulnerable patients seeking its assistance again after one year.

RECOMMENDATION 2

To better ensure that alternate funding arrangements are cost-effective and that patients have access to family physicians when needed, the Ministry of Health and Long-Term Care should:

- periodically review the number of patients who do not see the physician they are enrolled with, and assess whether continuing to pay physicians the full annual capitation fee for these patients is reasonable;

- review the impact of its policy that allows practices with more than five physicians to enrol only 4,000 patients in total, rather than the 800 patients per physician required by practices with fewer physicians, to determine the impact this policy has on access for people with no family physician; and
- review the number of patients being de-enrolled by their physician to determine whether a significant number of these patients are in the hard-to-care-for category, and, if so, whether the current financial incentive arrangements should be revised.

MINISTRY RESPONSE

The Ministry is supportive of conducting one or more policy reviews to evaluate whether the current enrolment-related provisions in the alternate funding arrangements contribute toward improved access to primary-care services for enrolled patients. The Ministry notes that significant research on the delivery of primary-care services is available to it, which can inform and support its policy reviews and corresponding contract amendments where necessary.

The Ministry's policy reviews will address the issues identified in the audit report:

- the appropriateness of paying capitation payments in respect of enrolled patients who do not access care from the physician they are enrolled with during a one-year period;
- the impact on access to care resulting from controls on minimum enrolment size; and
- the linkage between de-enrolment and patient complexity and whether payment incentives are required to ensure continued access to care.

Work that is currently in progress by a joint Ministry and Ontario Medical Association working group, with support from the Institute for Clinical Evaluative Sciences, may resolve issues related to maintaining complex patients in capitation-based funding models. This group

is evaluating options for modifying the current age/sex capitation rate to include an acuity/complexity modifier, and is expected to submit its final report in December 2011.

PATIENT ACCESS TO PRIMARY-CARE SERVICES

Hours of Services

Contracts signed by physicians participating in alternate funding arrangements generally state that the physician group “shall ensure a sufficient number of physicians are available to provide the services during reasonable and regular office hours from Monday through Friday, sufficient and convenient to serve enrolled patients.” The contracts do not further specify what constitutes “a sufficient number of physicians,” “reasonable and regular office hours,” or “sufficient and convenient to serve enrolled patients.” According to the Ministry, these terms were intentionally not further defined for various reasons, including giving physicians flexibility in operating their practices and avoiding contract restrictions that would prevent physicians from joining alternate funding arrangements.

Further, physician practices are required to provide at least one three-hour block of after-hours services per week for each physician in the group, to a maximum of five three-hour blocks per week for practices with five or more physicians. The contracts define “after-hours” as Monday to Thursday after 5 p.m. or any time on the weekend—that is, any time from Friday through Sunday. (Physicians are required to have some regular office hours on Fridays, but can also provide after-hours services any time outside of their regular hours that day.) Although the after-hours blocks must occur on different days, unlike regular office hours, there is no requirement in the contract for after-hours services to be “sufficient” or “convenient.” For example:

- Where a practice has more than five physicians, the minimum number of after-hours

services required per week is five three-hour blocks. Eighty-seven percent of Family Health Networks (FHNs), 64% of Family Health Organizations (FHOs), and 53% of Family Health Groups (FHGs) have more than five physicians in a group. Such FHNs, FHOs, and FHGs average from 10,000 to 24,000 patients. However, only one physician is required to be available during each after-hours block, and therefore we believe it would be worthwhile for the Ministry to assess whether these practices are providing sufficient evening and weekend availability to meet their patients’ needs.

- Even though some groups operate out of multiple locations, the after-hours services need only be offered at one location, which may not be convenient for many of the enrolled patients.

At the time they are established, physician groups participating in an FHN, FHO, or FHG provide their hours of operation to the Ministry. Only FHGs are contractually required to update the Ministry if their office hours change. Although the Ministry was not periodically monitoring changes to FHN, FHO, or FHG office hours at the time of our audit fieldwork, the Ministry indicated that this information could be obtained from the provider of its Telephone Health Advisory Service. The Ministry initiated a project in summer 2011 to collect information on the regular and after-hours schedules of FHNs, FHOs, and FHGs.

We reviewed ministry information for the 2009/10 fiscal year on which day of the week physician services were provided and on whether the physicians participating in alternate funding arrangements billed the services as having taken place during regular hours or after hours (for the latter, they receive a premium payment from the Ministry). For FHGs, FHOs, and FHNs, our analysis showed that less than 15% of patient services were provided on Fridays, and only about 6% of services were provided on Saturdays and Sundays. We also found that 92% of services were provided during regular office hours.

At the time of our audit, more than 100 FHG, FHN, and FHO groups were exempt from providing after-hours services. Exemptions can be obtained if more than 50% of physicians in the group provide certain other services outside regular hours (for example, hospital emergency-room coverage or obstetrical services) and the group obtains ministry approval. Physicians are not required to state how many hours of these services they provide or otherwise supply any proof that they are providing these services. Until 2011, exemption approvals had no expiry date. Starting in 2011, physician groups will be required to apply for the after-hours exemption annually, and every time a physician joins or leaves the group. The Ministry indicated that it reviewed physician groups' eligibility for exemptions a few years ago, and found that all exempted groups were eligible. However, no documentation of that review was maintained, or on how eligibility was confirmed.

In February 2011, the Ministry conducted an ad-hoc review of "after-hours" claims submitted by FHNs, FHOs, and FHGs for June 2010 to determine whether physician groups complied with the after-hours service requirements. Ministry results indicated that only 41% of FHNs, 60% of FHOs, and 74% of FHGs were providing after-hours services in accordance with their contracts. Physician groups providing less than 40% of the required after-hours services were sent a letter requesting an explanation. Some groups said that they met the exemption criteria but had not known they required ministry approval, and other groups said that they provided the services but didn't bill the after-hours code, despite the premium payment they would receive for providing after-hours services. The Ministry informed us that it is now requesting explanations from the rest of the physician groups with less than 100% compliance.

Physicians' Service Levels

The Ministry obtained some information on the wait time to see a family physician through its Primary Care Access Survey. Approximately 2,100

Ontarians aged 16 and older were surveyed every three months. The most recent survey responses available for our review were for the year ending September 30, 2010. Where appropriate, we compared these survey responses with responses from previous years. Based on survey responses, the Ministry projected that the number of Ontarians with a family physician increased by almost 500,000 from 2007 to 2010.

Overall, for persons with a family physician, responses to questions regarding access were similar, regardless of whether the person was enrolled with a physician in an alternate funding arrangement or the person's physician was paid under the traditional fee-for-service model. As well, the length of time patients currently waited to see a physician generally had not changed significantly from responses received approximately three years earlier, even though many more patients were now enrolled with a physician participating in an alternate funding arrangement practice. For instance:

- For persons who needed to see a physician because they were sick, 27% of respondents with a family physician (whether enrolled with the physician or not) said they saw a physician the same day; an additional 17% saw a physician the next day, and 44% were able to see a physician within two to seven days. The rest waited longer.
- For persons who needed to see a physician for monitoring an ongoing health problem, 12% of respondents with a family physician (whether enrolled or not) said they saw a physician the same day, 10% saw a physician the next day, and 45% were able to see a physician within two to seven days. The rest waited longer.
- Among respondents with a family physician (whether enrolled or not) who visited their physician, 93% were satisfied with the care they received. Respondents without a family physician were about 10% less likely to be satisfied with the care they received.

- Among respondents with a family physician (whether enrolled or not) who went to an emergency department, 15% went because their family physician was not available. The survey did not distinguish between regular office hours, weeknights, or weekends.
- Among respondents with a family physician (whether enrolled or not) who went to a walk-in clinic, 47% went because their family physician was not available. Another 36% said they went to a walk-in clinic because it was easier or more convenient. Compared to the 2008/09 fiscal year, there was a 10% increase in the number of respondents who used a walk-in clinic because their family physician was not available.

We also noted that interim results of the Ministry-commissioned study on Family Health Teams have indicated that enrolled patients were generally satisfied with their access to health services.

RECOMMENDATION 3

To ensure that alternate funding arrangements are meeting their goal of improving access to family physicians, the Ministry of Health and Long-Term Care (Ministry) should:

- periodically monitor whether physicians participating in alternate funding arrangements provide patients with sufficient and convenient hours of availability, including after-hours availability, as required by the arrangements; and
- conduct a formal review of whether alternate funding arrangements are meeting the goal of improving access, especially given that the Ministry's Primary Care Access Survey indicates little change in the last three years in the wait times for seeing a family physician.

MINISTRY RESPONSE

The Ministry supports the monitoring of alternate funding arrangements to ensure that patients have access to sufficient and convenient

hours of availability, including after-hours availability. The Ministry will develop service standards and performance measures that can be used to ensure that physician practices are open and available to their enrolled patients.

Performance measures will be incorporated into the alternate funding arrangements to ensure that physicians participating in the arrangements are aware of expectations and mechanisms that will be used by the Ministry to monitor compliance.

PAYING FAMILY PHYSICIANS

Non-fee-for-service payments made under alternate funding arrangements for family physicians increased significantly between the 2006/07 and 2009/10 fiscal years, with payments under the Family Health Organization arrangement (including \$153 million relating to Family Health Team funding) accounting for most of the increase, as shown in Figure 5. During the same time period, the total number of physicians participating in alternate funding arrangements increased by about 730 (11%) and the number of enrolled patients increased by almost 1.8 million (24%). Total funding to all family physicians increased by 32%, from \$2.8 billion to \$3.7 billion, between the 2006/07 and 2009/10 fiscal years. In the 2009/10 fiscal year, 66% of the total number of family physicians in Ontario participated in an alternate funding arrangement. They received 76% of the total amount paid to all family physicians.

At our request, the Ministry determined that family physicians participating in an alternate funding arrangement also earned \$1.2 billion in additional fee-for-service payments in the 2009/10 fiscal year for providing medical services not included in the list of services covered by the annual base capitation payment, as well as for providing services to non-enrolled patients. The Ministry does not know how much each physician who is participating in

Figure 5: Expenditures by Alternate Funding Arrangement, 2006/07–2009/10 (\$ million)

Source of data: Ministry of Health and Long-Term Care

Funding Model	2006/07	2007/08	2008/09	2009/10
Family Health Organizations (FHO) ¹	59	271	651	977
Family Health Groups (FHG) ²	229	269	278	277
Family Health Networks (FHN) ¹	209	276	201	156
other	256	152	181	221
Total	753	968	1,311	1,631

1. Excludes fee-for-service payments made to physicians for providing services to non-enrolled patients and for providing non-listed services to enrolled patients

2. Excludes traditional fee-for-service payments before the 10% top-up

an alternate funding arrangement receives in total, because the alternate funding arrangements allow some or all payments to be made directly to the physician group for distribution at its discretion.

Ministry staff informed us that the Family Health Group (FHG) arrangement was initially designed to pay more than the traditional fee-for-service amount in order to encourage physicians to join an alternate funding arrangement. It pays physicians 110% of the traditional fee-for-service amount. For other alternate funding arrangements, such as Family Health Organizations (FHOs) and Family Health Networks (FHNs), base capitation payments, as well as the continued fee-for-service payments for non-listed services and for services provided to non-enrolled patients, were designed to be expenditure-neutral—that is, costing neither more or less than before. The Ministry indicated that additional payments, such as bonuses and incentives, are included in all alternate funding arrangements to compensate and reward physicians for providing high-quality comprehensive care. This in turn makes these arrangements more lucrative for physicians than being paid through the traditional fee-for-service model.

Payments to family physicians under the alternate funding arrangements are complicated. For example, in the 2009/10 fiscal year, there were up to 42 types of payments made to physicians working in FHGs, and 61 types of payments made to physicians working in FHOs. (Selected payment types are shown in Figure 1.) Most of these payments are incentives in the form of premiums and

bonuses. For example, under both FHG and FHO arrangements, there are eight types of incentives offered to physicians for enrolling patients, and 12 types of incentives to physicians for providing preventive-care activities, such as vaccinations and cancer-screening tests.

Further, the basis for determining the amount of payment differs among the various payment types. For example, some payments (such as capitation) are based on the number (and certain other characteristics) of enrolled patients. Other payments (such as shadow billing and after-hours incentives) are based on the number of actual services provided to enrolled patients. Still other payments (such as administration fees, continuing medical education fees, and fees for being on call for the Telephone Health Advisory Service) are on a per-physician basis. Physicians can also receive bonuses for services their patients receive from other health-care professionals (for example, flu vaccines, mammograms, and colorectal screening) as long as a certain percentage of the physicians' patients receive the services.

The many different payment types make alternate funding arrangements more difficult for the Ministry to administer and monitor. We reviewed the capitation and access bonus payments, which together constitute more than 50% of payments made through the alternate funding arrangements.

Capitation Payments

Physicians participating in FHNs and FHOs generally receive two types of capitation payments (base capitation and comprehensive care capitation) for every enrolled patient, whether or not the patient visits them in a given year. As FHNs and FHOs receive both of these payments for all enrolled patients, we questioned whether the capitation rates could be combined.

We noted that the capitation rates in Ontario, similar to those in other Canadian provinces, are based only on the patient's age and sex, and do not consider the patient's health condition and health-care needs. In comparison, England's capitation payments to physicians consider, in addition to the patient's age and sex, the patient's health condition (morbidity), and New Zealand's consider how frequently the patient uses health-care services. Linking a patient's health condition and need for health-care services to the capitation funding for that patient could encourage physicians to treat hard-to-care-for patients and possibly eliminate the need to offer physicians additional premiums for seeing such patients. The Physician Services Agreement between the Ministry and the Ontario Medical Association indicated that a working group would be established to report to the Ministry by December 2011 on updating the capitation methodology.

The base capitation rate covers patient services listed in the alternate funding arrangement contracts. The capitation payment for each type of alternate funding arrangement includes a different list of patient services. For example, the FHO arrangement covers almost 120 services and has a capitation rate that can be up to 40% higher than the FHN arrangement, which covers only half that many services. The FHO arrangement includes services such as house-call assessments, palliative care, and single-injection chemotherapy, which are not covered by the FHN contract. Physicians under both arrangements still bill the Ministry on a fee-for-service basis for "non-listed" services provided to their enrolled patients. Our analysis indicated

that, despite FHOs having twice as many services listed in their arrangement as FHNs, in the 2009/10 fiscal year, 27% of physician services provided to patients enrolled with an FHO, as compared to 32% of services provided to patients enrolled with an FHN, were non-listed and billed to the Ministry as fee-for-service claims. The Ministry paid FHO and FHN physicians an additional \$72 million and \$13 million, respectively, for the non-listed services.

We further noted that almost 30% of the fee-for-service claims for non-listed services were for flu shots and Pap-smear technical services (that is, the cost of supplies used to perform the test). However, the Ministry had not analyzed which services would be most cost-effective to list in the alternate funding arrangements, or whether it would be beneficial to have capitation payments include most if not all of the more routine or most common medical services.

Access Bonus

Family physicians participating in an FHO or FHN whose enrolled patients seek primary-care services elsewhere lose a portion of their practice's total base capitation, known as the access bonus. This amount is calculated monthly. The loss is equal to the fee-for-service payments made by the Ministry to the physician who treated the patient, to a maximum penalty of 18.59% of the practice's total base capitation for FHOs and 20.65% for FHNs.

In the 2009/10 fiscal year, about 1.3 million patients who were enrolled with an FHO or FHN made 3.7 million visits to family physicians outside their practice. (This represented almost 30% of patients enrolled under these arrangements, and almost 20% of the times patients sought care from a family physician.) As a result, capitation payments for FHO and FHN physicians were reduced by \$54 million and \$4 million, respectively. Ministry data for the 2010 calendar year indicated that 140 FHOs and six FHNs were penalized the maximum amount in at least one month, with 25 FHOs penalized the maximum every month. Because these practices had reached the maximum percentage

penalty, the Ministry could not recover the additional \$11 million that it paid for their enrolled patients who sought care elsewhere. Therefore, the Ministry paid twice for these services—once through capitation payments to FHOs and FHNs and again through fee-for-service payments to other physicians.

We also noted that there is no deduction from the access bonus if an enrolled patient visits an emergency department for non-emergency care. Based on our analysis of claim submissions for the 2009/10 fiscal year, we found that although non-enrolled patients visited emergency departments about 10% of the time for their medical care, enrolled patients visited them slightly less often (about 7% of the time), with more than 40% of enrolled patients' visits being for non-urgent care.

RECOMMENDATION 4

To facilitate the administration of the current complex alternate funding arrangements for family physicians, the Ministry of Health and Long-Term Care (Ministry) should consider reducing the number of arrangements and simplifying the types of payments. Further, to better ensure that the alternate funding arrangements are cost-effective, the Ministry should:

- review the fee-for-service payments to physicians for services not covered by the annual capitation payment, and determine whether significant savings may be possible by having them covered by the capitation payment; and
- consider negotiating a reduction in capitation payments for patients who never or seldom see the physician they are enrolled with, as well as a further reduction in capitation payments to better reflect the cost of non-emergency services that patients obtain from physicians who are not part of the practice they are enrolled with.

MINISTRY RESPONSE

The Ministry agrees that the current array of alternate funding arrangements and the com-

plexity of the payment elements under each of these arrangements are complex. The Ministry supports the concept of simplified agreements and the reduction of the number of alternate funding arrangements.

However, the Ministry recognizes the advantage of using specific bonus and premium payments to encourage the delivery of specific services and/or activities that are a priority for the Ministry. The continuation of bonuses and premiums allows funding to be targeted toward specific programs of interest.

The Ministry will undertake a review of the payment elements under the existing alternate funding arrangements to identify opportunities for simplification.

The Ministry supports a review of existing included and excluded services under the Family Health Network and Family Health Organization alternate funding arrangements, to determine whether changes are required to better reflect the full range of comprehensive primary-care services.

The Ministry is currently in discussion with the Ontario Medical Association (OMA) to consider changes to the capitation payment to reflect patient acuity/complexity. The Ministry will approach the OMA to express its interest in having utilization-based modifiers considered in addition to modifiers based on patient acuity/complexity.

The Ministry and the OMA, through the Primary Health Care Committee, are currently conducting a policy review of the access bonus payment. This policy review will consider current services contributing to the access bonus, contract provisions related to the negative access bonus, and provisions to ensure that there are not unintended incentives to encourage the use of emergency departments outside available office hours.

MONITORING

Most provinces with alternate funding arrangements for family physicians, including Ontario, request physicians to shadow bill for services included in their contracts in order to obtain information on the frequency and nature of physician services being provided. However, the Ministry informed us that it has not analyzed shadow billing claims to determine the number of patients seen or the clinical services provided by physicians paid through alternate funding arrangements. The Ministry informed us that although there is no reason to believe that physicians would forgo income available through shadow billing, it has no assurance that physicians actually do shadow bill for all patient services rendered. Therefore, the shadow billing data may not reflect all patient services provided.

As well, although the Ministry has some cost information, it has not tracked the full cost of each funding arrangement since the 2007/08 fiscal year. Therefore, the Ministry cannot compare the amounts paid for the services delivered by family physicians among the different alternate funding arrangements or compare the payments made to the medical services being delivered. It also cannot compare amounts paid under alternate funding arrangements to the amounts paid to family physicians who are remunerated solely through fee-for-service billings.

Further, some aspects of the alternate funding arrangement contracts are difficult to monitor, such as whether physicians invite all of their patients to enrol with the group or whether physicians refuse to enrol certain patients when they switch to an alternate funding arrangement. This information would assist the Ministry in determining whether the more costly alternate funding arrangements are meeting its goals.

In addition, without good information on the relative costs and service levels being provided, it is more difficult for the Ministry to effectively negotiate with the Ontario Medical Association to make changes to alternate funding arrangements that

would better enable the Ministry to meet its goals, or to consolidate the current funding arrangements. The Ministry informed us that its initial focus was on encouraging as many family physicians as possible to join an alternate funding arrangement, in order to improve patient access, provide income predictability for physicians, and better predict Ministry expenditures. The Ministry indicated that it plans to increase its monitoring of these arrangements now that more than 60% of family physicians are participating.

RECOMMENDATION 5

To provide the Ministry of Health and Long-Term Care (Ministry) with information that would facilitate better monitoring of the benefits and costs of each alternate funding arrangement for family physicians, the Ministry should:

- periodically review shadow billing data to determine the frequency and nature of services provided by physicians in each arrangement;
- track the total amount paid to physicians participating in each arrangement; and
- track the average amounts paid to each physician both for reasonableness and for the purposes of comparing them to physician compensation under the traditional fee-for-service funding model.

MINISTRY RESPONSE

The Ministry supports the recommendations for improved monitoring of alternate funding arrangements. The Ministry recognizes that increased monitoring of the contracts will better ensure the achievement of the Ministry's goals and objectives in relation to the alternate funding arrangements, and the Ministry will implement the monitoring activities identified in the recommendations, as follows:

- introduce a process whereby shadow billed services by physicians in the Family Health Network and Family Health Organization

alternate funding arrangements will be reviewed to ensure that the volume and nature of the services are consistent with expected service levels and the services included in the contract;

- track total payments by model annually; and
- establish payment tracking at a physician level to compare base rate payments in the Family Health Network and Family Health Organization alternate funding arrangements with the fee-for-service equivalent, by using shadow billing claims data.

Funding Alternatives for Specialist Physicians

Background

Physicians may provide specialized services in over 60 areas, including cardiology, gynecology, orthopaedics, pediatrics, and emergency services. These specialists work in various settings, including hospitals and their own offices.

In the 1990s, the Ministry of Health and Long-Term Care (Ministry) introduced funding alternatives (known as alternate funding arrangements) for some specialist physicians to encourage them to provide certain services, such as academic services (including training new physicians and conducting research) and working in remote areas of the province. Before this, the Ministry paid specialist physicians on a fee-for-service basis for the different clinical services involved in diagnosing and treating patients, but did not compensate specialists for these other services. In 1999, the Ministry also introduced specialist alternate funding arrangements for physicians, generally family physicians, for providing emergency services in hospitals. Most of the specialists paid through alternate funding arrangements may also bill the Ministry on a fee-for-service basis for patient care provided outside the arrangement.

Alternate funding arrangements are contractual agreements between the Ministry, a group of phys-

icians, and in most cases the Ontario Medical Association (the organization that bargains on behalf of physicians in Ontario) and may include other organizations such as hospitals and universities. Alternate funding arrangements for specialists are also subject to provisions in the physician services agreements between the Ministry and the Ontario Medical Association, which have been negotiated every four years since 2000.

In the 2009/10 fiscal year, the Ministry paid almost \$1.1 billion, as shown in Figure 1, under specialist alternate funding arrangements to more than 9,000 physicians. This represents about 17% of the \$6.3 billion the Ministry paid to all specialists that year. As of March 31, 2010, 50% of the almost 13,000 specialists in the province and more than 90% of the 2,700 emergency department physicians were paid, at least in part, through a specialist alternate funding arrangement.

Audit Objectives and Scope

This year, our Office performed two audits on funding alternatives (known as alternate funding arrangements) for physicians. The audit discussed in this section focused on the arrangements for specialist physicians, and the audit in Section 3.06

Figure 1: Number of Physicians Participating in Specialist Alternate Funding Arrangements and Associated Payments, by Agreement Type

Source of data: Ministry of Health and Long-Term Care

Agreement Type	# of Physicians as of March 31, 2010	Payments for 2009/10 Fiscal Year (\$ million)
academic comprehensive ¹	1,234	268
Academic Health Science Centres ^{2,3}	3,692	242
emergency departments	2,653	315
northern specialists ³	280	39
other	1,181	208
Total	9,040	1,072

1. Unique alternate funding arrangements for academic services, including training new physicians and conducting research.
2. Standard alternate funding arrangement for academic services, including training new physicians and conducting research.
3. Excludes fee-for-service payments to participating physicians for clinical services.

focused on those for family physicians. Our audit objective was to assess whether the Ministry of Health and Long-Term Care (Ministry) has implemented systems and processes to monitor and assess whether alternate funding arrangements provide Ontarians with timely access to specialist physicians in a cost-effective manner. Ministry senior management reviewed and agreed to our objectives and associated audit criteria.

Given the number of different alternate funding arrangements for specialists, our audit focused primarily on arrangements with academic physicians (whose responsibilities generally include training new physicians and conducting research) and emergency department physicians, and to a lesser extent on payments to specialists working in Northern Ontario. Contracts with these groups currently encompass over 85% of physicians who participate in a specialist alternate funding arrangement.

Our audit work was conducted primarily at the Ministry's Negotiations Branch in Toronto, which is responsible for managing the specialist physician

contracts, as well as at other ministry branches in Toronto. In conducting our audit, we reviewed relevant files, systems, and administrative policies and procedures; interviewed appropriate ministry staff; and reviewed relevant research from Ontario and other jurisdictions. We also reviewed data received from the Ministry's Ontario Health Insurance Plan database. We did not rely on the Ministry's internal audit service team to reduce the extent of our audit work, because it had not recently conducted any audit work on alternate payment arrangements for specialists or emergency department physicians.

Summary

Payments made under alternate funding arrangements for specialists and emergency department physicians increased by more than 30% from the 2006/07 fiscal year to almost \$1.1 billion in the 2009/10 fiscal year, or more than 10% per year, similar to the increase in payments to all specialists during this time. By 2009/10, payments made under alternate funding arrangements accounted for about 17% of all payments to specialists and emergency department physicians. However, the Ministry has conducted little formal analysis of whether the expected benefits of these alternate funding arrangements, such as improving patient access, have materialized or have been cost-effective. For instance, payments to emergency department physicians increased by almost 40% between the 2006/07 and 2009/10 fiscal years, while the number of physicians working in emergency departments increased by only 10% and the number of patient visits increased by only 7%.

We also noted that although the Ministry indicated that it performed a cost/benefit analysis before it entered into any alternate funding arrangements, it was unable to provide us with any such analysis relating to the arrangements that most of the physicians participated in. Additionally, the relative complexity of the different

arrangements and the relative scarcity of performance measures in the contracts have made it difficult for the Ministry to effectively monitor both the accuracy of payments being made and the extent to which physicians have actually provided the services expected in their contracts.

Some of our more significant observations are as follows:

- The Ministry has made progress in implementing standard contracts for most specialists, and these contracts are now in place for more than 70% of physicians participating in specialist alternate funding arrangements.
- The Ministry does not track the total amounts paid to physicians participating in Academic Health Science Centre (AHSC) and northern specialist alternate funding arrangements, and therefore cannot readily perform any subsequent assessment of the cost-effectiveness of the alternate funding approach and also cannot compare the income of physicians paid through these arrangements to the income of physicians performing similar work but paid under the traditional fee-for-service arrangement.
- The alternate funding arrangement contracts generally do not contain measures by which the Ministry can assess the extent to which the objectives necessitating the alternate funding arrangement, such as improving patient access and advancing innovation in medicine, have been achieved.
- There are numerous types of payments and various premiums that specialists can earn, making contract- and payment-monitoring difficult for the Ministry. For example, for academic services (including training new physicians and conducting research), there were up to nine different categories of payments under AHSC contracts and up to 14 categories under academic comprehensive contracts.
- Ten AHSCs received “specialty review funding” totalling \$19.7 million in the 2009/10

fiscal year as an interim measure to alleviate immediate human resource challenges in five specialty areas. However, similar temporary or interim funding has been given annually since 2002.

- In May 2007, the Ministry obtained permission from 234 northern specialists to collect information on each physician’s income from provincial government-funded sources. The Ministry paid these physicians \$15,000 each.
- As a means to monitor whether specialists funded under academic contracts have met their contract obligations, the Ministry provided them with a checklist to self-evaluate their performance in this regard. However, the Ministry does not request the results of this self-evaluation, and it does only minimal other monitoring of these specialists to ensure that they are providing the level of service outlined in their contracts.

We also noted instances where the Ministry chose not to recover its overpayments to physicians. Our observations in this regard included the following:

- The Ministry has a good process in place to identify overpayments to emergency department physicians and found \$3.9 million in overpayments from the 2005/06 fiscal year to the 2009/10 fiscal year. However, even though the physicians at these emergency departments worked fewer hours than they were paid for, the Ministry did not attempt to recover any of the overpaid funds because it was concerned this would negatively affect patient wait times at these emergency departments.
- In April 2008, the Ministry paid over \$15 million to 292 physicians who signed a document indicating their intent to join a northern specialist alternate funding arrangement. However, 11 of the physicians, who were paid a total of \$617,000, did not subsequently join an alternate funding arrangement yet were allowed by the Ministry to keep the funding.

- The Ministry's review of service levels provided by AHSCs during the 2007/08 and 2008/09 fiscal years indicated that 40% generally had at least one specialty area that did not meet the contracted service-level requirements. However, no attempt was made to recover these overpayments nor was any adjustment to future funding levels made.

OVERALL MINISTRY RESPONSE

The Ministry welcomes the report from the Office of the Auditor General regarding alternate funding arrangements for specialist physicians. These arrangements were founded to address specific concerns, including sustaining or improving access to health-care services for all Ontarians regardless of income, geography, or other barriers to access. In this regard, the arrangements were often aimed at communities, services, and programs where the volume-driven fee-for-service model did not fit. To this end, the Ministry funds the majority of emergency departments, hospital-based northern specialists, and medical training, research, and innovation activities through alternate funding arrangements. The anticipated benefits of the arrangements are timely patient access to health services and reduced wait times, a reduction in travel costs, decreased morbidity and mortality, a reduction in hospitalizations and hospital-related costs, and a new generation of well-trained specialist physicians.

The Ministry appreciates the comments from the Auditor General about ongoing cost/benefit analyses of the alternate funding arrangements. Although the cost of these arrangements is offset in part by a reduction in fee-for-service payments, the measure of cost-effectiveness is not only as compared to fee-for-service, but must also take into account benefits associated with a range of health determinants over the long term, including access to care. The Ministry supports the need for further research in this area.

The Ministry also supports the need for clearly defined reporting expectations and meaningful performance measures and targets. As the Auditor General has noted, the Ministry has made progress on implementing standard contracts to reduce the complexity among agreement types. Furthermore, the Ministry is engaged in continuing this process through continual review and modernization of existing agreements to ensure that existing agreements:

- continue to address the Ministry's objectives;
- are in compliance with established protocols and processes;
- include appropriate performance monitoring and reporting provisions; and
- include appropriate, timely, and documented corrective actions.

Detailed Audit Observations

OVERVIEW

Like many other Canadian jurisdictions, Ontario has alternate funding arrangements for specialists. The Ministry's goals for these arrangements include:

- maintaining and enhancing the academic activities of physicians (for example, training medical students and conducting research);
- enhancing income predictability and stability for physicians; and
- increasing the recruitment and retention of physicians in underserved areas.

At the time of our audit, there were 10 types of specialist alternate funding arrangements, including arrangements for academic specialists; emergency department physicians; and specialists working in Northern Ontario. A specialist arrangement may fund an individual department in one hospital, or it may cover a range of services provided by all the physicians at a hospital. Prior to 2004, groups of physicians contacted the Ministry

to establish and participate in alternate funding arrangements. These arrangements represent over 80% of participating physicians. Since 2004, groups of physicians may initially contact either the Ministry or the Ontario Medical Association to propose new arrangements, or arrangements may be proposed directly by the Ontario Medical Association to the Ministry. Arrangements are then negotiated between the Ministry and the Ontario Medical Association. Physician groups generally have a governing organization (sometimes called a governance group), whose responsibilities include deciding how payments to the group will be allocated among participating physicians.

The specialist alternate funding arrangements are primarily managed by the Specialist Physician Contracts Unit in the Ministry's Negotiations Branch. Other branches within the Ministry are also involved in helping administer the contracts. These include the Financial Management Branch, which is responsible for processing physician payments and conducting financial forecasting and reporting; the Health Data Branch, which is responsible for collecting statistics relating to physician counts, conducting trend analyses, and calculating certain payments; the Registration and Claims Branch, which is responsible for processing physician registrations; and the Health Solutions Delivery Branch, which is responsible for developing information systems to support new types of payments or changes in payment rates.

CONTRACTING WITH SPECIALISTS

For most of the arrangements, either the Ontario Medical Association or a specialist group that was interested in receiving compensation for services not funded through fee-for-service payments approached the Ministry requesting that an alternate funding arrangement be established, such as for training and research. They may also have requested funding for other reasons, such as increasing physician income when patient volume in a region is too low to provide a full-time specialist

with a fee-for-service income level similar to what he or she would earn in other parts of the province. The Ministry generally is not approached about establishing an alternate funding arrangement for specialist groups that do not have concerns about the equity of their compensation levels, such as ophthalmologists, cardiologists, and radiologists.

The Ministry indicated that it reviews submitted proposals outlining why a physician group should receive alternate funding; compares the costs of the proposed alternate funding arrangement with the historical fee-for-service costs; and assesses the proposed benefits, such as improved patient access to care. We requested the Ministry's analyses for various specialist alternate funding arrangements, including arrangements for emergency departments, Academic Health Science Centres (AHSCs), and northern specialists, but it was unable to locate its analyses for these funding arrangements. However, the Ministry was able to locate a cost estimate prepared by the Ontario Medical Association for AHSCs. Based on this estimate, payments were expected to increase by 33%. As well, the Ministry was able to locate its cost estimates for two recent emergency department contracts. These estimates indicated that payments for physician services were expected to increase by 32% and 60%, respectively. The Ministry indicated that the benefits of these arrangements were expected to include improved patient access to care.

If the Ministry decides to pursue the alternate funding arrangement, it begins negotiations, which are generally with the specialist group of physicians, the Ontario Medical Association, and often the hospital at which the specialists provide services. In the case of specialists who train medical students, a university may also be part of the negotiations. As a result of these negotiations, the Ministry has developed standard contracts for most of the alternate funding arrangements, including those involving emergency departments, AHSCs, and northern specialists. For the few non-standard funding arrangements (for example, academic comprehensive agreements, which were developed

prior to the standardized AHSC contracts), each specialist group receiving funding under the same type of plan negotiates a unique contract with the Ministry. As of March 31, 2011, the Ministry had almost 250 agreements with specialist groups, as shown in Figure 2. The Ministry informed us that it intends to develop standard contracts for all plans in the future.

The contracts generally stipulate the amount of funding the specialists will receive, the service levels that the specialists must provide, recruitment and retention mechanisms for new specialists, and information that specialists must report to the Ministry. As well, the contracts usually include objectives such as improving patient access; supporting the clinical training needs of medical students, physicians, and other health-care providers; and advancing innovation in medicine. However, while the AHSC arrangement has more than 20 performance measures, the other arrangements generally do not have any. The Ministry had not used the measures in the AHSC contract to determine to what extent the objectives necessitating the alternate funding arrangement had been achieved. Further, the measures in the AHSC arrangement did not include the number of patients seen or wait times to access care. These measures would assist the Ministry in assessing whether the service levels and overall intent of the arrangements were being met.

Most specialist physicians who participate in an alternate funding arrangement are required to sign a form to indicate their acceptance of the con-

tract's terms. By signing such a form, a physician is agreeing to, among other things, provide services in accordance with the contract and not bill the Ontario Health Insurance Plan (OHIP) for these services except as provided for under the contract. Some contracts require participating physicians to sign the form before they begin to provide services; other contracts state that they must sign the form within 30 days of beginning to provide services; and still other contracts are silent regarding when the forms must be signed. For contracts tested where we would expect to have seen physician-signed forms, we found that only 30% of physicians signed consent forms before they began providing services. An additional 42% signed consent forms after they began providing services, and the Ministry did not have consent forms for the remaining 28%. Without a signed consent form, there is a risk that physicians may not fully understand their obligations and, for example, not provide the level of patient services required under the contract.

RECOMMENDATION 1

To help ensure that compensation arrangements for specialists meet the Ministry of Health and Long-Term Care's goals and objectives in a financially prudent manner, the Ministry should:

- assess and document the anticipated costs and benefits of each alternate funding arrangement, compared to the standard fee-for-service compensation method, before entering into a formal agreement;
- incorporate specific performance measures into the contracts, such as the number of patients to be seen or the wait times to access care, to enable the Ministry to periodically assess what benefits are received for the additional cost of the arrangement; and
- require physicians to sign that they agree to the terms of the contract before commencing participation in an alternate funding arrangement.

Figure 2: Number of Contracts by Agreement Type, as of March 31, 2011

Source of data: Ministry of Health and Long-Term Care

Agreement Type	# of Contracts
academic comprehensive	3
Academic Health Science Centres	18
emergency departments	134
northern specialists	23
other	70
Total	248

MINISTRY RESPONSE

The Ministry supports this recommendation, and as it moves forward to negotiate or renegotiate alternate funding arrangements it will work toward full compliance with this recommendation.

In recent years, alternate funding arrangements have been negotiated as part of the overall Physician Services Agreement discussions with the Ontario Medical Association. The alternate funding arrangements negotiated and implemented as part of this process are developed to ensure that the goals and strategic priorities of the Ministry and the Ontario government are met. These goals and priorities include ensuring access to high-quality health care for all Ontarians and providing specialist services in underserved communities. The Ministry will continue to compare the initial cost of each alternate funding arrangement to the fee-for-service compensation method before entering into a formal agreement.

The Ministry supports the principle of incorporating specific performance measures into the arrangements and is committed to improving how it demonstrates measurable results as it meets its goals and priorities in a cost-effective manner. All agreements negotiated or renegotiated with specialists will have the roles, responsibilities, accountability relationships, and obligations of all parties clearly defined and documented. In addition, the Ministry will work toward implementing reporting expectations with meaningful performance measures and targets.

The Ministry requires all participating physicians to sign an agreement before commencing participation in an alternate funding arrangement and will ensure full compliance with this obligation.

PAYING SPECIALISTS

Total ministry payments under both fee-for-service and alternate funding arrangements to all specialists and emergency department physicians increased by over 25% from \$5 billion in the 2006/07 fiscal year to over \$6.3 billion in the 2009/10 fiscal year, the most recently available data for total payments to these groups. Somewhat similarly, payments made under alternate funding arrangement contracts for specialists and emergency department physicians increased by over 30% during the same period, from more than \$800 million in the 2006/07 fiscal year to almost \$1.1 billion in the 2009/10 fiscal year.

Payments to specialists under the alternate funding arrangements are complicated, because there are numerous types of payments and various premiums that specialists can earn. Figure 3 outlines selected types of payments.

Figure 4 provides further information about how physician compensation is determined under selected specialist alternate funding arrangements.

Academic Physicians

Academic specialists represent more than half of the specialists participating in alternate funding arrangements. There are two main arrangements for academic specialists:

- Academic Health Science Centres (AHSCs)—a standardized arrangement introduced in 2003 to support academic physicians working at AHSCs, which are formed through an agreement between a university with a medical school, a hospital where medical students are trained, and physicians that work at both. In the 2009/10 fiscal year, 3,700 physicians received \$242 million under this arrangement.
- Academic comprehensive—unique agreements established prior to the introduction of the AHSC arrangements involving three hospitals and the associated universities,

Figure 3: Selected Types of Payments under Specialist Alternate Funding Arrangements

Prepared by the Office of the Auditor General of Ontario

Type of Payment	Description
base funding	A lump sum paid to specialist groups for providing a collection of services
fee-for-service	Physicians bill OHIP and are paid an established fee for each service provided to a patient
shadow billing	Physicians who receive base funding can bill OHIP and be paid a percentage of the established fee for each service provided to a patient
premiums	Additional payments to physicians to provide specific services, such as patient care on weekends
administration	Amounts paid to specialist groups for administering alternate funding arrangements

to support academic physicians. In the 2009/10 fiscal year, 1,200 physicians received \$268 million under this arrangement.

Figure 4 highlights some of the significant differences between these two payment arrangements.

Up to nine types of payments were made under each AHSC contract, and up to 14 types of payments were made under each academic comprehensive contract, including payments for the items shown in Figure 3. Based on our testing of these payments primarily in the 2009/10 fiscal year, we noted that:

- The Ministry did not have documentation to support whether the base funding amount paid under the three academic comprehensive contracts in the 2009/10 fiscal year was accurate. A significant portion of the base funding amount is based on physicians' highest 12 consecutive months of OHIP billings before joining the alternate funding arrangement. We noted that for 2009/10, base payments to one hospital exceeded the contract amount by \$2.1 million. Ministry staff informed us that the majority of the difference was likely due to physicians entering and leaving the academic group. However, the Ministry had no information on who had joined or left the groups, which would be needed to substantiate the amount that was paid.
- Funding to recruit recently graduated physicians or physicians new to the province began under the academic comprehensive contracts in the 2008/09 fiscal year. However, one

academic physician group was already receiving \$575,000 annually for the recruitment of physicians, having negotiated that payment as part of its base funding. This physician group received additional funding for recruitment activities after the recruitment funding was introduced in 2008/09, including an additional \$495,000 in the 2009/10 fiscal year, as the funding was available to all groups including the group that was already receiving recruitment funding.

- In the 2007/08 fiscal year, \$8.5 million in recruitment funding for AHSC physicians was allocated to their governance groups to distribute as they saw fit. Based on reports received by the Ministry, \$3.2 million of this funding was spent on recruiting physicians. The Ministry had no information on how the remaining \$5.3 million was spent. Similar issues were not noted in subsequent years.
- Ten hospitals received "specialty review funding" totalling \$19.7 million in the 2009/10 fiscal year to, according to the Ministry, "serve as an interim measure to alleviate immediate human resource challenges" in five specialty areas. Although it was indicated that it was an "interim" measure, similar temporary funding actually had been in place annually since 2002. The Ministry informed us that a formal review was done in 2002 that determined that there was a funding shortfall in these five specialty areas, but the Ministry was unable to provide any documentation relating to this

Figure 4: Payment Methods for Selected Specialist Alternate Funding Arrangements

Prepared by the Office of the Auditor General of Ontario

Arrangement/ Agreement Type	Start Date	How Specialists Are Paid	Additional Funding
Academic Arrangements			
Academic Health Science Centres (AHSs)	2003	<p><i>Base funding + fee for service (FFS)</i> AHSs are formed through an agreement between a university with a medical school, a hospital where medical students are trained, and physicians who work at both.</p> <p>These agreements provide AHSs with funding to pay physicians who teach, research, recruit, and provide clinical services to patients. Base funding is provided for all activities, excluding clinical services, and an additional amount (called clinical repair funding) is provided to close the gap in compensation between academic and non-academic physicians.</p> <p>Physicians also bill OHIP on an FFS basis for clinical services provided to patients. 40% of the FFS funding is paid directly to physicians; the remaining 60% is paid to the group that governs the AHS, to be distributed at the group's discretion. The Ministry considers these to be regular FFS payments, not alternate payment amounts.</p>	Funding of \$140,000 to \$835,000 per year is provided for administration costs (based on a percent of funding they receive for certain activities, including clinical services and training medical students).
academic comprehensive	1990	<p><i>Base funding + shadow billing</i> These agreements, which are used by three hospitals, predate the current AHSC standard contract. Base funding is provided for teaching, researching, and providing clinical services to patients. Also, physicians in two of the three hospitals shadow bill for clinical services at 10% of the FFS claim value.</p>	Funding for additional administration costs is provided under one contract only, in the amount of \$400,000 per year.
Emergency Department Arrangements			
workload model	2001	<p><i>Base funding + shadow billing</i> The workload model funds larger hospitals (i.e., those that have over 25,000 patient visits to the emergency department annually and require coverage by more than one on-duty physician). Base funding is determined by the annual volume of patients in the previous year as well as patient acuity (i.e., the urgency of care required). Services are also shadow-billed at 25% of the FFS claim value.</p>	<p>Under both emergency department models, funding of \$20,000 to \$50,000 per year (based on patient volume) is provided for administration costs.</p> <p>Recruitment and mentorship programs are available that provide funding for each eligible new recruit.</p> <p>Similar funding is available to emergency department physicians paid through FFS.</p>
24-hour model	1999	<p><i>Base funding + shadow billing</i> The 24-hour model funds smaller hospitals (i.e., those that have fewer than 25,000 patient visits to the emergency department annually and therefore need only one on-duty physician). There are 10 funding levels, with base funding for each level determined by the number of patients visiting the emergency department in the previous calendar year. Physicians can also shadow bill OHIP, and are paid at 25% of the FFS claim value.</p>	
Northern Specialist Arrangement			
Northern Specialist Alternate Payment Plan	2008	<p><i>Base funding + fee for service (FFS)</i> Each physician receives \$55,000 plus 30% of the physician's historical FFS billings, which are converted to "stable" or base funding. This payment is intended to assist in stabilizing clinical services and the retention of existing physicians in the northern centres.</p> <p>In addition, participating physicians bill OHIP, and are paid 70% of the FFS claim value.</p>	Funding of \$15,000–\$75,000 per group for the first year of funding and \$5,000–\$72,000 per group every year after for administration costs (based on the number of physicians in the group). There may be an additional annual payment of up to \$15,000 to acknowledge the remoteness of some communities.

review. The Ministry also indicated that the funding has been periodically reviewed. The most recent review was in 2009 and involved a two-day consultation with funding recipients. The Ministry concluded on the basis of discussions with the recipients that the funding was having a positive impact and would continue unchanged until further review.

- Clinical repair funding provides academic physicians with additional income to make their income levels comparable to those of non-academic physicians, who generally have time to see and bill for more patients. Since its introduction in the 2007/08 fiscal year, clinical repair funding has been calculated annually based on what similar non-academic specialists billed OHIP in the 2006/07 fiscal year. However, the Ministry had no documented analysis of whether the clinical repair funding amount in the 2010/11 fiscal year made the income of academic specialists reasonably comparable to non-academic specialist incomes. The Ministry indicated that it commenced a review of AHSC funding in 2010, which includes a review of clinical repair funding. The Ministry expects to complete this review by December 2011.

Emergency Department Physicians

Funding to the province's more than 145 emergency departments is intended to provide for around-the-clock emergency services. Between the 2003/04 and 2006/07 fiscal years, total ministry funding for emergency department (ED) physician services increased by almost 35%, as shown in Figure 5. Similarly, from the 2006/07 fiscal year to the 2009/10 fiscal year, payments for ED physician services also increased by almost 40% in total, although the number of physicians who worked in emergency departments increased by only 10%, and the number of patient visits to emergency departments increased by only 7% during the same period. The Ministry stated that 10 additional emergency departments

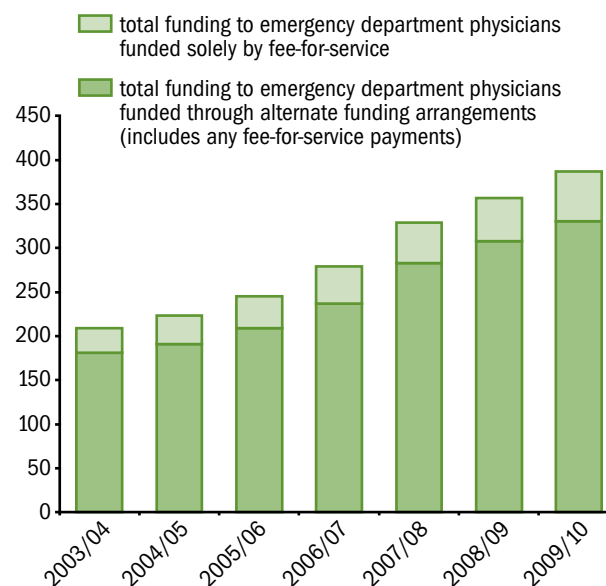
joined an alternate funding arrangement during this time and that alternate funding arrangements usually result in increased payments to physicians. The Ministry also indicated that the primary goals of the ED alternate funding arrangement were to ensure that emergency departments remain open 24 hours a day, seven days a week, and maintain a stable workforce of physicians.

For the 2009/10 fiscal year, payments for the services of ED physicians participating in an alternate funding arrangement consisted primarily of \$268 million in base funding with shadow billing (that is, physicians are paid 25% of the established fee-for-service amount for submitting data to OHIP on patient services provided) as well as additional premiums and other payments totalling \$47 million.

Funding for ED physicians participating in the workload model, under which more than one physician may be working in the emergency department at the same time, is based on patient acuity (that is, the urgency of care required by the patient) as well as on patient volume in the previous year. The Ministry inputs this information into a formula

Figure 5: Ministry Funding for All Emergency Department Physician Services, 2003/04–2009/10 (\$ million)

Source of data: Ministry of Health and Long-Term Care



to determine the number of hours ED physicians are required to work to meet patient needs. The formula was developed based on research commissioned by the Ministry. The Ministry uses these hours and an hourly rate to determine the funding to be provided annually to each group of ED physicians. The Ministry indicated that the established hourly rate was initially developed in the 1999/2000 fiscal year by a working group consisting of representatives from the Ministry, the Ontario Medical Association, and the Ontario Hospital Association.

The Ministry indicated that the current funding levels for ED groups under the 24-hour model (where only one ED physician is on duty at a time) were set in the 2006/07 fiscal year, based on negotiations between the Ministry, the Ontario Medical Association, and the Ontario Hospital Association. Since then, funding for ED groups under the 24-hour model has generally been based on patient volumes for the previous calendar year.

We noted that overpayments to ED physician groups were not being recovered. For example:

- Under the Ministry's contract with physicians participating in the workload model, the Ministry is to recover funds if the ED group provides fewer hours of work than determined under the Ministry's formula; conversely, the Ministry must make an additional payment if the ED group provides more hours, whether due to the volume or acuity of patients increasing. When we reviewed reconciliation summaries prepared by the Ministry for the five-year period from the 2005/06 fiscal year through the 2009/10 fiscal year, we identified Ministry overpayments totalling \$3.9 million. These overpayments were made to 24 ED groups, with 10 ED groups receiving overpayments in more than one year. The Ministry indicated that it had chosen not to recover the overpayments because the recovery could negatively affect patients' access to ED services or increase ED wait times.

- When we reviewed Ministry payments made in the 2009/10 fiscal year (the last full year for which data were available at the time of our audit) to ED groups funded under the 24-hour model, we noted that over 35% of the ED groups sampled received more funding than stipulated in their contract with the Ministry. Excess funding in 2009/10 amounted to over \$400,000, none of which was recovered by the Ministry. The Ministry indicated that the ability of these EDs to provide physician coverage 24 hours a day, seven days a week, would have been compromised without this additional funding.

Northern Specialist Physicians

Alternate funding arrangements for northern specialists were introduced effective April 1, 2008. For the 2009/10 fiscal year, 280 physicians received payments totalling \$39 million under the northern specialist alternate funding arrangements. This included about \$5 million primarily related to base funding for the prior year.

The alternate funding arrangements for northern specialists were determined as a result of negotiations with the Ontario Medical Association, similarly to other alternate funding arrangements. However, unlike negotiations for other funding arrangements, special payments were made to northern specialists during the negotiation process. Specifically:

- In May 2007, the Ministry paid \$15,000 each to 234 physicians, who gave the Ministry and Ontario Medical Association permission to collect information on the physicians' income from universities, hospitals, and the Ministry, through fee-for-service billings, for the purpose of negotiating the northern specialist alternate funding arrangement.
- In April 2008, the Ministry paid over \$15 million in total to 292 physicians who signed a document indicating that they planned to join a northern specialist alternate funding

arrangement, effective April 1, 2008. The Ministry informed us that this money was funding for the previous fiscal year (which ended March 31, 2008) and was paid to these physicians in addition to their regular fee-for-service earnings through OHIP. The amount paid ranged from \$20,000 to \$70,000 per physician, with most physicians receiving \$55,000. The document physicians signed indicated that the money was to be returned to the Ministry if the physician did not join a northern specialist alternate funding arrangement. We noted that 39 physicians, who collectively received over \$1.1 million, did not join a northern specialist alternate funding arrangement. Contrary to the document signed, the Ministry subsequently allowed these physicians to keep the money as long as they joined any type of alternate funding arrangement and continued to practise in Northern Ontario. However, 11 of these physicians did not join any type of alternate funding arrangement. The Ministry did not recover any of the \$617,000 paid to these 11 physicians.

RECOMMENDATION 2

To better ensure that payments made under alternate funding arrangements among similar specialist groups are in accordance with the underlying contracts, the Ministry of Health and Long-Term Care should:

- simplify the numerous different types of payments under the academic contracts; and
- review situations where additional funding is consistently being provided or where overfunding or duplicate payments have occurred in order to determine whether the funding should be adjusted or recovered.

MINISTRY RESPONSE

The Ministry supports this recommendation. As the Auditor General has noted, payments to

specialists under the alternate funding arrangements are complicated, because there are numerous types of payments and various premiums that specialists can earn. The Ministry agrees with the Auditor General's observation that there is an opportunity to simplify or reduce the number of payments, particularly when they are similar to or have outlived their necessity to be distinguished from base funding.

The Ministry is also reviewing practices with respect to recoveries; however, the Ministry notes that there may be cases, such as for the emergency department alternate funding arrangements, where pursuing a recovery could jeopardize the ability of some emergency departments to provide services 24 hours a day, seven days a week.

MONITORING ALTERNATE FUNDING ARRANGEMENTS

We reviewed the Ministry's monitoring of alternate funding arrangements with academic physicians and emergency department physicians.

The fee-for-service payment method encourages physicians to see as many patients as possible, because they get paid based on services provided. However, most alternate funding arrangements do not compensate physicians based solely on the volume of patient services provided. As a result, it is important that alternate funding arrangements with physicians be properly monitored to ensure that specialists maintain a minimum level of patient services. As well, it is important that the Ministry track the costs of each alternate funding arrangement and evaluate whether the alternate funding arrangements are meeting the Ministry's health-care goals in a cost-effective manner.

Shadow billing occurs when physicians participating in certain alternate funding arrangements (for example, academic comprehensive and emergency department) submit data to OHIP on

patient services provided. These physicians are paid a percentage (which varies by alternate funding plan) of the established amount that fee-for-service physicians receive for providing these services. Shadow-billing data can be used to assess the level of services provided by specialists participating in alternate funding arrangements and is used by at least one other Canadian jurisdiction for such purposes. However, the Ministry informed us that it has not analyzed shadow-billing claims to determine the number of patients seen or the clinical services provided.

Further, under the Academic Health Science Centre (AHSC) contracts, physicians can bill 100% of the fee-for-service claim value for clinical services provided, on top of the other amounts paid in the contract. Similarly, under the northern specialist contracts, physicians can bill 70% of the fee-for-service claim value, on top of the other amounts paid. The Ministry does not track the total fee-for-service amounts paid under either of these arrangements. Therefore it does not include these payments, which we would expect to be significant, when it determines the total amounts paid under the AHSC and northern specialist arrangements. Without this information, the Ministry does not know the total amounts paid to physicians under these arrangements. In addition, because a considerable proportion of the payments under the AHSC contracts goes to the governing group for distribution to the physicians, instead of directly to individual physicians, the Ministry does not know the total amount of compensation received by each physician participating in an AHSC and therefore the reasonableness of the amounts cannot be periodically assessed.

The Ministry acknowledged that this information would be useful and advised us that the Institute for Clinical Evaluative Sciences (ICES) is currently performing a review of physician compensation by specialty and it expects to receive a copy of the report from ICES by spring 2012. The Ministry also indicated that it commenced a review of AHSC funding, including physician-level fund-

ing information, which it expects to complete in December 2011.

Because patient volume and acuity form the basis of funding for emergency department physicians, the Ministry obtains information about both from emergency departments funded through alternate funding arrangements. We found that the Ministry made use of this information to identify over- and underpayments to emergency departments. As well, the Ministry had a process for preventing excess fee-for-service billings in certain circumstances, and received information on projected staffing shortages in emergency departments.

However, the Ministry's monitoring of the academic contracts was not effective. The contracts for academic physicians paid through alternate funding arrangements require that their governance groups submit numerous reports, such as an annual business plan, audited financial statements, a financial report, and a human resource report. Although we found that the Ministry received much of this information, it was not reviewing or analyzing it.

We concluded that the Ministry has little assurance that specialists provided the service levels outlined in their contracts. The Ministry informed us that it performs minimal direct monitoring as it expects specialists funded under academic contracts to meet their contract obligations, such as providing minimum hours of service or spending a minimum percentage of their time seeing patients. For example:

- There are three academic comprehensive arrangements in place, all of which require that the physicians in the group collectively work a minimum number of full-time hours. Two of the physician groups with these alternate funding arrangements submit reports to the Ministry that contain information that can be used to verify the total number of physician hours worked. The third hospital did not submit such information and the Ministry had not followed up to request the information.
- Under the academic comprehensive contracts, specialists are also required to provide a

minimum level of clinical patient services. For example, specialists working under one academic comprehensive contract are required to allocate 75% of their time to clinical services and the remainder to teaching, research, and administrative activities. However, at the time of our audit, the Ministry informed us that it was not obtaining information on whether the physicians were allocating 75% of their time to clinical services because this was considered a guideline, not a requirement. In another example, specialists working under another academic comprehensive agreement are required to provide a minimum of 33 hours of clinical services per week. Although the Ministry received some information annually on how physicians spent their time at work, it did not receive any information on how many hours of clinical service the physicians actually provided. The Ministry indicated that it does not set the hours of work for these physicians, and therefore it is considering the use of other service-level indicators, such as those in the AHSC contracts, in the future.

- Specialists working under AHSC contracts are required to provide a minimum level of clinical services, including seeing a minimum number of patients. The AHSC agreements state that if the physicians' services fall below an established level for each specialty, the Ministry may reduce the specialists' funding for that year. In April 2010, the Ministry reviewed information on the service levels achieved by the AHSCs for the 2007/08 and 2008/09 fiscal years and found that although over 60% of the AHSCs had met service-level requirements in all their specialty areas, the remaining 40% generally had at least one specialty area that did not meet the service-level requirements specified under the contract. No adjustment to future funding levels was made, nor was any funding recovered by the Ministry.
- The Ministry promotes self-monitoring for physicians participating in an AHSC arrange-

ment. In July 2010, the Ministry sent letters to the governance groups of the AHSC alternate funding arrangements asking them to perform a self-assessment using a checklist provided. This checklist was developed by the Ministry to help AHSCs assess whether they are meeting their obligations under their alternate funding agreements. The checklist covered areas such as governance, provision of services, and reporting requirements. The checklist asked whether processes were in place to monitor whether direct patient services and on-call services were provided. However, there was no actual requirement for the AHSCs to complete the self-assessments or to return completed self-assessments to the Ministry. The Ministry indicated that in future years it would be requesting confirmation that the AHSCs had completed the assessment. To ensure that the AHSCs take appropriate action on issues noted in the checklist, the Ministry is also considering whether or not to request the results of the assessment in the future.

We also noted that the Ministry does not periodically review whether its overall goals and objectives for specialist alternate funding arrangements—such as improving patient access; supporting the clinical training needs of medical students, physicians, and other health-care providers; and advancing innovation in medicine—are being met.

RECOMMENDATION 3

To better ensure that Ontarians have access to specialist physician care, consistent with the overall objective of alternate funding arrangements, the Ministry of Health and Long-Term Care should monitor whether specialist groups are providing patient care and other services in accordance with their contracts.

Further, to ensure that the benefits of the specialist alternate funding arrangements outweigh the costs, the Ministry should track the full costs of each alternate funding arrangement,

including total fee-for-service billings paid to physicians, either directly or indirectly, and use this information to periodically review whether its overall goals and objectives for such arrangements are being met in a cost-effective manner.

MINISTRY RESPONSE

The Ministry supports this recommendation and the inclusion of appropriate performance measures in all alternate funding arrangements. Further, the Ministry agrees that the specialist arrangements must be clear and detailed and that they must be actively monitored and reviewed in order to ensure that physician groups are providing patient care and other services in accordance with their contracts. Work

is under way to develop regular reporting of all physician payments under each agreement. An enhanced internal monitoring process has been developed and will be implemented in the near future. This will allow the Ministry to undertake regular reviews of the clinical services provided by specialists and to undertake periodic costing analyses.

The Ministry is currently evaluating specialist payments under the Academic Health Science Centre and academic comprehensive arrangements for the 2009/10 and 2010/11 fiscal years, which will also enable the Ministry to assess the reported level of clinical services and academic activities for both physician groups and individual physicians.

Chapter 3

Section 3.08

Liquor Control Board of Ontario

LCBO New Product Procurement

Background

The Liquor Control Board of Ontario (LCBO) is a Crown agency incorporated under the *Liquor Control Act* (Act) with the power to buy, import, distribute, and sell beverage alcohol products in Ontario. It reports to the Minister of Finance.

The LCBO's mission is to be a socially responsible, performance-driven, innovative, and profitable retailer. Overall, it offers consumers more than 21,000 products—approximately 3,400 items on its general list, 6,200 Vintages products, and 12,000 products available by private order. Vintages, the LCBO's fine wine and premium spirits line of business, contributes about 8% of total sales. About 10% of general-list products and about 50% of Vintages products were newly acquired for the 2009/10 fiscal year. The LCBO operates five warehouses that supply more than 600 stores across the province.

The LCBO uses three methods to select and buy new products. The principal one, for both the general list and Vintages, is to issue a call to suppliers, known as a “needs letter,” for a specific category of product. It can also purchase products on an “ad hoc” basis or, in the case of Vintages products, buy directly from suppliers.

For the 2010/11 fiscal year, the LCBO's sales and other income were approximately \$4.6 billion, and

net income was \$1.56 billion, with the LCBO remitting virtually all of that profit to the province. LCBO sales have increased by 67% compared to 10 years ago, and its net income and the dividends it pays to the province have gone up by about 80% over the same period. The breakdown of sales by product category for the 2010/11 fiscal year in dollars and by percentage of contribution to gross margin is illustrated in Figure 1.

Figure 1: Total Beverage Alcohol Sales and Contribution to Gross Margin by Category, 2010/11

Source of data: Liquor Control Board of Ontario

Product	Sales (\$ billion)	Sales (%)	Gross Margin Contribution (%)
spirits	1.84	40	47
wines	1.57	35	35
beer	0.91	20	15
other	0.22	5	3
Total	4.54	100	100

Audit Objective and Scope

The objective of our audit was to assess whether the LCBO had adequate systems, policies, and procedures in place with respect to new product purchases, and whether such purchases were acquired

and managed effectively and in compliance with applicable legislation, government directives, and LCBO procurement policies.

Before we began our audit fieldwork, we identified the audit criteria we would use to address our audit objective, then designed and conducted tests and procedures to address them. Our audit objective and criteria were reviewed and agreed to by LCBO senior management.

In conducting our audit, we reviewed relevant legislation and administrative policies and procedures, and we interviewed appropriate LCBO head-office staff and, where applicable, Ministry of Finance staff. We also reviewed and assessed pertinent summary information and statistics, as well as a sample of general-list and Vintages purchasing files. We held discussions with several key beverage alcohol stakeholder groups, including Spirits Canada, Drinks Ontario, the Wine Council of Ontario, and the Winery and Grower Alliance of Ontario. These groups represent both large and small beverage alcohol suppliers and agents. In addition, we met with a representative from the Canadian Association of Liquor Jurisdictions, whose members include the liquor jurisdictions of the 13 provinces and territories in Canada. We also contacted the liquor organizations in British Columbia, Alberta, and Quebec to get an understanding of their operations for comparison purposes, and the National Alcohol Beverage Control Association in the United States, which represents 18 states that directly control the distribution and sale of certain types of beverage alcohol in their jurisdictions.

Our audit included a review of related activities of the LCBO's Internal Audit Services. We reviewed its recent reports and considered its audit work and any relevant issues it had identified when planning our work.

Summary

Under Ontario's *Liquor Control Act* (Act), the Liquor Control Board of Ontario (LCBO) has the power to set the retail prices for the beverage alcohol products it sells. The mandate it follows in doing so is to promote social responsibility in the sale and consumption of alcohol while generating revenue for the province. In this regard, the Act sets out minimum retail prices for alcohol—certain other jurisdictions, such as Quebec and New York State, have no such minimums. This means that the LCBO does not sell its products at the lowest prices possible but rather at levels aimed at encouraging responsible consumption and generating profit for the government.

Most Canadian jurisdictions operate in a similar context. Canadian beverage alcohol products generally have higher markups and taxes as compared to alcohol sold in the United States, which means that many products are sold at lower prices in the U.S. Although some of the products that the LCBO sells are offered at lower prices in other Canadian jurisdictions, an April 2011 survey found that the LCBO had the lowest overall beverage alcohol retail prices of all Canadian liquor jurisdictions, with the third-lowest prices for spirits and beer, and the lowest wine prices. In a 2010 LCBO customer survey, about two-thirds of the respondents agreed that the LCBO's prices represented good value.

The LCBO's purchasing process differs from those used by private-sector retailers. In the private sector, retailers attempt to buy their products at the lowest possible cost. Although one might expect the LCBO—one of the largest purchasers of alcohol in the world—to follow a similar approach, the LCBO's purchasing process does not focus on cost. Instead, it focuses on the retail price it wants to charge for a product. Suppliers submit a retail price within an established retail price range set out in the LCBO's call for products and then work backwards, applying the LCBO's fixed-pricing structure to determine

the wholesale cost they will charge the LCBO. If a supplier's cost quote results in an amount that does not match the agreed-upon retail price, the LCBO will ask it to raise or lower the wholesale cost of the product. We found examples both where the supplier's initial cost quote had been raised and where it had been lowered, usually by fairly small amounts. But we also found examples where suppliers submitted wholesale quotes that were significantly lower or higher than what the LCBO expected, so the LCBO requested that the supplier revise the quote, which effectively either raised or lowered the price it paid the supplier for the product. The LCBO informed us that such discrepancies between the submitted quote and the expected amount may have been due to changes in transportation costs, currency exchange rates, or a supplier's error in calculating its quote.

Most large retailers use their buying power to negotiate with suppliers to drive down costs. We found that the LCBO does not negotiate discounts for high-volume purchases to reduce its costs. This is also true of the other Canadian jurisdictions we looked at. The LCBO's fixed-pricing structure gives it no incentive to negotiate lower wholesale costs—doing so would result in lower retail prices and, in turn, lower profits, which the LCBO indicated would be contrary to its mandate of generating profits for the province and encouraging responsible consumption. The LCBO has been successful in consistently generating increased profits for the province year after year.

The LCBO has many well-established purchasing practices that are consistent with those in other Canadian jurisdictions and in other government monopolies, such as in Sweden and Norway. However, the LCBO could improve some of its processes relating to purchasing and subsequent monitoring of product performance to better demonstrate that these are carried out in a fair and transparent manner. For example:

- In a sample that we examined, the LCBO rejected more than 80% of shortlisted products under the needs-letter process but

documented the reasons for very few of its decisions.

- The LCBO did not have written policies and procedures to help its staff determine under what circumstances it is appropriate to purchase products on an ad hoc or direct basis, and what evaluation criteria should be used, although 60% of all new products in the 2010/11 fiscal year were purchased using these two procurement methods.
- There was no documented rationale for the 60% of the products in our sample purchased using the ad hoc process. However, LCBO staff generally were able to recall the rationales behind their purchasing decisions when we discussed these with them.
- With respect to direct purchases of Vintages products, more than 45% of the direct purchases in our sample had not been previously purchased by the LCBO, and therefore never underwent the required taste, sight, and smell assessment. In addition, there was no documentation of the reasons for purchasing them. For those that were purchased directly because the LCBO had purchased them in the past, our review of historical sales noted that the amount of sales for most was less than the required sales threshold, and that many of these same products continued to sell poorly.
- The LCBO has a well-defined category management process and sets sales targets by product category to assess product performance and deal with products that are performing badly. It can delist products that fail to meet sales goals and request rebates. However, we found that some products that failed to meet sales goals for four or five years had not been delisted, and we also noted that the LCBO requested and received rebates for only 35% of delisted products.

OVERALL LCBO RESPONSE

The LCBO appreciates the Auditor General's observations that the LCBO's purchasing practices are well established and similar to the practices of other liquor boards in Canada and abroad. The Auditor General's recommendations for enhancing these practices will help the LCBO further improve current practices; many of the recommendations are already being implemented.

LCBO buyers make every effort to get the best products in every price band, whether for wines under \$8 or those greater than \$100. They review more than 50,000 submissions annually and work with suppliers to make the best of these available at good prices. The LCBO is an attractive customer for manufacturers, and there is fierce competition for listings. As a result, suppliers frequently submit products to the LCBO at prices lower than those at which they sell for in other Canadian jurisdictions. It is a mandatory condition of sales to the LCBO that suppliers do not sell the same product at a lower price to other Canadian liquor retailers. Regular price surveys show that the LCBO has the lowest overall alcohol prices in Canada.

The audit examined new product procurement, but suppliers of products already listed can unilaterally lower their retail price by selling to the LCBO at a reduced cost. Again, strong competition between listed products causes this to happen.

The LCBO must achieve a balance among the elements of its mandate: generating revenue, promoting social responsibility, and providing customers with selection and value at all price points. Although the audit report states that "the LCBO does not sell its products at the lowest prices possible," in fact many products in the LCBO do sell for the lowest price legally allowable. Under its mandate and the fixed-markup structure, the LCBO cannot currently negotiate for volume discounts. The National Alcohol

Beverage Control Association confirms that although there is variation at the state level, wholesale discounts are not permitted in most U.S. states. Similarly, as the audit report notes, other Canadian liquor boards also do not negotiate volume discounts. In light of this, and in addition to obtaining the best products at very competitive prices, the LCBO also obtains more than \$100 million annually from suppliers to support promotions and in-store merchandising.

Detailed Audit Observations

RETAIL PRICES OF BEVERAGE ALCOHOL PRODUCTS

Under the *Liquor Control Act* (Act), the LCBO has the power to set the retail prices for beverage alcohol in Ontario. It sets the prices for spirits, imported wines, and most Ontario wines, as well as for the beers that it sells exclusively. Beer manufacturers set the retail prices for other beers, in accordance with the Act.

In setting retail prices, the LCBO considers key aspects of its overall mandate and objectives to generate sufficient profits for the provincial government, promote social responsibility in the sale and consumption of beverage alcohol, support the province's wine industry, and offer customers good product selection and value at all price points.

A number of federal and provincial taxes, fees, and levies must be incorporated into LCBO prices, as illustrated in Figure 2. However, the two components that account for most of the retail price of alcohol are the wholesale price (described more fully in the later section titled "The Cost of Beverage Alcohol Products") and the LCBO's markup.

The markup structure was established by the LCBO and approved by its Board of Directors in consultation with the Ministry of Finance (Ministry). The LCBO advised us that successive governments

Figure 2: Components of Retail Prices for Alcohol Products

Source of data: Liquor Control Board of Ontario

Component	Explanation
supplier quote	price at which the supplier sells its product to the LCBO
+ federal excise tax	a variable tax based on volume and alcohol content
+ federal import duty	applied only to imported goods; similar in structure to excise tax
+ freight	rate based on existing LCBO freight contracts
= landed cost	
+ cost of service charge	applied to beer* products at a fixed rate per litre
+ LCBO markup	variable rate applied according to the type of product (see Figure 3)
+ wine levy	applied to most wine products at a fixed rate per litre
+ bottle levy	applied to all products at a fixed rate per litre
+ environmental charge	applied to all non-refillable products at a fixed rate per container
= base price	
+ harmonized sales tax (HST)	fixed rate of 13% applied to the basic price
+ container deposit	amount varies depending on volume of container (up to \$0.20)
= final retail price	prices are rounded up to the next \$0.05

* The LCBO sets the price of beer products that are exclusively sold by it. In accordance with the *Liquor Control Act*, retail prices for beer products that are also sold by The Beer Store are set by the manufacturer.

have endorsed the fixed-markup structure, and thus a fixed-pricing structure, as an appropriate means for a government agency such as the LCBO to show transparency in its purchasing and pricing practices. Markup rates vary by product category. However, within each category, the markup is the same for all products (examples are shown in Figure 3). Although the markup applies to all products, the LCBO can, at its discretion and with Board approval, change the markup on Vintages products. In addition, international trade agreements require government agencies such as the LCBO to treat domestic and imported products in the same way by applying the same markups to similar domestic and imported products. However, the LCBO can apply additional charges on imported products to cover any extra costs associated with such purchases.

The pricing structure and the related impact of LCBO's mandate and its objectives are well understood by suppliers and agents. Although some of this information is disclosed on the LCBO website under the "Contact Us" section, it would not be easy for

the public to find this information or use it to fully understand how beverage alcohol prices are set.

Retail Price Comparisons

The LCBO conducts retail price comparisons across Canada on a quarterly basis on behalf of the Canadian Association of Liquor Jurisdictions (Association), whose members include all 13 liquor jurisdictions in Canada. Prices are compared for some 50 products from different categories (except Vintages) that generate high sales revenue across Canada and that are sold in all 13 jurisdictions. The most recent survey results at the time of our audit showed that the LCBO had the third-lowest retail prices for spirits and beer, and the lowest for wine. The LCBO also had the lowest overall beverage alcohol retail prices.

We selected a sample of popular LCBO products to compare their retail prices to those in British Columbia, Alberta, and Quebec, as well as New York, Michigan, and Pennsylvania. Prices varied across, and sometimes within, these jurisdictions, but we noted that:

Figure 3: Examples of Markup Rates for Spirits, Wines, and Beer

Source of data: Liquor Control Board of Ontario

Class of Products	Product Origin	Markup Applied	
		%	(\$/litre)
vodka, whisky, rum	domestic	141.0	—
	imported (U.S.)	148.1	—
	imported (other)	148.0	—
table wine	Ontario	65.5	—
	other domestic and imported	71.5	—
beer	domestic and imported	—	.7094
	microbrewers	—	.2095

- Two other Canadian provinces sold almost all of the products at higher prices. The third province sold many of its products at prices lower than the LCBO, but all of its prices were within 7% of the LCBO's prices. This result was generally consistent with the Association's survey findings discussed at the beginning of this section.
- The three states sold most of the products at prices 3% to 55% lower than the LCBO.

The LCBO does not sell products at the lowest price possible because doing so would be contrary to its social responsibility mandate and would reduce its profits. For example, Ontario has minimum retail prices set out by the Act, while Quebec, Alberta, New York, and Pennsylvania have no such minimum prices. According to the LCBO, Canadian jurisdictions have consistently higher markups and taxes than those in the U.S. to encourage socially responsible consumption while generating revenue for government. The LCBO also pointed out that its 2010 customer survey found that about two-thirds of respondents agreed that it charged prices that represented good value.

Legislated Minimum Retail Prices

The government has established minimum retail prices for alcohol products to moderate consump-

tion. Public health research shows that higher alcohol prices lead to a reduction in drinking and the consequences of alcohol use and abuse. Ontario is one of six Canadian jurisdictions that have minimum retail prices.

With senior management approval, retail prices for discontinued products and products that will soon become unsellable because of age are allowed to fall below these minimum thresholds. However, such exceptions are not allowed for beer.

Minimum pricing applies to products sold in all Ontario stores, including LCBO retail stores and non-LCBO stores (such as agency stores in communities with populations too small to support a regular LCBO store, The Beer Store, and manufacturers' stores such as winery and distillery retailers). Minimum retail prices for beer and spirits are established by legislation. For wine, the legislation establishes minimum prices that the LCBO must pay its suppliers. According to the LCBO, the decision to set a minimum cost for wines was made in the 1980s to prevent the dumping of foreign wines into Ontario at subsidized prices. For the purpose of this report, we have converted the minimum acquisition cost for wine into a minimum retail price by applying the LCBO's fixed-pricing structure, as illustrated in Figure 4. Both the minimum retail price and the minimum acquisition cost are adjusted for inflation on March 1 of each year in accordance with the Act.

We were informed by staff at the Ministry that the LCBO is responsible for ensuring that all stores

Figure 4: Examples of Minimum Retail Prices as of March 1, 2011 (\$)

Source of data: *Liquor Control Act*, Liquor Control Board of Ontario

Product Type	Minimum Retail Price (excluding bottle deposit)
spirits – 750 mL	23.20
table wine, Ontario – 750 mL	5.65
table wine, imported – 750 mL	5.80
beer*	26.40

* case of 24 341-mL bottles with alcohol content equal to or greater than 4.9% and less than 5.6%

selling alcohol in Ontario, including non-LCBO stores, comply with the minimum pricing requirements. However, LCBO staff said they were unclear about their role in enforcing minimum prices, especially considering that some non-LCBO stores could be viewed as competition. The LCBO also noted that the Act does not specify the mechanisms by which these requirements are to be enforced. This increases the potential for products to be sold below their minimum retail price in contravention of the LCBO's social responsibility mandate.

RECOMMENDATION 1

To better inform Ontarians about how beverage alcohol prices are set, the LCBO should provide more information to the public on its pricing policy, including how its mandate and provincial policy objectives affect pricing, and details about its pricing structure. As well, the LCBO, in conjunction with the Ministry of Finance, should establish a process for ensuring that all stores are complying with the *Liquor Control Act's* minimum retail price requirements and consider whether the LCBO is the most appropriate organization to monitor this compliance.

LCBO RESPONSE

The LCBO agrees that Ontarians should have easy access to information about its mandate and operations, including pricing policy. That is why this information is currently available on the agency's website (www.lcbo.com). It is also routinely shared with the beverage alcohol trade and the media. The LCBO will examine ways to make it easier to locate this information and present it in the clearest way possible.

The LCBO will work with the Ministry of Finance to review how compliance with minimum prices is assured in all beverage alcohol retail locations across the province and which agency or part of government should fulfill this regulatory function.

The Cost of Beverage Alcohol Products

In the private sector, retailers attempt to buy their products at the lowest possible cost. One might also expect the LCBO, as one of the world's largest purchasers of beverage alcohol, to use its buying power to negotiate the lowest possible costs from its suppliers, but the LCBO's purchasing process does not focus on cost. Instead, the LCBO focuses on setting a specific retail price range, and suppliers must offer their products to the LCBO within this range. The wholesale price, or cost of the product to the LCBO, is determined by applying the LCBO's fixed-pricing structure and working backwards from the supplier's retail price to arrive at the cost the supplier will be paid for its product.

The LCBO's purchasing process is consistent with those in other Canadian jurisdictions we contacted and also resembles the ones used by other government monopolies, such as Sweden and Norway. The LCBO also informed us that, in keeping with its mandate to encourage responsible drinking, its retail pricing is geared toward "premiumization." This strategy aims to generate more revenue without increasing the amount of alcohol that is consumed by encouraging consumers to buy more premium-priced products and by increasing the number and variety of products offered at higher prices.

Once the LCBO determines the category of products it wishes to purchase, it issues a "needs letter," which is posted on its website and sent to various trade organizations. A needs letter outlines the required product category, the product specifications, and, in almost all cases, the retail price ranges. The retail price ranges that the LCBO asks for vary depending on the type of product requested and are based on what the LCBO establishes as prices that the market will bear. Most needs letters establish a price range, but some establish a firm price that suppliers must meet or exceed. For instance, the annual needs letter for general-list wines issued for the 2010/11 fiscal year requested 48 product categories. Of these, 41 required the retail price to exceed

\$9.95, while another six had to exceed \$8.95 (one did not stipulate a price range). The LCBO advised us that most of the requested wines were required to retail for more than \$9.95 because it already had an adequate selection of wines under \$10.

The retail price at which a supplier wants its product to sell in Ontario must be within the price range established in the LCBO's needs letter. As noted earlier, the wholesale cost to the LCBO is determined by applying the fixed-pricing structure and working backwards from the agreed-upon retail price. In essence, the LCBO sets the cost it will pay for a product by first establishing its retail price. We also found that the LCBO does not negotiate discounts for high-volume purchases to reduce its costs, but neither do the other Canadian jurisdictions we looked at. With its fixed-pricing structure, the LCBO has no incentive to reduce the supplier's wholesale cost, because doing so would result in lower retail prices and, in turn, lower profits—which would be contrary to the LCBO's mandate.

After the LCBO has selected a product it wants to purchase, the supplier sends a written confirmation or quote for the product. The LCBO inputs the supplier's quote into its system and applies the fixed-pricing formula. The result should equal the retail price in the supplier's submission. If the calculation results in an amount greater than the agreed-upon retail price, the LCBO will request that the supplier lower its wholesale quote to ensure that the LCBO is not overcharged. However, if the wholesale quote results in a lower retail price than what has been agreed to, the LCBO does not accept the quote, because the application of its fixed-pricing structure would result in a retail price that is too low. In such cases the LCBO asks the supplier to increase the quote, effectively raising the price it will pay for the product.

Although we found in a sample of products that some supplier quotes had been raised while others had been lowered, for the most part by minor amounts, we did note that while some suppliers submitted higher wholesale quotes, others submitted quotes that were significantly lower than what

had been expected for some of the products in our sample. As a result, these suppliers were requested to revise their wholesale price. The LCBO informed us that differences in quotes may have been due to changes in transportation costs, currency exchange rates, or a supplier's error in calculating its quote in order to match the required retail price. However, the reasons for adjusting the quotes were not documented.

The process just described did not always apply to products acquired for Vintages. We found that suppliers of these products were generally not asked to adjust their quotes. Instead, the LCBO adjusted its markup to arrive at the agreed-upon retail price.

We also noted that, as a condition to its purchase agreement, the LCBO requires suppliers to agree that they will not sell their product to the LCBO at a higher wholesale price than the price at which it is sold to any other government liquor purchaser in Canada, in the same quantities. If this happens, the LCBO is entitled to a rebate for the difference. We found that, for general-list products, the LCBO did not regularly monitor and compare its supplier costs to those paid by other jurisdictions for the same products. LCBO management indicated that it was difficult to obtain supplier cost information from other jurisdictions. Reasons for this included concerns that other jurisdictions considered the terms of payment to their suppliers confidential information. The LCBO also noted that other Canadian jurisdictions may purchase products at a lower cost than the LCBO, but that it would be unable to purchase them at this wholesale price if the application of its fixed-pricing structure resulted in a retail price lower than that allowed by the Act.

For Vintages products, the LCBO informed us it occasionally scans the Internet and reviews trade papers to identify retail price differences. In one case, it identified a supplier that charged the LCBO more than another Canadian jurisdiction for three Vintages products from 2006 to 2009. The LCBO requested and received rebates from this supplier totalling approximately \$600,000.

RECOMMENDATION 2

In keeping with its mandate to generate sufficient profits and adhere to the government's policy direction of maintaining a retail pricing mechanism that encourages responsible consumption, the LCBO should consider, in consultation with the Ministry of Finance, the following strategy on a trial or pilot basis to take advantage of its being one of the largest purchasers of beverage alcohol products in the world:

- once product categories and their related retail price ranges have been determined, allow suppliers to offer a product at whatever cost they are willing to accept to have it sold at the LCBO, and then use a variable markup to arrive at the desired fixed retail price; and
- calculate the gross profit margin for a particular product based on the supplier's cost quote, and take this into consideration in making decisions on which new products to purchase along with the other evaluation criteria currently used, such as the quality of the product.

LCBO RESPONSE

Previous independent reviews of the LCBO, commissioned by the province, have examined variable or flexible markups. The current fixed-markup structure, and the LCBO's use and management of it, has been endorsed by successive governments as appropriate for a government agency such as the LCBO. The current structure provides certainty and transparency for suppliers and more easily ensures that foreign products are treated as trade agreements require.

The LCBO looks forward to discussing the recommendation of a pilot of variable markups with the Ministry of Finance and will support the government's policy analysis of this proposed change.

As the Auditor General noted, the LCBO's fixed-markup structure results in product needs letters identifying retail price ranges for new products rather than a supplier quote or the payment the LCBO makes for the product to the supplier. LCBO buyers and suppliers or their agents focus on retail price, and once the price has been established, the supplier quote follows from the mechanical application of the fixed-pricing structure.

The LCBO is a single buyer for a major market. As a result, suppliers are keen to have their products listed for sale in LCBO stores. Competition for listings is fierce, and suppliers and their agents strive to submit the best products they have in response to LCBO product calls. By leveraging its size and buying power, the LCBO is able to obtain the best products the world has to offer at prices lower than those in comparable jurisdictions. When a product call asks for wines between \$13 and \$15, for example, suppliers often choose to offer wines that they would prefer to retail for \$16 to \$18 because of the attractiveness of large-volume orders from the LCBO. This is a central way that the LCBO meets one of the key objectives of its mandate: offering its customers good product selection and value at all price points.

IDENTIFYING PRODUCT NEEDS

The LCBO conducts a planning process to identify the types of products it will buy for the forthcoming year. The process includes establishing a budget that encompasses sales targets and the targeted amount of the dividend it will pay to the province. The LCBO provides this information to the Ministry and incorporates the Ministry's feedback before finalizing its targets.

An overall business plan sets out the LCBO's financial goals, such as total sales, litres to be sold, and average gross margin, and its non-financial

objectives, such as development of a varied product assortment to meet customer needs. These are further divided into high-level business plans for Vintages, beer and spirits, and wines. These include sales and gross-margin targets for each category as well as some detail on where to focus the forthcoming year's purchases. The LCBO uses a well-defined category management system for product purchasing. Annual category reviews identify growing or declining categories and gaps in the product selection where there may not be products available at certain retail price ranges, and this information is included in detailed category plans. These plans are also based on research to identify key trends and customer preferences. Prior sales histories also help staff to determine which products to purchase. Most respondents to the LCBO's 2010 customer survey said it offered a wide product selection, and more than half said there were often new products available to purchase.

Once these business plans are developed, the LCBO posts the needs letters described in the previous section on its website and distributes them to various trade associations. Needs letters are generally issued once during the fiscal year for each general-list product category, and three to four times a year for Vintages products. Needs letters include a number of requests for purchases. For example, the 2011 general-list needs letters included requests for purchases of 68 different types of products.

We selected a sample of the LCBO's needs letters to determine whether the products requested were consistent with those identified in the applicable fiscal year's detailed business plans. We found that purchases of spirits and beer in the 2009/10 fiscal year and Vintages purchases for both 2009/10 and 2010/11 were consistent with the business plans for those years. However, we noted that no detailed category plans had been created for the entire general-list category in 2010/11 or for the wine category in 2009/10. High-level business plans had been developed in 2011 and draft versions were available for 2010, but these provided staff with only limited direction. The LCBO informed us that

detailed plans had not been created for these years because of staff turnover and restructuring. According to the LCBO, an evaluation was conducted using information such as the historical sales performance of each product, trend analysis, price-band analysis, and an assessment of the inventory levels and overall performance of the portfolio. However, this evaluation was not documented and, as a result, it was not apparent what direction was provided to staff to guide their purchasing and whether the purchases they made were consistent with the direction they received.

RECOMMENDATION 3

To help ensure that purchases reflect corporate sales objectives and meet customer demand, the LCBO should develop detailed annual category plans for the major beverage alcohol categories.

LCBO RESPONSE

The two LCBO business units and Vintages produce business plans every fiscal year. These business plans provide the context to produce detailed category management plans. The LCBO will ensure that these plans are produced for the major categories every year.

METHODS OF PURCHASING NEW BEVERAGE ALCOHOL PRODUCTS

The Management Board of Cabinet's Procurement Directive (Directive) establishes comprehensive policies for the procurement of all goods by ministries and government agencies. Although the procurement of alcohol products is subjective in nature, the principles in the Directive are still fundamental to procurement across the public sector. These principles include open access for qualified vendors; conducting the procurement process in a fair and transparent manner; procuring goods only after considering the business requirements; and the effective management of procurement through

the appropriate policies and procedures. The Directive also sets out guiding principles that must be followed in the evaluation process. These include the evaluation of bid responses in a consistent manner and in accordance with the evaluation criteria, rating, and methodology set out in the procurement document. They also require the evaluation process to be fully disclosed, including a clear statement of all mandatory requirements, all weightings for rated requirements, and a description of any short-listing process. Following the evaluation process, only the highest-ranked submissions that have met all mandatory requirements may be selected.

According to its memorandum of understanding with the Ministry, the LCBO must comply with the Directive. It may develop and use its own internal policies so long as these policies incorporate the principles set out in the Directive. Because the procurement of alcohol is a specialized area, the LCBO chose to develop its own policy. We found that its policy for general-list products, with the exception of a description of the prequalification or shortlisting process, was based on the principles established in the Directive. However, at the time of our audit the LCBO had no documented policies related to Vintages' purchasing, although Vintages was in the process of creating such documentation.

The LCBO purchases new products throughout the year using three different methods: requests for purchase through the needs-letter process, purchases on an ad hoc basis, or purchases direct from suppliers. The number and percentage of purchases by each purchasing method for the 2010/11 fiscal year are shown in Figure 5.

Purchases by Needs Letters

As noted previously, needs letters setting out details including the countries, regions, varieties, and retail price ranges of products that the LCBO wants to purchase are posted on the LCBO's website and sent to various trade organizations. As shown in Figure 5, most general-list purchases are made via needs letters. Suppliers send their product submissions electronically, including such information as supplier name, product name, product price, a one-page marketing plan, relevant product attributes, third-party accolades, and photos of the product and packaging.

Because supplier responses to needs letters can number in the hundreds or even thousands, the LCBO shortlists a more manageable number of qualified responses before proceeding to the next stage. For general-list products, the use of a prequalification or shortlist stage started in the summer of 2010; Vintages had already been using a prequalification stage for a number of years. The LCBO informed us that, because it does not have a specific policy for the prequalification stage, a number of informal factors are considered when assessing submissions, including whether the product received a high score from a third-party reviewer, the types of awards it has won, whether it is a high-demand product with limited availability, and the product's image and packaging.

We reviewed a sample of needs letters issued in the 2009/10 and 2010/11 fiscal years for both general-list and Vintages products. We noted that more than 80% of the submissions in our sample

Figure 5: Types of Purchases by Purchasing Method, 2010/11

Source of data: Liquor Control Board of Ontario

Category	Needs-letter Purchases		Direct Purchases		Ad Hoc Purchases		Total #
	#	%	#	%	#	%	
Vintages	1,450	32	2,659	59	422	9	4,531
spirits and ready-to-drink	319	85	–	–	58	15	377
wines	280	72	–	–	110	28	390
beer	217	72	–	–	83	28	300
Total	2,266	40	2,659	48	673	12	5,598

were declined during this prequalification stage, but there was documentation to support the decision to decline for only a few of them. There was documentation to support the decision to shortlist the product for only a few of the remaining 20% of accepted submissions.

We also noted that approximately 10% of the accepted submissions that were shortlisted for a more detailed assessment did not fall within the retail price range established in the LCBO's needs letter. For instance, one Vintages needs letter specified a range of \$14 to \$50, yet one of the accepted submissions had a retail price of \$64. One needs letter for general-list wines requested a price range of \$11.95 to \$16.95, and five of the accepted submissions quoted a price of \$9.95. The rationale for accepting these products was not documented.

We were informed that submissions outside of the needs specified are generally rejected, but exceptions may be made at the discretion of the LCBO if the product is deemed to be outstanding and to meet the LCBO's financial and product-variety objectives.

According to the LCBO, management oversees the product selection process. However, we did not note any documented approval for these shortlisted products, including those products selected even though they did not meet all the requirements set out in the needs letter. The LCBO's Internal Audit Services also noted in its July 2010 review of the selection process for new products that the LCBO should document its basis for selecting products that were not within the established needs-letter criteria.

The next stage in the assessment includes an organoleptic (taste, sight, and smell) evaluation, and a label and container assessment. Suppliers send a sample of the product for organoleptic assessment by a panel of LCBO employees, including those who work in the category's purchasing unit and specially trained store employees. For some Vintages products, an employee who holds a Master of Wines designation is also included in the panel. A chemical analysis is also performed on the product, generally in the LCBO's own laboratory, to ensure that it is safe to drink and contains its stated contents.

For general-list products, suppliers must submit a detailed plan, which includes information such as sales from previous purchases by the LCBO, sales generated in other provinces, and marketing information. Suppliers of general-list products are informed that their submissions will be evaluated on a scale of 100 points, assigned as follows: sales information (10); marketing information (45); organoleptic assessment (20); and sample package appeal (25). The cost of the product is not a factor in the selection process because the needs letter has already specified what the retail price (and hence what the cost to LCBO) will be. Suppliers of Vintages products are not required to submit a detailed plan; rather, we were informed that the tasting evaluation was the key determinant. Other factors taken into consideration include third-party reviews, price/quality ratio, and availability of inventory. The entire process, from the issuing of the needs letter to the selection of the product, takes approximately three and a half months.

We reviewed a sample of general-list and Vintages product submissions and noted considerable variations in the level of documentation to support the decisions made. For example:

- In some cases there was no documented rationale for a purchase, while in others the reasons for accepting or declining the product were clear.
- In many cases, the submission was not scored, and there was no evidence that the marketing and sales information was evaluated, even though these components accounted for 55% of the overall assessment. However, each panel member's organoleptic assessments and packaging and price/quality ratio assessments were documented for all general-list products. LCBO management indicated that the scoring structure was outdated and did not reflect the differing priorities of each product category, but there was no evidence that another scoring system had been formally established and used to assess these submissions.

- Although organoleptic evaluation is the key criterion for Vintages products, the LCBO was unable to locate the organoleptic scores for 143 of the Vintages products in our sample, although it ended up purchasing 60 of these. The organoleptic scores for the rest of the items in our Vintages sample were documented for each panel member. We were informed that other factors, such as third-party reviews or historical sales, are taken into consideration during the purchasing process, but that these factors are not formally scored.

Overall, because the LCBO does not rank or summarize its assessment for each product submission, it was not evident why certain products were selected for purchase. We also noted that when submissions were declined, the supplier was sent an email notifying it that “other products submitted performed better against selection criteria.” We were informed that suppliers may contact the LCBO to obtain more detailed information on why their product was declined. However, given the lack of documentation, it would be difficult in our view for LCBO staff to subsequently provide suppliers with more specific details.

In its July 2010 report, the LCBO’s Internal Audit Services noted similar concerns and recommended that staff be given guidelines to help support their decisions for purchasing new products. Such guidelines would include the establishment of product selection criteria and an evaluation that would be subject to annual management review and approval.

Ad Hoc Purchases

When warranted, the LCBO can purchase products on an ad hoc basis, outside of the needs-letter process. The situations in which this may be necessary include shifts in consumer purchasing behaviour for products not currently available at the LCBO, needs-letter calls that were not timely enough to address a shift in consumer purchasing behaviour, or the identification of new or innovative products with favourable accolades. Ad hoc purchases may

be initiated by LCBO staff, or suppliers may inform the LCBO about a specific product they feel the LCBO might want to purchase. We were informed that very few products are purchased directly from supplier-initiated offers.

A product must be approved by LCBO management for ad hoc purchase before it is accepted, and then it is subject to taste-testing and the rest of the regular procurement process. In the 2010/11 fiscal year, 15% of spirits and 28% of both wine and beer purchases were made on an ad hoc basis, as shown in Figure 5.

At the time of our audit, the LCBO did not have written policies and procedures to guide its ad hoc purchasing process. Staff told us that they applied informal criteria, such as whether a product met a current gap in the product category, or the innovativeness of a product. We were informed that all decisions to accept an ad hoc submission were reviewed with management prior to finalizing the decision, but this review was not documented in most instances. The LCBO’s Internal Audit Services also noted a need for formalized ad hoc purchasing policies in its July 2010 review.

We reviewed a sample of general-list and Vintages ad hoc purchases and noted that for 60% of the products purchased there was no documentation explaining why the product had been purchased on this basis. However, when we asked about certain products, LCBO staff were generally able to provide a verbal rationale to support these purchase decisions.

Direct Vintages Purchases

Direct purchases are made either during the prequalification stage of the needs-letter purchasing process or from products submitted directly by the supplier with prior LCBO permission. Only Vintages products can be procured by direct purchase and, as noted in Figure 5, about 60% of all Vintages products purchased in the 2010/2011 fiscal year were acquired in this way. Products that the LCBO decides to purchase directly do not require organoleptic evaluation.

At the time of our audit, the LCBO did not have written policies and procedures in place to guide the direct purchasing process. Therefore, no formalized evaluation criteria existed to assess product submissions and there was no guidance on the level and type of documentation required and the type of management approval needed to support purchasing decisions. The LCBO informed us that the main considerations in the selection of products for direct purchase included high historical sales of previously purchased products, defined as sales of more than 75% of product inventory within 12 weeks; a compelling case showing that the product is in high demand in other markets and therefore likely will sell well in Ontario; or high third-party accolades. The LCBO also noted that it selects products for direct purchase when its capacity to perform additional organoleptic assessments is limited.

We reviewed a sample of supplier submissions in response to the LCBO's needs letters from the 2009/10 and 2010/11 fiscal years and found that there was often no documentation showing the rationale for making a direct purchase from them. Specifically:

- More than 45% of the direct purchases in our sample were for products that had not been previously purchased by the LCBO and therefore had never had an organoleptic assessment. No reasons for these direct purchases were documented.
- The remaining products selected for direct purchase had been bought in the past by the LCBO. About half of these purchases had no documentation of the buyer's review of the related historical sales of the product or other support for purchasing them. For those that did have documentation of the prior sales history, we found that more than 50% of these products had sales of less than the required 75% of product inventory within a 12-week period, yet were still selected for direct purchase. For instance, one product had previous sales of only 4%, and another just 37%. According to the LCBO, the previously

purchased products may have been from a different vintage, and therefore were not exactly the same. Another possible explanation is that some new circumstance may have arisen to make the product more attractive than its past sales might suggest, such as a new review or a price change. However, we found no documentation showing the reasons these products were selected.

- To determine how well the products selected for direct purchase were selling, we reviewed sales data for those products that had performed poorly in the past and compared it to subsequent sales data. More than half of those products that had performed poorly in the past continued to perform poorly.

Although the LCBO has no formal policy requiring management approval of significant direct purchases, we were informed that such purchases may be presented to the category manager for validation or verbal approval. However, for the direct purchases in our sample, there was no documentation of management having approved the products selected.

RECOMMENDATION 4

To ensure that it can demonstrate to suppliers and other stakeholders that purchases are acquired through an open, fair, and transparent process, the LCBO should:

- develop written policies and procedures for each procurement method, including the evaluation criteria and process to be used in assessing submissions at the various stages of the procurement process;
- disclose its evaluation criteria to suppliers, including a clear articulation of all mandatory requirements, an indication of the relative weighting for rated requirements where applicable, and a description of the shortlisting process; and
- ensure that reasons for selection and required management approvals are appropriately documented.

LCBO RESPONSE

The LCBO is in the process of updating its Product Management Policies and Procedures manual, which will include a description of the shortlisting process. The LCBO was in the process of documenting its Vintages policies during the audit and provided them to the Auditor General when the audit fieldwork was completed. The LCBO will continue to disclose its purchasing policies and procedures, and any changes or updates to them, to the beverage alcohol trade on its Trade Resources website at www.lcbotrade.com.

The LCBO agrees that the reasons for product acceptance and required management approvals should be documented. The LCBO will continue to record new product acceptance decisions in the New Item Submission System and has implemented a new process for documenting the rationale for these decisions from the submission stage onward, including management approvals. The LCBO has added further oversight to the shortlisting of product applications at the pre-submission stage, where the product manager reviews all applications with the category manager, whose documented approval is now required.

The LCBO has concerns regarding the idea of documenting the reasons for selection or elimination of products at the pre-submission stage. Currently, the LCBO receives more than 50,000 submissions annually and anticipates that this number will continue to grow. Documenting the reasons why products are accepted or declined at this stage would entail either limiting the number of submissions the LCBO would accept or hiring additional staff. Neither would result in a better product assortment.

Product submissions are assessed against general evaluation criteria, combined with the experience and judgment of the LCBO's buyers. This is a common retail-sector practice and one that the LCBO believes is appropriate for its pur-

chases. LCBO product purchase risk is further mitigated by the use of sales targets or sales performance terms to ensure that the products perform well in the market. This allows the LCBO to responsibly discontinue any underperforming products and to continue to create opportunities for new products.

ONGOING MONITORING OF PRODUCT PERFORMANCE

Monitoring the sales performance of products is done to help identify, in a timely manner, products that are not selling well and that should be replaced with better-performing ones.

The LCBO sets various sales targets by product category and adjusts them annually. Sales targets for wines, spirits, and Vintages core products (called Essentials) are based on the sales in dollars achieved in the previous year, while beer targets are based on the number of litres sold in the previous year. Targets are set to retain 90% to 95% of the products.

The LCBO informed us that the targets did not consider factors such as limited store distribution of products and niche products, although, according to LCBO staff, these factors were considered in their reviews of product performance. LCBO management informed us that targets can be adjusted as necessary. However, we found that there was no policy or guidance on when it is appropriate to adjust the sales targets or by how much.

New products are not held to their targets in their first year of release. Monitoring of a product occurs on a monthly basis at the start of the second year for general-list products and at the start of the third year for Vintages Essentials products. The LCBO produces a monthly report that tracks, on a 13-month rolling average, product sales against targets. However, it does not track the length of time that a product has failed to meet its sales targets. We selected a sample of individual products from the

general-list and Vintages Essentials categories that had not met their sales targets for approximately 16 consecutive months as of early 2011 and reviewed their performance for the previous four years. We found that often, timely action had not been taken to address poorly performing products, and that some of these products had not been meeting their sales targets over a period of four or five years.

In the event that a product fails to meet its performance targets, the LCBO may consider delisting or discontinuing it. LCBO management told us that they work with suppliers to try to increase sales—through, for example, additional marketing or promotional campaigns—before delisting a product. When a product underperforms and the LCBO decides to delist it, it may request a rebate in accordance with its purchasing conditions. It asks for 25% back on the cost of remaining inventory for general-list and Vintages Essentials products, and 20% back for Vintages Retail Release products (new products released every two weeks for a limited time). The LCBO's policy does not specify how long a product may continue to underperform before it is delisted and when it is appropriate to request a rebate from the supplier. The decision to request a rebate is left to the judgment of LCBO management. The LCBO informed us that Vintages Essentials products that do not meet sales targets may be periodically transferred out of the Essentials program and offered through other Vintages programs, and therefore rebates are generally not claimed for these products. However, for other types of products, we noted that the LCBO often did not ask suppliers to provide rebates when it delisted poorly performing products. In particular, we noted that 2,270 general-list and Vintages Retail Release products were delisted from April 2009 to around December 2010, and the LCBO had requested and received rebates for about 35% of them.

Products for which rebates have been requested and received are marked down at LCBO stores. However, prices remain the same for those where no rebates have been sought. The LCBO informed us that it uses its judgment on a case-by-case basis

to determine when to request rebates. For instance, it may not ask for a rebate when sales are deemed close enough to the target, or if the product comes from an iconic supplier with which the LCBO does not want to jeopardize its relationship. But there is no requirement to document these decisions.

RECOMMENDATION 5

To help ensure that products not meeting acceptable sales targets are identified in a timely manner, the LCBO should:

- regularly review and assess sales targets for each product category to ensure that they continue to be reasonable and appropriate for identifying underperforming products;
- establish clear guidelines for the nature and timing of action to be taken when a product is identified as underperforming; and
- establish policies for documenting decisions on delisting and requesting supplier rebates.

LCBO RESPONSE

LCBO sales targets are reviewed and updated annually. In the future, Vintages Essentials sales targets will also be reviewed and updated annually.

The LCBO agrees to establish clear guidelines for the nature and timing of action to be taken when a product is identified as underperforming and for developing policies to document the decision to delist products and/or seek a supplier rebate.

With respect to the reference to the LCBO requesting and receiving rebates on only 35% of delisted products, it is important to note that rebates are requested only for products that are reduced in price to clear inventory. Rebates compensate for part of the reduced profit from these sales. The LCBO avoids rebates where possible in order to maximize revenue.

Chapter 3

Section 3.09

Ministry of the Attorney General

Legal Aid Ontario

Background

The Legal Aid Services Act, 1998 (Act) took effect in April 1999 and established Legal Aid Ontario as an independent corporation accountable to the Attorney General to provide legal assistance to low-income individuals. Between 1967 and 1999, a similar function had been performed through the Ontario Legal Aid Plan, which was administered by the Law Society of Upper Canada (Law Society).

Under the Act, Legal Aid Ontario is required to provide “consistently high quality legal aid services in a cost-effective and efficient manner” to clients deemed eligible, and is to encourage and facilitate flexibility and innovation in the provision of such services, while recognizing the private bar and clinics as the foundation for providing such services in the areas of criminal and family law, and clinic law, respectively.

Legal Aid Ontario provides assistance in three ways:

- It issues more than 100,000 legal aid certificates annually to people involved in criminal, family, and immigration/refugee law matters, and in certain civil matters. Clients apply for certificates primarily through Legal Aid Ontario’s offices in courthouses, and through its client call centre. About 99% of clients who

are able to obtain a certificate retain private lawyers, who in turn bill Legal Aid Ontario for the services they provide to the client. About 4,700 private-sector lawyers participate in the legal aid program. Legal Aid Ontario also operates law offices with staff who provide legal services to people who have certificates.

- It pays and manages about 1,500 staff and contract lawyers to provide duty counsel services at criminal and family courts. Duty counsel primarily provide legal representation and advice to eligible people appearing in court without counsel.
- It funds and oversees 77 independent community legal clinics, with nearly 550 staff who assist low-income people with clinic law issues such as government-assistance matters and representation at tribunals such as those dealing with landlord–tenant disputes. Funding is also provided to legal aid clinics operating at six universities with law programs.

In Ontario, the income threshold for eligibility for legal aid certificates is very low and has not changed since 1996. According to Legal Aid Ontario, about 80% of approved applicants have gross annual incomes under \$10,000, and the majority are on some form of social assistance or have no reported income.

Legal Aid Ontario employs about 700 staff at its head office in Toronto, nine district offices,

70 courthouses, and 10 law offices. As shown in Figure 1, Legal Aid Ontario received \$354 million in funding during the 2010/11 fiscal year, with 76% of that coming from the provincial government. Additional funds came from the federal government under a cost-sharing agreement, from the Law Foundation of Ontario, and from clients whose income levels require them to help pay for legal assistance. As shown in Figure 2, Legal Aid Ontario incurred \$362 million in operating expenditures, with \$315 million spent on client programs and \$47 million on administration and other expenses.

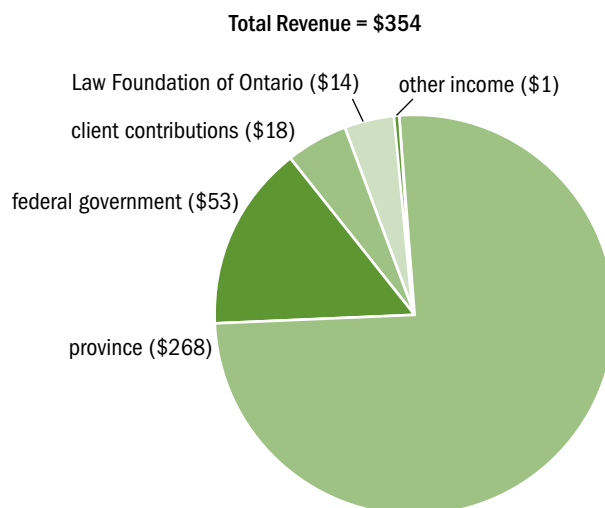
Audit Objectives and Scope

Our audit objective was to assess whether Legal Aid Ontario had adequate systems, processes, and procedures in place to:

- ensure that consistent high-quality legal aid services are delivered in a cost-effective and efficient manner to low-income individuals throughout Ontario in accordance with legislated requirements; and
- measure and report on its effectiveness in doing so.

Figure 1: Revenue by Funding Source, 2010/11 (\$ million)

Source of data: Legal Aid Ontario



Senior management reviewed and agreed to our audit objective and associated audit criteria.

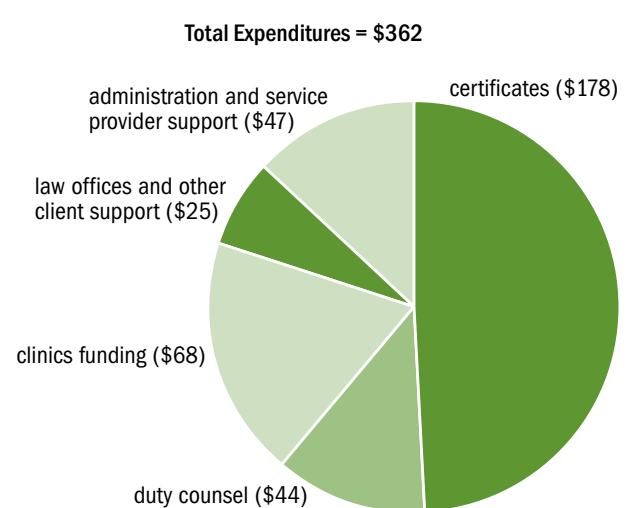
We conducted our fieldwork at Legal Aid Ontario’s head office in Toronto and visited five district offices, five courthouses, and three law offices. Our work included interviewing staff, reviewing recent reports and studies, and examining policies, records, and systems. We also held interviews with representatives of eight community legal clinics, as well as criminal, family, and refugee lawyers’ associations to discuss their perspectives on legal aid services provided in Ontario. We also considered recommendations we made in our last audit of Legal Aid Ontario in 2001.

We researched legal aid programs in other jurisdictions and met with senior program managers in two other provinces. We also engaged an independent expert who has senior management experience in delivering public legal aid programs.

Legal Aid Ontario’s internal auditor, and consultants that it hired, conducted a number of recent reviews that were helpful in planning our audit, including an assessment of the adequacy, effectiveness, and efficiency of internal controls over its lawyer billing and payment system, reviews of about half of the community legal clinics, and a value-for-money review of duty counsel services at two court locations.

Figure 2: Program Expenditures, 2010/11 (\$ million)

Source of data: Legal Aid Ontario



Summary

For at least the last decade, Ontario has spent more on legal aid support per capita than any other province, even though it has one of the lowest income eligibility thresholds and issues fewer certificates entitling people to legal aid per capita than most other provinces. Legal Aid Ontario acknowledges the need to address a history of operating deficits, make its operations more cost-effective, improve access to its services, and help make the courts more efficient. We noted that it has a well-defined long-term strategy to address these issues and that it has moved to increase access to legal aid services beyond the issuing of certificates, such as through expanded use of duty counsel available at court-houses and through its new call centre.

We felt its multi-year long-term strategy was heading in the right direction. However, the following are some of the areas the legal aid program must address if it is to be fully successful in meeting its mandate:

- Only people with minimal or no income qualify for legal aid certificates or for assistance from community legal clinics—the financial eligibility cut-offs for qualifying have not changed since 1996 and 1993, respectively. This, combined with an escalation in the average legal billing for each certificate issued, has meant fewer people over the last couple of years have been provided with certificates and more clients have been required to rely on duty counsel, legal advice, and information from Legal Aid Ontario's website for legal services.
- Although the Act requires Legal Aid Ontario to establish a quality assurance program with the Law Society with respect to the work performed by lawyers, it has not implemented quality assurance audits of lawyers since Legal Aid Ontario's inception in 1999. A robust quality assurance program would help ensure that legal services provided by staff and contract

lawyers to low-income and vulnerable clients are of a high standard. Given that legal aid lawyers generally work for lower rates than those in private practice, and approximately 11% of them carried large caseloads representing almost half of all certificates issued, there is a need for quality assurance audits to ensure that legal services meet the legislative requirement that certificate work performed by lawyers be of consistently high quality.

- At the time of our audit, Legal Aid Ontario was working on system improvements to address deficiencies with its lawyer payment system. Most importantly, strengthening of controls is required to ensure that all payments, which total \$188 million annually, are justified.
- Legal Aid Ontario's efforts to extract greater efficiencies from community legal clinics have caused relations to deteriorate. Although the Act technically gives Legal Aid Ontario significant authority and control over all areas of clinics' operations and expenditures, this has tended to conflict with the clinics' culture of independence and their individual board of director governance structure.
- With the significant amount of solicitor–client privileged information on its information technology systems, we expected Legal Aid Ontario to have performed recent and comprehensive privacy and threat risk assessments of its computer databases. However, the last privacy assessment was in 2004, and its systems have changed significantly since then.

As with our 2001 audit, we again noted that Legal Aid Ontario lacks key performance measures on the services it provides to its clients and stakeholders, and its annual reporting was three years overdue. In addition, it has not reported publicly on its strategic and business plans in a comprehensive manner.

OVERALL LEGAL AID ONTARIO RESPONSE

Legal Aid Ontario agrees with all of the recommendations of the Auditor General and welcomes his observation that Legal Aid Ontario's Modernization Strategy is heading in the right direction.

As an independent public institution committed to working with its clients, the Ministry of the Attorney General, and all justice-system stakeholders, Legal Aid Ontario looks forward to continually improving the legal aid system for low-income Ontarians.

Detailed Audit Observations

RECENT INITIATIVES

In recent years, Legal Aid Ontario has implemented significant changes to its operations to control costs and improve accessibility for its clients. Many of these changes were ongoing at the time of our audit. The need for change had been identified in public reviews of Legal Aid Ontario, during its participation in initiatives by the Ministry of the Attorney General (Ministry) to make criminal and family courts more efficient, and internally by Legal Aid Ontario management as part of its efforts to improve efficiency and to address ongoing operating deficits.

A July 2008 report resulting from a review commissioned by the Attorney General identified a number of themes that have since driven many of the changes at Legal Aid Ontario. The report said that legal aid reform must be viewed as an integral part of a broader justice-system reform, particularly with regard to timely resolution of disputes; that the income level under which someone must fall to qualify for legal aid services must be raised so that it bears a better relationship to the actual circumstances of those in need; and that varying levels

of services should be provided on a sliding scale of eligibility. Additionally, it recommended that fees paid to lawyers (called "tariff rates") and salaries paid to staff lawyers should be increased; that services should be provided in an integrated fashion, including more one-stop shopping opportunities for clients; that more public electronic information and hotline services should be available; and that Legal Aid Ontario should receive more funding.

Other reviews have said that Legal Aid Ontario needs to pay tariff rates high enough to attract more experienced lawyers to take on the large, complex criminal cases it is sometimes called upon to handle. Legal Aid Ontario spends an average of \$20 million per year, or 25% of its criminal certificate expenditure, on big cases, but these cases represent only 2% of the number of criminal certificates issued. In the 2009/10 fiscal year, the average cost of a case that was not one of these big cases was \$1,391; the average big-case cost was \$24,700, or 18 times the cost of a regular certificate. At the time of these reviews, criminal lawyers working on legal aid cases were organizing a protest of the Ministry's approved legal aid tariff rates and boycotting certain cases.

The provincial government announced a funding increase to Legal Aid Ontario of \$51 million spread over three years, beginning in the 2007/08 fiscal year, to improve access for low-income Ontarians. Legal Aid Ontario officials said that their plan for these funds would include a 5% increase to the tariff paid to lawyers, exemption of the universal child-care benefits from legal aid applicants' income, development of a new financial eligibility test for applicants, increasing the number of certificates for family law matters, an increase in funding to the big-case management program, and initiatives at community legal clinics to increase employee salaries and improve services.

In September 2009, the provincial government also announced a transformation plan for Legal Aid Ontario, with additional funding of \$150 million over four years, including an annual increase in base funding growing to \$60 million a year by the

fourth year. The objectives included expanding clinic legal services, developing a faster and easier system for the resolution of family law matters, promoting the Ministry's Justice on Target project for addressing criminal court delays, and creating a big-case management office.

Under the *Law Society Act*, the Law Foundation of Ontario pays Legal Aid Ontario 75% of the interest earned on deposits held in trust by lawyers and paralegals involving transactions such as real-estate purchases. Due to the economic downturn and declining interest rates, recent revenues from the Law Foundation to Legal Aid Ontario had decreased sharply, from a peak of \$56.4 million in 2007/08 to \$4.8 million in 2009/10, a decline of more than 90%. This decline has largely offset the annual funding increases recently announced by the government. As a result, over the three fiscal years from 2008/09 to 2010/11, Legal Aid Ontario incurred operating deficits of \$19.1 million, \$27.7 million, and \$8.6 million, respectively, as it tried to manage with less overall revenue than expected and higher operating costs than prior to this period.

Legal Aid Ontario management has introduced a number of initiatives—including its Value Agenda in 2007 and its Modernization Strategy in 2009—to reduce program costs and improve services and efficiency. The strategies include plans to reduce the use of costly traditional legal services, primarily via certificates, which provide for individual representation, and instead make use of new technologies and alternative service models for individuals whose legal matters do not warrant the issuing of a certificate, such as providing duty counsel services, summary legal advice, and information from its new call centre and an enhanced website. A simplified financial eligibility test was established to reduce the administrative cost and time it takes to review and accept an application. The initiatives also include a goal to reduce administrative costs by 5% over five years, in part by reducing the number of district offices to nine from 51; restructuring payments and payment procedures for lawyers;

increasing to 55 from eight the number of legal aid offices at courthouses to process legal aid applications; and establishing a process to boost the role and effectiveness of community legal clinics.

The Act requires Legal Aid Ontario to submit an annual report to the Attorney General within four months of its March 31 year-end, and to include key information on its activities and results. When the Attorney General tables this report in the Legislative Assembly, it becomes available for public review. However, at the time of our audit in August 2011, the most recent Legal Aid Ontario annual report published was for the year ending March 31, 2008. Although that report included fairly comprehensive data regarding certificates issued by area of law and their cost, and the numbers of assists to clients provided by duty counsel and legal clinics, the report did not include measures on the quality or effectiveness of these programs or of client service in general.

Two Canadian provinces with large legal aid plans that we reviewed issue strategic plans to inform the public of their key priorities for the following five years, and they report annually on the progress. For instance, Manitoba outlines its areas of strategic focus and its action plan, and identifies steps to be taken, who is responsible, implementation date, costs, and outcomes and measures. Its annual report includes achievements, and the most recent report focuses on actions in its strategic plan to improve service delivery to clients, improve internal support services to its staff, and implement a new governance structure.

In a recent Legal Aid Ontario survey of certificate lawyers, 31% of respondents stated that they did not have a clear understanding of Legal Aid Ontario's strategic direction. Our discussions with stakeholders, including lawyers and clinic staff, also confirmed that this was a concern.

As well, although Legal Aid Ontario published several documents on its website describing its plans for its Modernization Strategy and there was some information in its 2008 annual report, considering all the changes and initiatives it has

undertaken over the last few years, it needs to do more to inform the public about these changes, how it is executing them, and whether they are producing the desired results.

Furthermore, in its most recent publicly available annual report, for 2007/08, Legal Aid Ontario stated its intention to develop a plan to establish more comprehensive performance measure reporting across the organization over three to four years. At the time of our audit, Legal Aid Ontario was still working on developing performance measures to assess how it was making a difference to clients and their communities. However, we are concerned about the length of time that it is taking to complete this work.

RECOMMENDATION 1

To better inform the Legislature and the public of its strategic priorities and success in achieving its mandate of providing legal assistance to low-income Ontarians, Legal Aid Ontario should develop and implement meaningful performance measures on its key services and program outcomes, and enhance both the information in its annual report and on its website. It should also work with the Ministry of the Attorney General to ensure that its annual report is made public on a more timely basis.

LEGAL AID ONTARIO RESPONSE

Legal Aid Ontario agrees with the Auditor General's recommendation. Legal Aid Ontario recognizes the importance of communicating its areas of strategic focus and action plans with the public and stakeholders. Legal Aid Ontario maintains a proactive communications program, and changes were recently made to the organizational structure to enhance Legal Aid Ontario's focus on policy, research, and outreach. Legal Aid Ontario commits to the development of further stakeholder and public communications initiatives and policies, and will seek to update

the memorandum of understanding between the Ministry and Legal Aid Ontario in this regard.

Legal Aid Ontario agrees with the Auditor General that meaningful performance measures are important. Legal Aid Ontario has developed measures to track progress against its Modernization Strategy. For example, productivity target savings of 1% per year over three years were developed and achieved. Legal Aid Ontario has developed performance indicators that have been included in Legal Aid Ontario's reporting to the Ministry and is in the process of developing further measures focusing on program outcomes.

Subsequent to the review by the Auditor General, Legal Aid Ontario's 2008/09 annual report was tabled in the Legislature and is now posted on our website. Legal Aid Ontario also submitted its 2009/10 annual report to the Ministry of the Attorney General for tabling in the Legislature, and its 2010/11 annual report will be submitted shortly.

MEETING DEMAND FOR LEGAL AID

Under the Act, Legal Aid Ontario's mandate is to promote access to justice for low-income people by "identifying, assessing and recognizing the diverse legal needs of low-income individuals and of disadvantaged communities in Ontario," and to do so within its available financial resources. Details about such matters as applications for legal aid, appeals of eligibility decisions, recovery of legal aid costs, functions of duty counsel, and appointment of lawyer panels that provide services are set out in regulations, as are details of recording and billing requirements for lawyers, along with their fee and tariff schedules.

Moreover, the ability of Legal Aid Ontario to address the needs of its clients is greatly affected by the same problems that have hindered the efficiency of the court system in general. The problems

include the fact that the number of criminal charges and family cases handled by the courts has steadily increased over the past 10 years. Various factors have contributed to backlogs and delays, and courts are dealing with longer-running and more complex cases. Ministry initiatives such as Justice on Target have produced some progress in the last year in addressing court backlogs and delays.

Applicants are eligible for legal aid provided they meet the prescribed financial eligibility requirements and their legal issue is covered by the program. The financial eligibility test considers gross income, family size, and assets. Applicants below a set income threshold are eligible for a free legal aid certificate or other services, while those above the threshold up to a predefined limit can receive a legal aid certificate if they agree to pay for some or all of the services under a contribution agreement. The benefits of such agreements are that the legal services are provided at what is usually a lower legal aid tariff rate and that clients can repay Legal Aid Ontario over time.

As previously noted, the financial eligibility threshold for certificates has not changed since 1996, and only those individuals with little or no income qualify. In our sample, only 8% of certificate clients were employed with some income, 37% were recipients under Ontario Works or the Ontario Disability Support Program, and 55% reported no income whatsoever. Of those reporting no income, more than half were incarcerated. Similarly, Legal Aid Ontario reports that 80% of approved applicants have gross incomes under \$10,000, 73% either receive social assistance or have no reported income, and 94% of certificates were not subject to a contribution agreement.

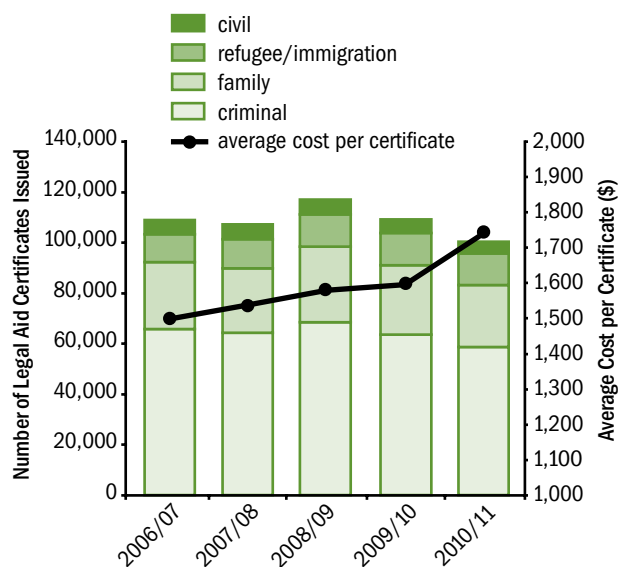
In 2001, Legal Aid Ontario issued almost 118,000 certificates at an average cost of almost \$1,350. In our 2001 audit, we concluded that Legal Aid Ontario had not been effective in controlling the costs of its certificates. However, since that time, Legal Aid Ontario has been working to address these costs. In the 2010/11 fiscal year, legal aid certificates accounted for approximately half

of all Legal Aid Ontario expenditures. As shown in Figure 3, just over 100,000 certificates were issued and the average cost per certificate had risen to \$1,752, an increase of about 30% over the 10-year period. The most recent spike in cost, from 2009/10 to 2010/11, is largely attributable to the fact that certificates are more frequently being reserved for complex and expensive cases, and to increases in the tariff rates paid to lawyers, which was done to address the rate conflict with criminal lawyers.

A goal of Legal Aid Ontario's Modernization Strategy is to reduce reliance on the use of certificates when other, less costly, assistance can be provided. Most people without legal representation can receive legal aid assistance with criminal, family, or refugee/immigration matters from either duty counsel or the call centre. However, the fact that Legal Aid Ontario's financial eligibility cut-off has not changed since 1996 is one of the reasons that, given the effects of inflation, fewer people are qualifying for certificates. A single person applying for a certificate must have an income of less than \$10,800 a year—an amount so low that someone working full time at the minimum hourly wage would earn twice as much.

Figure 3: Legal Aid Certificates Issued and Average Cost per Certificate, 2006/07–2010/11

Source of data: Legal Aid Ontario



As shown in Figure 4, Legal Aid Ontario's eligibility threshold for a fully paid certificate for a single person is the second-most restrictive among the larger provinces. The same is true for the threshold requiring a person to repay Legal Aid Ontario under a contribution agreement.

Even though Legal Aid Ontario has been working to control its certificate costs, Ontario still spends more on legal aid support on a per capita basis than any other province, but it is among the provinces that issue the lowest number of certificates on a per capita basis, as illustrated in Figure 5. However, Legal Aid Ontario offers almost three times more duty counsel assists per capita than the provincial average. Ontario offers more than 1 million duty counsel assists per year at an average cost of \$61 each, and makes such assistance available to people with higher incomes. A court assist is a cost-effective strategy, especially if it can help resolve a legal matter without a certificate. In addition, independent community legal clinics that are almost entirely funded by Legal Aid Ontario assist more than 155,000 people with clinic law issues.

Based on our discussions with various stakeholders, we feel that Legal Aid Ontario's multi-year reform strategy is heading in the right direction since it strives to improve efficiency in service delivery and make at least some level of service available

to a larger number of people, while reserving more costly legal representation certificates for more serious and complex cases. This approach is consistent with its legislated mandate, recent studies of legal aid, and other reforms to make courts more efficient. However, Legal Aid Ontario continues to have more costly programs when compared to other provinces, which can generally provide certificates to more low-income persons because they use higher financial eligibility thresholds.

Because Legal Aid Ontario's Modernization Strategy is being deployed to provide less costly alternative legal aid services using duty counsel, summary legal advice, and information provided via its call centre and website, it will be important for it to undertake a formal risk assessment to see how this approach affects the rights of low-income people to legal representation, and to ensure that low-income individuals receive the appropriate level of legal aid services for their circumstances. This risk assessment should take into consideration a variety of factors, such as a person's having the capacity and knowledge to manage his or her own case in the court system, language barriers, mental health issues, and computer literacy. We did note, however, that Legal Aid Ontario is taking action to address these risks.

Figure 4: Provincial Comparison of Financial Eligibility for Legal Aid Certificates, as of September 2011

Prepared by the Office of the Auditor General of Ontario with data from provincial legal aid offices

Province	Maximum Income Eligibility Threshold*			
	Free Certificate		With Contribution Agreement	
	Family Size: 1	Family Size: 5	Family Size: 1	Family Size: 5
Saskatchewan	9,924	20,784	12,540	24,264
Ontario	10,800	26,714	12,500	33,960
Nova Scotia	12,804	25,872	n/a	n/a
Quebec	13,007	21,328	18,535	30,393
Manitoba	14,000	31,000	23,000	37,000
Alberta	n/a	n/a	18,036	42,312
British Columbia	19,632	59,028	n/a	n/a

*Some eligibility figures have been adjusted for comparison purposes to take into account net income vs. gross income. In addition, most provinces, including Ontario, require an applicant's assets to be considered when determining eligibility. We excluded asset assessments from our comparison. Provinces marked n/a above: Alberta expects clients to repay some or all of their legal aid bills, but determines eligibility and client contributions on a case-by-case basis; British Columbia does not use contribution agreements.

Figure 5: Provincial Comparison of Total Legal Aid Funding,¹ Certificates, and Duty Counsel Assists, 2009/10

Source of data: Statistics Canada

Province ²	Total Funding for Legal Aid per Capita (\$)	Approved Certificates per 1,000 Population	Duty Counsel Assists per 1,000 Population
Ontario	28.40	10	87
Manitoba	26.00	22	32
Nova Scotia	23.00	21	20
Newfoundland and Labrador	21.30	10	22
Saskatchewan	21.00	21	16
Alberta	20.90	10	44
British Columbia	17.80	6	27
Quebec ³	17.30	29	0
Provincial Average	22.00	16	31

1. Comparison of total legal aid funding does not take into account program differences among provinces, such as areas in law covered, services provided, and financial eligibility.

2. Prince Edward Island and New Brunswick did not report data to Statistics Canada.

3. Quebec does not provide duty counsel services.

RECOMMENDATION 2

To help ensure that its multi-year efforts to modernize legal aid services result in delivering cost-effective services to those in need, Legal Aid Ontario, in collaboration with the Ministry of the Attorney General, should:

- study the impact on low-income individuals of its current financial eligibility threshold, which has not been raised since 1996, and its shift to using less costly legal aid support services;
- assess legal aid programs in other provinces to identify the factors and best practices contributing to their lower costs that can be applied in Ontario; and
- continue to identify alternative ways to meet the legal needs of low-income individuals in a cost-effective manner.

LEGAL AID ONTARIO RESPONSE

Legal Aid Ontario agrees with the Auditor General's recommendation. Legal Aid Ontario has made significant progress and takes care to ensure that low-income clients receive cost-

effective legal aid services tailored to their needs while reserving more costly services for more complex and serious cases. This allows Legal Aid Ontario to serve more clients with its available resources. Legal Aid Ontario believes the Auditor General's recommendation to study the impact of this approach on low-income individuals will demonstrate the overall benefits of the Modernization Strategy in offering a broader range of legal aid services.

Legal Aid Ontario's financial eligibility thresholds are governed by the regulations flowing from the *Legal Aid Services Act, 1998*, and any changes are the responsibility of the provincial government. Legal Aid Ontario has been concerned about this issue and has discussed it with stakeholders and the provincial government over a number of years. Legal Aid Ontario will be pleased to assist the Ministry in continuing to review this important matter.

Cost comparisons among legal aid plans in Canada are difficult to make precisely. It is Legal Aid Ontario's opinion that several significant limitations apply and that cost per service is another meaningful measure.

Legal Aid Ontario maintains close contact with other provincial and territorial legal aid plans through its membership in the Association of Legal Aid Plans of Canada, and will continue to share information in the areas identified by the Auditor General.

QUALITY OF LEGAL SERVICES

Panel Management

In 2004, Legal Aid Ontario began phasing in standards that require lawyers to demonstrate a specific level of knowledge, skill, and experience in the area of law they practice. Those who meet the requirements are assigned to one or more of 10 panels to provide service in specific areas of law: criminal; extremely serious criminal, such as murder and terrorism; family; child protection; refugee; consent and capacity (mental-health related); duty counsel criminal court; duty counsel family court; duty counsel advice; and *Gladue* (aboriginal persons) court. Legal Aid Ontario offers support for those lawyers through research, learning opportunities, and mentoring.

New lawyers or lawyers new to a particular area of law who do not meet the experience requirement can be conditionally admitted to a panel if they agree to meet the minimum experience level within 24 months. A conditionally approved lawyer must attend training and be mentored, as determined by the district area director. Conditionally approved lawyers are authorized to accept certificates.

Legal Aid Ontario's district area directors are responsible for assessing applications and admitting lawyers to panels in their geographic area. In addition, district area directors are responsible for ensuring that panel membership requirements are met, for overseeing the correction of non-compliance or unsatisfactory performance or conduct, and, if necessary, for initiating steps to remove from a panel a lawyer who fails to meet applicable standards.

Legal Aid Ontario does not set a specific number of lawyers for each panel, and the total number of panel lawyers increased an average of 5% per year over the past five years to 4,700.

We found that the number of conditionally approved lawyers on panels has increased over the past five years, from an average of 16% in 2007 to 23% in 2011. More than 800 of these lawyers had spent three years or more on conditional status, or at least one year beyond the maximum time allowed, and 27 of them had been on conditional status since 2004. In addition, we were informed that the mentoring process had not been evaluated, so Legal Aid Ontario does not know whether there are enough mentors available and to what extent mentoring needs are being met on a province-wide basis.

Since 2007, panel appointees have been required to confirm annually that they have met the experience and continuous learning requirements. Requirements vary by panel, but all include six hours of legal education and completion of a minimum number of case files in the previous year in the specific panel area of law. For the 2009 calendar year (the most recent statistics and status on self-reporting available to us), almost 1,100 lawyers had not reported on their experience and learning activities by the deadline of June 2010 as required. We were informed that Legal Aid Ontario cannot suspend a lawyer from practising law; only the Law Society of Upper Canada (Law Society), the body that governs members of the bar, can do so. However, Legal Aid Ontario can permanently remove a lawyer from a panel. From 2006/07 through 2010/11, four lawyers were removed from panels, two of them related to fraud and overbilling and the other two for "reasonable cause."

We are concerned that insufficient oversight of panel management could lead to legal aid clients not receiving the expected quality of service, and that panel appointees may conclude that the standards and reporting requirements are not important if little is done to enforce them.

Quality Assurance

The Quality Service Office (Office) of Legal Aid Ontario works with district offices, clinics, lawyers, duty counsel, and other external stakeholders in the justice sector to improve the quality of services provided to clients. The Office's responsibilities include developing and monitoring panel standards for lawyers, providing training seminars and materials to lawyers, conducting site visits at clinics, measuring the satisfaction levels of clients and service providers, and developing a performance measure framework for Legal Aid Ontario.

The Act requires Legal Aid Ontario to implement a quality assurance program to ensure that it is providing high-quality legal aid services in a cost-effective and efficient manner. The Act also states that Legal Aid Ontario may conduct quality assurance audits of providers of legal aid services but not of lawyers; it must, instead, direct the Law Society to perform quality assurance audits of lawyers. Although lawyers are required by their professional ethics and conduct standards to provide quality services, there is a higher risk that legal aid services may not be of a consistently high quality because fees paid to lawyers are lower than the going rate in private practice. As well, legal aid clients are typically more vulnerable and may not be as aware that the level of service they receive is not adequate.

In our 2001 audit of Legal Aid Ontario, we reported on the lack of a quality assurance program to assess the legal aid certificates program. During our follow-up in 2003, Legal Aid Ontario indicated that it had begun discussions with the Law Society on the objectives and approaches common to their respective quality assurance programs, and had identified areas where there could be co-ordination of efforts and support of each other's initiatives. However, beyond these initial discussions, little action has been taken and there was still no agreement or memorandum of understanding between Legal Aid Ontario and the Law Society, nor were there any ongoing efforts to pursue one. Further-

more, no requests have been made by Legal Aid Ontario of the Law Society to carry out any quality assurance reviews of lawyers, nor does it do any quality assurance audits of lawyers on its own.

In January 2010, Legal Aid Ontario, along with the Ministry of the Attorney General, entered into a memorandum of understanding with the Criminal Lawyers' Association in which it committed to developing and establishing revised requirements for panel membership. Legal Aid Ontario did not enter into a memorandum of understanding with other lawyers' associations, but it agreed to consult with them in the development of panel requirements, which would include quality assurance and practice review audits, including after-case review. However, at the time of our audit there had been no progress on these consultations.

Legal Aid Ontario imposes a billing cap of 2,350 hours per year to try to ensure that lawyers do not overbill and that they do not overextend themselves with large caseloads. This works out to a 45-hour week for all 52 weeks of the year. We noted that over the last three years, approximately 11% of panel lawyers carried about 48% of all certificates, which on average would require them to work almost the maximum number of hours each year to complete these files. Legal Aid Ontario has a system for identifying lawyers who are approaching the annual billing cap, and it then informs the lawyer that he or she is approaching the limit. A good starting point for any quality assurance program would be to target those lawyers carrying large caseloads.

Our research on other legal aid jurisdictions showed that in the United Kingdom, formal peer reviews are carried out by independent assessors funded by the Legal Services Commission of England and Wales. The assessors assign one of five grades. The lowest rating carries a recommendation that the contract between the Legal Services Commission and the lawyer or firm be terminated. The second-lowest rating requires a reassessment in six months. This approach might be worth investigating for implementation in Ontario.

RECOMMENDATION 3

To strengthen its ability to ensure that consistently high-quality legal aid services are being provided as required by legislation, Legal Aid Ontario should:

- assess the reasons for a high number of lawyers being on conditional status for panel membership beyond the two-year maximum time allowed, and take timely action to ensure that those not meeting requirements are appropriately followed up on; and
- either address long-standing impediments to establishing a quality assurance audit program with the Law Society of Upper Canada or seek changes to its legislation that would allow alternative means of developing and implementing a quality assurance audit program to oversee lawyers, including considering best practices in other jurisdictions.

LEGAL AID ONTARIO RESPONSE

Legal Aid Ontario agrees with the Auditor General's recommendation.

Legal Aid Ontario is committed to ensuring that high-quality legal aid services are provided by lawyers and to reviewing its process related to the conditional status of lawyers on the panel.

Legal Aid Ontario will develop proposals for improving its quality assurance program consistent with the Auditor General's recommendations.

BILLINGS BY LAWYERS

Payment Systems and Structures

All private-sector lawyers who accept legal aid certificates, as well as court duty counsel who are paid on a per diem basis, submit their accounts for payment through a Web-based billing and payment system. The system was implemented in 2005 to process payments more efficiently and help com-

pensate lawyers in a timely manner. The system was updated in 2007 to allow lawyers to accept and confirm certificates for clients on-line. In the 2010/11 fiscal year, the system was modified again to accommodate block-fee billing for criminal certificates, whereby a fixed fee would be paid for the most common legal procedures handled by criminal lawyers. Legal Aid Ontario says that it expects the new block-fee billing to achieve cost control, reduce financial risk, and be easier to administer.

In 2010/11, the lawyer billing and payment system settled 215,000 billings, totalling \$188 million in certificate and per diem duty counsel lawyers' payments.

In April 2010, with the assistance of consultants, Legal Aid Ontario determined that automated controls within the billing system did not adequately support established billing rules and policies. The review also identified \$17.5 million in lawyers' billings over the previous three-year period that warranted follow-up. Among the problems identified were possible violations of rules that state that lawyers should not bill while under suspension, double bill, or bill for unreasonable discretionary costs, or work more than 10 hours per day. The review also found that there were insufficient oversight mechanisms and appropriately trained staff in place to ensure that lawyers complied with the rules. In addition, lawyers were not required to submit court dockets that included the details that Legal Aid Ontario staff needed in order to verify the work that was billed. A total of 21 recommendations were made to address strategic and organizational alignment, staff skills and capabilities, operations, and technology.

At the time of our audit, implementation of eight recommendations had been completed, and implementation of another 12 was expected within the following three to six months. We were advised at the end of our fieldwork that the system changes needed in order to address the remaining recommendation—to improve the accuracy, timeliness, and completeness of the lawyers' database—were in progress.

Legal Aid Ontario suspended post-payment examinations of billings from April 2010 to March 2011 because a new targeted, risk-based process to examine lawyer account billings was being implemented. Billing payments for this period amounted to \$179 million. Accounts that were not examined from April 2010 to March 2011 will be subjected to the new examination process within the new compliance and risk management framework. However, we believe that certain payments prior to April 2010, including the \$17.5 million in questionable billings, should be included in the examination of past accounts.

Billing Oversight and Verification

Legal Aid Ontario's Investigations Department has six full-time staff and is responsible for protecting Legal Aid Ontario from fraud and billing errors by lawyers and other external service providers or legal aid clients. The department investigates alleged breaches of the Act, recovers overpayments made to lawyers and other service providers, and pursues recovery of amounts billed to certificates for which clients were not eligible.

Investigations staff run computer analyses of lawyer billing and payments to identify inconsistencies, which then become the focus of investigations. To complete the investigation, staff must request from the lawyers documents verifying the work they completed. Such documentation can take a long time for the lawyers to produce, if it is ever produced at all. In 2010/11, investigations staff completed more than 250 solicitor and client file reviews, but were able to recover only \$193,000. The amount recovered for 2009/10 was \$110,000. According to Legal Aid Ontario, although management acknowledges that the recoveries may be low, just the existence of the department may well be acting as a deterrent against inappropriate billing.

Beginning January 1, 2011, Legal Aid Ontario implemented a new policy requiring lawyers to submit these documents with their bills, with the exception of block-fee billing for criminal certifi-

cates. Since the information will now be more accessible, staff expect this to improve the investigations process. For lawyers billing on a block-fee basis for criminal cases, staff will still need to ask them to submit documents supporting their work should this be deemed necessary.

Investigations staff also need to obtain court information about specific case proceedings and outcomes in order to verify lawyer billings under investigation. Although Legal Aid Ontario has sought on-line access to the Ministry of the Attorney General's Integrated Court Offences Network (ICON) system for several years, that request has been denied. Instead, a Ministry liaison was appointed to handle their requests. Staff told us that there are often lengthy delays, and that some documents received are of poor quality so that the request must be made again. Our analysis showed that 20% of court information requests took longer than 30 days. We noted from our visits to both Quebec and Manitoba that legal aid staff have on-line access to court information of this nature.

Following our fieldwork, Legal Aid Ontario reached an agreement with the Ministry to receive monthly reporting on requested case details. However, the agreement does not provide Legal Aid Ontario with on-line access to ICON.

RECOMMENDATION 4

To help ensure that internal controls over lawyer billing and payment processing are appropriate, Legal Aid Ontario should:

- assess the recoveries achieved in the most recent year's billings using the new targeted, risk-based approach, and on that basis decide whether or not to proceed with an examination of billings from additional prior periods; and
- assess the cost-effectiveness of its investigation activities and continue to work with the Ministry of the Attorney General for timely access to court information that is needed for verifying lawyers' billings.

LEGAL AID ONTARIO RESPONSE

Legal Aid Ontario agrees with the Auditor General's recommendation.

Legal Aid Ontario has developed a comprehensive compliance plan that will continue to identify areas of payment risk for the organization and agrees to consider the probability of recoveries as part of its assessment.

Legal Aid Ontario is improving the effectiveness of its investigation group through the implementation of an automated case management program. Legal Aid Ontario has recently been given some access to court information by the Ministry of the Attorney General and continues to work with the Ministry for improved access to court information needed to verify lawyers' billings.

COMMUNITY LEGAL CLINICS

Under the Act, community legal clinics are independent corporations governed and managed by boards of directors, and are accountable to Legal Aid Ontario. When deciding whether to provide funding to a clinic, the Act requires Legal Aid Ontario to consider the legal needs of individuals or communities the clinic serves, the clinic's cost-effectiveness and efficiency in providing legal aid services, the past performance of the clinic, and whether it is within Legal Aid Ontario's financial resources and priorities. In 2010/11, Legal Aid Ontario provided \$65 million to 77 independent community legal clinics, which provided assistance to more than 155,000 low-income individuals. More than 85% of clinic expenditures are for salaries.

We noted the following areas where oversight of the clinics could be improved:

- Of the 77 clinics funded in 2010/11, all but two had submitted their budgets for approval on time as of February 1, 2010. However, we found that Legal Aid Ontario had not approved any of these budgets six months

into the fiscal year (by September 30, 2010). By March 31, 2011, 18 budgets had still not been approved, although the clinics received their expected funding nonetheless. We are concerned that the value of the administrative effort to produce budgets is diminished when they are not analyzed and approved in a timely fashion.

- The community legal clinics' financial eligibility threshold for their clients receiving clinic services, which is different from Legal Aid Ontario thresholds for certificates, was last set in 1993 and has not been adjusted since then to account for general inflation. Clinics are not required to track the number of clients turned down, the reasons they were turned down, or whether they found alternative assistance—information that would be useful for identifying unmet needs.
- Currently, clinics measure and report on outputs such as number of cases, number of public education sessions held, and number of referrals; however, there are no data on whether these outputs are achieving the desired program outcomes for clinic law matters, such as successful appeals of disability income cases and landlord-tenant disputes. This had been noted as well in an earlier evaluation of clinics in 2004, by consultants hired by Legal Aid Ontario, and was noted again in 2008. In addition, Legal Aid Ontario was concerned about the accuracy of clinic productivity statistics, particularly with respect to whether client assists and the opening and closing of client case files were recorded in a consistent manner. We were advised that Legal Aid Ontario plans to address this issue through the development and implementation of a Clinic Information Management System, as noted in its business plan for 2011/12.
- Legal Aid Ontario's internal auditors commenced a clinic review program in 2009. So far, 42 clinics have been evaluated. During our audit, we were advised that the review was

put on hold pending a review of the program evaluation framework and that no further reviews were scheduled.

Legal Aid Ontario issued a discussion paper to clinics in May 2010 outlining proposals for reducing overhead costs, such as rent and administration, in order to free up resources to serve more clients. Opportunities identified included regional co-ordination of services among clinics; shared space or co-location among clinics or with community agencies; shared services such as human resources, knowledge management, and finance; amalgamation of clinics; and leveraging technology (for example, by providing Internet-based services to clients). At the end of our fieldwork, Legal Aid Ontario and the clinics were still assessing the options.

For the most part, the clinic staff we spoke to expressed concern about Legal Aid Ontario's recent demands for greater efficiencies and about the level of support and communication the clinics receive from Legal Aid Ontario. Although the clinics are legally independent from Legal Aid Ontario, they are dependent on it for virtually all their funding and support, including information technology. For example, Legal Aid Ontario approves the clinics' client financial eligibility thresholds, budgets, salaries, rent, and reporting requirements.

In essence, the clinics are accountable to Legal Aid Ontario, although on a day-to-day operational basis, they are accountable to their local boards of directors. This makes it challenging to propose and implement any system-wide changes because, although Legal Aid Ontario provides the funding, it is not always easy to obtain local buy-in for proposed changes.

RECOMMENDATION 5

To better address the legal needs of low-income individuals served by community legal clinics, Legal Aid Ontario should:

- assess the impact of not increasing the clinics' income threshold for determining financial eligibility since 1993;

- consider requiring clinics to capture and report on the number of applicants who are denied assistance and the reasons they are denied;
- improve the timeliness of the clinic budget review and approval process; and
- develop and implement performance measures for clinics that are reflective of the outcomes achieved, together with a quality assurance program that includes the quality of legal advice and services delivered to clinic clients.

Legal Aid Ontario, in conjunction with representatives of community legal clinics, should assess the overall effectiveness of the local clinic structure and consider whether any changes are possible that would help serve more clients using available funding.

LEGAL AID ONTARIO RESPONSE

Legal Aid Ontario agrees with the Auditor General's recommendation and acknowledges that its approval process for clinic budgets needs to be faster.

With respect to the issue of financial eligibility for clinic law services, Legal Aid Ontario commits to assessing this matter in the way the Auditor General recommends.

In July 2011, Legal Aid Ontario and the Association of Community Legal Clinics of Ontario (ACLCO) agreed upon an approach that is aimed at achieving \$5.5 million in annualized administrative savings within the clinic system by 2015. Also, the ACLCO is leading a strategic planning initiative for the future of clinic law services. At the invitation of the ACLCO, Legal Aid Ontario will be participating in this process. In the course of these discussions, Legal Aid Ontario commits to raising the Auditor General's observations about the possibility of changes to the local clinic structure to serve more clients using available funding.

Additionally, Legal Aid Ontario is currently working with the clinics to develop and implement a Clinic Information Management System. Performance measures are being developed as part of this project. This system will address the gaps identified by the Auditor General.

INFORMATION TECHNOLOGY

The Information Technology (IT) department of Legal Aid Ontario provides strategy, architecture, systems development, and project management for the organization, and supports approximately 1,500 end users in more than 200 locations across the province, as well as about 4,700 panel lawyers. IT had 41 staff and five managers and an operating budget of \$6.5 million in the 2010/11 fiscal year. Approximately \$8 million is budgeted for upgrading infrastructure and application systems in the next two years.

Ontario government standards require that departments assess threats and risks to which sensitive information, assets and employees are exposed; select risk avoidance options, implement cost-effective safeguards, and develop comprehensive business continuity and disaster recovery plans. Information retained by Legal Aid Ontario on its clients is generally considered solicitor-client privileged, requiring permission of clients before it is disclosed. We noted that, while there is a focus on information technology security and privacy management at Legal Aid Ontario through staffing, policies and procedures, and IT controls, there is no process to formally assess threats and risks associated with sensitive information, assets, and employees. We were advised by Legal Aid Ontario that the last privacy impact assessment was conducted in 2004, which would have been before they introduced the many new web-based systems in place and relocated their head office and most of their offices throughout the province. Without periodic assessments,

management does not have objective assurance that sufficient safeguards exist to respond to privacy, security, and availability threats in the provision of information technology services.

Performance measures are benchmarks for evaluating how information technology investments can be more efficient and effective. The IT department does not currently report on performance measures important to its operations and stakeholders. Such measures typically include system availability, response times to business requests, system changes to meet user needs, and costs of delivering services. IT has not yet developed such performance measures and targets in consultation with its internal and external stakeholders that reflect user needs.

RECOMMENDATION 6

To ensure that information technology systems meet privacy, security, and service level standards, Legal Aid Ontario should:

- periodically assess threats and risks associated with its sensitive information and assets and take steps to manage the issues identified; and
- engage the users of the information technology services in the development of key performance measures that would provide management with information on their progress in meeting user needs.

LEGAL AID ONTARIO RESPONSE

Legal Aid Ontario agrees with the Auditor General's recommendation.

Legal Aid Ontario performed a Threat Risk Assessment and Privacy Impact Assessment before it implemented its new web-based systems in 2005. There is no evidence of privacy breaches associated with Legal Aid Ontario's information technology systems.

Chapter 3

Section 3.10

Ministry of the Attorney General

Office of the Children’s Lawyer

Background

The Children’s Lawyer is appointed by the Lieutenant Governor on the recommendation of the Attorney General. The Office of the Children’s Lawyer (Office) is located in Toronto and has approximately 85 staff, including lawyers, social workers, and support staff. The Office also engages what it calls “panel agents”—approximately 440 private lawyers and 180 clinical investigators across the province—on an hourly fee-for-service basis.

The legal services the Office provides fall under various statutes and the Rules of Civil Procedure in the Superior Court of Justice. These services involve providing children under the age of 18 with legal representation for personal or property rights matters. Other parties whose interests might be at stake in a court proceeding involving children include the child’s parents and relatives, Children’s Aid Societies, and insurance companies.

Personal rights proceedings include child protection cases and custody and access cases. The Office must provide legal representation for children in protection cases when ordered by the court under the *Child and Family Services Act*. For custody and access cases, the court may request under the *Courts of Justice Act* that the Office provide a child with legal representation, and the Office has discre-

tion in accepting these cases. When it does accept them, it either provides lawyers to legally represent the child or has clinical investigators with expertise in social work help resolve the dispute and prepare reports for the court or involves both lawyers and clinical investigators, depending on the child’s age and circumstances.

The Office must represent children in property rights proceedings when appointed by the court or as required by legislation. In civil litigation cases, which consist mainly of personal injury actions, the Office may be ordered by a court to act as Litigation Guardian for the child where there is no parent, guardian, or other adult willing and able to pursue or defend a claim on behalf of the child and make decisions on his or her behalf. The Office also reviews proposed settlements referred by the courts in cases involving minors to assess whether they are in the best interests of the child and reports back to the court. In estate/trust cases, the Office represents minor and unborn beneficiaries in matters such as challenges to the validity of a will, interpretation of a will, removal of executors and trustees, and other estate administration matters.

The Office is part of the Ministry of the Attorney General (Ministry). For the 2010/11 fiscal year, the Office’s expenditures were approximately \$32 million, including \$22 million for external professional services and \$9 million for internal staffing costs.

The Office is unique in Canada for the broad range of legal and other services that it provides to children. Although there are other agencies in Ontario that offer support services to children, they generally do not have the mandate or funding to provide children with their own independent legal representation for court proceedings.

The Office accepts about 8,000 new cases per year and as of March 31, 2011 had more than 11,000 open cases. Figure 1 illustrates the types of open cases as of March 31, 2011.

Audit Objective and Scope

Our audit objective was to assess whether the Office of the Children's Lawyer had adequate policies, procedures, and systems in place to:

- serve the personal and property interests of children in accordance with legislative and court requirements; and
- measure and report on its efficiency and effectiveness in doing so.

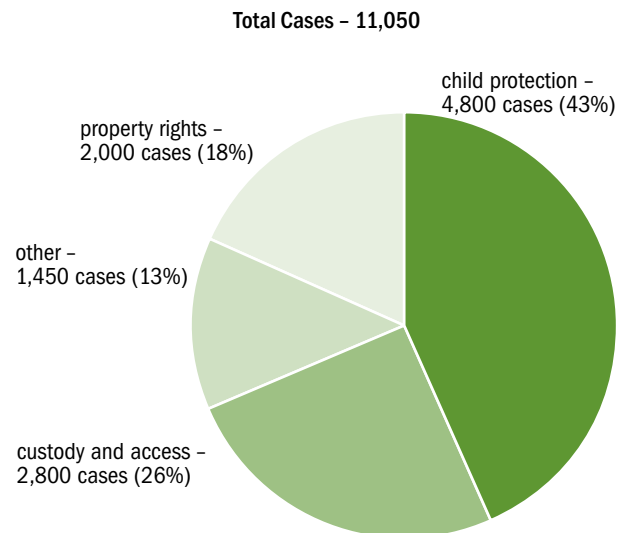
Senior management reviewed and agreed to our audit objective and associated audit criteria.

The scope of our audit included interviews with ministry officials and an examination of files, documentation, and policies in use at the Office's only location, in Toronto. We contacted stakeholders from the private bar and other agencies that provide children's services to discuss their perspectives on the services provided by the Office. We also engaged as advisors independent experts in legal services and child and youth services and researched how other jurisdictions provide legal representation to children. In addition, we obtained input from the Chief Justice of the Superior Court of Justice and the Chief Justice of the Ontario Court of Justice.

We did not rely on the Ministry's internal auditors to reduce the extent of our audit work, because they had not conducted any recent audits of the Office. However, we were able to reduce our work on financial controls, particularly with respect

Figure 1: Open Cases at the Office of the Children's Lawyer as of March 31, 2011

Source of data: Office of the Children's Lawyer



to payments to service providers, because we examine these annually as part of our annual audit of the Office of the Children's Lawyer's financial statements.

Summary

Ontario legislation and the province's courts provide children in need of protection of their personal and property rights with independent legal representation through the Office of the Children's Lawyer. Demand for the Office's legal and clinical investigation services is significant. As well, the Office is unique in that no other jurisdiction in Canada provides children with the same range of centralized legal services. Overall, the legal and investigative work done by the Office is valued by the courts, children, and other stakeholders. However, these services are often not assigned or delivered in a timely enough manner.

We also found that the Office's case management system was not meeting its information needs and that it did not have an adequate process

in place for evaluating the cost-effectiveness of its operations. For example, the Office had not adequately analyzed why its payments to panel agents had increased by more than \$8 million, or 60%, over the last 10 years even though new cases accepted decreased by 20% and the Office's overall active caseload did not change significantly over the same period.

We identified several other areas where the Office's systems, policies, and procedures warranted improvement, as follows:

- In the 2010/11 fiscal year, the Office exercised its discretion to refuse more than 40% of child custody and access cases referred to it by a court. We found that the Office had not adequately assessed the impact of these refusals on the children and courts. The Office's decisions were based on reasons to refuse a case rather than reasons to accept a case based on the best interests of the child. As well, many of the decisions to refuse cases were made primarily because of limited financial resources. In addition, it had not explored the reasons for fairly significant regional fluctuations of between 29% and 50% in refusal rates across the province.
- Although the Office has substantially reduced the time it takes to accept or refuse custody and access cases, from 68 days in 2008/09 to 39 days in 2010/11, it still is not meeting its 21-day turnaround target. Also, once a case was accepted, it took more than eight weeks to assign almost 50% of cases to staff or an agent before work could commence. Improved information systems would help ensure that the causes of these delays are better identified for corrective action.
- In a custody and access case where the Office is providing the court with a Children's Lawyer Report detailing its investigation and making recommendations to the court on the custody of and access to a child, the Family Law Rules require that it do so within 90 days. However, the Office met this deadline less than 20% of the time and did not have any formal strategy in place to improve its performance in this area.
- The Office had a sound process for ensuring that personal rights lawyers and clinical investigators were well qualified and selected fairly. However, there was no open selection process in place for the almost 100 property rights lawyers the Office had under engagement at the time of our audit.
- The Office permits property rights panel lawyers to charge a rate of up to \$350 an hour when recovering their costs from a child's estate or trust or settlement funds. Yet if the same lawyers charge their services directly to the Office, they are paid \$97 an hour.
- The Office's programs for reviewing the quality of the work performed by panel agents did not include an assessment of whether the fees charged were reasonable.
- A new case management system, scheduled for November 2011 and estimated to cost \$3.8 million, might not meet all of the Office's key information needs and functional requirements.
- There were no formal protocols for transition planning and support to assist children (other than those who are mentally incapable) with the management of their ongoing civil lawsuits or estate matters when they turn 18 and no longer qualify for the Office's services.
- The Office did not have objective measures to assess and report on its performance, nor were there formal, regular processes for assessing whether stakeholders, including children, were satisfied with the services provided.

We did note that the Office had established quality assurance processes and training programs to help ensure that legal and clinical investigative services were being consistently and competently delivered.

OVERALL OFFICE RESPONSE

The Office of the Children's Lawyer is committed to continuing to provide the children it serves with the highest-quality legal and clinical services in a wide range of court matters within its mandate.

The Office has begun a multi-year organizational transformation to ensure optimal alignment of its resources with the needs of the children it serves. A key part of this change initiative is the modernization of case management technology and business processes that is being implemented in phases and will enable increased efficiency and responsiveness in delivering high-quality and timely services.

Improvements are being made in areas including:

- information and case management;
- monitoring and tracking;
- empanelment of, and payments to, its legal agents;
- financial forecasting;
- staff and panel agent training and development;
- stakeholder outreach; and
- key performance indicators.

The Office welcomes and supports the findings and recommendations as it continues to move forward to increase its effectiveness in delivering its services to the children of Ontario.

is asked to by the court, and it has established an intake process for reviewing and deciding whether to accept these types of cases. In the 2010/11 fiscal year, it received almost 4,480 custody and access cases and rejected about 1,820 of them, or 41%. Figure 2 shows that the percentage of custody and access files refused over the last five years has ranged from 41% to 55%.

More than 10 years ago, the Office developed 13 criteria that its intake staff and senior management use to decide whether to refuse to provide services in referred custody and access cases. To assess a case against its refusal criteria, the Office requires a copy of the court order requesting its services, which is usually forwarded to it by the court or an involved party, such as a parent's counsel. It also requires the submission of standardized intake form that provides information about the family's history, the situation, and the relationship between the parents and children involved. Parties must submit their forms to the Office within 10 calendar days of the date of the court order or the case may be refused. The Office's intake clerks use the forms and collateral information, such as Children's Aid Society investigations or medical reports, to prepare a summary of the case and make a recommendation to accept or refuse the case to either the Personal Rights Legal Director or the Manager

Detailed Observations

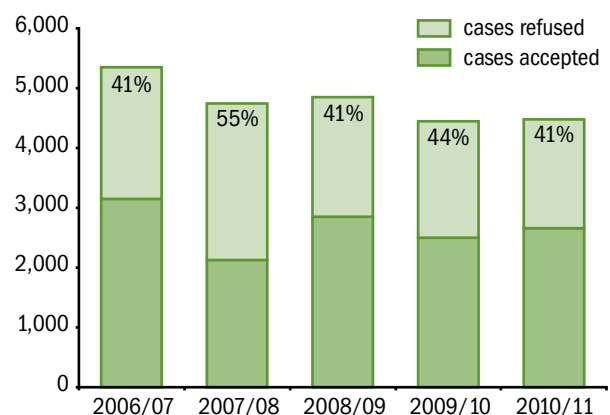
INTAKE AND REFERRAL OF CASES

Decision to Accept or Refuse a Custody and Access Case

The *Courts of Justice Act* gives the Office discretion to decide whether it will provide representation to children in custody and access cases when it

Figure 2: Number and Percentage of Custody and Access Cases Accepted and Refused, 2006/07–2010/11

Source of data: Office of the Children's Lawyer



of Clinical Services, who make the final decision. Generally, for accepted cases, those that involve children under the age of 12 are recommended for clinical investigator services, and those that involve children who are aged 12 and over, who are more likely and able to express their views and preferences to lawyers, are recommended for legal representation.

We were advised that the 13 refusal criteria are used to ensure that the Office provides its services only in cases where it believes that it could add value. Nonetheless, we questioned whether the Office ought to establish criteria that set out when a case should be accepted and that focus on ensuring that it accepts a case when it is in the best interest of the child to do so. Acceptance criteria would enable the Office to better track the common reasons for being involved in a custody and access case as well as the benefits provided to children. The Office has not done any studies or assessments, and had no other mechanisms in place, to determine the impact on children and the courts of its refusing, over the last five years, an average of 44% of the custody and access cases referred by the courts.

We were advised that the Office's decisions to refuse custody and access cases were all made from its head office in Toronto and not on a regional basis, nor are its budgets based on regions. However, we noted that the Office had not determined the reasons for inconsistent refusal rates for its nine regions throughout the province. Figure 3 indicates that the average refusal rates varied from 29% in an eastern region to 50% in its northern region.

Although 12 of the 13 refusal criteria are published on the Ministry's website, the Office is not required to disclose its reason for refusal to the parties in a particular case. We were advised that this is a common complaint of parties whose cases have been refused. However, the Office will inform the parties if a case is refused for the following reasons: an intake form was not received; one of the parties resides outside of Ontario; there is a restraining order prohibiting contact between one of the parties and the child(ren); supervised access

Figure 3: Average Refusal Rate for Custody and Access Cases, by Region (%)

Source of data: Office of the Children's Lawyer

Office of the Children's Lawyer Provincial Regions	Average Refusal Rate for Custody and Access Cases
North	50
Central South A	49
South West	46
Toronto	45
Central South B	42
Central East	42
Central West	34
East A	30
East B	29

has been ordered but has not yet commenced; Children's Aid Society (CAS) has not responded to a request for information regarding its involvement; or the child(ren) are in the care of CAS. Parties may request a reconsideration of their case after it has been refused by the Office.

Based on the refusal criteria, the Office's internal reports indicate that more than 90% of the custody and access cases that it refused were turned down for the following reasons:

- 38% are refused because there is insufficient information to evaluate the case;
- 36% are refused because other resolution efforts should have first occurred but have not been attempted; and
- 17% are refused because the Office deems that the child's situation would not be improved by the Office's involvement.

The Office records in Case Track, its computerized case management system, the reasons for refusing a case according to one of the 13 intake criteria. We noted some inconsistencies between the reasons for refusal that were documented in the file compared to those documented in the database. In addition, in some instances where it had been recorded in the database that a case had been refused, the file noted that the Office had

actually accepted the case and provided services. The documentation of how a decision was arrived at to refuse a case could also be improved. For example, more than a third of cases were refused because other resolution efforts (such as mediation, clinical assessments, or family counselling) should have occurred and had not been attempted. However, almost half of the cases we reviewed that were refused for this reason did not indicate the specific resolution efforts that should have been considered, nor was it evident from the file summaries. Without clear documentation of how decisions are made, there is a risk that intake staff may not be adequately and consistently assessing children's needs, and this would not be apparent from any supervisory or management review of the case documentation.

Senior management at the Office informed us that one common reason for refusing a custody and access case was a lack of available funding for the Office to accept more cases; however, this reason was not tracked, nor is it one of the 13 refusal criteria. For cases that would otherwise be accepted (based on the refusal criteria) had funds been available, we were told that another reason for refusal is selected from one of the 13 refusal criteria. The Office uses a forecast model to ensure that expenditures for the year stay within budget. Because custody and access cases are the most significant type of cases the Office has the discretion to refuse, budget considerations affect how many cases at any given time can be accepted. However, the number of cases rejected due to funding limitations is not specifically monitored or even known. This would be useful information to communicate to senior ministry decision-makers as part of the Ministry's annual budgeting process.

Timeliness of Decisions

The Office has identified the issue of delays in the intake process as a concern to its stakeholders. It completed internal reviews in 2007 and 2008 to seek ways to improve the process. The 2007 report

made 15 recommendations, including changes to the intake form, training for staff, granting more authority to intake staff to refuse files, replacing the Case Track system, and reassessing the 21-day target turnaround time for deciding whether to accept or refuse a case. At the time of our audit, the Office had implemented or partially implemented seven of the 15 recommendations and was working to address those that remained. For instance, intake staff report weekly to management the number of cases refused and accepted, the number still waiting to be processed, and the reasons for refusing cases to help identify outstanding cases and causes of delay.

We noted that the Office has made headway in reducing delays in decision times, but not enough to achieve the 21-day target turnaround time. Our sample showed that average turnaround time significantly improved between 2008/09 and 2010/11, falling from 68 days to 39 days, but it was still about 85% higher than the target. The Office records the date a file is received and the date a recommendation to accept or refuse a case is made by an intake clerk, but it does not record the date the Personal Rights Legal Director or Manager of Clinical Services makes the final decision. It is difficult to accurately assess where bottlenecks are occurring if this information is not tracked. Using data from Case Track that includes the date a case is received and the date that it is forwarded to the Director or Manager for a decision, our analysis indicated that over the last three years:

- 17% of cases took 21 days or less to be forwarded;
- 67% took between 22 days and 56 days to be forwarded; and
- 10% took 57 or more days, or more than eight weeks, to be forwarded.

We could not determine time frames for the remaining 6% of cases because of missing or inconsistent information in Case Track.

Case Assignment

The Office's Accounts and Referrals unit is responsible for assigning protection cases when a court

order is received requiring the Office's involvement and for assigning accepted custody and access cases. Cases outside of the Toronto region are generally assigned to panel agents residing in the local community. Cases in the Toronto region are assigned to both in-house staff and panel agents.

Panel agents have voiced concerns about unfair distribution of cases across a particular region. We also noted wide disparities in the number of cases being assigned to agents within a geographic region. Although an agent may have a good reason for not carrying more cases (such as being newly empanelled or having other workload), the Office has an inadequate system in place to monitor and track panel agents' workload or their reasons for rejecting cases. Our analysis indicated that in one region there were 22 active legal agents, each carrying an average caseload of 17 files; six of these agents were carrying fewer than five files, and four of them were carrying 30 or more. The Office could more appropriately assign cases if it tracked and took into consideration the current caseload of each of its panel agents.

Furthermore, the Office has a policy requiring prior authorization for legal agents to be assigned more than 50 files at a time and for clinical agents to be assigned to prepare more than two Children's Lawyer Reports per month. (If the parties do not resolve the dispute, the clinical investigator prepares a Children's Lawyer Report under the *Courts of Justice Act* for the court that assesses the children's wants and needs and the family's circumstances.) Accounts and Referrals staff informed us that there is no documentation in the personnel files or any notation in Case Track to indicate a legal agent having received authorization to carry more than 50 cases at a time. Accounts and Referrals staff told us that they rely on the supervisors in other areas of the Office who monitor agents to advise them that an agent should not be assigned any more files. As of April 2011, there were 15 legal agents who were carrying more than 50 files. One agent had a caseload of 123 files. However, no documentation was on file indicating that the

required prior authorization had been given for these agents to carry more than 50 cases.

Similarly, there was no documentation or notation in Case Track to indicate a clinical agent receiving authorization to be assigned more than two Children's Lawyer Reports per month. We were informed that, although supervisors monitor case-loads through regular file reviews of each agent, the Accounts and Referrals staff who actually assign the cases did not actively keep track of agents' case-loads. We noted that as of April 2011, there were eight clinical agents with a caseload of 10 or more Children's Lawyer Reports.

We also found that there was no tracking of files waiting to be assigned at Accounts and Referrals. Clerks report monthly on the number of unassigned files, but they do not report how long those files have been left unassigned. We were informed that a case may take up to three weeks to be assigned because there are no agents willing or able to take it. Possible reasons for this include conflict of interest and excessive workload. The Office does not formally keep track of panel agents' refusal of cases and their reasons for refusing a case. It has attempted to address delays by recently implementing a new procedure that requires clerks to bring a file to the attention of the manager if it has been unassigned for two weeks. In the meantime, the Office advised us that child protection cases are a high priority for the Office and are assigned to an agent within five business days of acceptance in 80% to 90% of cases. However, we found long delays for custody and access cases to be assigned, as follows:

- 7% of cases took 28 days or less to be assigned;
- 36% took between 29 and 56 days to be assigned; and
- 47% took 57 or more days, or more than eight weeks, to be assigned.

We could not determine time frames for the remaining 10% of cases because of missing or inconsistent information in Case Track.

RECOMMENDATION 1

To ensure that its intake and referral services make appropriate and timely decisions on whether to accept or reject a custody and access case and whom to assign a personal rights case to, the Office of the Children's Lawyer (Office) should:

- establish criteria for accepting cases based on the best interests of the children involved and the benefits provided by the Office's involvement, and track these reasons for accepting them—the reasons for refusing cases should also continue to be tracked, but recorded more accurately, including noting when funding limitations affect the decision to refuse a case;
- examine the impact on children and the courts of its refusal rate of more than 40% for custody and access cases referred to the Office by the courts;
- monitor the number of cases assigned to each in-house lawyer and panel agent, and ensure that higher-than-normal caseloads receive the required authorizations; and
- establish recording and reporting systems that allow management to adequately track and monitor the time it takes to accept or reject a custody and access case as well as to assign an accepted case, and use this information to identify any systemic reasons for delays.

OFFICE RESPONSE

The Office strives to be responsive to the needs of children, parents, other parties, and the family courts and to inform them in a timely way about whether custody and access cases have been accepted.

The Office is also committed to providing staff with the tools they need to make appropriate case acceptance/refusal decisions and to accurately record the reasons for decisions taken.

The Office is taking steps to:

- articulate and record in more detail the criteria used by the Office when accepting or refusing a custody and access case, including specifying when funding limitations are a factor;
- communicate to senior management in the Ministry the number of custody and access cases accepted and refused;
- reduce the current turnaround times for communicating a decision to accept/refuse a case;
- monitor and authorize, when appropriate, panel agent caseloads that are beyond established thresholds; and
- analyze and measure case flow to identify systemic issues affecting the management of cases from the time a case is opened to its assignment, if accepted.

TIMELINESS OF COURT REPORTS

The Family Law Rules of the Superior Court of Justice require that the Office file a Children's Lawyer Report with the court within 90 days of serving notice to the parties that an investigation is to be conducted. We were informed that the Office does not view the 90-day time frame to be realistically attainable and that it has attempted in the past to extend this time frame through discussions with the Family Rules Committee but was unsuccessful. The Office monitors the number of reports that meet the 90-day requirement and the number of reports that were completed within 120 days. Since April 2006, the Office has reported that less than 20% of assigned reports were filed within 90 days, with an additional 22% of reports filed within 120 days. We also noted that 25% of reports took more than 180 days to complete, with the longest taking almost 400 days. The Office had not established an action plan to improve its performance in meeting the 90-day deadline.

RECOMMENDATION 2

To help improve its performance in meeting a regulated 90-day deadline for filing Children’s Lawyer Reports with the court, the Office of the Children’s Lawyer should establish a formal strategy that addresses the changes needed to its systems and procedures in this area.

OFFICE RESPONSE

The Office remains committed to delivering its Children’s Lawyer Reports to the parties and the courts in a timely manner. The preparation of these reports is time-intensive and requires meetings with the parties, meetings with the child(ren), observing the parties and the child(ren), obtaining information from several external sources, and drafting the report. Accordingly, it is often difficult to meet the 90-day timeline.

To improve timeliness, the Office is examining and analyzing the obstacles to meeting the 90-day timeline. It is also exploring alternative forms of fact-gathering and report-writing, both within the Office and with stakeholder partners. An action plan is being developed, geared specifically to reducing impediments to meeting the 90-day timeline.

PANEL AGENTS

Empanelment Process

The Office uses “panel agents”—lawyers and clinicians (that is, social workers or psychologists) working in private practice—to supplement its own staff and to provide services throughout the province. An empanelment process is used to select and prequalify lawyers and clinicians, who are then enrolled to a list, also called a panel, and who can then be assigned cases in their region.

We found that a comprehensive empanelment-selection process was in place for lawyers and

clinicians hired for personal rights cases, but there was no equivalent process for the lawyers the Office used in property rights cases.

The Office advertises its empanelment process, and interested lawyers and clinicians submit applications and references. The Office requires that personal rights legal and clinical agents have sufficient credentials, knowledge, experience, and interpersonal skills to deal effectively with children and families. Both legal and clinical applicants must sign an agreement listing the undertakings expected of the agent if he or she is selected for the panel—agreeing to comply with Office policies and procedures, lawyers being a member in good standing with the Law Society of Upper Canada, submitting invoices on time, attending training, and accepting all cases assigned except where there is a conflict of interest.

The Office’s panel agents for personal rights cases are retained for a three-year term. They may leave or be removed from the panel at any time, and new agents may be hired in-term, if required. At the end of the empanelment period, agents must reapply if they wish to remain on the panel. At the time of our audit, there were about 335 active panel lawyers carrying more than 7,200 cases, and about 180 active clinical agents carrying about 1,150 cases. We concluded that this was a sound process.

However, the Office has not established a similar process or criteria for its property rights agents. At the time of our audit, there were 98 private lawyers retained by the Office for property rights cases, an increase of 17 lawyers or 17% from the previous year. The Office informed us that it seeks out lawyers in private practice who have skills and experience in conducting estate and civil litigation cases. The Office also relies on lawyers that have established good working relationships based on previous services provided. Nevertheless, a more formal and open empanelment process for property rights lawyers would be more consistent with the general principles of a transparent and fair procurement process.

Tariff Rates

The Office sets maximum amounts for the rates and hours that personal rights panel agents are allowed to charge for their services. Any service hours charged over the maximum require prior authorization by the Office. In general, lawyers may charge up to 30 hours for the first year of a case, and up to 15 hours for the second and each subsequent year, which is increased to 40 and 20 hours, respectively, if four or more children are involved. They are also allowed additional hours if the case proceeds to trial. Clinical panel members can charge up to 30 hours for preparing a Children's Lawyer Report or in the first year in a case requiring clinical assistance, and up to 15 hours in each subsequent year.

Historically, changes to the tariff rates paid to Legal Aid Ontario lawyers have been followed within a few months by a matching increase in the Office's legal tariff rates.

On January 25, 2010, the Attorney General announced that the province was going to increase the rates for Legal Aid Ontario lawyers. One of the changes introduced under the agreement was an increase in hourly fees for criminal, family, immigration/refugee, and mental-health lawyers by an average of 5% per year for the next seven years. As of April 1, 2011, lawyers working for Legal Aid Ontario receive an hourly rate of around \$112, compared to a rate of \$97 for those hired by the Office. However, the Office's last tariff increase was approved more than three years ago by the Ministry.

Stakeholders advised us that they found the difference in rates for similar services unfair because in many cases in the same courtroom parents may be represented by Legal Aid Ontario lawyers while their children are represented by the Office's panel lawyers at a lower rate.

The Children's Lawyer has made a request to the Ministry to match the rates paid by Legal Aid Ontario. The Office estimated that the financial impact of this proposed tariff increase would be a 10% rate increase effective November 1, 2010, and would result in the Office requiring approximately

\$732,000 in additional funds for the 2010/11 fiscal year and 5% per year over the subsequent five years. At the time of our audit, the Office's request had not been approved.

Property Rights Legal Fees

When the Office represents a child in an estate matter, the services will be paid for by the Office at the tariff rate unless the fees can be paid by another party to the litigation or out of the estate/trust, or the settlement. When the fees are to be paid by another party, or from the estate/trust or settlement, the property rights staff lawyers review the accounts and the court approves the payments from the other party or the child's funds. In civil cases, when damages are paid to a child, such as for accident claims, panel agents are instructed to seek recovery of their costs from another party to the litigation whenever possible. If it is not possible to recover costs from another party, fees are paid from the settlement, after being approved by the court.

We noted that the Office was paying lawyers it engaged for property rights cases \$97 per hour when the Office paid for the services, but had established a policy that allowed lawyers to "charge their usual hourly rate" up to a maximum of \$350 per hour (\$300 per hour before June 2010) when a child paid for the services from the estate/trust or settlement. The Office advised us that a higher rate was established as a means of attracting and retaining property rights counsel to do work for it. In 2002, the rate was capped at \$300 per hour. In our discussions with them, Office staff noted that they hire expert lawyers to handle more complex cases, sometimes on a contingency-fee basis, and this expertise necessitates higher fees. In our view, this still does not explain why the Office permits lawyers to charge only the tariff rate when the Office is paying and to charge a rate that is more than three times higher when they are being paid from the child's funds.

The Office informed us that it reviews all cases that have settled with payments to agents to ensure

that the payments made on behalf of the child are acceptable and that these fees are approved by a court. We requested information on how much has been paid to lawyers from estates/trusts and settlements at the rate above the tariff, but the Office does not keep track of this information because the payments do not come from its budget. Therefore, the Office could report only the amount that it paid out to property rights agents at the tariff rate, which was \$354,000 in 2010/11.

Because the Office pays the lower tariff rate to many different panel lawyers for property cases, it should have a good understanding of which of these lawyers are most capable of handling the more complex cases. We suspect that many of these lawyers might well, if offered the opportunity, be willing to undertake property cases on behalf of a child's estate for significantly less than \$350 an hour.

Payments

Legal and clinical agents for personal rights cases are required to submit invoices to the Office at least three times per year but not more than once a month and not for less than \$100 for services rendered.

Accounts and Referrals clerks receive all personal rights agents' invoices and manually enter the payments in Case Track. The clerks check the invoices for accuracy, correct tariff rates, and approved disbursements and ensure that any amounts over the tariff rate include documentation of prior authorization before approving them for payment. However, the clerks do not have the knowledge of the cases to be able to assess whether the amounts billed are reasonable given the services provided. A supervisor, staff lawyer, or clinical investigator reviews panel agents' files as part of the Office's quality assurance program, but this review does not include an assessment of invoices either before or after payment to ensure that the charges were reasonable. Office staff informed us that supervisors have occasionally conducted ad hoc file examinations where billings that were considered

higher than the average amounts were reviewed for reasonableness of services provided, but these examinations have not been consistently done and there was no record of specifically which files were reviewed or any documentation of the procedures followed when they are done.

Until 2010, invoices pertaining to a particular case were not centrally stored; rather, the invoices relating to the case could be located in several different batches of payments, making it labour-intensive to locate all of an agent's invoices for a single case to review the billings after payments had been made. Although invoices are now filed by case, processes for regularly examining payments have still not been established. At the end of our audit fieldwork, the Office told us that it had been informed by an outside source about possible fraudulent billings by a panel agent that may have taken place over the past 10 years and, although it was still too soon to know the extent of the billing irregularities in that particular case, it had initiated an investigation of its payment practices. We also noted from our discussions with Legal Aid Ontario that it was implementing a process for conducting regular post-payment examinations of its panel lawyers' invoices to ensure that the payments made to the panel lawyers were appropriate and reasonable in relation to the work done.

The Office informed us that agents regularly complain about the length of time it takes for their invoices to be paid. One of the Office's performance measures is to have 80% of invoices paid within 30 days. The Office has reported its difficulties in meeting this target—the percentage of invoices paid within 30 days fell from 78% in 2006/07 to just 26% in 2009/10. The Office informed us that it is working to address delayed payments and has hired contract staff for 2010/11 and 2011/12 to clear the backlog of invoices waiting to be processed. This resulted in 71% of invoices being paid within 30 days for the 2010/11 fiscal year. However, the Office has not determined whether it is possible to change its current business processes to expedite

invoice processing without having to resort to the periodic use of contract staff.

Block Payments

Block fees are fixed fees that are paid for common types of services. We discovered that, to reduce administrative costs and provide more financial certainty, Legal Aid Ontario was changing to a block-fee framework for many legal services rather than paying by the actual number of hours incurred on a case. To implement block-fee payments, Legal Aid Ontario reached an agreement with its legal stakeholders to pilot a new payment method. The first and second phases of its block-fees program were implemented in May 2010 and May 2011.

The Office informed us that it was not formally considering other billing structures, such as block fees or alternative payment arrangements, for personal rights cases. We were also advised that the Office had implemented a block-fee arrangement with a firm to handle aspects of its 2003–2009 property rights cases; however, the Office did not have any information or analysis on the cost-effectiveness of this arrangement.

The Office's annual review of tariff fees paid to panel agents includes a review of the total hours paid for and total disbursement amounts above the standard tariff hours allowed. However, we noted that the Office's billing system is not capable of reporting on the number of hours and amounts billed compared to the allowable maximums and other similar analyses. Access to information on the extent to which particular types of cases require more or less than the standard tariff hours, or on whether certain agents consistently require more or less time than the tariff allows, would be useful in evaluating allowable tariff hours and different payment frameworks.

RECOMMENDATION 3

To ensure that it has adequate systems, policies, and procedures for acquiring, reimbursing, and

managing its legal and clinical panel agents, the Office of the Children's Lawyer (Office) should:

- develop a more open empanelment process for lawyers hired for property rights cases similar to the sound process already in place for personal rights panel agents;
- further consult with the Ministry of the Attorney General on establishing a process whereby the tariff rates for panel lawyers would be the same as the rates paid by Legal Aid Ontario;
- assess whether alternatives may be available to retain appropriate lawyers for property rights work to enable at least some reduction in the current significant premium rates being paid for services billed directly to the estates/trusts or out of settlement funds belonging to the child;
- implement better systems and procedures for scrutinizing legal fees, such as post-payment examinations and assessing the reasonableness of invoices, and for paying them within targeted time periods; and
- in conjunction with its stakeholders, research and evaluate alternative methods of payment to its panel agents, such as block-fee payments, that would increase financial certainty in payments and reduce administrative processing requirements and costs for the Office.

OFFICE RESPONSE

The Office values the experience, knowledge, and commitment of its legal and clinical panel agents and is committed to providing high-quality services for children in a cost-effective manner. Accordingly:

- The Office will develop a fair and open process for the empanelment of qualified agents to provide representation for the Children's Lawyer in property rights cases across the province, similar to the process already in place for personal rights panel agents.

- A Ministry-approved increase in the tariff rates for panel lawyers to match the rates paid by Legal Aid Ontario, retroactive to July 1, 2011, has been implemented. The Office will consult with the Ministry on establishing a process for the timely consideration of requests for future tariff-rate increases and possible synchronization with future Legal Aid Ontario rate increases.
- The Office will canvass other Ontario Public Service and broader-public-sector organizations and consult with stakeholders to assess whether there are suitable alternatives to the current retainer model that can be used in the small specialized portion of property rights cases where panel agents are retained. Such an approach must, however, maintain the high-quality legal representation that the Office currently provides to children.
- The Office's new case management system, Children Information and Legal Database (CHILD), scheduled for phase-one implementation in December 2011, will automate and improve the Office's information technology systems, as well as its processes for acquiring, reimbursing, and managing its legal and clinical panel agents. The second phase of implementation of CHILD, scheduled for spring 2012, will allow for electronic billing and more timely and efficient invoice payments.
- The Office will improve current auditing and assessment of agent bills-of-account for reasonableness and compliance with legal and clinical tariffs, as well as consider alternative methods of review and payment of its fee-for-service panel-agent invoices, such as post-payment examinations. It is anticipated that the portal component of the new system will significantly automate the submission and processing of agent payments, and reduce the Office's administrative costs.
- The Office will also examine alternative billing methods, such as block-fee payments, as part of the new systems evaluation.

PROGRAM COSTS

Cost Analysis and Forecasting

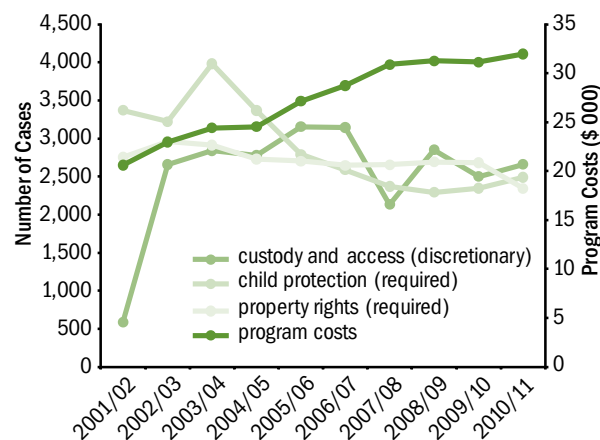
We found, as shown in Figure 4, that the Office's expenditures had increased at a substantially higher rate than its underlying service volumes over the past 10 years and that the Office needed better management information to allow it to ensure and demonstrate the cost-effectiveness of its operations. For instance, over the 10-year period from the 2001/02 to the 2010/11 fiscal years, we noted the following:

- Overall program expenditures increased from \$20.6 million to almost \$32 million, or by 55%.
- Payments made to panel agents, which account for approximately 70% of the Office's total budget, increased from about \$13.6 million to \$21.7 million, or by 60%.
- New cases accepted decreased by about 20%, and the Office's overall active caseload did not change significantly.

Although some of these changes can be explained by three tariff-rate increases over this period, the Office had not conducted any formal analysis to identify the extent to which other factors—such as more complex and time-consuming cases or process inefficiencies—contributed to the disproportionate cost increases.

Figure 4: Accepted New Cases and Program Costs, 2001/02–2010/11

Source of data: Office of the Children's Lawyer and Public Accounts of Ontario



We also found that the Office was not tracking and monitoring its case costs as fully as it could. For instance:

- The Office does not know the cost of handling a personal rights case from beginning to end. Instead, to determine its budget the Office calculates the average cost of all the ongoing personal rights cases in a particular year by totalling the amounts paid out that year divided by the total number of ongoing cases at the end of the year. The Office also uses averages to estimate case cost per agent in a given year, and has occasionally used this method to target agents for file audits on an ad hoc basis.
- The Office also does not determine the cost per property rights case. It informed us that, because the cost of using agents in property rights cases is relatively low, a lump-sum forecast of \$400,000 for all cases is budgeted every year.
- The Office has no time-docketing system in place to track the amount of time in-house legal and clinical staff spend on each case. As a result, it cannot do a comparison of handling a case in-house versus with panel lawyers to determine what is more cost-effective and efficient for different types of cases. It could also only estimate the time personal rights staff spent on supervision and quality assurance activities for panel agents, which it estimated took 60% to 80% of staff's time. The Office informed us that it was considering time-docketing for its new computerized case management system, CHILD, which is discussed later in this report, but this function was not part of the project at the time of our audit.

Co-operative Arrangements with Similar Organizations

The Office has not formally examined opportunities for sharing costs and resources and co-operating with organizations that provide similar legal or support services. For example, the Office of the Public

Guardian and Trustee (OPGT) acts as Litigation Guardian for mentally incapable adults, and Legal Aid Ontario provides legal representation to adults, primarily using panel lawyers. Making use of such co-operative arrangements could help reduce overhead expenses and build capacity and might enable the Office to deliver its programs more cost-effectively. Approximately 25 of the Office's 85 staff perform administrative duties, and legal and clinical staff conduct training, and hire and supervise panel agents, in addition to working on cases.

We identified opportunities for co-operative arrangements that include training of staff and panel agents, quality assurance programs for services provided, and the empanelment process used to select panel agents. We were informed that the Office has worked with Legal Aid Ontario in the past to offer training sessions to panel agents in conjunction with duty counsel. Also, OPGT and the Office provide similar services in property rights (for example, both may act as Litigation Guardian for adults and children, respectively), yet the Office has not explored opportunities to share resources with the OPGT. However, we did note that there is a protocol between the OPGT and the Office for cases where there may be potential duplication of services. For example, in an estate case where there is a child beneficiary and a mentally incapable adult beneficiary, and both the Office and the OPGT have taken the same position, only one office brings the case forward, so as to reduce duplication and costs.

RECOMMENDATION 4

To ensure that it has adequate management information on costs for services to enable it to more accurately assess the efficiency of both in-house staff and panel agents over time, the Office of the Children's Lawyer should collect information on the actual costs of completing its different types of cases and other activities. It should also explore opportunities for reducing its costs or enhancing its administrative capacity by collaborating with Ontario Public Sector

organizations that do similar legal work in areas like property rights and in fields such as training, quality assurance, and empanelment processes.

OFFICE RESPONSE

The Office is making changes to improve its case-cost information and its financial forecasting. A case-cost forecasting model has been developed to better analyze and predict total existing and new case commitments and costs. It provides more case information data and analysis on the average life cycle of a case, average and total case costs, and case type and category, including small, medium, and large total-dollar value.

The Office will continue to implement measures to better monitor and control its total operations expenditures to ensure that it provides the most cost-efficient services within its budget allocation. The Office follows the OPS-wide Results-based Planning process and forecasts program expenditures in comparison to budget each month. Total expenditures have been limited to a 2.2% increase over the three fiscal years ending March 31, 2011.

The Office will explore additional opportunities for co-operation with OPS organizations that provide legal services, including the Office of the Public Guardian and Trustee.

INFORMATION MANAGEMENT SYSTEMS

In 2002, the Office developed and implemented a computerized case management system called Case Track for its personal and property rights cases. Management also relies on this system to provide timely, accurate, and relevant information for decision-making purposes.

In 2003, an internal audit followed by two subsequent systems evaluations raised serious concerns about Case Track's viability. The 2003

internal audit report noted that the Office had no integrated case management system to effectively monitor and manage cases, nor were there sufficient access controls within Case Track to reduce the risk of unauthorized changes to case information, which may have been one of the reasons for unreliable and inconsistent data in the database. We found these issues still outstanding at the time of our audit. For example, Case Track was unable to track activity or status updates throughout a case and could capture information only at the opening and closing stages of a file. Statistics on cases sitting at the Intake and Accounts and Referrals units are gathered manually because it is not possible to record this information in Case Track. We also noted many instances of erroneous or missing data in Case Track, including almost 300 child protection cases, which are mandatory for the Office to accept, that were recorded incorrectly as having been refused.

A business technology solutions consultant the Office engaged to review its systems in 2007 reported that Case Track was meeting only 25% of the Office's functional requirements and that the system's design made subsequent maintenance or enhancements prohibitively expensive. The consultant recommended replacing the Case Track system even though it was only five years old at the time. In response to these findings, the Office has been working with the Ministry's Justice Technology Services (JTS) to design and implement a new case management system called Children Information and Legal Database (CHILD) to address the current system's deficiencies. The total cost for this project was budgeted at \$3.8 million at the time of our audit, with approximately \$1.4 million having already been spent. The Office informed us that it expected CHILD to become operational in November 2011. As of the end of our fieldwork, we found that the project was being managed according to the Management Board of Cabinet Information and Information Technology Directive and the OPS Integrated Project Management Framework and Methodology.

We understand that the system was designed in consultation with all of the Office's departments to ensure that it meets key business and user needs. However, we were informed by the project's team members that the new system will still meet only about 75% of the Office's business requirements. There was no documentation to support this informal assessment or what requirements constituted the missing 25% but, for example, tracking the time Office staff spends on each case (time-docketing) was not within the scope of the new system's design, although this was initially identified as a business need for approving the CHILD system and the absence of time-docketing functionality in the Office's current system was noted as a deficiency in the 2007 business technology consultant's report.

RECOMMENDATION 5

To ensure that the new case management information system—Children Information and Legal Database (CHILD)—being developed will resolve deficiencies in the system it is replacing and meet current business and user requirements, the Office of the Children's Lawyer, in conjunction with Justice Technology Services (JTS) project managers, should prepare an interim report for senior management comparing the deficiencies of the existing system to the intended functionality of the new system and identify any expected gaps or limitations in CHILD's design. The interim report should also address how the new system will improve safeguards for confidential information and improve data integrity and case file management and controls.

OFFICE RESPONSE

The Office's new case management system, CHILD, has been designed to resolve many of the information technology, information management, and process deficiencies identified in this audit. The system has been developed to

meet 100% of the documented business requirements signed off on by the Office–JTS Project Team and governance structure. The system has also been built using an iterative design methodology that will ensure that the application functionality aligns with business needs and process improvements. Important additional functionality, such as time-docketing, is planned as part of a future phase of the project.

The Office and JTS are preparing an interim report that includes a gap analysis to describe how the new application will address existing system deficiencies. The project and governance teams are confident that the new system will meet the required levels of confidentiality and provide for improved data integrity and systems controls.

TRANSITION TO ADULthood

We noted that there is no formal protocol in place to assist children turning 18 who have been represented by the Office. Once a mentally competent child turns 18, the Office ends its involvement in any of his or her legal matters because it does not have the legal authority to act on behalf of adults. Children are notified in writing of the termination of the Office's involvement and are advised to retain their own counsel if they wish to continue to pursue a legal matter, such as a pending civil lawsuit. Without continuity of service or any type of planned transition or offer of support services, there is a risk that a child's interests will not be adequately protected after he or she turns 18. We acknowledge that there are legal limitations on the Office's further involvement when the child turns 18 and is legally considered an adult capable of making informed decisions. However, the children to whom the Office provides property rights services typically may not have parental or other support or may have a legal conflict with family members, and may become responsible for complex estate

and injury cases involving significant financial matters. They also may not be able to afford further legal representation or qualify for Legal Aid Ontario support. In many cases, they may lack both the maturity and the experience to know what to do when they receive such a “now-in-your-hands” letter from the Office.

The Office advised us that it does have informal arrangements in place with the OPGT for the transition of minors who may be mentally incapable and are turning 18. The OPGT conducts an investigation when it receives information from the Office that a child turning 18 may be incapable and therefore at risk of suffering serious financial or personal harm and no alternative solution is available. This investigation may result in the OPGT asking the court for permission to make decisions on the person’s behalf. The Office informed us that it is currently working with the OPGT to develop a standard letter to be sent to the child and other affected parties in cases where a transition to the OPGT after the child turns 18 may be necessary.

RECOMMENDATION 6

To help ensure that children’s interests continue to be adequately protected when they turn 18 and no longer qualify for the legal services offered by the Office of the Children’s Lawyer (Office), the Office should establish processes that include developing and communicating transition plans for each child, including referrals to appropriate support services.

OFFICE RESPONSE

The Office recognizes the importance of providing youth who have been represented by the Office and who turn 18 during the course of litigation with information to help them assume the responsibility to carry on the litigation. The Office will consider appropriate additional ways to assist in the transition.

QUALITY ASSURANCE AND TRAINING PROGRAMS

We found that the Office had established quality assurance processes and training programs to help ensure that legal and clinical investigative services were being consistently and competently delivered to children by qualified service providers.

Performance Evaluations and File Reviews

As previously mentioned, we were informed that personal rights staff lawyers and clinical investigators estimate that they spend from 60% to 80% of their time supervising panel agents to ensure that they provide timely and quality services. The rest of their time is spent working on cases of their own, participating in committees, and planning for agent training. The performance of new panel agents is reviewed 18 months into the three-year empanelment period to determine whether the agent should remain on the panel, remain empanelled on conditional status, or be removed from the panel. A similar review is conducted at the end of the empanelment period for those agents seeking re-empanelment. These reviews consist of an evaluation of an agent’s performance based on criteria such as legal or clinical skills, compliance with Office policies and procedures, case management, and general administrative skills.

The individual case files of all in-house staff and panel agents are also reviewed on a regular basis. Regional supervisors conduct these file reviews once every four months for new and conditional legal agents, once every six months for all other legal agents and in-house legal counsel, and quarterly for all clinical agents. Prior to the file review, the panel agent or in-house member of staff is required to submit a reporting letter or status review, which consists of a brief summary of the case, the work they have performed to date, and the work yet to be done. The supervisor then evaluates the quality of the agent’s work against various criteria, such as the number of times the agent met with the child,

whether the position taken was appropriate, and whether sufficient information was gathered from collateral sources to support the position. Clinical agents are also required to submit their completed Children's Lawyer Report for approval by their supervisor and the Manager of Clinical Services before the final report is submitted to the court.

Any concerns identified with the work of a panel agent are discussed with the agent; if the work has been unsatisfactory, he or she may be put on a probation period or removed from the panel. The Case Track system includes a reminder system to help ensure that supervisors complete file reviews and monitor agents at the required intervals.

We reviewed adherence to the Office's established quality assurance processes and generally found that staff were meeting set timelines for performance evaluation and file reviews and identifying significant areas of concern. As of February 2011, 17 of 345 panel lawyers had been placed on conditional status.

Training

Upon empanelment, new agents are required to attend a one-day orientation where they are trained in Office policies and procedures and learn generally how to conduct the various types of cases they will be assigned. In addition, the Office has training sessions in professional and administrative matters for legal and clinical agents twice a year. The Office decides on the type of training to be provided at these sessions through informal discussions with supervisors and senior management.

We noted that there was no documentation or formal training plans targeting specific competencies needed by lawyers and clinical investigators for the type of work they perform. As well, the Office did not consistently record which agents had taken which training courses. The Office also does not offer makeup sessions for agents who have missed a training session.

The most recent agreement, for the 2009–2012 empanelment period, requires clinical agents to

provide proof that they have completed a minimum of 21 hours of continuing education per year. However, we learned in discussions with Office staff that they were not aware of this requirement. There was no documentation in any of the clinical agents' personnel files we sampled to show that the agents had completed the minimum required 21 hours of continuing education per year or that this had been assessed in their most recent quality assurance reviews. In-house clinical investigators are also expected to maintain 21 professional development hours per year through reading and attendance at seminars and conferences. We noted that the Office keeps track of the seminars attended by each investigator per year, but does not note the number of hours they have completed.

RECOMMENDATION 7

To ensure that it is reaping the full benefits of in-house training and continuing education requirements for its panel agents and its own staff, the Office of the Children's Lawyer should better document attendance at training and professional development activities so that such activities can be considered in its panel agents' and staff performance evaluations.

OFFICE RESPONSE

The Office is committed to ensuring that it continues to provide opportunities for training and development to its staff and panel agents:

- The Office will more accurately document the attendance of panel agents at training sessions offered by the Office, and the time spent, and consider this in its agents' performance reviews.
- The Office will more accurately document staff attendance and time spent at continuing education and professional development programs, and consider this information as part of performance management and learning development plans.

MEASURING PERFORMANCE

Performance Measures and Reporting

Over the last several years, the Office has established and used 12 performance measures to assess program performance. These include measures of the timeliness with which services were delivered and of the results achieved.

Three of the 12 measures are considered critical measures of success by the Office and are reported to the Ministry through the annual Results-based Planning process. These performance measures help report on the Office's success in assisting in getting cases resolved or settled without going to trial, and are appropriately outcome-based. However, all involve the Office evaluating its own success. For example, the measure that reports the percentage of cases where the Office's involvement assisted in resolving the matter is based on the legal agent's or in-house counsel's own assessment of his or her success in resolving the case, with no input from external stakeholders. Furthermore, there are no documented criteria against which this assessment is made. We also found that this measure needed to be more clearly defined, because it could be misleading—it claims to report on the Office's achievement on all cases, but the information used pertains only to custody and access cases, which represent only 26% of the Office's total cases.

Two measures pertain to the legislative requirement under the *Courts of Justice Act* that the Office serve and file a Children's Lawyer Report to the court within 90 days of serving notice to the parties of an investigation: the number of reports that meet the 90-day requirement and the number of reports that were completed within 120 days. However, as mentioned earlier, in the last five years, fewer than 20% of the assigned reports were completed within the 90-day time frame.

During the 2010/11 fiscal year, more than 80% of all child protection cases received by the Office were handled outside of the Toronto area. Before April 2010, child protection cases outside of Toronto were assigned to the Office's panel agents

by Legal Aid Ontario. This arrangement has since ended, and the Office now assigns all child protection cases across the province. The Office has a performance measure in place that all child protection cases in Toronto are to be assigned within five working days, yet it imposed no similar measure for assignment of child protection cases outside of Toronto.

The Office prepares an annual review report for distribution to stakeholders such as Children's Aid Societies, the Ontario Bar Association, the Ontario and Superior Court Justices, and Legal Aid Ontario. This annual review provides only background information on the Office, a breakdown of expenditures for the year by department, the number of cases assigned in the year, and information on the Office staff's community involvement. In our view, the Office's annual report would be more informative and relevant to its stakeholders if it contained more useful and objective information on the Office's performance compared with its performance targets and if it were posted on the Ministry's public website.

Consultation with Stakeholders

Although the Office consults with panel members on its policies and procedures, there are no formal consultation processes in place with other key stakeholders—such as the child clients, Children's Aid Societies, and other parties to court proceedings—to regularly obtain feedback on the Office's effectiveness and the degree to which it meets expectations.

We noted that in previous years the Office has asked its panel lawyers and clinical investigators about any concerns they might have regarding the Office's practices, such as the level of supervision needed, timeliness of payments, training provided, and other administrative matters, and communicated the results to them. The Office conducted a consultation with panel lawyers in 2007, and most recently again in 2010. However, as of June 2011, it had not yet communicated the results of the 2010 discussions to them.

The Office also does not hold consultations with the children it serves to determine whether their needs have been met by the services that were provided. We noted a practice in Alberta where the Office of the Child and Youth Advocate initiated a client feedback process to hear about children's expectations of their legal representative and how their experiences compared to those expectations. Questions included:

- Did you understand your lawyer?*
- Did your lawyer explain what was happening in court?*
- Did your lawyer listen to you?*
- Did your lawyer tell the court what you wanted?*
- Did your lawyer answer your questions?*
- Did your lawyer explain what the judge's decision means?*
- Were you happy with the legal services you received from your lawyer?*

The Office informed us that the Children's Lawyer performs outreach and establishes dialogue with organizations doing work for families and children, as well as with the judiciary. From time to time, the Office's senior management also meet with provincial justices involved in family matters to discuss any concerns, but they did not have a record of the results of these meetings.

RECOMMENDATION 8

To help assess whether it is efficiently and effectively meeting the needs of its clients and stakeholders, the Office of the Children's Lawyer should continue to develop and report key performance indicators that are clearly defined

and objectively measured, establish realistic targets, and measure and report on its success in meeting such targets. It should also implement a more formal process of obtaining periodic feedback from stakeholders, such as its child clients and the judiciary.

OFFICE RESPONSE

The Office acknowledges the importance of continuing to develop its key performance indicators (KPIs) in support of its core mandate and of measuring the results of internal processes and services provided to children and key stakeholder groups.

The following key steps have been taken by the Office:

- The Office's senior management team has already established a conceptual framework, based on best practices, and identified a robust set of KPIs to drive results in alignment with key operating goals and strategies. The Office's new case management system will allow the Office to gather information about the services it provides in each region of the province.
- The Office will continue to engage in direct outreach to key stakeholders to improve the information exchange with the Office.
- The Office is developing a youth engagement strategy that will include dialogue with youth about the Office and its services.
- The Office is committed to communicating more regularly with the public about the Office and what it does for the children of Ontario.

Chapter 3

Section 3.11

Ontario Trillium Foundation

Background

The Ontario Trillium Foundation (Foundation) was established in 1982 as an agency of the Ontario government. Its mission is to build “healthy and vibrant communities throughout Ontario by strengthening the capacity of the voluntary sector, through investments in community-based initiatives.”

It does this by distributing grants—about 1,500 of them, worth more than \$110 million, in the 2010/11 fiscal year—to not-for-profit and charitable organizations working in the areas of human and social services, arts and culture, environment, and sports and recreation. Most of the grant money goes to pay the salaries and wages of people working in these organizations.

The Foundation operates under the terms of a memorandum of understanding (MOU) with the Ministry of Tourism and Culture (Ministry) that is updated every five years, most recently in 2009. The MOU defines the Foundation’s mandate and relationship with the Ministry regarding operations, accountability, finances, administration, and reporting.

The agency has a volunteer board of directors and approximately 120 full-time staff located at its Toronto head office and in 16 regional offices across the province. In addition, more than 300

volunteers may be named to grant-review teams across the province—there are 18 to 24 volunteers on each team—to vote on which projects or organizations should be funded. At the time of our audit, 38% of grant-review team positions were vacant. The volunteer members of the board and of the review teams are appointed by the Lieutenant Governor-in-Council on the recommendation of the Minister of Tourism and Culture.

From 1982 to 1999, the Foundation operated on approximately \$16 million a year in Ministry funding drawn from provincial lottery revenues, and provided assistance only to groups involved in human and social services. In 1999, the Foundation’s mandate was significantly expanded to include groups working in arts and culture, the environment, and sports and recreation. At that time, Foundation funding also increased to approximately \$100 million a year, drawn largely from charity-casino revenues. Since 2007, funding has come from general provincial revenues.

In the 2010/11 fiscal year, the Foundation received total funding of about \$124 million. About \$111 million was paid out in grants to charitable and not-for-profit organizations, and the remainder covered program administration. The same year, the Ministry also committed an additional \$50 million for a two-year capital-funding program with a focus on organizations serving culturally diverse

communities. Approximately \$3.5 million in grants had been approved under this new program by the end of the last fiscal year.

Audit Objective and Scope

The objective of our audit was to assess whether adequate policies and procedures were in place at the Ontario Trillium Foundation (Foundation) to ensure that:

- approved grants were consistent with the Foundation’s mandate, in amounts that were commensurate with the value of the goods and services provided by the grant recipients, and that they were spent for their intended purpose; and
- costs were incurred and managed with due regard for economy and efficiency, and the effectiveness of the Foundation was appropriately evaluated and reported on.

Prior to our fieldwork, we identified criteria to be used to address our audit objectives. Senior management at the Foundation reviewed and agreed to these criteria.

Our audit included a review of the Foundation’s administrative and operational policies and procedures. We also talked to selected staff members at eight locations—head office and seven regional offices in Toronto, Waterloo, Barrie, Kingston, Peterborough, Sudbury, and North Bay—and interviewed the chair of the board of directors. We reviewed and assessed pertinent grant, financial, and operational information, along with a sample of individual grant files. We visited 29 organizations that received grants from the seven regional offices we visited.

The Internal Audit Division of the Ministry of Tourism and Culture had not conducted any recent audits of the Foundation’s operations. We did review reports from an individual contracted by the Foundation to conduct individual grant reviews. However, these reviews did not relate to our audit

criteria so we were unable to reduce the extent of our audit work as a result.

Summary

A primary responsibility of the Ontario Trillium Foundation (Foundation) is to ensure it gives out its annual allocation of more than \$100 million each year to community not-for-profit and charitable organizations. A wide range of projects can be funded, as long as they support the local community and relate to social services, arts and culture, the environment, and sports and recreation activities. For instance, grants can range from funding a light conservation project to reduce light pollution in the Bruce Peninsula, to supporting carbon-neutral farming, to developing employment skills for low-income newcomers, to strengthening the leadership skills of First Nations women. With respect to the question of value for money received for each grant, we acknowledge that this may well be in the “eye of the beholder” and that it is within this context that the Foundation operates.

We found that the Foundation does ensure that all grants have a community-based focus. And while it has a well-defined grant application and review process for deciding which applicants receive grants, we noted that the underlying process and resulting documentation often did not demonstrate that the most worthy projects were funded in reasonable amounts because there was little evidence that the Foundation:

- objectively compared the relative merits of different proposals to ensure the most worthy projects were supported;
- adequately assessed the reasonableness of the grant amounts requested and approved; and
- effectively monitored and assessed spending by recipients or the results they reported.

In addition, many of the grant recipients we visited could not substantiate the expenditure and

performance information they reported to the Foundation.

While its website is comprehensive and informative, we believe the Foundation could do more to inform all community organizations of the availability of grants and the application process. It could, for example, consider advertising periodically in local and ethnic-community newspapers.

Although the Foundation's administrative expenditures were relatively modest compared to most other government agencies that we have audited, it nevertheless needs to tighten up its administrative procedures to ensure it complies with the government's procurement and employee-expense guidelines.

OVERALL FOUNDATION RESPONSE

The Ontario Trillium Foundation (Foundation) appreciates the Auditor General's recommendations. We acknowledge too the observations that the Foundation has a well-defined grant application and review process, and that there is an institutional mindset that places emphasis on keeping costs to a minimum.

With 16 regional offices and approximately 1,500 grants each year to not-for-profit organizations across Ontario, the Foundation is committed to building healthy and vibrant communities by serving the voluntary sector in all its diversity: large organizations and small, urban and rural communities, in every region of the province. The Foundation's grantee organizations are all volunteer-led—and in many cases entirely volunteer-run—building communities with enthusiasm and often with very limited resources.

Up to 300 community volunteers can be engaged in the Foundation's grant-making decisions, bringing their community experience to supplement the research and analysis of the professional staff. Effective community-building may not always fit a template, especially given the limited staff and resources of many small

community organizations. Nonetheless, we appreciate the Auditor General's recommendations for stronger documentation, robust performance measures, and enhanced monitoring.

The Foundation has introduced a new online grants-management system, developed and tested in the 2008/09 fiscal year, and fully implemented in March 2010. We are confident that the built-in controls are addressing many of the Auditor General's recommendations relating to the grant review and approval process and standardized documentation.

The Foundation is committed to further enhancing its impact across the province, and welcomes the recommendations of the Auditor General to assist in its continuous improvement.

Detailed Audit Observations

GRANT PROGRAM OVERVIEW

The Ontario Trillium Foundation (Foundation), as outlined in the memorandum of understanding with the Ministry of Tourism and Culture (Ministry), has a mandate to “provide funds in a fair and cost-efficient manner with community involvement in decision-making, and by way of supplementing rather than replacing regular sources of income, to eligible charitable and not-for-profit organizations in Ontario [...] to help finance through time-limited, results-oriented grants, programs undertaken by such organizations; and to help finance initiatives that increase organizational and/or community capacity and self-reliance.”

The kinds of groups and projects that have received funding include small theatre companies, rural development initiatives, urban school food projects, multicultural festivals, cultural counselling and support organizations, amateur sports and recreational associations, and local environmental initiatives.

The Foundation has three funding programs, as follows:

- The Community program, which receives approximately \$83 million, or 77% of available grant money, covers activities in Ontario's 16 individual regions. Organizations can get up to \$375,000 over five years under this program, including \$75,000 per year for operating expenses and a total of \$150,000 for capital items such as building renovations or equipment purchases. Over the last four years, the Foundation provided approximately 1,360 such grants each year with an average value of about \$60,000 each.
- The Province-wide program, which receives approximately \$21 million, or 19% of the available grant money, covers either activities with a province-wide impact or those taking place in at least three regions (two in the north). Organizations may receive up to \$1.25 million over five years, including up to \$250,000 per year for operating expenses and a total of \$150,000 for capital items. Over the last four years, the Foundation awarded about 110 such grants each year with an average value of about \$180,000 each.
- The Future Fund, which receives approximately \$4 million, or 4% of the available grant money, covers projects that create significant and sustainable change in a specific area using distinct and innovative approaches. The focus for the 2010/11 fiscal year, for example, was on creating economic opportunities for youth and building skills for the green economy. About 10 such projects are funded each year with an average value of \$400,000 each.

The Foundation's goal is to dispense the entire annual grant funding that it receives from the government. It allocates funds for the Community program to its 16 regions on a per-capita basis. In the 2010/11 fiscal year, per-capita funding, based on census information, was approximately \$6.64. As the different regions had varying population

levels, total annual funding to each ranged from a low of \$1.4 million to a high of \$16.6 million.

We found that total funding requests relative to the amount of funding provided varied significantly, both within and between regions. Approval rates for community grants ranged from a low of 23% of funds requested in all applications in one region to a high of 58% in another during the 2009/10 fiscal year, as illustrated in Figure 1.

Allocation of funding to the regions on a per-capita basis facilitates equitable access to grant funds throughout Ontario, but it is not intended to ensure that the most worthy projects across the province are actually funded, as outlined in the section on the grant review and approval process.

GRANT PROMOTION

The Foundation has three main ways of promoting the availability of grants to the public:

- *Website and social media:* The Foundation maintains a comprehensive and informative website that outlines, among other things, its mission, its granting programs, and how a group can apply for funding. Social media approaches—including Twitter, Facebook, and blogs—were introduced in 2011.
- *Media and announcements:* The Foundation participates in more than 700 ceremonies held by grant recipients each year; these events generate more than 4,500 articles each year in print and broadcast media.
- *Solicitation and word of mouth:* Foundation staff proactively seek out and communicate with organizations about potential projects that they think could meet the criteria for grant funding. In addition, board and grant-review team volunteers spread the word in communities and among community organizations.

However, the Foundation, which is required to “provide funds in a fair...manner,” does not publicly advertise the availability of grants in any formal way; it buys no ads, for example, in print or

Figure 1: Approval and Grant Allocation Rates for Trillium Community Program Grants by Region, 2007/08–2009/10

Source of data: Ontario Trillium Foundation

Region/Catchment	Approval Rate (% of Approved Grant Funding Compared to Total Funds)			Three-year Average (\$ million)
	2007/08	2008/09	2009/10	
Algoma, Cochrane, Manitoulin, Sudbury	35	40	34	3.22
Champlain	30	33	29	7.00
Durham, Haliburton, Kawartha, Pine Ridge	59	44	45	6.15
Essex, Kent, Lambton	33	33	34	4.35
Grand River	38	36	33	1.91
Grey, Bruce, Huron, Perth	66	49	40	2.42
Halton-Peel	43	46	34	9.11
Hamilton	33	25	27	2.98
Muskoka, Nipissing, Parry Sound, Timiskaming	50	58	33	1.18
Niagara	45	43	38	3.15
Northwestern	32	28	58	1.95
Quinte, Kingston, Rideau	46	42	35	3.81
Simcoe-York	41	39	34	8.10
Thames-Valley	36	32	23	4.15
Toronto	30	31	28	15.06
Waterloo, Wellington, Dufferin	37	31	35	4.77

broadcast media. As a result, there is little assurance that all eligible organizations even know that there is an Ontario Trillium Foundation and that grant money may be available to them. Unless someone in an organization discovers the availability of grants and then visits the website, that organization misses out on an opportunity.

We found evidence that other granting bodies use print or broadcast media to publicize the availability of grants. For example, grants available under the New Horizons for Seniors Program of Human Resources and Skills Development Canada are advertised in 50 newspapers across the province. In addition, York Region advertised funding available through the New Agency Development Fund in local print media in spring 2011.

The solicitation of applications by staff and the Foundation's volunteers, including grant-review team members, also raises the issue of potential conflict of interest as the same people who invite certain groups to apply for grants, or who tell them

about the program, later review those applications and determine who gets funding.

We noted, for example, that two board members also own consulting businesses that provide service to the not-for-profit sector. We examined one of the businesses and found that of the 11 projects listed on its website, six had received Foundation grants during the time the owner was on the Foundation board. One of the grants included money for consulting services bought from the board member's business. Although we understand that the consultant's business got the contract only after a formal bidding process, arrangements of this nature run the risk of being viewed as a conflict of interest.

RECOMMENDATION 1

To ensure that all qualified organizations get a fair chance to learn about and apply for its grants, the Ontario Trillium Foundation should:

- publicly advertise information about its grants, application deadlines, and its website; and
- investigate ways to reduce or eliminate perceived or real conflicts of interest by ensuring that the people who encourage organizations to apply for grants are not the ones who subsequently help select which applications will be funded.

FOUNDATION RESPONSE

The Foundation recognizes the value of continually enhancing the level of awareness of its programs. We have received more than 16,000 grant applications in the past five years, and annually receive \$3 to \$4 in requests for every \$1 available. Building upon our comprehensive website and cost-efficient media strategy, the Foundation will investigate and institute new forms of generating publicity about its grant programs.

While the Foundation's conflict-of-interest policies have served it well in the past 29 years, we agree with the Auditor General's recommendation that there is a need for continued enhancements, and we will investigate ways to further reduce or eliminate perceived or real conflicts of interest.

GRANT REVIEW AND APPROVAL PROCESS

The Foundation puts grant applications for all three funding programs through a standard review process as follows:

- *Technical review:* Applications are initially screened to ensure that they are complete and that applicants meet basic eligibility criteria, such as being either a not-for-profit or a charitable organization with a board of directors. Proposed projects must include, among other requirements, an operating budget.

Incomplete applications, and those deemed ineligible, are rejected in this phase.

- *First review:* Foundation staff apply a 15-question test to applications, rating them on points for each question. Totals are then to be used to rank projects.
- *Triage meeting:* Regional staff and grant-review team members meet to vote on which applications to reject. The remaining ones move forward.
- *Additional research and analysis:* Projects are further scrutinized by staff, who are supposed to conduct site visits for community projects seeking more than \$100,000 and for province-wide projects asking for more than \$500,000.
- *Proposal Assessment Summary Sheet (PASS):* Information collected during the research phase is consolidated into the PASS, which also recommends whether the application should be approved or declined.
- *Final meeting:* The grant-review team meets to recommend approval or rejection. If it opts to approve, the team also recommends how much funding the project should get.
- *Final approval:* The Foundation's CEO or its Board approve or reject the proposal. We understand that projects making it all the way to this stage are rarely rejected.

Given the Foundation's broad mandate, and the fact that it solicits many of the project proposals it receives, it is unusual for an application to be rejected for falling outside the Foundation's mandate.

With respect to the phases of the application review process, we found the following:

- The technical review is an objective process that usually weeds out those applications that are ineligible or missing information.
- Although regional offices are required to complete the 15-question first review for each application that passed the technical review, we found that many of the case files we reviewed contained no evidence that this had been done. Even when the 15-question

test was on file, it was improperly completed in half the cases we reviewed.

- Five of the eight offices we visited did not use the total score from the first review to rank projects, as intended by the procedure. The three others generally used the process in the way that we would expect, but there were instances where, without explanation, lower-ranked projects advanced while higher-ranked ones did not.
- Work conducted on applications following the first-review and triage-meeting phases, and the quality of documentation, varied significantly and in our view was often inadequate. In addition, we found in a sample of files that site visits, required for projects of a certain size, were either poorly documented or not done at all.
- Regardless of whether the PASS document supports funding, it does not provide a viable basis for comparing one project to another. As a result, there was no comparative documentation to indicate why some projects were recommended for funding and others were not. This meant that there was a lack of documentation to demonstrate that the relative merits of proposals had been objectively compared.
- At the final grant-review team meetings that we attended, there was little discussion and debate, and all of the recommended projects presented were approved.

RECOMMENDATION 2

To help ensure that grant decisions are objective and supportable, the Ontario Trillium Foundation should:

- make sure each of its regional offices completes the 15-point questionnaire and uses it to assess and prioritize grant applications;
- develop consistent guidelines, policies, and procedures for staff and grant-review teams to follow when assessing grant applications, and make sure any required site visits are conducted; and

- maintain documentation that provides a basis for comparing one project to another to clearly demonstrate why some projects were funded and others not.

FOUNDATION RESPONSE

The Foundation agrees with the Auditor General regarding the value of greater consistency of grant-making procedures and better documentation. This is particularly relevant in the context of our regional structure. This need was one of the driving factors behind the development and implementation of our new on-line grants-management system, developed and tested in the 2008/09 fiscal year, and fully implemented in March 2010.

The new system is enforcing the standardization of consistent procedures and documentation, and we will continue to actively monitor the success of this objective. We acknowledge the recommendation to better document the comparability of projects and we will work to review methods of doing this effectively.

REASONABLENESS OF AMOUNTS APPROVED

As the biggest component of many projects funded by the Foundation is salaries and fees, it is important to assess the reasonableness of these proposed costs in applications. Our review of a sample of files for approved grants found that they often did not contain the information from applicants needed to assess this. Accordingly, we questioned how the Foundation was able to adequately assess the reasonableness of the grant amounts requested. Based on the available information, we were often unable to determine for ourselves whether the grant amounts were commensurate with the services to be provided because we could not assess either the reasonableness of the specific services or deliverables the organizations proposed to provide, or the work required to meet the objectives.

Examples of projects where the reasonableness of funding amounts was not established include:

- a grant of \$120,000 to a community organization with one staff member over a two-year period to develop a strategic plan for itself;
- \$400,000 over 36 months to an organization to enable Ontario sports leaders and organizations to collaborate, innovate, and better contribute to social and economic development in their communities;
- a grant of \$132,000 to an organization to deliver a training program on self-employment to newcomers to Canada;
- \$222,000 over three years for hiring at-risk individuals and starting up a community garden program;
- \$537,000 over three years to provide leadership programs to women in First Nations communities; and
- \$35,900 for a year to increase citizen awareness and reduce light pollution in the Bruce Peninsula.

The Foundation also requires that grant recipients obtain two quotes when buying items costing more than \$1,000 (increased to \$5,000 in March 2010). However, we found a number of cases where there was no evidence the grant recipients actually obtained the required competitive quotes. Some examples were:

- a multicultural cinema club given \$40,000 for camera equipment;
- a soccer club awarded \$34,000 for a new computer system; and
- an environmental group funded for a \$125,000 renovation.

RECOMMENDATION 3

To help ensure that grant amounts are reasonable and commensurate with the value of goods and services to be received, the Ontario Trillium Foundation should:

- assess and adequately document the reasonableness of the specific services or deliv-

erables organizations say they will provide with the money they are requesting; and

- objectively assess the required work effort or other resources needed to meet the stated objectives of the grant application.

FOUNDATION RESPONSE

The Foundation agrees with the Auditor General that the assessment of the reasonableness of grant amounts approved is an essential component of effective grant-making. With most organizations in Ontario's not-for-profit sector, there is a commendable culture of cost containment, thanks in large part to committed donors and volunteers in the sector.

Grant-making decisions at the Foundation involve detailed discussions at various points in the multi-stage review and approval process. We agree that the assessment of reasonableness of costs needs to be better documented, so as to more clearly demonstrate the analysis done. The new on-line grants-management system, developed and tested in the 2008/09 fiscal year, and fully implemented in March 2010, provides an excellent platform for enhanced documentation.

GRANT MONITORING

Grant recipients are required to submit annual progress reports for the duration of the grant term and a final report within two months following project completion. These reports must include information comparing budget allocations to actual expenditures, as well as what was accomplished with the money they received.

We found the process to be inadequate for ensuring that money was spent for the intended purposes. In particular:

- Although groups are required to report back in summary form to the Foundation on spending, our review of a number of these

found that there was insufficient detail to assess the reasonableness of amounts spent or whether organizations were simply reporting the original budgeted amounts as the actual expenditures, without showing what actual expenditures were.

- While grant recipients are expected to retain receipts and invoices for audit purposes, they are not required to submit them to the Foundation to substantiate the expenditures. We noted the Foundation rarely requests these documents to spot-check that the reported expenditures were actually incurred as reported by the recipient.
- Grant recipients are not required to submit documentation to substantiate the performance information that they provide in the progress reports and the final reports.
- In the sample we reviewed, there was often inadequate evidence that Foundation staff questioned the progress and final reports submitted by grant recipients.
- Reports were often late—one-third of the progress reports in our sample were late by an average of four months and one-quarter of final reports were late by an average of seven months.
- The Foundation requires no site visits by staff, even on a sample or risk-assessment basis, to assess what has been accomplished with Foundation funds, and site visits are rarely done.
- The Foundation hires an outside contractor to review about 1% of completed grants and grant recipients each year. We found that these reviews are limited in scope because they focus on evaluating support for expenditures and do not include results achieved. In addition, the contractor makes no site visits and simply has supporting information sent to the office.

Our site visits to a number of grant recipients found a number of instances where spending of grants was not adequately documented; where the amounts spent appeared excessive and were not

supported by documentation; and where grant money was used for purposes other than those approved. For example:

- More than half of the organizations that we visited did not have sufficient receipts available to support the amounts they said they had spent.
- In almost all cases the organizations could not provide evidence of the hours worked or what actual work was undertaken by people in the funded positions.
- A grant of \$73,000 was provided to an organization for air quality tests, including \$31,600 for salary costs and \$23,000 for equipment. We found little evidence of any work done—except a recording of eight hours of visits to two schools over the course of a year. In addition, the air-testing equipment purchased with the grant could not be located during our visit.
- Funds were provided to an organization to renovate a soup kitchen, including \$26,000 for landscaping and \$12,000 for steam-cleaning equipment. We found only \$2,600 was spent on landscaping, and the steam-cleaning equipment was never purchased. Instead, the funds were spent on other renovations that were not approved.
- A non-profit housing corporation received \$48,000 to help integrate youth from its community into the wider population. However, the grant predominantly supported a range of recreational activities, including makeup lessons, and outings involving skiing, laser tag, and minigolf.
- An organization received \$5,000 to purchase transmitting equipment for a radio station but we could not locate the equipment during our visit, and the organization could not provide an invoice or other receipt to show it had ever been purchased.
- Two organizations we visited had not spent all the grant funds they received, even though they said they had on their final reports. One of these organizations returned \$6,600 from

a \$75,000 grant more than a year after its final report was submitted while another kept the unspent \$10,000 from an \$81,000 grant because it was reported as spent.

RECOMMENDATION 4

The Ontario Trillium Foundation should strengthen its monitoring efforts to help ensure that funds are used for their intended purpose, and that reported purchases were actually made, by:

- implementing periodic quality assurance reviews of grant files to ensure compliance with internal policies and requirements, and assessing the appropriateness of decisions made by granting staff;
- expanding on the process undertaken by the contracted individual to include more thorough reviews of granting information;
- requiring organizations to submit sufficiently detailed information to enable the Foundation to assess the reasonableness of the amounts spent;
- conducting more audits of progress and final reports submitted by grant recipients; and
- conducting site visits, where applicable, to see how grant money was spent.

FOUNDATION RESPONSE

The monitoring of grants in a cost-efficient way is a challenge that all grant-makers face. The Foundation has always worked to achieve an optimal balance between maintaining cost-efficiency, while auditing and verifying a sample number of grant records each year.

The Auditor General is recommending that additional resources be used to implement quality assurance reviews, expand internal audit functions, request and review more grantee documentation, and conduct more site visits. The Foundation acknowledges and respects these recommendations, and will investigate cost-efficient ways of expanding these procedures.

PERFORMANCE MEASURES

The Foundation has outlined for itself a set of performance measures intended to report on its performance as a granting organization and to determine whether grants met the intended outcomes.

The performance evaluation measures include:

- allocating a specific percentage of funds to each granting priority and sector (for example, human and social services is designated at 30% to 50%, arts and culture at 20% to 50%, and sports and recreation at 20% to 50%);
- a goal of dispensing 100% of a year's ministry-approved grant budget to recipients by the end of the fiscal year;
- a goal of an average turnaround time for grant decisions of 120 days; and
- maintenance of the Foundation's "high ranking" in terms of cost-effectiveness of average administration expenses for each grant.

These criteria, intended to measure the Foundation's own performance, provide information that may be of interest to the Foundation and the public. However, they are not useful for actually assessing the Foundation's success in meeting its objective to fund worthy projects in the right amounts, or for identifying areas in its operations that need improvement. Two of the measures—allocation of funds and cost-effectiveness—are too broadly defined to yield meaningful assessments.

The performance measures aimed at determining whether grants meet intended outcomes include:

- the percentage of grant recipients that meet "all or some" of their program targets;
- the value of additional leveraged contributions for every dollar granted, with a goal of generating an additional \$1.50 to \$2 from the recipient for every \$1 of grants; and
- the percentage of grant recipients that provide recognition to the Foundation, with a goal of 90%.

The first two of these could be reasonable measures of performance. However, the evaluation of

these measures is based on unverified information reported by grant recipients themselves. The value of additional leveraged contributions, for example, is based on estimates of such factors as volunteer hours reported by recipients in their final reports. In many of our visits to recipients, we could find little evidence to support the information reported to the Foundation.

RECOMMENDATION 5

To help assess whether the Ontario Trillium Foundation (Foundation) is meeting its stated objectives, and to help identify in a timely manner those areas needing improvements, the Foundation should:

- establish meaningful operational indicators and realistic targets, and measure and publicly report on its success in meeting such targets; and
- substantiate, at least on a sample basis, the information obtained from grant recipients that is used to evaluate success in meeting targets.

FOUNDATION RESPONSE

The Foundation agrees with the Auditor General about the value of meaningful operational indicators and targets. Within the context of our multi-sector, highly diversified community and province-wide grant-making, we will continue to investigate and develop stronger operational indicators. This is a challenge that faces most grant-making foundations around the world, and the Foundation is committed to setting and maintaining high standards in this area.

We agree with the Auditor General's recommendation that we substantiate, at least on a sample basis, the indicators of success that are communicated by our grantee organizations.

GOODS AND SERVICES PROCUREMENT

The Foundation's administrative expenditures total approximately \$13 million a year, of which \$9 million is for employee wages and benefits and \$4 million for the acquisition of goods and services. We noted an institutional mindset that placed emphasis on keeping costs to a minimum.

However, the Foundation is required to follow government procurement policies, which for consulting services require:

- three competitive proposals for services up to \$100,000; and
- an open competition for bids through Ontario's electronic tendering system for services over \$100,000.

For the acquisition of all other goods and services, the policy requires:

- three verbal quotes for anything valued between \$5,000 and \$25,000;
- three written quotes for anything valued between \$25,000 and \$100,000; and
- an open competition for bids through Ontario's electronic tendering system for anything over \$100,000.

We reviewed a sample of both types of contracts and found that half were single sourced and lacked adequate documentation to support the rationale for single sourcing. In addition, for a quarter of the contracts we reviewed, the appropriate level of approval was not documented.

We also reviewed a sample of employee claims for travel, meal, and hospitality expenses, and for foundation-organized staff functions, and found that they frequently lacked the detailed information required to assess the reasonableness of the items and amounts claimed, as well as documentation to prove they were business-related expenses.

RECOMMENDATION 6

To help ensure that the Ontario Trillium Foundation (Foundation) follows the government's directives on the acquisition of goods and

services, as well as travel, meal, and hospitality expenses, the Foundation should reinforce with staff the need to comply with the directives, and consider having the Ministry of Finance's Internal Audit Division periodically review compliance and report the results of such reviews to the Foundation's Board.

FOUNDATION RESPONSE

The Foundation is committed to following the government's directives in these areas, and has been strengthening its internal policies over the last few years. Consistent documentation of procurement decisions is also being strengthened.

The overall modesty of our operating costs bears testament to our commitment to cost-efficiency. We appreciate the Auditor General's recommendation regarding periodic review by the Ministry of Finance's Internal Audit Division. We would welcome this, and have initiated discussions with the Ministry in this regard.

OTHER MATTER

Conflict-of-interest Declarations

Persons hired as staff and volunteer appointments to grant-review teams and the board of directors are required to sign conflict-of-interest declarations that they have read, understand, and agree to comply with the Foundation's conflict-of-interest policy. However, such individuals are not required to identify people or organizations with whom they may have a potential conflict of interest, as is required by many other organizations.

Given the nature of its grant program, the Foundation often recruits staff and volunteers from the same community as grant recipients, and, as a result, many already know individuals from organizations seeking grants. Accordingly, it is particularly important for the Foundation to ensure that new staff and volunteers identify potential con-

flicts. Otherwise, the Foundation cannot effectively oversee and monitor potential conflicts of interest. However, we also found that there is no requirement that individuals periodically update or renew their conflict-of-interest declarations, as required annually by many other organizations. We noted that the Foundation could not locate a few of the conflict-of-interest declarations that we asked to see for individuals who began working for the Foundation in the last three years.

RECOMMENDATION 7

To help ensure that its conflict-of-interest policy is effectively enforced, the Ontario Trillium Foundation should more effectively oversee and monitor compliance with its conflict-of-interest policy by staff, members of the board of directors, and grant-review team members. It should also require them to update or renew their conflict-of-interest declarations annually, and include a listing of individuals and organizations with whom they have a potential conflict of interest.

FOUNDATION RESPONSE

The Foundation's volunteers and staff are all highly engaged members of their communities, participating actively in voluntary work and community-building. The Foundation agrees with the Auditor General regarding the value of effective and clear conflict-of-interest policies and practices. While our policies have served us very well over the years, we are committed to ongoing improvement.

The Foundation has instituted the annual signing of conflict-of-interest declarations. We will investigate best practices in relation to the creation and maintenance of a list of organizations with which individuals have a potential conflict of interest, as recommended by the Auditor General.

Chapter 3

Ministry of Training, Colleges and Universities

Section 3.12

Private Career Colleges

Background

Private career colleges are independent organizations that offer certificate and diploma programs to students in fields such as business, health services, information technology, and electronics. Private career colleges also cater to adults who need specific job skills to join the workforce or want to enhance their practical skills to become more competitive in the job market. There are about 470 registered private career colleges in Ontario, with 650 campuses and an estimated 60,000 students.

Private career colleges are governed by the *Private Career Colleges Act, 2005* (Act) which came into force on September 18, 2006. The Ministry of Training, Colleges and Universities (Ministry) administers the Act through its Private Career Colleges Branch. The Branch, headed by a director referred to in the Act as the Superintendent of private career colleges, has 30 staff including contract staff and spent almost \$3 million in the 2010/11 fiscal year.

Under the Act, institutions that provide instruction in the skills and knowledge required to get a job in a particular vocation must be registered, and their vocational programs must be approved by the Superintendent. Private career colleges currently offer more than 5,000 programs excluding non-vocational programs and programs that are exempt

from the Act, such as programs exclusively for youths and programs providing religious vocational training. Private career colleges must also comply with a number of other obligations, including those pertaining to program delivery, instructor qualifications, and admission requirements.

According to the Ministry, the Act is focused on student protection, and the Ministry's primary objective is to protect students and prospective students of private career colleges. These protections include the right to receive a refund of fees, access to a student complaint process, the right to receive transcripts for at least 25 years, and the opportunity to complete their training, at no additional cost, at another institution if their original private career college ceases operations. The costs for completing training under the latter circumstances are borne by the Training Completion Assurance Fund, which receives contributions from registered private career colleges to protect students in the event of a closure. The Ministry has significant powers to ensure that private career colleges comply with the Act and its regulations, including the ability to enter and inspect the premises of a registered private career college or an unregistered institution that ought to be registered.

Although the Ministry does not fund private career colleges directly, the Ministry provides significant funding to the private career college

sector through its employment training and student assistance programs. Over the past three fiscal years (2007/08 through 2009/10), a total of almost \$350 million was provided through the Ministry's Second Career and Skills Development programs to an annual average of 13,000 students to pay for their tuition to attend private career colleges. In addition, during the last three academic years, almost \$200 million in provincial loans and grants were provided to an annual average of 9,500 private career college students through the Ministry's Ontario Student Assistance Program (OSAP).

Audit Objective and Scope

The objective of this audit was to assess whether the Ministry of Training, Colleges and Universities had adequate procedures in place to meet its legislated responsibilities to protect existing and prospective students of private career colleges in Ontario and to measure and report on its effectiveness in doing so.

Senior management reviewed and agreed to our audit objective and associated audit criteria.

Our audit work was primarily conducted at the Ministry's Private Career Colleges Branch. We also contacted associations representing private career colleges in Ontario to obtain their views and conducted an independent survey of 500 recent graduates about their satisfaction with the training they received, their employment status, and their awareness of their rights under the Act. We visited a few campuses, but because our audit focused on ministry controls and procedures, we did not audit any private career colleges.

In conducting our audit work, we reviewed relevant legislation, policies, and procedures, and met with appropriate staff of the Ministry. We also researched other jurisdictions. Our audit also included a review of related activities of the Ministry's Internal Audit Services Branch. We reviewed the Branch's recent reports and considered its

current and planned work, and any relevant issues identified when planning our work.

Summary

The Ministry has recently undertaken several good initiatives to improve its oversight of private career colleges in Ontario and strengthen the protections for students. Nevertheless, further improvements are required to ensure compliance with the Act, its regulations, and ministry policies, and to better ensure that the Ministry's primary objective of protecting students is met. Some of our more significant observations are as follows:

- Although several steps have been taken to identify and act on unregistered colleges, the Ministry could make better use of information it already has on hand to identify colleges that continue to operate illegally. For example, the Ministry does not routinely check that closed schools have not continued to operate without the necessary ministry approvals. We reviewed a sample of schools identified as being closed and found that a number of them appeared to be offering unapproved courses. We informed the Ministry, and in two of these cases it subsequently took enforcement action.
- Although the Ministry collects and publishes performance information such as graduation rates and employment for public colleges, the Ministry does not collect similar information for private career colleges. Over 85% of the private career college graduates who responded to our survey agreed that such student outcome data would be useful. The Ministry used to collect this information for OSAP-approved private career colleges, but in 2006 placed a temporary moratorium on the collection of this information to allow for a review of the process to take place. It has yet to re-establish this practice.

- According to the Act, in order to open a private career college, an applicant must satisfy the Ministry that it can be expected to be financially responsible and operate the college “in accordance with the law and with integrity and honesty.” Although we found that the Ministry generally had the required registration documentation on file, we had concerns about the adequacy of some of the procedures undertaken to assess this documentation such as a lack of verification through credit and reference checks.
- Private career colleges are required to renew their registration annually. Although applications for renewal must be accompanied by financial statements, and the Ministry intends to phase in a requirement that these statements be audited, the Ministry did not have a process in place for reviewing the financial statements submitted to determine if a college’s financial viability was in question. A private career college with significant losses, which the Ministry attributed to declining enrolment, that also appeared to be dependent on shareholder loans to meet its financial obligations had its registration renewed without evidence that its financial viability had been reviewed. The college subsequently closed, costing the Training Completion Assurance Fund over \$800,000. The Ministry advised us that the college’s inability to meet new regulatory requirements may also have contributed to its closure.
- According to legislation, for a program to be approved, it must provide the skills and knowledge required to obtain employment in a prescribed vocation. In addition, legislation requires program applications to include an evaluation of the program by an individual who has expertise in the assessment of such programs. Our review of a sample of evaluations completed by third-party assessors revealed that there was no documented evidence that the Ministry had attempted to confirm their credentials, although the Ministry informed us that it had begun to keep track of validated assessors. In addition, in most cases, neither the applicant nor the assessor had declared, as required, that they were not in a potential conflict of interest. We noted a case in which a conflict appeared to exist where a program assessor who previously had been employed by the college in question had also been involved in developing a curriculum for that college.
- To continue to provide the skills and knowledge needed to obtain employment in a prescribed vocation, most approved programs need to adapt over time to meet market demands. Programs approved by the Ministry subsequent to the proclamation of the new Act and one of its regulations, on September 18, 2006, can be approved for a maximum of five years, but approximately 40% of the 5,000 currently approved programs were approved before the proclamation of the current Act, and the Act does not include a requirement to re-approve these programs. Furthermore, the Ministry does not know how old the majority of these older programs are, nor does it have a formal plan to call in these programs for re-approval.
- Although a recent risk assessment completed by the Ministry identified 180 private career college campuses with multiple compliance risk factors, the Ministry could not demonstrate that it had undertaken enough compliance inspections to adequately manage the risk of non-compliance with the Act and its regulations. For instance, although there are approximately 470 registered colleges and 650 campuses in Ontario, the Ministry estimated that only 30 campuses had been inspected in 2010, although we were informed that ministry investigators made 20 additional campus visits to address specific concerns. We also found that inspectors did not maintain sufficient documentation showing the full nature of the work performed. In addition,

according to the Ministry, just 5% of inspectors' time was devoted to inspections, as the majority of their time was spent on processing program approvals.

OVERALL MINISTRY RESPONSE

The Ministry appreciates the recognition provided by the Auditor General of the multiple initiatives that are under way to advance its oversight of private career colleges. The Ministry also agrees that student protection continues to be a fundamental priority. The Ministry is supportive of the Auditor General's recommendations and offers the following context.

Supporting an expanded range of high-quality programs for students, while ensuring that illegal and non-compliant programs and operators are addressed, are dual priorities for the Ministry. Beginning with the creation of the new Private Career Colleges Branch in December of 2009, the Ministry has significantly strengthened sector oversight and student protection, while working with the sector to improve the quality of programs and program applications.

Through the use of the full spectrum of enforcement tools provided for in the legislation, the Ministry has identified and taken enforcement action against over 150 illegal operators. The Ministry has also approved 944 new programs in registered private career colleges in the past 12 months, which will expand the options available for private career college students. The Ministry continues to evaluate existing policies, processes, and tools to ensure that they remain applicable and relevant to sector oversight and student protection.

In late 2011, the Ministry will begin a review of the Act and related regulations. This will provide an opportunity for the Ministry to reassess and validate the degree of oversight of the sector, given the ongoing need for student protection.

Detailed Audit Observations

UNREGISTERED PRIVATE TRAINING INSTITUTIONS

Partly in response to recommendations made in a report issued by the Ontario Ombudsman in July 2009, the Ministry has undertaken several initiatives to address unregistered private training institutions that offer unapproved vocational programs. These initiatives include:

- establishing the Private Career Colleges Branch, which is dedicated to the oversight of the sector and the investigation of unregistered institutions;
- developing a regulatory framework to allow the Ministry to issue administrative monetary penalties to institutions that violate the Act or its regulations;
- working with professional and regulatory bodies to improve communication and to strengthen awareness of each other's requirements; and
- significantly increasing enforcement action against unregistered private training institutions.

To illustrate increased enforcement action, in a little over a year and a half (between August 1, 2009, and March 31, 2011), the Ministry issued about 130 orders to unregistered private training institutions, or more than four times as many as in the preceding three-year period. In addition, starting in December 2009, shortly after developing the regulation to do so, the Ministry began to issue administrative monetary penalties to non-compliant institutions. From December 1, 2009, through March 31, 2011, the Ministry issued about 120 notices of contravention and associated administrative monetary penalties to unregistered private training institutions for violating the Act and its regulations.

Within the Ministry's Private Career Colleges Branch, the Compliance and Enforcement

Unit—which is staffed with four investigators, a manager, and a research analyst—is responsible for investigating allegedly unregistered private training institutions, as well as investigating allegations of major non-compliance issues at registered private career colleges. The vast majority of the Unit’s investigations involve unregistered private training institutions. According to the Ministry, most of the investigative efforts involving unregistered private training institutions were reactive, based primarily on responding to tips and complaints from registered private career colleges.

Although our review of the Ministry’s investigations of unregistered private training institutions identified these improvements, there are several areas that warrant management attention:

- The Ministry had not kept a record of tips and complaints containing allegations about unregistered private training institutions, although during the course of our audit the Ministry began to keep a centralized record of such tips and complaints.
- The Ministry had not set a targeted time frame for completing investigations of allegations against unregistered institutions, and the Ministry had not tracked the time taken to complete such investigations so that it could establish a baseline against which a target could be set and subsequent performance measured. In about half the cases reviewed, there was insufficient information available to determine the length of time it took to complete investigations. Where an investigation’s length could be determined, we found that on average, the Ministry took approximately 70 days to complete the investigation and take enforcement action from the date the complaint had been received: investigation lengths ranged from fewer than 10 days to almost 220 days. Ministry management informed us that in some of the lengthier cases, investigative and/or enforcement action had been delayed by the Ministry so that it could undertake simultaneous sector-specific investigations.

However, the resulting delays could have put prospective students of these institutions at risk.

- We reviewed a sample of investigations that had been closed because the Ministry had obtained documentation indicating compliance from unregistered institutions. However, we were told that subsequent follow-up to determine continued compliance was not strictly required: additional procedures and associated timelines were at the discretion of ministry investigators. In more than half of the investigations we examined, we observed that subsequent follow-up procedures to ensure continued compliance either had not been documented or had not been undertaken.
- The Ministry was tracking information related to enforcement action against unregistered institutions and recording that information in a spreadsheet program. Management used this information to periodically analyze the impact of administrative monetary penalties, including measuring the number of such penalties issued per month and the impact of such penalties on encouraging compliance. This was a good initiative, but our review of the spreadsheets revealed errors and omissions that reduced the usefulness of the analysis undertaken.

Management shared with us various proactive measures it would undertake if resources permitted, including advertising to prospective students, reviewing advertisements in ethnic newspapers to identify suspected unregistered institutions, and educating prospective students at events such as job fairs on how to differentiate registered and unregistered institutions. Although some proactive measures for identifying unregistered private training institutions carry an additional financial cost, we observed that the Ministry had at its disposal information that could be used to identify possible unregistered institutions. Examples are information about programs pre-screened to determine whether they are vocational and require approval under the

Act, and information on institutions that ministry records indicate had closed.

Subsequent to our discussions with ministry management, we observed that the Ministry began to review institutions that had pre-screened programs during 2010 to determine whether they were offering and/or advertising unapproved vocational programs. As a result of this new process, the Ministry found a number of institutions that warranted further investigation and some cases that warranted enforcement action.

At the outset of our audit, the Ministry had not undertaken a review of closed schools to ensure that they were not continuing to operate and advertise themselves as registered private career colleges. We reviewed a sample of the private career colleges that, according to ministry records, had closed since the beginning of the 2006/07 fiscal year and found examples where these institutions appeared to have continued to operate and advertise unapproved vocational programs. We informed the Ministry, and in two of these cases the Ministry subsequently took enforcement action against these institutions for infractions that included advertising and operating an unregistered private career college and advertising and/or providing unapproved vocational programs. During the course of our audit, the Ministry informed us that it had launched an initiative to review institutions that had closed, but at the completion of our fieldwork the results of this review were not available.

RECOMMENDATION 1

To enhance protection for current and prospective students of private career colleges, the Ministry of Training, Colleges and Universities (Ministry) should:

- use the information at its disposal to proactively identify possible unregistered private training institutions offering or advertising unapproved vocational programs and establish a targeted time frame for completing investigations; and

- consider establishing standardized follow-up procedures and timelines to ensure that the unregistered institutions against which it has previously taken enforcement action continue to comply with the Ministry's requirements.

MINISTRY RESPONSE

The Ministry agrees with the Auditor General's recommendation and has implemented protocols that will allow it to fully utilize available information to enhance student protection.

The Ministry consistently surveys available media, including the Internet, to find evidence of unregistered institutions. The Ministry also investigates unregistered institutions that have been identified by students or registered institutions. These sources of information have been the primary basis for the over 100 enforcement actions taken in the first nine months of 2011.

In addition, the Ministry is tracking all:

- unregistered institutions that have been subject to an enforcement order to ensure compliance and to detect new activity;
- institutions that have applied for registration and been rejected or that have failed to complete their registration to ensure that they are not operating illegally; and
- institutions that have surrendered their registration to ensure that they are not continuing to operate illegally.

The Ministry has reviewed all such circumstances since 2006 and has initiated 30 investigations and six enforcement actions as a result.

The Ministry is also expanding its scope by partnering with other law enforcement agencies for investigations, including investigations of immigration-related offences and fraud.

Moving forward, the Ministry will build on its experience in investigations to develop benchmarks for investigation timelines.

PERFORMANCE MEASURES

Although the Ministry collects performance information related to student outcomes for universities and public colleges, the Ministry does not currently collect performance information for private career colleges. For public colleges, the Ministry publishes information on five performance indicators: graduation rates, graduate employment, graduate satisfaction, employer satisfaction, and student satisfaction. Such information helps students make informed choices regarding which colleges and programs will best meet their educational and employment goals. Similar measures would be helpful to the Ministry in overseeing private career colleges and meeting its primary objective of protecting students.

Until 2006, the Ministry collected graduation and graduate employment rates for OSAP-eligible private career colleges. However, in 2006, what was to be a temporary moratorium was placed on the collection of these data to develop performance indicators for all private career colleges. The Ministry subsequently developed performance indicators related to student outcomes for private career colleges similar to the measures in place for public colleges. However, more than four years after the Ministry placed a moratorium on the collection of student outcome data, the Ministry has yet to establish a timetable for the implementation of these performance measures.

Our survey of 500 recent private career college graduates funded by the Ministry's employment training programs found that over 85% of respondents felt that performance measures such as those developed, but not yet implemented, would be useful in deciding which private career college and program to select. About half of those we surveyed indicated that such information was currently being provided in some form by the colleges they attended. Our survey also found that, although 75% of graduates were employed full- or part-time, less than 40% of graduates were employed full-time in a position related to their private career college program. This statistic clearly demonstrates that

there is a need for consistent, comparable information that will enable prospective students to make informed decisions regarding which private career college and program to select.

In addition to helping prospective students make informed choices, student outcome data can also be used by the Ministry to better ensure the effective use of public funds provided to students who attend private career colleges. Specifically, such information would assist the Ministry in its monitoring activities and enhance accountability for the expenditure of hundreds of millions of dollars of public funds provided to students attending private career colleges. For example, a private career college, to obtain initial OSAP approval, must demonstrate that its graduation and graduate employment rates for the previous two years are at least two-thirds of the average rate attained by public colleges. Such a requirement provides a measure of assurance to OSAP students that they have a reasonable likelihood of finding employment. It also enhances accountability for public funds. Although OSAP provides a combination of loans and grants to students to attend private career colleges, funding provided to students through the Ministry's employment training programs was generally not repayable. These programs had no supplementary eligibility requirements that private career colleges must meet in order for the Ministry to provide students with funding to attend these institutions.

RECOMMENDATION 2

To help prospective students make informed decisions on which private career college and which program to enrol in, the Ministry of Training, Colleges and Universities (Ministry) should collect, validate, and publish student outcome data such as information on graduation rates and employment in their field of study. In addition, the Ministry should use these data to assist in its oversight of the private career college sector.

MINISTRY RESPONSE

The Ministry agrees with the Auditor General on the importance of collecting, validating, and publishing private career college performance outcomes. The Ministry has completed a review of the former key performance indicator process and has developed six performance indicators for the private career college sector. The Ministry will be working with the sector associations on developing a phased implementation plan that will moderate the financial and administrative impacts for both the Ministry and private career colleges.

In addition, the Ministry has now implemented performance measures such as the Student Satisfaction Survey for students affected by a school closure and protected under the Training Completion Assurance Fund. The survey measures student satisfaction with the Ministry's support, the student's program, and the quality of education received from the training completion provider.

REGISTRATION

Registration Applications

The Ministry's Private Career Colleges Branch is responsible for the regulatory tasks associated with administering the *Private Career Colleges Act, 2005*. The Act generally requires that institutions providing instruction in the skills and knowledge necessary to get a job in a vocation must be registered and that their vocational programs must be approved by the Ministry. As a first step toward registering as a private career college, institutions complete the Ministry's pre-screening process. Based on information provided through this process, the Ministry determines whether a program is vocational, and thus whether the institution is required to submit an application for registration and program approval.

Applications for registration require the applicant to provide information and supporting documents, including an applicant profile, sample student contracts, copies of the student complaint procedure, financial information and security, and insurance coverage. We reviewed a sample of approved registration applications and found that the required documentation was generally on file, but we had several concerns about the adequacy of some of the documentation obtained and the procedures undertaken by the Ministry to assess that documentation:

- According to the Act, the Ministry must be satisfied that the applicant can be expected to be financially responsible in the operation of a private career college. To assess financial viability, the Ministry requires applicants to provide forecast financial statements prepared by a public accountant. Although we observed that financial statements were on file, we did not see any documented evidence that such information had been reviewed. Reviewing available financial information is important given the impact a college failure can have on students, as well as on the Training Completion Assurance Fund. We also observed that although applicants are asked to disclose if they have previously filed for bankruptcy, or are currently party to bankruptcy proceedings, applicants' past credit history is not validated through procedures such as a credit check.
- The Act requires that the Ministry be satisfied that applicants will operate the private career college "in accordance with the law and with integrity and honesty." To satisfy this requirement, the Ministry asks applicants to submit references and disclose any criminal offences. Although a poor reference or a criminal record is not necessarily grounds to reject a registration application, for the cases we examined the Ministry did not contact references to help establish the applicant's integrity and honesty. The Ministry also did not perform criminal

background checks to confirm applicants' assertions that they did not have a criminal record.

- The Ministry did not maintain—and due to systems limitations was unable to generate—a reliable record of registration applications that had been rejected. Maintaining a list of rejected applications could enable management to perform follow-up procedures to ensure that these applicants and institutions do not subsequently operate and provide vocational programs in contravention of the Act.

Registration Renewal

Private career colleges are required to complete an annual application to renew their registration. Applications for renewal must be accompanied by supporting documentation, such as financial statements prepared by a public accountant, a schedule of domestic and international student enrolment, and a continuation certificate with respect to financial security posted in the form of a surety bond or letter of credit.

We reviewed the registration renewal process and observed that the Ministry was generally doing an adequate job of obtaining financial statements, the appropriate amount of financial security, and proof that a continuation certificate was on file. However, we were concerned that in a few cases the Ministry did not ensure that financial statements had been prepared by a public accountant and the Ministry did not have a process in place for reviewing the submitted financial statements to determine if financial viability was in question.

Our review of financial statements identified no significant concerns regarding financial viability in the vast majority of cases examined. However, our testing and discussions with responsible staff confirmed that they were not assessing financial viability before renewing the registration of a private career college. Renewing a private career college's registration when it may not be able to meet its financial obligations could have an adverse impact

on prospective students and the Training Completion Assurance Fund. For example, we observed a private career college that had its registration renewed after it had considerable losses in its first year of operation and appeared to be dependent on shareholder loans. However, there was no indication that the Ministry had taken any steps to obtain assurance that this college could be expected to meet its financial obligations. According to the Ministry, this college subsequently closed due to declining enrolment, and the Training Completion Assurance Fund had to pay out over \$800,000. The Ministry advised us that this college's inability to meet new regulatory requirements may also have contributed to its closure.

Management acknowledged that the Ministry did not have a staff member qualified to undertake an assessment of financial viability, but advised us that an individual would be hired to perform this task.

Another criterion for renewing the registration of a private career college is that the Ministry must be satisfied that the applicant will operate the college in compliance with the Act and its regulations. We noted that, although compliance issues appeared to have been considered during the registration renewal process, on-site inspections of colleges were limited. Although no formal record of field inspections was maintained, the Ministry estimated that it may have visited 30, or about 5%, of the 650 college campuses in 2010.

With regard to the timeliness of registration renewal, colleges that apply for renewal remain registered until the Ministry makes a decision on their applications. The Ministry does not report on the length of time it takes to review and make decisions on applications for registration renewal, but we found that the renewal process could take more than a year to complete and averaged about 150 days. Since private career colleges remain registered while their renewal application is being reviewed, prospective students could be put at risk should the Ministry decide not to renew their registration. In one case, where a registration had

expired more than seven months previously, the college's ability to meet its obligations appeared to hinge on continued shareholder loans. In another instance involving a registration that had expired more than seven months previously, ministry inspections had identified serious concerns about misconduct, as well as numerous straightforward compliance issues. However, although at the time of our audit this college was under investigation, the Ministry had taken no enforcement action. As a result, prospective students could enrol at this institution with no knowledge of these incidents.

RECOMMENDATION 3

To safeguard government funding provided to students and the money in the Training Completion Assurance Fund as well as to enhance the protection offered to prospective students of private career colleges, the Ministry of Training, Colleges and Universities should:

- ensure that its review of applications for private career college registrations is initiated on a timely basis and includes an appropriate assessment of the applicant's forecast financial information, and checks on the applicant's references, credit, and criminal record;
- maintain a record of rejected applications to facilitate management follow-up to ensure that rejected institutions do not subsequently operate in contravention of the *Private Career Colleges Act, 2005*; and
- ensure the timely review of applications for registration renewal, including an adequate assessment of financial and other application information.

MINISTRY RESPONSE

The Ministry agrees with the Auditor General's view on the importance of verifying institutions' financial viability in order to protect prospective and current students. The Ministry has hired an accounting professional to assess the financial viability of private career colleges through a

review of audited financial statements. This will allow the Ministry to proactively identify high-risk institutions. The Ministry complemented this process with a comprehensive three-tier financial review methodology, which was implemented in September 2011, for registration renewal. A similar framework for new applicants will follow.

The Ministry has also developed operational policies and benchmarks to assist with meeting service timelines for the initial review of a registration application of a new private career college, prior to assigning it to an inspector. In 2011, the Ministry registered over 40 locations. The Ministry's ability to meet its service commitments is directly related to the quality of the applications received. The Ministry will continue to work with private career colleges to improve the quality of submitted applications.

As indicated in the response to Recommendation 1, the Ministry will track rejected applicants to ensure that they are not operating in contravention of the Act.

PROGRAM APPROVAL

Program Applications

Applications for program approval require the applicant to provide information and supporting documentation related to several aspects of the program, including admission requirements, program fees, an employment profile, and an outline of each subject. Legislation also requires applications to include a program evaluation report, submitted directly to the Ministry by the evaluator, who must have expertise in evaluating such programs. Evaluators assess the program's adequacy and recommend whether or not the program should be approved. For a program to be approved under the Act, the Ministry must be satisfied that the program will provide the skills and knowledge for students to obtain employment in the prescribed vocation. During the course of our audit,

the Ministry approved approximately 60 programs per month.

We observed that the degree of assurance obtained by the Ministry before approving a program varies. For instance, some programs are evaluated by the regulatory body that oversees the profession or by a party recommended by the regulatory body. In the absence of a regulatory body, other programs are evaluated by experts in the subject matter against a defined ministry program standard or another formal standard that the Ministry recognizes or requires programs to meet. A third process is for programs to be evaluated by program assessors who have been pre-approved by the Ministry. However, according to the Ministry, in the vast majority of cases, the Ministry relies on a program evaluation completed by a third-party program assessor chosen by the college.

Although the Ministry prescribes requirements that general third-party program assessors must meet, including adult education experience and professional experience in the field, we had the following concerns about programs reviewed by general third-party assessors.

- Assessors are required to submit a resumé and/or a summary of qualifications, but in the cases we reviewed there was no documented evidence that the Ministry had confirmed the credentials of the general third-party program assessors. Furthermore, staff responsible for reviewing program evaluation reports and assessor qualifications confirmed that these assessors' credentials were not usually checked. However, the Ministry informed us that they had begun to keep track of those assessors whose credentials had been validated so this information would be available for subsequent evaluations.
- To ensure that program evaluations can be relied on, the Ministry requires that all evaluations be undertaken by an arm's-length third party. The program application specifically notes that assessors should not have had any connection to the private career college being

evaluated or to the program being reviewed within the last seven years. Both the applicant and the program assessor are required to declare that they are not in such a conflict-of-interest situation. However, for almost every application we reviewed, neither the applicant nor the assessor had declared that they were not in a potential conflict-of-interest situation. Although conflicts can be difficult to identify in the absence of a declaration, we noted an instance where the program assessor had been employed by the private career college in question within the previous two years and had been involved in developing curriculum at the college. There was no evidence on file that ministry staff had questioned this circumstance.

We noted that the Ministry's information system did not include a record of whether approved programs had ever undergone a formal program evaluation. Although the Ministry informed us that to its knowledge, program evaluations had been required for many years, the Act and regulations preceding the current Act did not strictly require a formal program evaluation. We attempted to determine whether older programs had been evaluated by a program assessor, but program information older than 10 years had been destroyed.

For programs approved within the last 10 years but before the proclamation of the new Act, the Ministry was unable to provide documentation that the program had been evaluated in the majority of the cases we requested. However, where such documentation was provided, we observed that these programs had also been assessed by both employers and program design specialists. Employers were asked questions such as whether the program covered the knowledge and skills required for entry-level employment. The Ministry used these assessments in deciding whether to approve a program. We felt this was a good practice, and our review of the practices of other Canadian jurisdictions revealed that some other provinces, unlike

Ontario, require employer program assessments to assist in the decision to approve a program.

With regard to program applications, we were also concerned that the Ministry did not maintain a record of rejected program applications and could not generate a reliable record of applications that had been rejected. Maintaining a list of rejected program applications and the reasons for their rejection could enable management to perform follow-up procedures to ensure that such programs were not subsequently offered despite having failed to be approved by the Ministry.

Timeliness of Program Approvals

We also reviewed the timeliness of the program approval process. We found that in response to a July 2009 recommendation from the Ontario Ombudsman to address delays in the time it takes to review and approve program applications, the Ministry had made progress in reducing the application turnaround time. In this regard, the Ministry also established a goal that no program application would await review by one of the Ministry's eight inspectors for longer than six months. In an effort to meet this goal, approximately 80% of inspector time was devoted to reviewing program applications in 2010. Inspectors therefore spent very little time on their other responsibilities, such as visiting colleges to perform inspections, resolving student complaints, and assisting with college registration renewals.

In August 2010, the Ministry began to track and report on a monthly basis the number and age of outstanding program applications. The Ministry noted that the percentage of program applications awaiting review for longer than six months declined from 46% in August 2010 to an average of 31% in the first quarter of 2011. Also, the number of applications older than one year declined from 28% to an average of 13%. In addition, the Ministry advised us that a significant number of the applications awaiting review for longer than one year had issues that prevented the Ministry from completing

its review. These issues included missing documentation (such as program evaluations), unresolved compliance issues, and programs that did not meet current program standards. Despite these significant ministry improvements in reducing the backlog in processing program applications, our discussions with associations representing private career colleges indicated that they had concerns about the program approval process, including that the approval process was still too long and therefore hindered the colleges' ability to respond to changing employment demands on a timely basis.

Program Re-approvals

Most programs, to continue to provide the skills and knowledge necessary to obtain employment, will need to adapt over time to meet market demands. According to a regulation under the Act, which came into force on September 18, 2006, programs approved from that point on could be approved for a maximum of five years. Programs approved before the regulation came into force have no expiry date.

As of March 31, 2011, there were approximately 5,000 approved private career college programs. According to the Ministry, almost 2,000, or 40%, of the currently approved programs had been approved before the proclamation of the current Act and thus do not have an expiry date. The Ministry was unable to provide us with a list indicating the age of these older programs, because the approval dates for the vast majority of the older programs were not recorded in the information system. Our review of a sample of programs approved before the regulation came into force identified several programs that had been approved more than 20 years ago, including one program that had been approved almost 35 years ago. Although discussions with the Ministry revealed that it intends to eventually call in such programs for re-approval, the Ministry did not have a documented plan or timetable for doing so.

We reviewed the Ministry's full list of currently approved programs and found that, for programs

identified by the Ministry as having been approved after September 18, 2006, almost 30% did not have an expiry date recorded in the Ministry's information system. We also found that a number of programs had an obviously incorrect program approval or expiry date, such as 1900 or 2099. In addition, in a number of cases the Ministry was unable to provide source documentation to substantiate the expiry date. Furthermore, in more than half the cases we examined where the program's expiry date was recorded in the system and the source documentation was available, the expiry date recorded in the system did not match the source documentation. Such data integrity issues affect the Ministry's ability to effectively manage re-approvals.

Concerns over data integrity notwithstanding, we noted that over 80 programs were already flagged in the Ministry's information system as having expired during 2010 and about 90 were also set to expire in 2011. However, the Ministry did not have a documented plan for when it would call in these programs for re-approval. According to the Ministry, these programs will not expire and will remain approved until it decides to call them in for re-approval.

RECOMMENDATION 4

To enhance the quality of private career college programs and to ensure that all programs, regardless of which college is offering them, provide the skills and knowledge currently necessary to obtain employment in the prescribed vocation, the Ministry of Training, Colleges and Universities should:

- review the processes in place to assess the qualifications and independence of the general third-party program assessors that provide recommendations for program approval;
- maintain a record of rejected program applications and consider implementing follow-up procedures to ensure that such programs are not offered despite their not being approved;

- build on the progress made to date in improving the timeliness of the program approval process and develop a plan for program re-approvals; and
- enhance its system so that it can provide the information needed to effectively manage the program approval process.

MINISTRY RESPONSE

The Ministry agrees with the Auditor General's recommendation and, in September 2010, the Ministry started work on improving the third-party evaluation process, including a redesign of the Program Evaluation Report Form. The form will now include more substantial qualitative analysis as well as sections for commentary for both Adult Education and Subject Matter experts. The Ministry has also standardized the process for validating assessors' credentials with regulatory institutions and now tracks these assessors for future reference and evaluation.

As indicated in the response to Recommendation 1, the Ministry has also begun to track rejected program applications to ensure that these programs are not being offered in contravention of the *Private Career Colleges Act, 2005*.

In the last 12 months, the Ministry has approved a total of 944 program applications. The Ministry continues to work toward a service delivery standard of six months for decisions on programs in queue. In the last year, the Ministry has met this standard for 94% of complete applications.

While the Ministry has made significant progress in processing program approval applications, the ability of the Ministry to improve turnaround times for program approval is directly related to the quality of the information it receives from the sector. The Ministry will continue to work closely with the sector to improve the quality and completeness of information received.

While under the current legislation the Superintendent is not required to re-approve pre-2006 programs, the Ministry appreciates the Auditor General's concern for the quality of older programs and will explore options for program re-approval as part of its operational planning and in preparation for the upcoming Act review.

Finally, the Ministry is actively working on developing options for a new information system that will facilitate program approval, improve feedback to institutions on the elements required for a complete program application, and enhance reporting and information retrieval.

LEGISLATIVE COMPLIANCE

Compliance Inspections

The Ministry's Private Career Colleges Branch is responsible for inspecting private career colleges. Inspections focus on a number of areas, including student contracts, admission requirements, instructor qualifications, advertising, the procedure for handling student complaints, program compliance, and insurance requirements. Such inspections enhance the Ministry's ability to protect current and prospective students of private career colleges. The responsibilities of the Branch's eight inspectors who are charged with undertaking such inspections also include reviewing registration, renewal, and program applications, as well as resolving student complaints.

We observed that at the outset of our audit, the Ministry did not have any goals in place with respect to the number of inspections (such as to inspect all private career colleges over a defined period of time or to inspect colleges identified as high risk). We requested a list of inspections that had been completed during the previous three fiscal years and up to the end of the calendar year 2010. However, the Ministry was unable to provide us with such a list. In the absence of a list of inspections, management estimated that during 2010,

about 30 campuses had been inspected. We were informed that ministry investigators had made 20 additional campus visits to address specific concerns.

The Ministry indicated that resource constraints were the reason so few inspections had been performed in the previous year. According to management, 80% of inspectors' time had been devoted to reducing the backlog of program applications. As a result, management estimated that inspectors spent just 5% of their time on inspections, even though management noted that compliance inspections were an important monitoring function to protect current and prospective students. To be effective, management told us, between 150 and 200 inspections should be conducted annually. Furthermore, management was of the opinion that each registered private career college should be inspected at least once every three years.

We noted that the Ministry had prepared a risk assessment of Ontario's private career colleges in 2009 that included identifying whether each college posed a risk in eight defined risk categories, including chronic violation of the Act and its regulations, registration renewal issues, and questionable advertising practices. The Ministry's risk assessment identified 118 private career colleges that were chronic violators; as well, 77 had advertising issues, and 48 had registration renewal issues. We were informed that, since the Ministry's focus over the last two years had been on program approvals, the risk framework was not used to schedule inspections. In addition, we were told that those inspections that did occur were often in response to specific concerns that arose during this time period. Nevertheless, we used the risk assessment to select a sample of private career college campuses with multiple risk factors and private career college campuses identified as chronic violators to determine whether these schools had been inspected. We found that only one-third of the 60 colleges we selected had been inspected during the previous three calendar years.

During the course of our fieldwork, the Ministry completed an updated risk assessment that identified about 470 private career college campuses with one or more risk factors, 180 with two or more risk factors, and 50 with three or more risk factors. For the 2011/12 fiscal year, the Ministry has committed to tracking the percentage of higher-risk private career colleges that are inspected, and at the time of our fieldwork it indicated that it intends to inspect all private career colleges with three or more risk factors.

Inspection Procedures

Although we had concerns over the low number of inspections completed, we also had concerns about the quality and consistency of inspections in ensuring that private career colleges comply with the Act and its regulations. While the Ministry had a standardized checklist in place to guide inspectors, our review of the checklist and of recent inspections completed identified some inspection areas (such as advertising and instructor qualifications) where greater clarity or more detailed procedures would enhance inspection quality and consistency. For example, although instructor qualification requirements are articulated in a regulation under the Act, the Ministry's checklist does not provide instructions to inspectors on when and how to validate instructor qualifications. This observation was of concern given that among the private career college graduates we surveyed, those who did not feel that their program had provided good value relative to the fees they had paid cited the poor quality of instructors as the top reason for their dissatisfaction.

With regard to advertising, the Ministry's checklist requires a review of the private career college's advertising materials. However, not all of the steps shown on the checklist are described in enough detail to communicate how to assess and reach a conclusion on advertising materials. To illustrate, one such question addresses the presence of a false or misleading statement, but generally the advertising materials reviewed by inspectors were

not kept on file, so neither we nor ministry management are able to assess the adequacy of the testing performed.

We were also concerned that inspections did not cover some significant areas outlined in the Act and its regulations. For example, no specific testing was done on the degree to which a program curriculum was being delivered as approved except with regard to the duration of the program—for example, to ensure that a full-time program was not being delivered on a part-time basis. In addition, although inspectors ensure that the student complaint process meets legislative requirements, the Ministry's checklist does not require any specific testing to determine if actual complaints were being addressed appropriately by the college. Furthermore, management indicated that inspectors are not generally expected to review curriculum except where a problem is suspected. In addition, management also noted that it does not have the requisite number of staff or the knowledge necessary to make such an assessment. We also noted that should the Ministry decide to undertake such assessments, in some cases its ability to do so would be compromised by the fact that it has destroyed program information older than 10 years. The lack of testing in these areas was a concern because the graduates we surveyed who felt that the program they had attended was not a good value cited the poor quality of curriculum as the second most prevalent source of their dissatisfaction.

Management Oversight

We noted a lack of management oversight of inspections to ensure quality and consistency between inspectors. In addition, since details of inspection testing were not documented in some areas, management's ability to monitor inspection quality was limited. Furthermore, management apprised us of some information system constraints that also limit its ability to undertake post-inspection quality control. Finally, due to the incomplete nature of its records, management had not aggregated the

results of inspections to identify trends and possible systemic issues that might warrant further investigation or amendments to inspection procedures.

Our review of inspections and inspection reports identified several compliance issues, but the Ministry did not deem most of these issues significant enough to warrant enforcement action. However, we did come across a situation where an inspector had discovered an unapproved program. This inspector identified the problem in the inspection report issued to the private career college, but the college continued to advertise the program and did not submit an application to have that program approved. Although the inspector subsequently requested that the college cease advertising the program and apply for program approval, the college did not comply. However, the inspector did not bring this issue to the attention of ministry management. Consequently, this private career college continued to offer this unapproved program for over a year. Only after we brought the situation to the attention of ministry management did the Ministry take enforcement action and issue a compliance order requiring the private career college to cease advertising the unapproved program.

Although this was an isolated case among the files we reviewed, the circumstances that permitted its occurrence were systemic. We noted that inspectors are not required to bring inspection results to the attention of management. In addition, where compliance issues are found, the Ministry has not established timelines within which private career colleges must comply.

RECOMMENDATION 5

To enhance the level of compliance with the *Private Career Colleges Act, 2005* and its regulations, and to provide better protection to students and prospective students of private career colleges, the Ministry of Training, Colleges and Universities should:

- undertake enough inspections to adequately manage the risk of non-compliance;

- clarify the focus and extent of testing that inspectors should perform during the course of an inspection of a college;
- implement appropriate management oversight procedures to enhance the quality and consistency of college inspections; and
- aggregate and analyze inspection results to identify trends and systemic issues that warrant further attention.

MINISTRY RESPONSE

The Ministry agrees with the Auditor General's recommendation.

In 2011, the Ministry assessed all registered private career colleges against a nine-part risk management framework for inspections that identified high-, medium-, and low-risk schools. The Ministry conducted inspections of all the private career colleges that were deemed "high risk." Management has established a goal of ensuring that all high-risk schools are inspected within three months of being identified and that all medium-risk schools are inspected within 24 months of being identified.

The Ministry has implemented additional financial risk review requirements to support the registration renewal process. Management will standardize reporting and oversight of the inspection process. Regular management reviews of inspection results, including trends in compliance issues identified through inspections, have been introduced. The Ministry will strengthen the checklist and will expand the inspection protocol.

STUDENT COMPLAINTS

The Act requires every private career college to have a procedure in place for resolving student complaints. In addition, a regulation under the Act states that if a student is not satisfied with the way a private career college has resolved his or her

complaint, the student may refer the matter to the Ministry. We noted that, although the Ministry records written complaints from students in its information system, it does not keep a separate record of complaints that can be used to easily identify the number and types of complaints received. We were also advised that complaints from sources other than students are not recorded in the Ministry's information system.

We also observed that the Ministry strives to acknowledge receipt of complaints within 15 business days, and it informed us that, beginning in the 2011/12 fiscal year, it would track the percentage that had been acknowledged within five business days. Although the Ministry had not established a targeted time frame for resolving complaints, it did require that colleges establish a maximum length of time for making a decision on a complaint. In addition, we noted that the Ministry had not set defined timelines for private career colleges to respond to requests for supporting documentation required by the Ministry, and the Ministry was not measuring the length of time taken to resolve complaints. Furthermore, we observed that management was not analyzing complaints to identify systemic issues or trends that require action on an overall basis.

Our analysis of a sample of student complaints to the Ministry identified that resolving a student's complaint took from 17 to 244 days, or about 100 days on average. Reasons for lengthy delays varied: for instance, in some situations the Ministry had difficulty obtaining the necessary information from the private career college, and in others the Ministry could not demonstrate that it had reviewed information received from the private career college on a timely basis.

The Ministry has informed students of their ability to escalate unresolved complaints to the Ministry through means such as the Ministry's website and individual college complaint procedures. In addition, the Act requires that every student contract include an acknowledgement that the student has received a copy of the college's student complaint procedure and a copy of the "Statement

of Students' Rights and Responsibilities" developed by the Ministry. Nevertheless, we were concerned that many students may not be aware that they can escalate their complaints to the Ministry. In the 2008 through 2010 calendar years, the Ministry had received an average of about 80 student complaints annually, a number that is significantly less than 1% of students in private career colleges. Although this low rate might suggest that private career colleges are resolving student complaints in a satisfactory manner, our review of complaints and inspections identified cases where students seemed unaware that they could complain to the Ministry, because they initially directed their complaints to other sources (such as the Ontario Association of Career Colleges, the Better Business Bureau, and the Ministry of Consumer Services). In addition, our survey of private career college graduates revealed that of those students who filed a complaint with their college, 64% were not satisfied with the resolution of their complaint, yet only 14% of those individuals were aware that they could have escalated their complaint to the Ministry.

RECOMMENDATION 6

To help ensure that the protections offered by legislation to students of private career colleges are effective and to enhance management's ability to oversee the complaints process, the Ministry of Training, Colleges and Universities (Ministry) should:

- establish target time frames for resolving complaints and for receipt from colleges of the information necessary to address complaints;
- analyze complaints to identify possible issues or trends that may require more focused action; and
- more effectively communicate to students that they are entitled to escalate unresolved complaints to the Ministry.

MINISTRY RESPONSE

The Ministry agrees with the Auditor General's recommendation.

The Ministry notes that private career colleges are required, as a condition of registration, to include in every student contract a copy of the "Statement of Students' Rights and Responsibilities" developed by the Ministry and a copy of the private career college's student complaint procedure, expulsion policy, and refund policy. A private career college's student complaint procedure, expulsion policy, and refund policy must be aligned to the provisions within the legislation and approved by the Ministry.

The Ministry has begun work on restructuring its public website to simplify access to information about how students may file complaints. The website will outline the student complaint procedure step by step, including how to submit complaints to the Ministry where required. The Ministry will also continue to partner with the sector and with other government consumer protection institutions to ensure that students are provided with consistent and accurate information on protections under the *Private Career Colleges Act, 2005*.

The Ministry will establish target time frames for an initial response to student complaints and for private career colleges to respond to documentation requests. The Ministry will also review complaints to identify trends for further analysis or action.

PUBLIC AWARENESS

The Ministry has undertaken a number of initiatives to enhance public awareness with the aim of financially and academically protecting students and prospective students of private career colleges. These efforts include:

- posting "buyer beware" messaging on the Ministry's website as well as on Facebook that

includes instructions to prospective students on how to ensure that the private career college program they select is approved under the Act;

- setting up a Web search function that allows prospective students to verify that a private career college is registered and that its programs are approved under the Act;
- posting ministry enforcement orders and financial penalties issued to registered private career colleges as well as to unregistered private training institutions both on the Ministry's website and on Facebook; and
- distributing "buyer beware" posters and pamphlets to organizations such as high schools, immigrant settlement agencies, and employment resource centres that instruct prospective students on how to ensure that they select a registered private career college and an approved program.

However, we noted that the Ministry has not undertaken an overall evaluation of its communication efforts to determine the degree to which it is reaching students and prospective students. In addition, the Ministry confirmed that it had not used information such as user feedback collected from its Web search function to assess the adequacy of its communication efforts. We noted that results from the first quarter of 2011 showed that over 30% of respondents did not feel it was easy to find the information they were looking for and did not find all the information they needed on the Ministry's website.

As noted, the Ministry publishes a list of institutions against which it has taken enforcement action and issued financial penalties on its website and on Facebook. However, when we spoke to associations representing private career colleges, they were concerned that the Ministry does not differentiate between enforcement action taken against registered private career colleges and enforcement action taken against unregistered private training institutions. These associations felt that because the majority of enforcement action has been taken against unregistered private institutions, this approach has resulted in associating the legitimate

private career college sector with illegal operators. Concern was also raised that the primary focus of the Facebook page on private career colleges was not a positive approach to educating prospective students about the sector. Rather, the site was perceived as being negative and served primarily to identify institutions against which enforcement action had been taken.

RECOMMENDATION 7

To enhance protection offered to students and prospective students, and to ensure that the private career college sector is not unfairly affected, the Ministry of Training, Colleges and Universities should:

- periodically evaluate the effectiveness of its communication strategy to identify opportunities for improvement in helping students choose the private career college and programs that best meet their vocational goals; and
- work with private career colleges and their associations to ensure that student-oriented communications are user friendly and communicate in a fair and transparent manner

the protections offered to students who attend registered colleges and programs.

MINISTRY RESPONSE

The Ministry agrees with the Auditor General's recommendation and has partnered with sector associations to work on the information relating to private career colleges on the ministry website.

As required by the *Private Career Colleges Act, 2005*, every private career college student contract includes a copy of the "Statement of Students' Rights and Responsibilities" developed by the Ministry and a copy of the private career college student complaint procedure, expulsion policy, and refund policy. These are important protections for students, and the Ministry will continue to reinforce the requirement to include them in the contract and will promote the availability of these policies to private career college students. Moving forward, the Ministry will regularly review its communications strategy to inform the sector and students of upcoming initiatives and new or changing regulatory requirements.

Student Success Initiatives

Background

The Ministry of Education (Ministry) administers publicly funded education in Ontario and is generally responsible for developing the curriculum, setting requirements for student diplomas, and providing funding to school boards. Currently, Ontario has 72 publicly funded school boards, of which 70 have secondary schools, with more than 700,000 students attending some 900 secondary schools. Since 2003, the Ministry has implemented a number of initiatives to help Ontario's secondary school students graduate with a high school diploma. Together these initiatives comprise Ontario's Student Success Strategy. The strategy's overall objective was to have 85% of high school students achieve a secondary school diploma by the end of the 2010/11 school year.

A 2003 report commissioned by the Ministry titled *Double Cohort Study* concluded that at least 25% of Ontario students who began grade 9 in 1998/99 would leave school without a high school diploma. The graduation rate at the time stood at 68%. The report further pointed out that if a student was falling behind by one credit in grades 9 or 10, he or she was at risk of dropping out. Using that criterion, at the time, 27% of the students who had completed grade 9 and 40% of grade 10 students

were at risk of not graduating because they lacked at least one course credit.

These statistics prompted the government to establish the Student Success Strategy to improve student achievement and dramatically reduce the dropout rate. The strategy helps students tailor their education to individual strengths, goals, and interests, and encourages students who have left school to return and complete their diploma. To earn an Ontario Secondary School Diploma, students must successfully complete 18 compulsory and 12 optional courses, complete 40 hours of community involvement, and pass the grade 10 provincial literacy test or course.

The Ministry's Student Achievement Division holds the primary responsibility for developing, implementing, and monitoring Ontario's Student Success Strategy. Approximately 50 full-time division employees are involved in the delivery of the Student Success Strategy, including operational and administrative staff. School boards and schools are responsible for the delivery of student success initiatives. Every board receives funding for one student success leader to help implement program initiatives in its schools and funding for one student success teacher per secondary school, who is responsible for providing supports to students at risk of not graduating. In addition to per student funding provided for student success

teachers, in the 2010/11 school year, the Ministry provided almost \$130 million to school boards for the delivery of student success initiatives.

Services Branch. We reviewed the branch's recent reports and considered its work and any relevant issues it identified in planning our work.

Audit Objective and Scope

The objective of our audit of the Ministry's Student Success Strategy was to assess whether the Ministry, selected school boards, and schools had adequate procedures in place to:

- identify students at risk of not graduating and develop and implement initiatives to address their needs;
- ensure that transfer payments are spent for the purposes intended and allocated based on student needs; and
- measure and report on the strategy's effectiveness in increasing the number of students that graduate and are adequately prepared to pursue post-secondary education, apprenticeship, or employment.

Senior management reviewed and agreed to our audit objective and associated audit criteria.

Our audit work was conducted at the Ministry's head office, primarily in the Student Achievement Division, which is responsible for carrying out the Student Success Strategy, as well as at selected school boards and a sample of secondary schools in these boards. The boards we visited were the Lambton Kent District School Board, the Simcoe County District School Board, and the Toronto Catholic District School Board.

In conducting our audit work, we reviewed relevant legislation, policies, and procedures, and met with the appropriate ministry staff. We also met with school board staff, including principals and teachers. We researched related practices in other jurisdictions and solicited the opinions of faculty at universities and colleges about the level of preparedness of graduates from Ontario's secondary school system. Our audit also included a review of relevant activities of the Ministry's Internal Audit

Summary

The Ministry set an overall objective whereby 85% of secondary students would graduate with a high school diploma by 2010/11. Based on the reported graduation rate, steady progress has been made toward achieving this goal: the graduation rate stood at 81% in the 2009/10 school year compared to 68% in 2003/04. Further refinements may be needed to the initiatives under way to ensure that the Ministry's objective can be met and that graduating students have acquired the knowledge and skills needed for successful post-secondary study or employment. Some of our more significant observations regarding the delivery of the Student Success Strategy were:

- Overall, we found that the school boards we visited did a good job of identifying and providing supports to individual students considered at risk of not graduating. The boards and schools track risk factors such as gender, absenteeism, and course success to help identify students at risk. Although the boards we visited targeted most programming to individual students at risk, some other jurisdictions have found that more formally targeting supports to higher-risk groups of students based on such risk factors as ethnicity, disability, or economic status can be very effective in improving graduation rates. For example, targeted programming in one U.S. high school resulted in a 92% graduation rate for African-Americans far exceeding the state-wide average of 67% for this group.
- The Ministry's reported graduation rate is based on calculating the percentage of grade 9 students who graduate within five years. However, the graduation rate would have been

- 72% had only four years of high school been considered, which could provide a measure for how well schools have delivered the curriculum. On the other hand, the graduation rate would have been 91% if the Ministry reported the overall graduation rate by the time students reach the age of 25, which would provide a better picture of the number of people in Ontario who have achieved at least a high school education.
- The Ministry and school boards are collecting useful information, such as credit accumulation rates, needed to identify students at risk of not graduating at an early stage and to track their progress as student success initiatives are implemented and additional supports are provided. In the absence of any provincial testing beyond the grade 10 literacy test, the Ministry relies primarily on tracking changes in the graduation rate to measure the success of the strategy. However, unlike EQAO results, graduation rates are not publicly available by board, and school boards do not yet use a consistent method of calculating their graduation rates to allow meaningful comparisons across the province. Better information is also needed on graduates' level of preparedness for post-secondary studies and employment.
 - For the 2010/11 school year, a student re-engagement initiative encouraged more than 5,000 students to return to school to get their diploma, but in some cases the 40 hours of community involvement was the only outstanding requirement to graduate. At one of the boards we visited, a school had implemented a program to help students complete their community involvement hours and, in the second year of the initiative, one-half of the grade 9 students had already completed this requirement. Furthermore, this school found that these students generally continued to participate in community activities, accumulating hundreds of community involvement hours.
 - We noted situations where the Cooperative Education program documentation did not clearly demonstrate the link between the work placement and the associated curricular expectations as required. Cooperative education allows students to earn secondary school credits through a work placement related to a ministry-approved course. For example, students earned credits working in a wide range of placements, such as clothing stores, fast-food outlets, coffee shops, municipal planning offices, television studios, and laboratories. We found many examples where we questioned whether the placement was directly related to the students' in-class curriculum learning expectations.
 - Over the past two school years, 2009/10 and 2010/11, \$15 million of the \$245 million the Ministry provided to school boards for student success initiatives was allocated based on a direct assessment of student needs. Much of the funding was allocated based on the number of students enrolled in each board or based on applications submitted by boards. Although a considerable amount of this funding is ultimately used to support students at risk, it was not necessarily targeted to the boards, schools, and students most in need of support. For example, a board with 81% of its students on track to graduate received \$240 per student, while a neighbouring board with only 69% of its students on track to graduate received less than half this amount. We were advised that the majority of the funding disparity was due to different degrees of board participation in programs funded through applications.
 - We found that the boards we visited properly accounted for Student Success funds received. However, in the last two school years ending in 2010/11, Ontario school boards received a total of nearly \$8 million in unexpected funding late in the school year that had to be spent by year-end. Such late payments make

it difficult to effectively use this money, and some boards purchased items that schools did not necessarily need at the moment, such as more tools and more modern equipment.

OVERALL MINISTRY RESPONSE

We respect the recommendations of the Auditor General and have given careful consideration to their implementation. The Ministry of Education has three goals: to increase student achievement; to reduce gaps in achievement among students; and to increase public confidence in publicly funded education. Together with educators across the province, we place considerable importance on using research and outcome-based evidence to pursue these goals more effectively. The Auditor's report on the Student Success Strategy makes an important contribution to that effort.

The report points to areas of commendable practice as well as some specific areas for improvement. It points to school board practices that should be shared more widely. It supports the Ministry's and school boards' practices of collecting performance data and reporting on key indicators of progress. It supports our increased collaboration with the secondary education and post-secondary education and training sectors, and employers. It notes the progress made in increasing the graduation rate in Ontario and encourages our ongoing review of student success over a range of variables and time frames. Finally, it reinforces our commitment to policy and program assessment and affirms the importance of our ongoing program refinement to ensure that ministry and school board resources are collectively deployed to best meet student needs.

Detailed Audit Observations

MEASURING AND REPORTING ON STUDENT OUTCOMES

Student Success Indicators

The Student Success Strategy is a broad, province-wide strategy designed to ensure that students successfully complete their secondary schooling and reach their post-secondary goals. In 2005, the Ministry set a target of an 85% graduation rate by the 2010/11 school year. As noted in Figure 1, the graduation rate has been steadily increasing, from 68% in 2003/04 to 81% in 2009/10.

In addition to monitoring the provincial graduation rate, the Ministry collects information known as student success indicators to measure and evaluate student progress and to assess its Student Success Strategy. These indicators are based upon research conducted by the Ministry and other studies that highlight the factors that may eventually result in students leaving school without a diploma. Some of the other indicators collected by the Ministry are credit accumulation rates, compulsory course pass rates, and Education Quality and Accountability Office (EQAO) test results.

The EQAO administers a province-wide grade 9 mathematics test and the grade 10 Ontario Secondary School Literacy Test (OSSLT). The EQAO reports publicly the results of these tests on a provincial, board, and school level. The grade 10 literacy test is

Figure 1: Ontario High School Graduation Rates (%)

Source of data: Ministry of Education

School Year	Graduation Rate (%)
2003/04	68
2004/05	71
2005/06	73
2006/07	75
2007/08	77
2008/09	79
2009/10	81

the last independent province-wide assessment of performance that secondary students are given.

Although the Ministry publishes grade 10 credit accumulation rates by board, it does not publish graduation rates by board, nor has it established specific goals for any of its student success indicators. Establishing goals for individual indicators and measuring progress toward those goals at the school, board, and provincial levels can provide early warning signs that intervention may be required.

Internally, the Ministry assembles board data reports on key indicators along with provincial averages. While the boards did not use these indicator data reports for analytical purposes, they did use them to verify and reconcile their own data and to compare them with provincial averages. However, with the exception of shared grade 10 credit accumulation data, boards and schools cannot assess where they stand in relation to comparable boards and schools in other parts of the province.

On a broader level, since the 2009/10 school year, boards have been expected to prepare overall improvement plans for their secondary schools, with clearly defined performance targets, intended strategies to achieve those targets, and relevant timelines for reporting on results. Ministry monitoring of these plans involves discussions with senior board staff three times a year regarding progress toward achieving targets, lessons learned from the past year, and strategies to be implemented in the future.

We reviewed a sample of school board improvement plans and noted that although some had common goals, the Ministry did not integrate them into an overall strategy. For example, most boards adopted the provincial graduation rate targets, but there was no attempt to outline how each board would contribute to achieving the overall goal of an 85% graduation rate. Only one of the three boards we visited established specific and measurable targets related to credit accumulation and graduation rates.

We noted some other jurisdictions that had more rigorous accountability and transparency structures

for their education ministries and individual school boards (authorities, districts) through formalized annual reports with long-term plans that included performance indicators and targets. Alberta, for example, uses a common and consistent set of performance measures where school authorities' performance measures are aligned with province-wide goals. Alberta also reports on additional performance measures such as annual dropout rates and post-secondary transition rates, while British Columbia requires its districts to outline how their strategies will be adjusted when targets have not been met.

Graduation Rate Calculation and Reporting

The Ministry's method for calculating the graduation rate is based on a cohort approach that measures the percentage of students who graduate with an Ontario Secondary School Diploma within five years after starting grade 9. There are some gaps inherent in the calculation such as not having the information to include students who may have graduated outside Ontario. Also, students may have left school and returned to finish their diploma in a year beyond the five years from when they started grade 9.

Many factors need to be considered in deciding how best to calculate a graduation rate. Each methodology has advantages and disadvantages, and no method will produce a statistic that is ideal for all purposes. Although the high school curriculum has been designed so that it can be completed in four years, the Ministry has selected the five-year cohort rate as the official measure of student success. Reporting the four-year cohort rate would provide an assessment of how many students have completed the curriculum—and how often schools have delivered the curriculum to students—within the four-year time frame. Also, another measurement such as reporting an overall high school graduation rate by a certain age—say, 25—would provide a better picture of the number of people in Ontario who

have achieved at least a high school level of education. (See Figure 2.)

Two of the school boards we visited calculate multiple graduation rates such as four-year, five-year, and six-plus years to provide a broader picture of their performance. While the boards may calculate such rates, none of the ones we visited publish their graduation rates, although some of this information can be found in their board improvement plans.

Furthermore, each of the school boards we reviewed utilized a different method for calculating its graduation rate. They ranged from variations of the Ministry's cohort method to not basing the calculation on a cohort at all. Therefore, even if graduation rate information were available, it would be misleading to use it to compare board or school graduation rates across the province.

In addition to monitoring graduation rates, we noted a school board that gathered, at both the board and school level, other graduation-related statistics such as:

- how many students attained their diplomas within four years;
- how many students transferred elsewhere for educational purposes;
- how many students did not return in the fall but received a diploma subsequently; and
- the percentage of students who left the education system without graduating.

This particular board felt that using different rates and breaking down those rates provided it with data useful in implementing the student success initiatives, as well as a more complete picture of student activity regarding graduation. The fact that school boards are taking it upon themselves to complete this type of evaluation shows its usefulness and demonstrates the value of doing such analysis consistently and province-wide.

In October 2009, the Ministry established a working group to review the calculation of board graduation rates. The group agreed upon a number of factors relevant to determining school board-level graduation rates, including standardized

Figure 2: Differing Ontario High School Graduation Rates (2009/10 School Year) (%)

Source of data: Ministry of Education and Statistics Canada

Rate	Calculation Method
72	four-year cohort graduation rate
81	five-year cohort graduation rate
91	overall graduation by age 25*

* based on survey data

calculations that are consistent with those used to determine the provincial cohort graduation rate. However, the group did not consider the calculation and reporting of graduation rates for individual schools. Still, there was agreement that further detail should be provided concerning students who did not graduate, such as gender and immigration status, for planning and program development purposes. The last meeting of the working group took place in March 2010, although the Ministry informed us that a new committee was to be convened in September 2011.

We noted other jurisdictions that publicly report detailed board-level and school-level graduation and dropout rates as part of their accountability requirements. For example, Saskatchewan reports a completion rate for each year ranging from students who graduate in three years or less to those who spent eight or more years to achieve their diploma. Similarly, Alberta reports three-, four-, and five-year completion rates. Furthermore, Alberta reports the number of students who dropped out or continued in school but did not earn a diploma.

Student Success Data Collection

In addition to Student Success Strategy funding, the Ministry has provided more than \$120 million from the 2004/05 to the 2010/11 school year in funding to enhance the capacity of schools and school boards to use data and information for evidence-based decision-making to improve student achievement. In our audit, we noted that each of the three school boards we visited had a student information management system purchased from

a third-party vendor. These systems collected data and had the ability to produce board-, school-, and individual student-level reports, and to track and monitor student performance data for subsequent analysis. Although the Ministry has attempted to help build systems capacity at the board and school levels, a more province-wide approach might be more cost-effective given the similarities in the functionality of student information management systems.

As noted earlier, each school board reports data to the Ministry on student achievement as well as attendance and biographical information, including country of birth and first language spoken at home. We found that the Ministry had a thorough process in place for ensuring that data collected by schools and school boards are verified so that the risk of inaccurate information is minimized.

With the completion of Ontario School Information System (OnSIS) submissions by boards, indicator data can be finalized for internal decision-making and external reporting purposes. However, data are usually not finalized for more than six months after the submission date, because not all boards submit data on time. Consequently, the Ministry provides boards with preliminary data to be used for analysis and program planning purposes.

At each school board visited during our audit, we found that data had been verified prior to upload and sign-off for OnSIS. We also noted some practices aimed at enhancing the efficiency of this process, such as having built-in system verification that is run nightly to flag potential errors to initiate the ongoing correction of data. We also noted that one board provided release time for school staff to visit the board office to verify data and correct errors, an approach that assisted in the timeliness of data submission. All boards we visited conducted workshops and training sessions on data preparation and verification. One of the school boards also conducted internal enrolment reviews to ensure the reliability of its data.

Tracking Students after High School

The Ministry has had to undertake surveys to assess the success of its initiatives in preparing students for apprenticeships, college, university, and the workforce because it is not possible to track students beyond high school, as information regarding graduates is not readily available through its current systems.

The Ministry and the Ministry of Training, Colleges and Universities are working with colleges and universities to facilitate the use of the Ontario Education Number as the common student number for students from kindergarten to college/university graduation. This project has a target date for implementation in 2012. The current plan is to eventually include other government-sponsored employment training programs and apprenticeships in the project. However, the project does not include extending the use of the Ontario Education Number to private career colleges.

Information such as career choices, university/college enrolment, post-secondary marks, and credentials and qualifications earned could help to evaluate the success of ministry initiatives and assess how well former students are performing after high school. Additionally, examination of student data related to students' performance in post-secondary pursuits, such as college, university, or apprenticeships, could help provide a better understanding of the knowledge gaps and skills required to be successful in a post-secondary setting.

British Columbia uses a common identifier number to track and report on graduating students' post-secondary destinations for up to seven years after high school graduation. California also uses a common identifier, and its post-secondary institutions report back to high schools on curriculum areas where students were not sufficiently prepared. Meanwhile, in Florida, an information system allows for the tracking of students from the time they first enter school until they enter the workforce.

RECOMMENDATION 1

To help the Ministry of Education (Ministry), school boards, and schools generate timely data for decision-making purposes that are consistent and comparable, the Ministry and the province's school boards should:

- set reasonable targets for graduation rates and student success indicators in line with overall provincial goals and require more formal reporting on the achievement of these targets at the provincial and school board levels;
- develop a common method for school boards to calculate and report graduation rates and other student success indicators;
- help school boards share best practices that would assist in the more timely verification and submission of student data;
- consider collecting information on high school graduates to identify any gaps in knowledge or skills that may require attention; and
- extend the use of the proposed student identifier number to include private career colleges.

MINISTRY RESPONSE

The Ministry agrees that consistent, comparable data are required for decision-making purposes and will work with school boards to identify and share effective data collection and verification practices. This work can then be used for decision-making processes such as establishing reasonable targets for board graduation rates, creating common calculation and reporting methods, and monitoring students as they progress into their chosen post-secondary pathways. The Ministry will also continue to work with the Ministry of Training, Colleges and Universities to extend the student identifier number to apprenticeships, colleges, government-sponsored employment training programs, and

universities, and will explore the feasibility of extending it to private career colleges.

STUDENTS AT RISK OF NOT GRADUATING

Identifying Individual Students at Risk

Students who are socio-economically disadvantaged, as well as those who have behavioural traits such as high absenteeism and those from certain cultural backgrounds, are more likely than other students to experience difficulty in school and drop out. Studies also have shown that students at risk of not graduating benefit from early identification and intervention.

For example, credit loss has been identified as one of the biggest factors affecting graduation rates. A 2009 study of Ontario students noted that one failed course in grade 9 reduces by more than 20% an Ontario student's chance of graduation within five years. One U.S. city noted that only 28% of its students who were off-track for required courses in grade 9 graduated from high school within five years.

Overall, we found that the school boards we visited did a good job of identifying and providing supports to individual students considered at risk of not graduating. In general, the boards had effective transition programs for students moving from grade 8 to their first year of high school in grade 9. In the three boards we visited during our audit, grade 8 teachers along with a high school student success teacher prepared detailed student profiles to be passed on to the student's grade 9 teacher. The student profiles contain information regarding academic learning skills, at-risk behaviours, strengths, needs, and suggested learning strategies.

The boards also had processes to identify at-risk students and assigned each student to a high school staff member (Student Success teacher, guidance counsellor, regular teacher) to help them with any difficulties. In addition, two boards established

peer mentor programs to help guide these students through their first year of high school.

Although each of the school boards we visited varied slightly in its approach, all boards identified at-risk students based on indicators such as credit accumulation, grades, attendance, suspensions, and EQAO results. In addition, one school board produced reports that broke down the number of students considered significantly at risk, moderately at risk, and on track. The school's Student Success Team would then work out strategies to assist the identified students at regularly scheduled meetings.

School boards are required to report the number of at-risk students to the Ministry three times per school year so it can track these students on a provincial level. These reports also include what strategies are being used to keep the students in school, such as being assigned a high school staff member, having a strength-and-needs-based student profile, and establishing an education and career pathway. The Ministry does not formally compile these board reports, but it does prepare some provincial trend analyses.

The Ministry has provided a common at-risk definition for grades 11 and 12 that boards are required to use. For grade 9, boards use their own definitions, and for grade 10, boards use credit loss and other locally determined factors to identify at-risk students. Note that Figure 3 shows a significant drop in the number of at-risk students in the later grades as compared to grades 9 and 10. However, it is not possible to determine if this drop is due to differing school definitions and methodologies or if early interventions are successful in reducing the number of at-risk students.

Identifying At-risk Groups

Academic research into Ontario's education system has identified some groups of high school students more at risk of not graduating than others. For example:

- Male students are less likely to graduate than females.

- Students from certain linguistic groups are less likely to graduate and go on to post-secondary education than others.
- Rural and Northern Ontario students are less likely to apply to and register in post-secondary education than urban and southern Ontario students.

Despite this evidence, information on graduation rates is not differentiated by sub-categories. However, the Ministry does track certain gaps, such as by gender, through its student success indicators.

One further step in identifying student groups at risk of not graduating involves extracting data based on factors such as ethnicity and language spoken at home. Although this is considered a sensitive issue, programs in other jurisdictions have found that supports targeted to specific ethnic groups can be constructive, because these types of data can help guide program planning and delivery. For example, targeted programming in one U.S. high school resulted in a 92% graduation rate for African-Americans, far exceeding the state-wide average of 67% for this group.

One such initiative reported by the Toronto District School Board in January 2011 studied achievement test scores and completion-of-graduation requirements for self-identified students from Latin America who speak Spanish at home. The report noted that 40% of these students left high school before graduation. The report also noted that it was the first time that any Canadian school board had collected and extracted achievement data

Figure 3: Percentages of Students at Risk of Not Graduating (2009/10 School Year) (%)

Source of data: Ministry of Education

Grade	Percentage
9	23
10	21
11	13
12	17
12+*	18

* Includes students still in secondary school and not having graduated after four years.

based on students' self-identified ethno-linguistic background. As a consequence, the board reported that, among other initiatives, it would implement cultural sensitivity classes for teachers, offer support programs for newcomers, and in some cases give students from lower-income households part-time jobs at their school.

Currently, data collected by the Ministry in the Ontario School Information System (OnSIS), mainly through student registration forms, include language first spoken, residence status in Canada, year of entry into Canada, and country of birth. Although the Ministry informed us that it is not currently possible to accurately calculate student success indicators by various groups, one of the school boards we visited did sort key student indicators by attributes such as country of origin and language spoken at home.

Other jurisdictions have also managed to report indicators based on various student groups. British Columbia, for example, has reported that 76% of its students who speak East Asian languages graduated and went on to post-secondary education. It has also broken this group into different East Asian national backgrounds/countries of origin and calculated graduation rates accordingly.

Identifying Early School Leavers

Tracking and analyzing why students leave school before they graduate helps boards to establish more timely and effective programs and supports to assist students at risk before they drop out. Schools record why students drop out of the education system through the use of a series of pre-established destination or exit codes.

We analyzed the total number of recorded exits for the four school years beginning in 2006/07 on a board-by-board basis. Many students were coded as unknown because school boards and schools were unsure where the students went or for what reason. In addition, a large number of dropouts were coded as "other," a category used when there is no specific code for the reason that the student left school. We

concluded that such coding lacks any useful meaning and cannot be used for any constructive analysis of why students drop out of school and what might be done to help keep such students in school.

To assess the overall success of programs to help keep students in the education system, other jurisdictions such as Alberta calculate an annual dropout rate for students aged 14 to 18. However, the Ministry informed us that it does not calculate a dropout rate because of methodology concerns such as accounting for students who leave the province or who leave and return to school several times.

RECOMMENDATION 2

To help identify students and student groups at risk of not graduating who may benefit from additional and specific supports and programs, the Ministry of Education and the province's school boards should:

- establish a common definition for reporting grade 9 and grade 10 students considered at risk of not graduating;
- assess the viability of calculating student success indicators by a variety of attributes such as ethnicity, language, and socio-economic status, and consider a system or process for collecting data based on student self-identification; and
- review the processes used to record students who leave school without a diploma so that the reasons students leave school can be determined.

MINISTRY RESPONSE

The Ministry will work toward establishing a common reporting definition of students considered at risk of not graduating to help improve its ability to identify such students. The Ministry will also explore the viability of collecting data on students who self-identify on a variety of attributes, and continue to review and initiate research regarding students who struggle to complete school or leave school early.

STUDENT SUCCESS STRATEGY INITIATIVES

The Ministry has developed a number of initiatives to help keep students in school, re-engage students who have dropped out, and prepare students for post-secondary education, apprenticeship, and employment. For our audit, we reviewed six major ministry Student Success Strategy initiatives.

- Re-engagement—Recent dropouts are encouraged to return to school and complete their high school diploma requirements.
- Cooperative Education—Students earn secondary school credits for taking a job placement that enhances the classroom experience.
- Credit Recovery—Students who failed a course are allowed to pass by working satisfactorily on only those course expectations where the student had been unsuccessful.
- Specialist High Skills Major (SHSM)—This career-focused program of courses allows students to earn related certifications while fulfilling graduation requirements.
- Dual Credit—Students taking college or apprenticeship courses can earn credits for both their high school diploma and post-secondary qualifications.
- Student Success School Support—A limited number of low-performing schools received funds for an additional Student Success leader, a mentor for the school principal, and additional professional development opportunities.

Re-engagement

In August 2010, the Ministry implemented a re-engagement initiative to encourage recent dropouts to return to school and complete their high school diploma requirements. The Ministry calculated that 16,000 fourth-year students left high school in 2010 without graduating but could have completed their diploma requirements with just another year of school. The Ministry provided each school board with a number of students whom boards were

required to identify, contact, and attempt to bring back to high school. Boards were also expected to monitor these students' progress toward completing their diploma and to place them in appropriate programs to maximize their chances of success.

As of October 31, 2010, school boards had contacted more than 10,000 such students, and more than 5,000 had returned to school to complete their high school diploma. The boards we visited had put procedures in place to identify, contact, and monitor re-engaged students. Almost one-half of the returning students needed five or fewer course credits to graduate.

In addition to course credits, 25% of the returning students needed to pass the grade 10 literacy requirement, while more than 70% had not completed their 40 community involvement hours. The Ministry informed us that obtaining community involvement hours was the only graduation requirement that some of this 70%—it was unable to provide an exact number—needed to complete.

One board said that many students had not completed their community involvement hours because they lacked the resources or initiative to achieve this requirement on their own. In contrast, there is a significant school focus on passing the literacy requirement, with considerable support provided for students to pass this test.

At one of the boards we visited, a school had implemented an initiative to help ensure that grade 12 students did not leave their community hours requirement to the last minute and jeopardize their graduation. The school encouraged grade 9 students to complete their 40 hours in the first year of high school. The school presented students with various opportunities to obtain their hours through teacher-led activities and encouraged them to volunteer in the community. Before this initiative began, fewer than 10% of grade 9 students had completed their community involvement hours. In the first year of the initiative, 25% completed their community involvement hours, and in its second year nearly half met the requirement. Furthermore, the school found that these students generally continued to

participate in community activities throughout high school, accumulating hundreds of hours.

Overall, the boards told us that re-engagement was a worthwhile and successful initiative because it focused on a targeted group of students that had been largely ignored in the past. The Ministry spent \$5.3 million on this initiative in the 2010/11 school year and has allocated another \$1.3 million for 2011/12. However, no ministry funding has been committed for future years. One of the boards we visited expressed concerns whether it could sustain this program if ministry funding ceased.

Cooperative Education

The Cooperative Education program allows students to earn secondary school credits through a job placement. In 2005, the program was modified so that up to two cooperative education credits could be counted as compulsory credits, and the program was promoted to students at risk. Cooperative education placements are available in many kinds of work settings, such as hair styling, auto mechanics, television broadcasting, municipal government, and nursing. The program is intended to complement academic requirements and prepare students for the future by providing practical work experience. In the 2008/09 school year, using the most recent available data, there were 72,000 students enrolled in cooperative education who earned 150,000 credits.

For a student to earn a cooperative education credit, which has the same value as any other credit, the job placement must be related to a ministry-approved course that the student is enrolled in or has completed successfully. A student can earn up to two work placement credits for each subject credit. In addition to the work experience hours a student is required to achieve, students are expected to complete a minor classroom component that is designed to relate the placement experience to the curriculum expectations of the related course. Students can earn all 12 optional and two of the 18 compulsory credits required to obtain an

Ontario Secondary School Diploma through the Cooperative Education program.

Over the years, the Cooperative Education program has been promoted as potentially helpful to students who are disengaged, returning to school, or experiencing developmental delays. All of the boards we visited had some form of centralized cooperative education program in place.

Generally, co-op teachers are responsible for interviewing students for work placements, finding students suitable jobs, and evaluating performance. In collaboration with the students, these teachers write out the skills students are expected to learn at their placements. However, many of the related reports we reviewed did not clearly document the link between the job placement and the course expectations. In a number of cases, students had earned or were earning credits for working in a wide range of placements, such as clothing stores, fast-food outlets, coffee shops, grocery stores, municipal planning offices, television studios, and laboratories. In many of these cases, we could not assess the merit of the work placements reviewed and whether the placement complemented the in-class experience. In addition, the Ministry and boards informed us that a formal analysis has not been performed to assess the overall suitability of co-op placements in ensuring that students acquire the expected knowledge and skills.

Credit Recovery

The Credit Recovery program is designed to increase student retention by enabling students who have failed a course to earn the credit by repeating only those course expectations where the student had been unsuccessful. Since student performance in the earlier secondary school years is considered critical to future learning, credit recovery is generally directed to grade 9 and grade 10 students. In the 2008/09 school year, more than 17,000 students received 23,600 credits through credit recovery.

When the Ministry introduced Credit Recovery in 2005, it issued a series of memos to guide

implementation. In 2010, the Ministry consolidated these guidelines in a formal policy document. However, we found these guidelines to be general and to provide little specific direction to school staff. For example, there are no guidelines on the maximum number of optional or compulsory courses a student could recover and no minimum percent a student should have received in the original course to be eligible for the Credit Recovery program. The Ministry and boards informed us that the guidelines are intended to be flexible to allow for individual student circumstances.

As a result, we found wide variations in the way the Credit Recovery program was delivered. According to ministry guidelines, a student's evaluation can be based solely on performance in the credit recovery portion of the course or by merging the credit recovery mark with that of the original course. In the schools we visited, we found that the weight assigned to a student's performance in credit recovery relative to the original course mark ranged from 30% to 70%. In other words, in one school the credit recovery work was worth 70% of the student's final mark, whereas in another it was worth only 30%. No documented rationale was provided for the percentage of the student mark awarded for the credit recovery portion of the course.

The subject teacher is required to complete a student credit recovery profile indicating the units, concepts, and expectations not successfully completed. The profile is to be used by the credit recovery teacher to develop a learning plan that should identify the expectations to be covered, the appropriate teaching strategies, and how the final mark will be determined.

We reviewed credit recovery documentation at a number of schools and found that many profiles and plans were not on file, and those that were on file failed to indicate clearly the course expectations that had not been successfully achieved and/or the expectations to be realized in credit recovery. We also found examples where it seemed unclear what work students had performed to pass the course

through credit recovery. In one case, a student who had received 24% in a course recovered the credit by completing five expectations. This student had failed 26 of the 31 original course activities, earned a zero in 19 of these activities, and failed the final exam with a mark of 14%. Due to the lack of documentation, we could not assess whether the student met the required expectations for the course.

In 2010, the Ministry initiated a study at five school boards to assess the Credit Recovery program to ensure that students acquired sufficient knowledge to be successful at the next level. The study examined the subsequent performance in grade 10 of students who failed a grade 9 course but subsequently passed the course through credit recovery or by repeating it. Significant differences were noted among the boards in the grade 10 pass rates of credit recovery students versus those who repeated the grade 9 course in its entirety. However, the study ended without drawing conclusions because of concerns with small sample sizes and incomplete data. To address these concerns, the Ministry plans to perform a more comprehensive province-wide analysis of the program.

Specialist High Skills Major

Introduced in 2006, the Specialist High Skills Major (SHSM) program allows students to focus their learning on a specific economic sector while meeting the requirements to graduate from secondary school. SHSM enables students to gain knowledge in various career options such as agriculture, aviation, business, transportation, and mining. The program also helps students prepare for the transition to apprenticeship, college, university, or the workplace. In the 2009/10 school year, nearly one-half of Ontario's 900 secondary schools offered nearly 750 SHSM programs to more than 20,000 students.

School boards submit SHSM applications to the Ministry for funding approval. As part of its monitoring processes, the Ministry requires school boards to submit SHSM student data reports three

times a year. The reports include enrolment, number of credits attempted and earned, and total number of students earning a diploma with an SHSM designation. Based on these reports, the Ministry prepares a summary report that provides boards with information on where they stand in these respects relative to the province. These reports help boards improve their programs. Also, to help evaluate and refine the program, Ministry officials regularly meet with SHSM teachers across the province.

Overall, the Ministry has put some good monitoring procedures and a process in place to evaluate the success of the SHSM initiative. However, the current reporting requirements focus on participation, retention, and credit accumulation rates because information regarding student destinations after graduation is not readily available through the current information systems. The Ministry informed us that, to better assess the success of the SHSM program, the common identifier number that it planned to implement in 2012 would help track students' post-secondary pursuits.

To assess the success of the SHSM program, in November 2010, the Ministry initiated a survey of former SHSM students. For the most part, the results of the survey were positive. Six months after graduating, nearly two-thirds (64%) of SHSM students were registered in a post-secondary program (31% in university, 27% in college, and 6% in an apprenticeship), and nearly 70% of students declared that the program influenced their career and educational plans.

Dual Credit

Introduced in 2006, the Dual Credit program allows students, while they are still in secondary school, to take college or apprenticeship courses that count toward both their Ontario Secondary School Diploma and a post-secondary diploma or apprenticeship certificate. These ministry-approved courses are delivered by publicly funded Ontario colleges.

Dual Credit programs are intended to assist secondary school students in their progress toward

graduation and in making successful transitions to college or apprenticeship. The Ministry informed us that the focus of the program was two groups: disengaged students with the potential to succeed and returning students who had left high school before graduating. For the 2009/10 school year, the Ministry reported that 46% of dual credit students were identified as disengaged or as having previously dropped out of high school. In 2010/11, there were almost 13,000 students enrolled in over 400 dual credit programs.

The Dual Credit program is co-funded by the Ministry of Education and the Ministry of Training, Colleges and Universities and managed by the Council of Ontario Directors of Education. Regional planning teams are responsible for the delivery of the program. There are 16 teams across the province, with each team consisting of college faculty and high school teachers. On behalf of their schools, boards submit program applications to their respective regional planning teams. The Ministry, in conjunction with the Ministry of Training, Colleges and Universities and the Council, reviews the applications submitted by the teams and makes recommendations for final funding approval. The Council is responsible for administering the funds to the regional planning teams and monitoring how the money is spent, while the Ministry monitors the success of the program.

The regional planning teams submit student data reports to the Ministry twice a year. The provincial roll-up of these student data reports includes information such as the distribution of students by age and gender, the number of students considered disengaged and underachieving, how many have previously dropped out of high school, and the retention and success rates of the students who participated in the program. The Ministry has also collected anecdotal information from administrators regarding lessons learned and the challenges they have encountered with the implementation of the Dual Credit program, in addition to students' perceptions of its benefits and challenges.

In the 2009/10 school year, the Ministry began requiring the regional planning teams to prepare SMART (specific, measurable, attainable, realistic, and timely) goals for the coming year. The Ministry performs annual monitoring visits with the teams to follow up on the status of the goals from the prior year and to learn about the challenges and successes each team has had with implementing the program. Also, as part of the visits, the Ministry provides regional planning teams with a data package that includes a three-year comparison of statistics such as participation rates, retention rates, and success rates in comparison to the provincial average.

In general, we noted that the monitoring processes in place for the Dual Credit program are far more extensive and comprehensive than for any of the other Student Success programs and in many ways serve as a best practice standard for other ministry initiatives. Although the Ministry has not evaluated the program to determine if participating students are making a successful transition to post-secondary schooling, it did conduct a survey to determine the status of dual credit students six months after leaving the secondary school system. For the most part, the results were positive. Almost two-thirds (65%) of the dual credit students were registered in a post-secondary program (6% in university, 50% in college, and 9% in an apprenticeship), and 77% of respondents declared that the program influenced their career choice and educational plans.

Student Success School Support

In 2008, the Ministry introduced the Student Success School Support initiative targeting a limited number of schools in boards that had a significant number of secondary schools where student achievement was below the provincial standard. The Ministry informed us that the focus was on boards that could make a significant contribution toward meeting the provincial graduation target. Each participating board received ministry funding for an additional student success leader to monitor the initiative, and each principal at the selected

schools was assigned a mentor for support. The initiative provided funding to 27 schools in three boards in 2008/09, 67 schools in seven boards in 2009/10, and 85 schools in 14 boards in 2010/11.

In order to identify low-performing schools, the Ministry used student success indicator data from grades 9 to 12. Some of the key indicators included credit accumulation rates, compulsory and optional course pass rates, and province-wide EQAO test scores. Based on these indicators the Ministry identified 170 of the lowest-performing schools.

We reviewed the selection of schools for this initiative in the 2009/10 school year and noted that although three-quarters of the schools selected for funding were in the lowest-performing category, more than 100 of the lowest-performing schools received no funding under this initiative in the 2009/10 school year.

As part of this initiative, funded schools are required to develop an annual School Support Plan. The plan is expected to include SMART goals related to underperforming students. In addition, these plans are to set out the strategies to achieve the plan's goals as well as expected student outcomes. For example, one school had a goal to increase the grade 9 applied mathematics pass rate by five percentage points from 70.2 to 75.2 over the 2010/11 school year. It targeted 36 students and focused on mathematics reading comprehension, vocabulary development, and communicating mathematical concepts. To monitor progress, schools are expected to report to the Ministry six times a year.

To determine the initiative's impact on school performance, the Ministry compiled data on credit accumulation at schools and found that the 27 participating schools in the first year increased their grade 9 credit accumulation by 6.8% and their grade 10 credit accumulation by 5.6% over two years. However, the Ministry performed its analysis on an overall school basis and did not have sufficient information to assess the success of specific students who underperformed. Consequently, the Ministry could not determine whether the initiative was successful in improving student achievement in the target group.

RECOMMENDATION 3

To ensure that student success initiatives increase the number of students who obtain their Ontario Secondary School Diploma and are adequately prepared for college, university, apprenticeship, or the workforce, the Ministry of Education and the province's school boards should:

- assess the re-engagement initiative to determine if the benefits that boards had noted justify the cost of maintaining the program in future years;
- disseminate best practices or guidance for helping students achieve their community service hours before graduation;
- better link work placements in cooperative education with course expectations to ensure that the placements complement the in-class experience as required; and
- assess the Credit Recovery program to determine whether students are achieving the required course expectations, and consider more detailed guidelines to ensure consistent program delivery across the province.

MINISTRY RESPONSE

The Ministry will assess the benefits of the student success initiatives and programs to ensure that they are effective in increasing the number of students who graduate and are adequately prepared for post-secondary pursuits. Included in this work will be the sharing of effective practices and guidelines with school boards, as well as guidance regarding documentation that clearly identifies the linkage between workplace experiences and in-class learning.

STUDENT SUCCESS FUNDING

Over the past two school years ending in 2010/11, the Ministry has provided nearly \$245 million (\$130 million in 2010/11) to deliver Student Success Strategy initiatives to help secondary school

students succeed and graduate with a high school diploma.

Program Funding

As illustrated in Figure 4, two of the Student Success programs—Re-engagement and Student Success School Support—are funded based on student needs. For these programs, the Ministry allocated a higher proportion of funding for lower-performing schools and boards. Such needs-based funding provides resources to the areas where it is most required. Over the past two school years, 2009/10 and 2010/11, \$15 million of Student Success funding was distributed based on the Ministry's assessment of student needs. The remaining \$230 million was allocated based on student enrolment or based on applications submitted by school boards.

Under enrolment funding, each board is provided with the same amount per student rather than allocating a greater amount to the boards that have a higher percentage of students who need additional help. As a result, such a per student approach does not focus scarce resources on the highest priorities that have been identified.

Similarly, application-based funding is not based strictly on need but is based on board estimates of the number of students to be enrolled in the programs the boards have in place or are proposing to implement. Application-based funding can be a better representation of student needs than enrolment because these programs are primarily developed for students at risk of not graduating. However, application-based funding is still dependent on whether the schools and boards take the initiative to put programs in place to assist students in need of additional supports.

Although much of the funding for enrolment- and application-based programs will ultimately be used to support board-identified students at risk, overall, it would be prudent to target an increased proportion of funding to the school boards that need the most assistance. We noted that based on various indicators, there was a wide variation

Figure 4: Student Success Payments to School Boards (\$ million per school year)

Source of data: Ministry of Education

Program ¹	Primary Funding Basis	2009/10	2010/11
Student Success Grants ²	enrolment	59.6	60.5
math and literacy ³	enrolment	6.9	7.6
other enrolment-based programs	enrolment	5.1	4.8
Total Enrolment-based Funding		71.6	72.9
Dual Credit	application	17.2	25.8
Specialist High Skills Major	application	21.1	18.6
other application-based programs	application	1.4	1.2
Total Application-based Funding		39.7	45.6
Student Success School Support	needs	5.2	4.4
Re-engagement initiative	needs	0	5.3
Total Needs-based Funding		5.2	9.7
Total All Student Success Programs		116.5	128.2

1. There is no separate transfer payment amount provided to school boards related to the Cooperative Education and Credit Recovery initiatives.

2. Student success grants are not targeted for any specific purpose but must be spent by boards to assist students at risk of not graduating.

3. Math and literacy funding is primarily provided for professional learning supports for mathematics teachers.

in student needs between boards. For example, when considering grade 10 credit accumulation, a key early indicator of student graduation success, the percentage of students who were on target for graduation ranged from 49% to 92% at the 70 boards with secondary schools.

A further analysis of Ontario board program funding and credit accumulation also revealed little correlation between student needs and funding received. For example, a board where 81% of its students were on track to graduate received \$240 in student success funding per student while a second board in the same region, with only 69% of its students on track, received only \$98 per student. Most of the funding disparity between the two boards was due to different degrees of board participation in programs funded through applications. Given that other indicators showed similar anomalies, overall funding was often not targeted to the boards with proportionally more students in need of support.

Financial Administration

After reviewing the Student Success financial processes and procedures at the Ministry and at the school boards we visited, our audit found that

the boards accounted properly for funds received. In general, the Student Success funding was segregated into separate accounts to help ensure that funds allocated to each initiative were spent on those programs. Overall, there were generally good processes in place to monitor the transfer payments to these school boards to help ensure that funds were spent for the purposes intended or carried over for these purposes to subsequent years. However, we noted some concerns:

- The Ministry could improve its monitoring of board expenditures. For example, we found that some board reports on how funding was spent were based on budgeted rather than actual expenditures. Also, the Ministry did not require the boards to submit any evidence of expenditures that could be subject to periodic verification or certification.
- In the past two school years ending in 2010/11, Ontario school boards received nearly \$8 million in unexpected funding for Student Success initiatives late in the school year that had to be spent by the end of the school year. Such payments make it difficult to effectively and efficiently use funds to

address the specific needs of students. Each of the boards we visited welcomed the funds but noted the challenges of finding ways to spend them wisely on such short notice. Consequently, for programs like the Specialist High Skills Major, some boards purchased items that schools did not necessarily need at the time, such as more tools and equipment.

- Two application-based programs, Specialist High Skills Major (SHSM) and Dual Credit, receive funding based on projected enrolments. However, officials in both programs greatly overestimated student participation. Consequently, the programs were overfunded by \$3.1 million in the 2009/10 school year. For SHSM, nearly one-quarter of the boards overestimated their enrolment by more than 50% of actual student participation while one-quarter of the Dual Credit regional planning teams over-projected by more than twice the actual enrolment. We observed that one of the boards we visited worked closely with its SHSM schools to come up with a realistic enrolment projection that resulted in a forecast that was off by less than 7%. In the case of the SHSM program for the 2010/11 school year, the Ministry advised boards that there would be adjustments to funding based on substantial differences between the actual and projected student numbers. For the Dual Credit program, overpayments were to be deducted from subsequent years' funding.
- In addition to enrolment projections, SHSM program funding is based on a step-down model that allocates more money in the early years of the program. The logic for this approach is to provide up-front funds for materials and equipment to get the program started. However, several boards informed us that some programs such as construction are more costly and more capital intensive to run on a continuous basis while others cost much less to operate. Some boards we visited expressed concerns over the sustainability of

their programs as they need to update equipment and other materials to stay relevant.

- For the Dual Credit program, we found that the regional planning teams applied different funding mechanisms to distribute money to their respective boards and colleges. Some teams worked through the boards to determine appropriate funding, whereas others worked directly with the schools. Funding was benchmarked at a maximum of \$200 per student at the board level and \$750 at the college level. At the two boards we visited that delivered the program, we found that teams disbursed the benchmark amounts rather than the actual expenditures incurred, which were often less. Due to this and other program issues, the Dual Credit program was overfunded by more than \$4.3 million in the 2009/10 school year.
- Student Success School Support initiative funding that was to be used by school boards for professional learning days and effective instruction purposes was overfunded by almost \$2 million in the 2009/10 school year. One board we visited informed us that it could not spend all of its program funds because it could not use all the allotted professional learning days. In addition to regular professional development days, the board considered it excessive to provide 137 more days of principal/teacher time for professional learning associated with the Student Success School Support initiative. The Ministry noted that, for subsequent years, the allotment for professional development was to be considerably reduced. Another board we visited did not receive any Student Success School Support funding and was not even aware of the program. Yet, 12 of this board's 18 secondary schools were either low-performing or among the lowest-performing schools in the province.
- In addition to Student Success Strategy funding, boards received approximately \$140 million in "demographic funding" for secondary

schools in the 2010/11 school year. This funding is based on school profiles of social and economic indicators associated with high-risk students. Among the indicators are low income, recent immigration, lack of parental education, and single-parent status. However, we found that the allocations to school boards were based on outdated information, as much of the source data were derived from the 1991 and 1996 censuses and Statistics Canada information. In the 2010/11 school year, school profiles were updated with 2006 data, but funding re-allocations were to be phased in over four years to give school boards time to alter their programs and supports to account for the new funding levels. As a result, much of the funding was in effect still based on 15- to 20-year-old data. Finally, the boards visited indicated that there was no specific reporting to the Ministry on the use of demographic funding.

- The Ministry's contract with the Council of Ontario Directors of Education to deliver the Dual Credit program requires the Council to provide externally audited financial statements. However, our audit found that a financial adviser completed the Council's financial reports. Therefore, the Ministry lacked professional assurance that the \$17.2 million provided to the Council in the 2009/10 school year had been spent for the purposes intended. (The Ministry subsequently requested that the Council submit audited financial statements.) In addition, the Ministry and the Ministry of Training, Colleges and Universities provided the Council with a total of \$700,000 in the 2009/10 school year for program delivery (\$335,000) and administrative costs (\$365,000), but the Council did not report back on how these funds were used. We also found that most of the program delivery funding was paid by the Council to consultants for implementation advice and guidance to regional planning

teams, colleges, and school boards, at a cost of \$500 per day. Although the Council was to start up the Dual Credit program, the Ministry was to eventually take over the administrative responsibilities. Therefore, it may now be financially prudent for the Ministry to deliver the program itself.

RECOMMENDATION 4

To ensure that Student Success Strategy funding is spent efficiently to address the specific needs of students at risk of not graduating, the Ministry of Education and the province's school boards should:

- adopt funding methods that target more money for schools and boards where students at risk most need the assistance and work with the boards and schools to better estimate student participation in application-based programs;
- improve existing processes to monitor board expenditures and ensure that overfunding is properly accounted for;
- allocate demographic funding based on the most recent data available; and
- assess the cost and benefits of ministry delivery of the Dual Credit program.

MINISTRY RESPONSE

The Ministry agrees that program funding must be spent efficiently and will continue to work with school boards to ensure that funding effectively reaches students deemed at risk of not graduating and to improve estimates of program participation where necessary. The Ministry also uses enrolment- and application-based funding approaches to support boards' efforts to increase student achievement and reduce gaps in achievement among students. The Ministry will continue to work with school boards to ensure that funding is properly accounted for. The Ministry will assess the feasibility of delivering the Dual Credit program internally.

Chapter 3

Ministry of Community and Social Services

Section 3.14

Supportive Services for People with Disabilities

Background

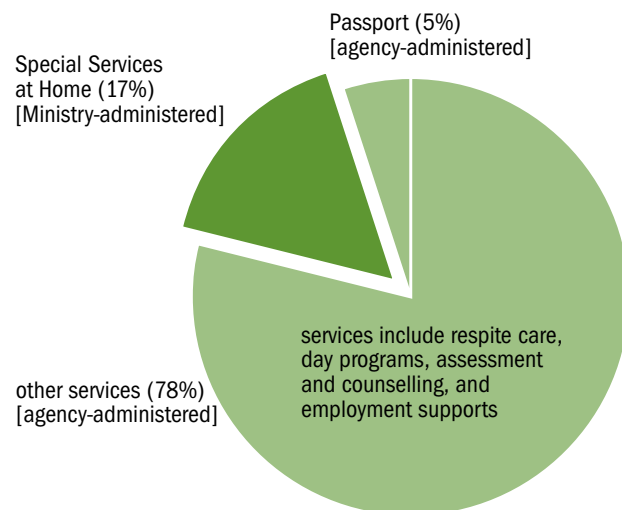
The Ministry of Community and Social Services (Ministry) funds a variety of supportive services programs designed to help people with developmental disabilities live at home, work in their communities, and participate in a wide range of activities.

Transfer payments for supportive services totalled approximately \$571 million in the 2010/11 fiscal year, an increase of approximately 68% from the 2000/01 total of \$340 million. This represents an average annual increase of approximately 5% over the last 10 years. Of the \$571 million the Ministry spent in 2010/11, it disbursed \$472 million, or approximately 83% of the total, through 412 contracts with transfer-payment agencies in nine regions. These agencies provided services to about 134,000 eligible people. The Ministry-administered Special Services at Home (SSAH) program received \$99 million to serve 24,000 families. The breakdown of funding is illustrated in Figure 1.

Agencies that receive transfer-payment funding provide or arrange for such services as assessment and counselling, speech and language therapy, behaviour intervention therapy, and respite care. The SSAH program provides direct funding to families that have eligible people with disabilities

Figure 1: Supportive Services Expenditures, 2010/11

Source of data: Ministry of Community and Social Services



living at home. This money is to be used for purchasing supports and services beyond those typically provided by families and that are designed primarily to enhance personal development and growth and provide family relief through respite care. As well, the agency-administered Passport program—a recent Ministry initiative—provides direct funding to families for such things as personal development, as well as social and recreational activities.

Audit Objective and Scope

The objective of our audit of supportive services was to assess whether the Ministry of Community and Social Services (Ministry) had adequate policies and procedures for ensuring that:

- quality supportive services were provided in compliance with legislative and program requirements and performance expectations; and
- transfer payments were satisfactorily controlled and commensurate with the amount and value of services provided.

Senior management reviewed and agreed to our audit objective and associated audit criteria.

Our audit included a review and analysis of relevant files and administrative policies and procedures, as well as discussions with appropriate staff at the Ministry's head office and four regional offices that we visited (Kingston, Ottawa, Sudbury, and Toronto). We also reviewed and analyzed relevant files and administrative policies and procedures, and we held discussions with senior staff at 13 transfer-payment agencies within the four regions we visited.

In addition, we met with the Provincial Network on Developmental Services, which included members from a wide range of interest groups, such as Ontario Agencies Supporting Individuals with Special Needs and the Ontario Association on Developmental Disabilities.

We reviewed several audit reports issued by the Ministry's Internal Audit Services, including its 2006 transformation project review of the SSAH program and its 2010 Regional Office Controllorship Review of the South West Regional Office. Although these reports did not reduce the extent of our work, they did influence our thinking about specific issues and the approach to our work with respect to those issues.

We also reviewed the 2008 Deloitte report on the Ministry's Passport program, which made a number of recommendations. We considered these

recommendations and the actions taken by the Ministry in planning our audit.

Summary

Many of the concerns noted in our last audit of this program, which took place 15 years ago, have still not been satisfactorily addressed. As a result, the Ministry still does not have adequate assurance that its service delivery agencies are providing an appropriate and consistent level of support in a cost-effective manner to people with developmental disabilities.

Specifically, the Ministry's oversight procedures are still not adequate to ensure that quality services are provided and that public funds are properly managed by transfer-payment agencies. For example, ministry staff rarely visit agencies for these purposes. Such visits would be particularly important given the inadequate accountability mechanisms we noted during our audit.

The Ministry has for several years been undertaking a comprehensive Developmental Services Transformation project. When the project is complete, the Ministry expects to have made a number of significant changes to the system of developmental services and supports. However, given the extent and complexity of the changes, it will take several years before many of the issues we identify in this report can be effectively addressed.

With respect to ensuring that quality services were provided by transfer-payment agencies in compliance with legislative requirements and program policies and procedures, we found the following:

- In half the cases we reviewed, agencies lacked supporting documentation to adequately demonstrate a person's eligibility or needs. As a result, agencies could not demonstrate, and the Ministry could not assess, an individual's needs and whether the individual was receiving the appropriate level of service or, for example, was in need of additional support.

- The Ministry has not established acceptable standards of service, or the necessary processes to properly monitor the quality of services provided and whether it is receiving value for money for the funding provided to community-based agencies.
- The Ministry is not aware of the number of people who are waiting for agency-based supportive services, information that is necessary for assessing unmet service needs.
- Although one would expect a consistent set of rules about what are appropriate services and, therefore, allowable expenditures under the Passport program, the Ministry has not set such rules. As a result, expenses for services reimbursed in one region were deemed ineligible for reimbursement in another. In addition, claims by individuals under the Passport program often lacked the details necessary to ensure the appropriateness of expenses approved and reimbursed. For example, a family was paid a total of \$22,000 for a year; however, the monthly expenditure reimbursement requests submitted by the family did not provide any information to demonstrate that the funding was being requested for eligible purposes.

Our observations with respect to the Ministry's oversight of funding provided to transfer-payment agencies are as follows:

- In practice, annual agency funding continues to be primarily historically based rather than needs-based, and this exacerbates any previous funding inequities. As a result, we were not surprised to find that some hourly service costs appeared excessive and that the range of costs per hour for similar services varied widely across the province.
- The quarterly reporting and annual transfer-payment reconciliation processes are ineffective and serve little purpose given that:
 - information provided by agencies in these reports is often not accurate and reflective of operations;
 - the quality of the Ministry's review is inadequate and is performed by staff without adequate training and expertise; and
 - the Ministry does not adequately review the year-end transfer-payment reconciliations to ensure that they were properly and consistently completed.
- The Ministry had little knowledge of whether the agencies it funded and their boards of directors had effective governance and control structures in place. We found that, in one case, even when serious concerns were identified, neither the board nor the Ministry took appropriate action.

With respect to the Special Services at Home (SSAH) program, which directly reimburses individuals and families for eligible expenses, we found the following:

- Our review of a sample of case files for people who received SSAH funding found that the forms were properly completed, and in most cases people received the support they were entitled to under the program's decision guide.
- Since 2008/09, no additional SSAH funding has been provided to address the gap between the growing demand and available funding. As a result, as of March 31, 2011, there was a waiting list of almost 9,600 people who met the eligibility criteria but were still waiting for SSAH funding.
- We were often unable to determine, and the Ministry was unable to demonstrate, that the claims submitted and the reimbursements made to families were for eligible expenses.

We also found that the Ministry has not ensured that transfer-payment agencies complied with the government directive regarding travel, meal, and hospitality expenses. We noted a number of purchases made by senior management at the agencies that did not comply with the government directive on travel, meal, and hospitality expenses, or with good business practices.

OVERALL MINISTRY RESPONSE

The Ministry appreciates the recommendations of the Auditor General. As part of its long-term plan to transform the developmental services system, the Ministry has already initiated several improvements that are consistent with the recommendations concerning accountability, eligibility for and access to services, and administration.

In January 2011, the Ministry put in place more robust quality assurance measures to set service standards for all agencies that receive provincial funding for developmental services.

Subsequent to the audit, the Ministry implemented a new way for people to apply for services. This addresses the Auditor General's concerns about inconsistency in eligibility. Individuals will now apply for services based on the same criteria through a single streamlined and consistent process.

We are continuing to introduce measures to make sure that public funds are managed more effectively. We have implemented a stronger approach to assess financial risk in agencies delivering services and will be introducing new reporting standards to improve service quality and financial information.

The Ministry is also improving the administration of the Special Services at Home and Passport programs. We are moving to a single direct funding program to make the system easier to navigate and more flexible for individuals and families. As of April 1, 2012, Special Services at Home will no longer serve adults with a developmental disability. Adults will apply to Passport for direct funding; children will apply to Special Services at Home. As part of this change, the Ministry is reviewing the Passport guidelines and will clarify eligible expenses for reimbursement under both programs.

Detailed Observations

SERVICES PROVIDED BY TRANSFER-PAYMENT AGENCIES

Eligibility and Access to Services

At the time of our audit, agencies in the nine regions, which account for 80% of total program expenditures, were using one of two access models to enable people to obtain services—either a single-agency model or a multi-agency collaborative model.

In a single-agency setup, people apply to an agency in the community that has been designated as the single access point. This agency performs the initial screening, determines a person's eligibility for supports and services, and matches his or her needs to the available services. In a multi-agency collaborative setup, a person or family can apply directly to any agency in their community.

To qualify for and receive supportive services, a person is first assessed for eligibility by the agency he or she approaches. The agency prepares a formal assessment to determine what services the person needs. We found that, in most cases, the Ministry did not provide guidance to agencies regarding the criteria and documentation required to demonstrate someone's eligibility and, therefore, their needs. As a result, half the cases we reviewed lacked documentation supporting the diagnosis of the individual's specific disability and needs. In the absence of such documentation, the Ministry cannot readily ascertain whether service needs are determined on a fair and consistent basis throughout Ontario and that the services recommended are the most appropriate for the individual's needs.

RECOMMENDATION 1

To help ensure that eligibility is determined consistently and equitably across the province, and that individuals receive the appropriate

support, the Ministry of Community and Social Services (Ministry) should provide guidance to agencies regarding the criteria and documentation required to demonstrate a person's eligibility and needs. The Ministry's regional offices, as part of their oversight responsibilities, should then periodically review whether transfer-payment agencies are assessing people on a consistent basis and matching their needs to the most suitable available services.

MINISTRY RESPONSE

In July 2011, the Ministry implemented a new way for people to apply for developmental services and supports. Nine Developmental Services Ontario organizations are now the single windows through which adults with a developmental disability and their families apply for services and supports. Decisions about eligibility for support are made the same way across the province, on the basis of consistent criteria. Everyone will be assessed in the same way regardless of where he or she lives in the province. This new process means that eligibility will be determined consistently across the province.

Quality of Services Provided

Establishing measurable service standards can be challenging, given that agencies provide a wide range of programs, and that service needs can vary significantly from person to person. However, it is important for the Ministry to set quality-of-service standards to help ensure that programs delivered by agencies meet people's needs and ultimately represent value for money spent. Common benchmarks such as staff-to-client ratios, assessment of staff qualifications, and, ultimately, assessment of program outcomes are useful tools for evaluating the quality and cost-effectiveness of the developmental support services being provided.

However, based on our review of program files and discussions with ministry and agency staff and stakeholder groups, we noted that, similar to findings from our last audit of this program in 1996, the Ministry does not have a set of standards or a process in place for periodically assessing the quality of services provided by agencies. As well, we noted that the regional offices seldom made on-site visits to the various agencies responsible for service delivery in their regions to gain first-hand knowledge of their operations. As a result, the Ministry cannot assess whether agencies have provided the right services given the individual's needs or whether value for money has been received for the funding provided to that agency.

RECOMMENDATION 2

To ensure that services are appropriate, are of an acceptable standard, and represent value for the money spent, the Ministry of Community and Social Services should:

- establish acceptable standards of service; and
- periodically evaluate the appropriateness and cost-effectiveness of the services provided by transfer-payment agencies.

MINISTRY RESPONSE

The Ministry monitors service agencies through an annual funding agreement that sets out the Ministry's expectations and requirements for service delivery for each program area.

In January 2011, the Ministry introduced a new regulation that established more robust quality assurance measures for agencies. These measures are intended to help set consistent standards and evaluate the appropriateness of the services and supports being delivered to adults with a developmental disability. All Ontario-funded developmental services agencies were trained on the measures, and ministry staff will regularly follow up with agencies to make sure they are complying.

The Ministry is also planning to conduct an evaluation of the implementation of the new Developmental Services Ontario organizations as part of its transformation initiatives. These organizations provide a single point of access for adults with a developmental disability and their families to apply for services and supports. Anticipated as part of this evaluation is whether individuals with a developmental disability receive the appropriate services as identified in their assessments, as well as an analysis of the cost of these services.

In addition, the Ministry is co-leading a long-term human-resource strategy with the developmental services sector to recruit and retain qualified professionals to ensure that there is a well-trained, skilled workforce to support individuals. A key component of the strategy has been the development of core competencies for positions at all levels in the sector. These core competencies will help improve the skill sets of direct support staff as well as of agency management.

Wait Lists

People who are assessed as eligible for supportive services, but for whom agency-based services or direct funds are not available at the time of assessment, are placed on a waiting list. Lack of access to supports or services—and the resulting wait lists—can arise because of inequitable distribution of funds among the regions. As well, some areas of the province have limited access to certain professional services, resulting in longer waits for such services.

Agencies within each region maintain, either collectively or individually, the wait-list information for applicants who are determined to be eligible and in need of service. There currently is no standard approach in maintaining waiting lists for agency services, and, with the exception of the Passport program, wait-list information is not provided by the agencies to the Ministry's regional

offices. Therefore, with the exception of the direct funding programs (SSAH and Passport), the Ministry is not aware of the number of people waiting for agency-based supportive services, information that is necessary for assessing unmet service needs. Wait-list information, once collected and analyzed, would help the Ministry identify where the need is greatest and would help it, for example, distribute funding more effectively.

RECOMMENDATION 3

To help monitor and assess unmet service needs, and help allocate funding more equitably, the Ministry of Community and Social Services (Ministry) should work with agencies to ensure that they prepare and periodically forward to the Ministry accurate wait-list information on a consistent basis.

MINISTRY RESPONSE

A key goal of Ontario's developmental services modernization is improving fairness and equity in how funding decisions are made. Developmental Services Ontario will now be responsible for assessing everyone's needs in a consistent way. Its work will be supported by new technology that will maintain accurate information about service needs and wait lists across the province.

The next step in the modernization plan is a new funding approach that will consistently prioritize service for people who need it most. It will also make funding more equitable by tying funds to each person's assessed needs, so that people with similar needs receive similar levels of support.

Passport Program

In the 2005/06 fiscal year, the Ministry implemented an initiative called the Passport program to give an annual block of funding to agencies to

be given to families of eligible people who have left school or who are waiting for community-based services. Under this program, people may receive funding to help them get involved in continuing education, volunteering, leisure activities, and social skills development, as well as to get help with employment preparation and vocational activities.

In the 2010/11 fiscal year, 2,700 people received a total of \$31 million (or an average of \$11,500 each) in Passport funding. In addition, there were approximately 4,500 people who had been determined to be eligible, but who, because of the limited funding available, were on the Passport funding wait list.

Passport Program Reimbursements

Once a region's designated Passport program agency has determined eligibility and approved funding amounts, clients and their families can choose either to receive funding directly to purchase services themselves or to have the agency administer the funding on their behalf. Families that choose to receive funding directly must submit detailed invoices to the Passport-designated agency for approval and reimbursement.

Our review of a sample of claims found that the process for ensuring that funding was spent only for eligible services was ineffective for the following reasons:

- The Ministry has not set out clearly what are appropriate uses of Passport funding. As a result, expenditures being approved in one region were not deemed eligible for reimbursement in another. For example, reimbursements for entertainment expenses at times included expenses for the support worker only, at other times for both the support worker and the client, and at other times the support worker, the client, and accompanying friends and family members, depending on which region the client was in.
- There is inadequate control by agencies over the review and approval of reimbursements.

All files we reviewed had instances where the invoices lacked normally expected information such as specific dates, what activity was being claimed for reimbursement, and the duration. For example, a family was reimbursed \$22,000 for a year with monthly invoices that simply noted "volunteer job activities," "health and fitness in the community," and "personal skills development." Another client was reimbursed for a \$7,000 invoice that listed only "recreation" activities for an 11-month period.

RECOMMENDATION 4

To ensure that families are being reimbursed only for the reasonable cost for eligible activities, the Ministry of Community and Social Services should clearly define what are eligible expenditures and ensure that agencies are approving and reimbursing expense claims on a consistent basis across the province.

MINISTRY RESPONSE

The Ministry is moving toward a single direct funding program in April 2012. To prepare for this change, the Ministry has begun reviewing its guidelines for Passport. The new guidelines will specify more clearly the services and supports that can be purchased through this program and the reporting and accountability requirements.

MANAGEMENT AND CONTROL OF TRANSFER-PAYMENT CONTRACTS

Budget Submissions and Annual Service Contracts

The Ministry enters into annual service contracts with each of its supportive services transfer-payment agencies. The agencies submit annual budget proposals, which are to include details about the

amount of program funding they are seeking, and the types and quantity of services to be provided. The process then calls for the Ministry to review the budget submission package to help ensure that the final contract entered into provides for quality services that represent value for money spent.

We found that the Ministry's budget review and contract approval process does not ensure that the approved amount of funding is reasonable and commensurate with services to be provided. In the cases we reviewed, there was little or no evidence that the Ministry had performed any analysis of budget submissions.

This is of particular concern for the following reasons:

- In most of the files we reviewed, there were significant variances in budgeted service targets and requested funding amounts compared to the previous year's approved contract. For example, the service target for one program decreased by almost half—from 39 to 21 individuals—but the funding requested by the agency almost doubled—to \$803,000 from \$440,000. The Ministry subsequently approved the contract for the agency to receive \$840,000 to serve the 21 people. Although the total number of people served isn't the only indicator of what funding an agency should receive, the significant decrease in clients served should have warranted follow-up questions before an almost doubling of the previous year's funding was approved.

- The service targets and funding amounts on the agencies' budget submissions were often significantly different from those on the contract that was ultimately approved, and there was no evidence of the Ministry's rationale for the approved amounts. For example, for one agency the service target for one of its programs decreased significantly, from 51 individuals on the budget submission to nine on the approved contract, yet the original \$79,000 requested for 51 people was not changed and was ultimately approved.

Except for minor adjustments for special initiatives and new programs, service contracts—including service targets and total funding amounts—are generally rolled forward from year to year. There's no evidence that the Ministry assessed the reasonableness of the funding approved, vis-à-vis the services to be provided.

The cost per hour for particular types of services varies widely among regions. We asked the Ministry whether it compares the cost of similar services between agencies within each region or across the province to determine whether the costs are reasonable. We were advised that the Ministry does not do such comparisons. We analyzed the cost per hour of direct service for various types of programs in three of the four regions we visited and noted a wide range. Figure 2 shows the cost range for some services.

The costs per hour for different types of supportive services are expected to vary, sometimes

Figure 2: Cost Range for Selected Adult Services, 2009/10

Source of data: Ministry of Community and Social Services

Type of Service	Cost per Hour of Direct Service				
	Province	Three Regions Visited			# of Agencies*
	Average (\$)	Average (\$)	Lowest (\$)	Highest (\$)	
out-of-home respite care	61	20	4	457	35
assessment and counselling	86	121	10	487	32
day programs	33	45	8	74	59
client case management	32	48	16	881	52

* Number of agencies that are providing each specific service within the three regions from which we obtained the information

significantly, depending on the type of service a client requires, although the cost per hour of similar services should be within a reasonable range. However, as seen in Figure 2, some costs per hour appear excessive, and the range of costs per hour for similar services is extreme. The Ministry does not have the information necessary to assess what constitutes a reasonable hourly cost or a reasonable range.

We also noted that a 2%-a-year base funding increase was provided to agencies beginning in the 2007/08 fiscal year up to and including 2009/10. This increase was part of the 2007 Ontario Budget announcement to enhance services and supports in the developmental services sector.

Because increases such as the 2%-a-year base increase were given without any consideration of the agencies' prior-year surpluses or deficits, or changes in service demands, any previous funding inequities were not addressed. We noted similarly in our 1996 audit that across-the-board percentage funding changes perpetuated historical funding inequities. We further noted that there was insufficient evidence in the files we reviewed that the Ministry related the amount of an agency's total funding approval to an assessment of the value of the underlying services to be provided or the comparative need for services in that local community. For example, the Ministry did not determine the cost per unit of service to permit the comparison of the costs for similar services or the identification of higher-cost services that could benefit from a more detailed review.

RECOMMENDATION 5

To ensure that funding provided to transfer-payment agencies is commensurate with the value of services provided and that funding is primarily provided based on local needs, the Ministry of Community and Social Services should:

- reassess its current budget submission, review, and approval process and revise it to ensure that the approved funding to agencies is appropriate for the expected level of service; and

- analyze and compare the agency costs of similar programs across the province, and investigate significant variances that seem unjustified.

MINISTRY RESPONSE

The Ministry is developing a new funding allocation model that will improve equity, allocate funding on the basis of assessed need, and promote cost-effectiveness.

In the 2012/13 fiscal year, the Ministry will introduce new Transfer Payment Reporting Standards that will help improve the Ministry's ability to compare costs between agencies that are providing similar programs. Following that, additional financial data standards will be implemented that will allow more accurate information on program cost factors and variances. Ministry and agency staff will be trained to ensure a consistent approach to contract management and analysis of quarterly reporting information.

Ministry Oversight and Control

The government transfer-payment accountability Best Practices guide states:

It is not enough to have an agreement in place and then file it away. [Transfer-payment] program managers have to read, understand, and actually use and enforce these agreements in managing the [transfer-payment] relationship on a day-to-day basis. So while an agreement is an essential instrument to have in a well-managed [transfer-payment] program, it is not a substitute for program managers' due diligence at every stage of the transfer payment accountability cycle.

To assess whether the Ministry was adhering to this directive in monitoring the quality of services

and the value-for-money performance of the community-based agencies it funds through transfer payments, we looked at two things. The first is the accuracy of the information that the agencies report to the Ministry, and the second is the process that the Ministry has in place for assessing that information in relation to the annual agency contract, including performance benchmarks. Our review found that neither of these requirements was fulfilled to a sufficient standard to allow proper oversight of community-based service delivery. These requirements are particularly important in view of the fact that regional offices do not conduct periodic on-site visits of agencies.

In particular:

- Although the Ministry requires that agencies file quarterly and year-end reports to inform it of such things as budgeted expenditures compared to actual expenditures, and expected services being funded compared to actual services provided, agencies often did not accurately or adequately report key information to the regional offices.

For example, we found that many agencies report their service results by replicating their approved targets or making arbitrary allocations, regardless of actual clients served. Almost all of the agencies maintained client lists that differed, sometimes significantly, from what was reported to the Ministry. For example, one agency reported serving 65 people in its respite-care program when it actually served 26. Another reported serving 25 people in its day program when it served 194. When asked about the basis for the numbers reported to the Ministry, these agencies said that they were arbitrary numbers determined in previous years and were reported to match the approved funding contract for that year.

We also found that programs' service hours and administration costs reported by agencies do not represent the actual costs.

Once again, agencies told us that they arbitrarily allocate those amounts to programs.

We also found that some agencies did not submit the required audited financial statements, post-audit management letters, or other supporting information to substantiate expenditures and adjustments on their year-end reports, known as Transfer Payment Annual Reconciliation (TPAR) reports.

We recognize that agencies have little incentive to report actual service and expenditure data accurately, since Ministry-approved funding amounts are based primarily on historical data and are consistently rolled forward from year to year, regardless of the level of actual services being provided. As well, in most cases, there are no consequences for agencies that report inaccurate or misleading results.

- The Ministry does not have in place adequate procedures for reviewing the information that it receives from agencies to determine its accuracy, or for following up on inconsistencies even when they're evident. We found that the Ministry does not request supporting information, such as client lists, in order to confirm whether data from the agencies are accurate and reflect actual operations; nor, as previously noted, do regional office staff visit the agencies to gain first-hand information on the level of services actually being delivered. The Ministry also doesn't confirm whether data were reported in accordance with the instructions it sends out to the agencies.

We found no evidence that the Ministry followed up on any of the cases where there were significant variances between approved and actual reported service targets on quarterly reports, even though there was no explanation provided by the agencies, or the explanations were insufficient. As well, the Ministry did not identify and analyze variances in data from one quarterly report to another. For example, for the first three quarters of the fiscal year, an

agency reported serving 15 people in a program; in the fourth quarter, it reported only four people in the program.

We also found that the two ministry units that handle the reviews of the quarterly and year-end reports, respectively, operate independently and therefore do not benefit from each other's knowledge of the agencies' files.

When agencies did submit the required financial information in their year-end TPAR reports, the Ministry did not properly reconcile the reports to the agencies' related audited financial statements. We reviewed the financial information provided in a sample of TPAR reports and identified a number of inappropriate expenses that the Ministry did not identify, but should have. For example, we found capital purchases that were made using transfer-payment funds approved for delivery of supportive services. In half of these cases, the agencies reported on their TPARs that annual program operating funds of up to \$540,000 were used for one-time capital purchases, the details of which were not documented. Ministry staff in this region told us that they compared totals rather than doing a line-by-line review of the financial information provided. Our scan of the information indicated that a line-by-line review would have highlighted these unauthorized major capital purchases for follow-up.

We also noted that ministry staff responsible for review and approval of financial submissions from agencies often did not have the necessary training and expertise. As a result, the staff cannot effectively review and interpret the information from agencies. For example, ministry staff relied on the audited financial statements of agencies to ensure that transfer payments were spent prudently and for their intended purposes. However, a financial-statement audit isn't intended to provide assurance that funds were spent prudently and for the intended or eligible purposes; it ensures only

that what the funds were spent for is accurately reported in the agency's financial statements.

RECOMMENDATION 6

To ensure adequate oversight of transfer-payment agencies and to improve accountability within the supportive services program, the Ministry of Community and Social Services should:

- review all agency quarterly reports and year-end TPAR submissions for unusual or unexplained variances from previous years and from contractual agreements, and follow up on all significant variances;
- perform spot audits on agencies to validate the information provided in the quarterly reports and TPAR submissions; and
- assess whether each regional office has the level of financial expertise required, and, where lacking, determine the best way of acquiring this expertise.

MINISTRY RESPONSE

Introduction of new Transfer Payment Reporting Standards in the 2012/13 fiscal year and additional financial data standards will enhance the Ministry's ability to assess whether or not value for money was received and require that significant variances be explained.

Ministry staff will receive additional training to support a more consistent approach to contract management and analysis of quarterly reporting information.

Work is also under way on two separate Transfer Payment Governance and Accountability Frameworks, one for ministry staff and one for service providers. The frameworks will promote a stronger understanding of ministry business practices and risk management to improve accountability in the management of transfer payments.

The Ministry's new legislation for developmental services includes requirements for quality assurance measures and allows ministry staff

to conduct site visits with agencies. These visits can include inspection of financial records.

Governance and Accountability

Agencies that receive transfer payments are required to have effective governance structures and accountability processes in place to properly administer and manage public funds.

However, contrary to what one would expect, especially for agencies receiving significant funding, the Ministry had little knowledge of whether agencies and their boards had the expertise and experience necessary to discharge their responsibilities in compliance with ministry requirements, and had the appropriate governance and control structures.

Although smaller agencies receive less funding, appropriate oversight is still critical, especially because separation of duties is inherently difficult at small agencies, which are often run by a single individual. Generally, such agencies have insufficient resources to achieve the proper segregation of duties found in larger organizations. Although the primary oversight role rests with the boards of directors, the Ministry still needs to be cognizant of the risks, so any concerns identified to the boards and the Ministry should be addressed promptly.

However, we found examples where even when concerns were identified, neither the board of directors nor the Ministry took action. In one agency we visited, we noted that the executive director performed all the accounting functions and was the only person who had access to the agency's financial information, such as bank records and journal entries. This agency's external auditors noted in their report to the board of directors that errors and omissions in the agency's financial records resulted in internal financial statements that differed materially from the actual financial position and results of the agency's operations. The external auditors' report also highlighted concerns over the conflicting duties of the executive director. Subsequent to

this report, the board of directors fired the external auditors and appointed new auditors. The Ministry also obtained the report from the auditors but did not question or even follow up with the board or the agency.

We also identified a number of questionable expenses at larger agencies, such as retirement gifts and frequent staff appreciation meals. At one agency, when we brought such examples of inappropriate expenditures to the attention of senior executives, the response from one was that the agency would simply charge those expenses to a different account in the future, so as not to raise any suspicion in upcoming audits. Our sense was that senior management did not appear to understand that the account to which the expenses were charged was not the issue; rather, it was the questionable use of taxpayer money.

Based on the findings in this report and our discussions with ministry and agency staff, we believe that the Ministry's oversight procedures are not adequate to ensure that public funds are well spent and properly managed by agencies and their boards of directors.

RECOMMENDATION 7

To ensure that agencies have the capabilities to properly administer the spending of public funds, the Ministry of Community and Social Services should encourage the regional offices to play a more hands-on role in ensuring that agencies have appropriate expertise and governance structures and accountability processes, including those smaller agencies that receive less funding but may have more difficulty maintaining proper financial controls.

MINISTRY RESPONSE

The Ministry is committed to strengthening governance and accountability in the use of public funds. Work is under way on two separate Transfer Payment Governance and Accountability Frameworks, one for ministry staff and

one for service providers. The frameworks will promote a stronger understanding of ministry business practices and risk management to improve accountability in the management of transfer payments. The Ministry is also refining its risk assessment tools, introduced in 2008, for fall 2011. Ministry staff use the tools to assess a broad range of risks, including those associated with governance and accountability.

SPECIAL SERVICES AT HOME (SSAH)

Under its Special Services at Home (SSAH) program, the Ministry directly funds, at an average of \$4,200 each, 24,000 individuals or families that have elected to manage the services for an eligible adult or child with a developmental disability, or for a child with a physical disability. The funding provided is intended to assist the eligible individual and his or her family in purchasing services such as family relief, or for personal growth and development for developmentally disabled individuals.

In the 2008/09 fiscal year, the Ministry decided to freeze SSAH funding while it looked at ways to address the gap between the growing demand and available funding. Since this freeze came into effect, no additional individuals have been approved for funding, resulting in a wait list of almost 9,600 people who had been determined to be eligible and were waiting for SSAH funding as of March 31, 2011.

Eligibility for SSAH funding is restricted to adults and children with developmental disabilities or children with physical disabilities, provided that they are residents of Ontario, have ongoing functional limitations as a result of their disabilities, require support beyond that which is typically provided by families, and are living at home with their families or are living outside the family home but do not receive residential staff support from a government-funded source. To qualify, a person

must have written documentation from a physician or psychologist that outlines his or her disability.

To help regional offices provide funding commensurate with an applicant's needs and to ensure that levels of funding are comparable for people with similar needs, the Ministry in 2004 implemented the Decision Support Guide. The guide includes 15 questions to be used by ministry staff to assess the level of a person's needs on a point system in eight major categories. The accumulated score for the 15 questions then determines the maximum amount of funding for which the person is eligible.

Our review of a sample of case files for people who received SSAH funding found that the forms were properly completed, and in most cases people received the support they were entitled to under the decision guide.

However, there were many cases in which there were changes to an individual's decision-guide score from one year to the next—something that could change the amount of funding for which he or she would be eligible. Even in those cases where the change in score did change the funding, there was no additional information to support the change in score. For example, one person whose score changed from one year to the next without any documented rationale received a funding increase of \$4,000, or 66%, from the previous year's funding. The increase was approved while the SSAH funding freeze was in effect.

SSAH Reimbursements

SSAH funds help eligible people and their families purchase support services that would otherwise not be available to them. These must be for one of two purposes: to help with the client's personal development and growth or for the family's relief and support, including respite care.

There are a number of services available in the community, and families are expected to bear some costs, regardless of their situation. Therefore, there are services that are not recognized or funded

through SSAH, including basic care, child-care fees, assistive devices and specialized equipment, dental services, and home modifications. Although the Ministry has produced a list of ineligible expenses that will not be reimbursed, it has not defined precisely what expenses do qualify for SSAH funding.

Individuals may choose to purchase services themselves with their approved SSAH funding or may elect to have an agency administer the funding on their behalf for a negotiated administration fee. In either case, for individuals and families to recover expenses incurred under the SSAH program, they must submit invoices that are supported by appropriate documentation either to the regional office if they self-administer, or to the agency they designated to administer their funds on their behalf.

Our review of submitted claims and reimbursements paid directly to families by the Ministry or through an agency found that there was inadequate information and review of reimbursement claims to ensure that payments met the intent of the program. Following are some examples:

- In some cases, claims were inappropriately approved and reimbursed for such things as basic care by the primary caregiver and for duplicate invoices. For example, two identical invoices of \$4,100 submitted in the same month by a family were approved and reimbursed without question by the Ministry.
- An invoice for \$4,560 was reimbursed, although detail that should be expected, such as specific dates the service was rendered, and the hours and rate charged by the person providing the service, were missing.

We also found that in the small number of cases in which individuals elected to have an agency administer the funding on their behalf, the Ministry neither requested invoices from the agencies to substantiate the SSAH reimbursements nor performed any spot audits to verify amounts claimed by agencies.

RECOMMENDATION 8

To ensure that Special Services at Home (SSAH) reimbursements to families are consistently made only for legitimate and eligible expenses, the Ministry of Community and Social Services (Ministry) should establish and communicate clear criteria for what constitutes an eligible expense.

In addition, the Ministry and agencies that administer SSAH funding should obtain sufficiently detailed invoices—and, where applicable, receipts—to ensure that the amounts claimed are in fact eligible and reasonable before funds are disbursed.

MINISTRY RESPONSE

In June 2011, the Ministry announced that it will be moving to a single direct funding program to make the system easier to navigate and more flexible for individuals and families. As of April 1, 2012, adults applying for direct funding support will apply to the Passport program. As outlined in the Ministry's response to Recommendation 4, the Ministry will be revising the Passport guidelines to specify more clearly the services and supports that can be purchased through this program and the reporting and accountability requirements. At the same time, the Ministry will also be reviewing its invoicing procedures to improve financial oversight.

The SSAH program will continue to serve children and youth. There will be a review of the SSAH program guidelines to address the Auditor General's concerns.

OTHER MATTERS

Travel, Meal, and Hospitality Expenditures

In the latter half of 2009, after questionable spending practices at other public-sector organizations received significant public attention, the Ministry

of Finance announced that all agencies that receive government funding would have to comply with the government directive surrounding travel, meal, and hospitality expenses. The Ministry of Community and Social Services advised all its transfer-payment agencies to comply with the government directive, which, among other things:

- states that expense claims must be properly documented and include detailed receipts;
- outlines expenses that are not eligible for reimbursement, such as alcohol for employees;
- defines under what conditions travel and accommodation expenses will be reimbursed; and
- sets out acceptable hospitality costs.

We found that the government's directive on travel, meal, and hospitality expenses had often not been adopted by agencies.

We reviewed a sample of travel, meal, and hospitality claims of senior management. Most of these expenses were charged to agency credit cards. On an overall basis, we found that transfer-payment agencies often did not comply with the government's directive or with good business practices. We noted many instances where reimbursements for travel, meal, hospitality, and other expenses appeared excessive or otherwise inappropriate in our view. Our specific comments are detailed as follows.

Travel

We found several instances of travel to the United States where detailed invoices were not submitted to substantiate the expenses incurred. For example, invoices were not submitted for hotel accommodations for the Hyatt Hotel in Phoenix, Arizona, where hotel charges to the agency credit card totalled \$1,880. In another case, \$1,300 was charged for accommodation at the Hilton Hotel in Seattle, with no details provided on the nature of the trip. In some cases where invoices were submitted, the circumstances of the trips were not documented or justified. For example, two people charged their agency

credit cards a total of \$3,587 for return flights to, and accommodations in, San Francisco. When questioned, the agency explained that the purpose of the trip was for a "social enterprise conference." In addition, we found that at some agencies, staff charged their credit cards for hotel accommodations in close proximity to their office headquarters, which is contrary to the government directive.

Meals and Hospitality

Our review of a sample of meal and hospitality expenses charged to agency credit cards noted that many appeared excessive and/or were questionable in our view. They included:

- \$1,155 spent at a steakhouse, with neither the purpose nor the number and identities of those who attended stated, and with no detailed receipt submitted;
- \$1,090 spent at a steakhouse, with neither the purpose nor the number and identities of attendees stated, and with no detailed receipt submitted;
- \$747 for five cakes for a "top employers celebration";
- \$570 spent on a "retirement lunch," with the number and identities of attendees not stated and no detailed receipt submitted;
- \$545 for catering for a "send-off reception" at which the number of guests was not recorded.

Other types of questionable expenditures included:

- gift cards totalling \$800 purchased by an agency, with no record of who actually received the gift cards or why;
- \$327 spent on jewellery at Tiffany & Co. for a "retirement gift";
- annual lease and car insurance payments for a personal luxury vehicle totalling \$11,000 made with agency funding on behalf of the executive director. In addition, the executive director was reimbursed for all vehicle maintenance and gas purchases. We also noted that the personal vehicle benefit obtained by the

executive director was not reported as a taxable benefit on the individual's annual T4 slip.

- fitness and pool memberships paid for by an agency in 2009 and 2010 worth \$1,400 each year. The details of the memberships clearly identified that they were for two individuals—specifically, the executive director of the agency and the executive director's spouse.

During the time of our audit, all agencies had to comply with the then government directive on travel, meal, and hospitality expenses. However, the government's new *Broader Public Sector Accountability Act*, which came into effect in April 2011, stipulates that only agencies receiving \$10 million or more per year in provincial funding must now comply with the new Broader Public Sector Expenses Directive, which mirrors the government's 2009 Travel, Meal, and Hospitality Directive.

The new directive notwithstanding, we believe that the principles in this directive provide sound guidance for all agencies to follow.

RECOMMENDATION 9

To help ensure that all agencies that are required to do so implement the government's new directive on travel, meal, and hospitality expenses, and that all other agencies follow the spirit of the directive, the Ministry of Community and Social Services should reinforce the requirements to do so and consider having the agencies' board chairs annually attest to such compliance.

MINISTRY RESPONSE

The Ministry has strengthened its risk assessment process to include oversight of procurement activities and travel, meal, and hospitality expenses. The Ministry is now developing additional measures and strategies to hold boards of directors accountable for the prudent use of program funds and compliance with the new *Broader Public Sector Accountability Act, 2010*, including board attestations for compliance

and training for boards as recommended by the Auditor General.

As noted by the Auditor General, effective April 2011, all ministry transfer-payment agencies that receive \$10 million or more a year in provincial funding must now comply with the Broader Public Sector Expenses Directive, which mirrors the government's 2009 Travel, Meal, and Hospitality Directive. Agencies subject to the Act and Directive were notified of their obligations.

Smaller agencies not subject to the Act were provided with the Broader Public Sector Directives on Procurement and Expenses and were encouraged to voluntarily comply.

SSAH Program Administration

All nine of the Ministry's regional offices administer the SSAH program, which includes assessing clients for program eligibility and processing eligible reimbursements. However, we noted some significant differences in the way the program is administered in some regions.

Although all regional offices have similar staffing levels for administering the SSAH program, one office provided funding to six agencies to help it administer the program, at a cost of \$2.1 million. As well, in five regions, a total of \$3.2 million was paid to 33 agencies for helping SSAH clients fill out their application forms. The amount agencies received varied within regions and across the province. For example, some agencies received as little as \$60 on average per client served, while other agencies received as much as \$1,500. The Ministry could not provide an explanation for the variances.

In 2009, the Ministry established a working group to assess the appropriateness of the additional administration expenditures being incurred. However, the Ministry had not taken action on any of the recommendations made by the group as of spring 2011.

RECOMMENDATION 10

Given the similarities in overall staffing levels at the regional offices dedicated to the Special Services at Home (SSAH) program, the Ministry of Community and Social Services should assess the need for the additional administration costs being paid out to agencies and ensure that all costs incurred are reasonable and necessary.

MINISTRY RESPONSE

The Ministry agrees that program administration costs should be reasonable and necessary. During summer and fall 2011, the Ministry was working to move toward a single direct funding program for adults with a developmental disability. As part of this transition, the Ministry will be undertaking a review of SSAH program administration funding and guidelines. The Ministry will also review the administrative costs for the Passport program.

Follow-up on 2009 Value-for-money Audits

It is our practice to make specific recommendations in our value-for-money audit reports and ask ministries, agencies of the Crown, and organizations in the broader public sector to provide a written response to each recommendation, which we include when we publish these audit reports in Chapter 3 of our Annual Report. Two years after we publish the recommendations and related responses, we follow up on the status of actions taken by management with respect to our recommendations.

Chapter 4 provides some background on the value-for-money audits reported on in Chapter 3 of our *2009 Annual Report* and describes the status of action that has been taken to address our recommendations since that time as reported by management.

For a number of these audits, hearings were also held and reports issued by the Standing Committee on Public Accounts (Committee). This year, for the first time, where a hearing was held, we have included a summary of the Committee's recommendations in the applicable section of this chapter.

We believe that this additional reporting will help ensure that action is being taken by audited entities to address the issues that the Committee raised during the hearing and in its subsequent report to the Legislature. Chapter 6 describes the Committee's activities more fully.

We are pleased to be able to report that for close to 90% of the recommendations we made in 2009, progress is being made toward implementing our recommendations, with substantial progress reported for more than 40% of them.

Our follow-up work consists primarily of inquiries and discussions with management and review of selected supporting documentation. In a few cases, the organization's internal auditors also assisted with this work. This is not an audit, and accordingly, we cannot provide a high level of assurance that the corrective actions described have been implemented effectively. The corrective actions taken or planned will be more fully examined and reported on in future audits and may impact our assessment of when future audits should be considered.

Chapter 4

Section 4.01

Ministry of Health and Long-Term Care

Assistive Devices Program

Follow-up on VFM Section 3.01, *2009 Annual Report*

Background

The Ministry of Health and Long-Term Care (Ministry) administers the Assistive Devices Program (Program), whose primary objective is to help provide personalized assistive devices to Ontario residents with long-term physical disabilities. In the 2010/11 fiscal year, Program expenditures were approximately \$343 million (\$347 million in 2008/09).

At the time of our 2009 audit, we found that the Ministry had improved its ability to monitor and enhance service delivery to clients since our previous audit in 2001. However, we also concluded that the Program could be run more cost-effectively if the Ministry managed payments more economically and enforced eligibility and other policy requirements more rigorously. In our *2009 Annual Report*, some of our more significant observations were as follows:

- A majority of people getting oxygen at home used oxygen concentrators that cost between \$400 and \$1,000 to buy and that last five to seven years, with the required periodic servicing. However, the Ministry typically paid vendors about \$23,000 over five years to buy and service each device without analyzing whether this cost was reasonable.
- The Ministry set 33% as a reasonable rate of return for vendors of assistive devices. However, we found that average vendor mark-ups for mobility aids, respiratory devices, and computer systems were 84%, 117%, and 128%, respectively. In setting prices, the Ministry did not consider significant price decreases arising from technological advances or the volume discounts available to some vendors.
- Vendors were receiving even greater rates of return from computer components such as monitors, printers, and scanners. For example, one monitor that often cost vendors only about \$250 had a Program-approved price of \$1,332—a potential return of 400%. We also found that vendor price quotes for the same computer system varied significantly, from \$1,300 to \$4,400.
- The Ministry was not consistently monitoring scooter claims to identify unusual patterns; nor was it taking appropriate action to prevent potential abuses. We noted that scooter claims of some vendors increased by more than 800% over the last three years.
- In our sample, one-third of the assessments that should have been conducted by vendors to confirm clients' continued eligibility for home oxygen either had not been done or showed that the clients no longer qualified.

Yet the Ministry was not made aware of this and continued to pay for their home oxygen.

- Claims for Frequency Modulated (FM) systems, a more expensive type of hearing aid, increased dramatically among seniors, from \$250,000 in 2004/05 to \$4.8 million in 2008/09. However, some clients indicated that they did not really need or use the FM system.
- We found that some vendors had more than 90% of their claims authorized by only one or two health-care professionals. One such vendor had since 2000 claimed more than \$10 million for hearing aids. Some authorizers regularly referred clients to the same vendors, even when there were others much closer to the client's residence. The Ministry had known about some of these cases for several years but took no action.
- Ontario did not recycle used manual wheelchairs. Other provinces, such as Alberta and Quebec, achieved cost savings of \$4 million to \$5 million per year and protected the environment by recycling manual wheelchairs.

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

STANDING COMMITTEE ON PUBLIC ACCOUNTS

In March 2010, the Standing Committee on Public Accounts (Committee) held hearings on our audit and expressed concerns about the Ministry's progress in addressing many of the issues we had identified. In August 2010, the Chair of the Committee wrote to the Deputy Minister, questioning the Program's business model and listing the Committee's specific concerns. In November 2010, the Ministry was called back for a follow-up hearing, and the following May, the Committee issued a report. One of the Committee's recommendations asked our Office to follow up on its five areas of concern as follows:

- *Volume discounts*—to examine the Ministry's progress in capturing volume discounts while still maintaining equitable access across the province.
- *Inter-jurisdictional price comparisons*—to assess whether the Ministry is comparing the prices it pays in major device categories to the prices being paid by other jurisdictions.
- *IT system*—to determine whether the Ministry is meeting its deadlines for implementing its new system and whether the new system is helping to reduce processing time for applications.
- *Claims backlog*—to determine whether the Program has made progress in eliminating its claims backlog and achieved its processing time target of six to eight weeks.
- *Increased auditing and evaluation of vendors*—to assess whether the Ministry has implemented stronger procedures to prevent and detect potential program abuses.

Accordingly, as part of our follow-up work, we also reviewed the status of ministry actions to address the Committee's concerns.

Status of Actions Taken on Recommendations

The Ministry implemented a Modernization Project (Project) from fall 2010 to summer 2011 to redesign the Assistive Devices Program (Program) that addressed most of our 2009 recommendations. The Project also incorporated a new IT system to help improve program management and delivery. The Project included such initiatives as changing Program-approved prices for computers and mobility devices, having an external consultant undertake a pricing and funding model review, and launching a manual-wheelchair-recycling pilot project.

According to information provided to us by the Ministry, significant progress has recently been

made in addressing most of our recommendations and those of the Standing Committee on Public Accounts (Committee). The Ministry advised us that it will take additional time to fully address certain of the recommendations. The status of the action taken on each recommendation at the time of our follow-up was as follows.

PRICING

Pricing of Home Oxygen

Recommendation 1

To ensure that prices for home oxygen are competitive, the Ministry of Health and Long-Term Care should perform a more rigorous analysis of the costs of delivering home oxygen under each method before negotiating the new rate for home oxygen. This analysis should consider the oxygen prices other provinces are paying to ensure that Ontario is getting good value, especially given the economies of scale that should result from being the largest province.

The Ministry should seek clarification from the Management Board of Cabinet with respect to the approval not to tender for home oxygen provided that “total expenditures for the program should not exceed \$54.6 million annually.” Specifically, it should confirm whether the maximum can be exceeded due to an increase in utilization provided the increase can be funded internally within the Ministry and approved through a Treasury Board Order.

Status

The Program implemented a Vendor of Record (VOR) system on April 1, 2010, with 69 home oxygen vendors on the list. The VOR system requires vendors to report information on the type of oxygen systems they supply to clients. The Ministry indicated that since April 1, 2011, the Program has tracked this information to help it understand the cost of delivering home oxygen. As of June 2011, about 70% of 13,600 clients were using stationary concentrators with cylinders, but the Program had yet to collect information from about 20,400 other clients. As a result of the VOR system, the Program

has saved about \$2 million annually by more accurately capturing the start and end dates of home oxygen services to ensure that funding is initiated at the start of oxygen therapy and terminated when therapy stops.

Because the VOR system is relatively new, no changes in the service delivery model are currently envisioned. However, the Ministry indicated that it has begun a statistical review, to be concluded by April 2013, to provide baseline data for pricing updates.

In spring 2008, the Program undertook a review of home oxygen programs in other jurisdictions, paying particular attention to programs in Saskatchewan and Alberta. A second jurisdictional review was conducted in September 2010 to validate equipment and maintenance costs, as well as replacement periods. The review noted that the \$1,172 cost in Ontario for 90-day funding is very close to the \$1,208 in Saskatchewan and \$1,155 in Alberta. The Program will conduct pricing reviews and consider updating prices accordingly in April 2013.

The Ministry also sought and received approval from the Treasury Board Office to allow expenditures for the home oxygen program to exceed \$56.4 million annually, provided the increase can be funded internally by the Ministry and approved through a Treasury Board Order.

Pricing of Other Devices

Recommendation 2

To ensure that the cost of equipment paid for by the Ministry and its clients is competitively priced, the Ministry of Health and Long-Term Care should:

- *conduct regular pricing reviews for each device category and update Program-approved prices accordingly; and*
- *take volume discounts and technological advances into consideration when updating Program-approved prices.*

Status

The Ministry reviewed and updated Program-approved prices in several categories, including computer systems, mobility devices, orthotics, and ocular prostheses. Specifically, according to the Ministry:

- Program-approved prices for computer and related equipment in the Communication Aids and Visual Aids categories were reduced by about 60% effective January 1, 2011, to better reflect current market prices. The price cuts are expected to save the Program \$2.2 million annually.
- Effective April 1, 2011, Program-approved prices for mobility devices were revised, which should generate savings of about \$1.2 million a year.
- Program-approved prices for orthotics were increased effective April 1, 2011, based on information about material costs supplied by the Ontario Association of Prosthetists and Orthotists. The increases are expected to cost the Program about \$600,000 more a year.
- Effective April 1, 2011, Program-approved prices for ocular prostheses were increased after discussions with certified ocularists and with staff in other Canadian jurisdictions. The increases are expected to cost the Program about \$500,000 more annually.

Apart from the above pricing changes, Program staff also conducted jurisdictional reviews on insulin pumps and Continuous Positive Airway Pressure (CPAP) machines and concluded that no price changes were needed for these device categories.

The Program is currently conducting similar reviews of other high-volume, high-cost devices, and the Ministry expects to complete a review of all device categories by summer 2012. The review will include price comparisons with Alberta, Quebec, and Saskatchewan.

In addition, as part of the Modernization Project, the Program has engaged external experts to assist with a comprehensive funding model and pricing review of all device categories. The review

aims to identify ways to capture volume discounts, particularly for high-volume, high-cost device categories, which offer the biggest potential savings. The Ministry also advised us that the Program will in future conduct ongoing pricing reviews and comparisons with other jurisdictions.

VERIFICATION AND REVIEW PROCESS

Monitoring of Claims

Home Oxygen Claims

Recommendation 3

To ensure that funding for home oxygen is provided only to individuals who require it for medical reasons, the Ministry of Health and Long-Term Care should:

- *assess whether more stringent vendor oversight is required to ensure that the required periodic assessment tests are being appropriately conducted and reported, or, alternatively, consider the practicality of having independent respiratory therapists perform eligibility assessments, rather than vendors' staff; and*
- *establish procedures and assign clear responsibility for discontinuing home oxygen supply to clients who no longer meet the medical eligibility criteria.*

Status

The Ministry advised us that since 2008/09, the Program had recovered about \$485,000 from home oxygen vendors who continued to bill the Ministry after a client had died. In October 2010, the Ministry found more cases of overpayment, including clients who had died in long-term-care homes but who were still being funded for oxygen therapy, and the Program recovered about \$106,000 dating back to 2006. In the first half of 2011/12, the Ministry identified an additional \$132,000 for recovery, and in June 2011, a new information system—Assistive Devices Application Management—was launched that the Ministry expected would help detect similar claim anomalies in the future.

According to the Ministry, the new Vendor of Record (VOR) system for home oxygen services

included new mandatory requirements to ensure that funding would be provided only to eligible individuals. Specifically:

- In addition to the initial, 90-day, and one-year physical assessments, subsequent annual re-assessments will be required to confirm the client's ongoing need for oxygen therapy.
- The VOR system states that discontinuation of oxygen therapy is the responsibility of the client's physician and is based on the physician's assessment of a client's medical needs.

Mobility Aids—Scooter Claims; Hearing Aids—FM System Claims; Ostomy Supply Claims; and Insulin Pump and Supply Claims

Recommendation 4

To ensure that Assistive Devices Program funding for devices and supplies is provided only to individuals who are eligible for it, the Ministry of Health and Long-Term Care should:

- identify and investigate abnormal claim patterns through regular reviews;
- take action to deter authorizers or vendors who are suspected of abusing or misusing program funding, including suspending their registration with the Program and bringing the matter to the attention of the appropriate regulatory college or professional association where professional misconduct is suspected.

Status

The Ministry informed us that it has taken the following actions to ensure that Program funding for devices is provided only to eligible individuals:

- It launched a new information system, called Assistive Devices Application Management, in June 2011 to help detect abnormal claim patterns by examining claim patterns, authorizer–vendor links, and patterns within device categories.
- The Program has developed a Claims Verification and Review Policy, which requires regular reviews of claims and claim patterns for all device types.

- The Program worked with the Ministry's Accounting Policy and Financial Reporting Branch (Branch) in order to identify and investigate unusual claim patterns. The Branch indicated that it continues to review claims data. It also targets areas of high risk, and verifies and tests claims samples from all device categories.

The Ministry also indicated that the Program made changes to the way it handles claims for Frequency Modulated (FM) hearing devices after learning of the significant increase in such claims since 2006/07, as follows:

- In January 2009, the Program and the Ministry's Fraud Awareness and Management Unit developed the *FM System Review Work Plan* to prevent abuses by, among other things, making Claims Assessors and Program Coordinators responsible for monitoring and reviewing claims.
- Since 2009/10, the Program has recovered \$243,000 from eight vendors, and has identified an additional \$4.4 million from 40 vendors for potential recovery. There has also been a dramatic decrease in claims, from more than 5,000 in 2008/09 to about 1,000 in 2009/10.
- The eligibility criteria for FM systems were updated and stated clearly on the application form and in the administration manual for hearing devices.

Post-payment Review Process and Fraud Investigation

Recommendation 5

To more effectively identify abuses, recover overpayments, and deter misconduct, the Ministry of Health and Long-Term Care should:

- expand its efforts and resources to better monitor vendors' and authorizers' compliance with program policies and procedures;
- take timely corrective action to terminate agreements with vendors and authorizers who have clearly violated program policies;

- *work with the Ministry's Accounting Policy and Financial Reporting Branch to elevate staff risk-awareness and risk-assessment skills; and*
- *where there is clear evidence of potential misconduct, report its concerns to the appropriate regulatory associations or colleges, which are responsible for ensuring the public is protected.*

Status

The Ministry indicated that since July 2006, the Program had referred eight cases to the Ontario Provincial Police for investigation of suspected fraud. Three cases were closed without charges, one was resolved with \$560,000 recovered, one resulted in court-ordered restitution, and three were still under investigation. The Ministry's Accounting Policy and Financial Reporting Branch (Branch) said that from November 2009 to July 2011 it had recovered \$1.8 million in overpayments.

The Ministry took action where there was evidence of potential misconduct and violation of Program policies by vendors and authorizers: see the status of Recommendations 6 and 9.

The Branch provided risk management and fraud awareness training sessions in September 2010 to Program staff, and additional risk management training for new staff was scheduled in July 2011. The Ministry informed us that other training will be offered in future on an ongoing basis to provide Program staff with specific learning and training opportunities to improve verification and claims review.

CONFLICT OF INTEREST

Recommendation 6

To deter potential conflict of interest as well as the misuse and abuse of program funding, the Ministry of Health and Long-Term Care should:

- *more closely monitor vendor billing patterns and, particularly when claims have increased dramatically, consider investigating the various*

parties for evidence of inappropriate authorizing or billing practices;

- *terminate agreements with vendors and authorizers who breach the Program's conflict of interest policies; and*
- *inform the appropriate regulatory college or professional association of any health-care professionals whose behaviour or practices put the public at risk of harm.*

Status

The Program has strengthened its Conflict of Interest Policy and Procedures for Managing Breach of ADP Vendor and Authorizer Agreements, which specifies the process leading up to suspension and/or termination of contracts with vendors and authorizers after the Program has identified a breach of contract. The new procedures were posted on the Program's website in November 2010, and notices were mailed to all registered vendors and authorizers. The Program has also designated staff to respond to inquiries about conflict of interest.

In June 2011, a new information technology system, Assistive Devices Application Management, was launched to help detect abnormal claim patterns. The system generates regular reports on claim patterns, authorizer–vendor links, and patterns within device categories. According to the Deputy Minister's presentation to the Standing Committee on Public Accounts in November 2010, the full benefits of the new system will likely become apparent only in early 2012. At that time, the Program will be in a better position to conduct a quantitative benefit analysis.

The Ministry indicated that although the Program has not referred any case of professional misconduct to any regulatory college since 2008, matters related to fraudulent billings by vendors have been referred to the Ontario Provincial Police. The Program has conducted regular reviews to ensure that contractual commitments with authorizers are enforced. As a result of the reviews in February and May 2011, the Program terminated

authorizer agreements with seven physiotherapists, 35 occupational therapists, and 21 audiologists who were not in good standing with their regulatory colleges.

RECYCLING AND REFURBISHING INITIATIVES

Recommendation 7

To achieve cost savings and protect the environment, the Ministry of Health and Long-Term Care should consider the feasibility of implementing a strategy to recycle and refurbish used manual wheelchairs based on the experience of other jurisdictions that have successfully adopted such a strategy.

Status

The Program reviewed recycling programs in other jurisdictions and determined that their administrative and service delivery models vary widely. According to the Ministry, no single recycling model that is in use elsewhere would completely meet Ontario's needs, given the broad range of wheelchairs and seating devices funded by the Program in this province.

In order to determine the potential market for recycled wheelchairs in Ontario, the Ministry has entered into an agreement with the Canadian Red Cross to run the Manual Wheelchair Recycling Pilot Project, launched on June 30, 2011, to assess the availability of certain types of manual wheelchairs for recycling. Although these wheelchairs would be collected across the province, they would be distributed only in the Hamilton region. The Program will assess the pilot project's effectiveness after one year.

RECOVERY OF OVERPAYMENTS

Recommendation 8

To ensure that Assistive Devices Program grants are administered economically, the Ministry of Health and Long-Term Care should recover overpayments on

a timelier basis and expedite the recovery of overpayments made since 2005.

To ensure that funding for devices is not duplicated at taxpayers' expense, the Ministry of Health and Long-Term Care should re-institute an information-exchange agreement with the Workplace Safety and Insurance Board and initiate an agreement with the Department of Veterans' Affairs as has been recommended by the Ministry's Fraud Programs Branch.

Status

The Ministry indicated that since 2008/09, the Program has recovered about \$334,000 from the Workplace Safety and Insurance Board (WSIB) related to duplicate funding for hearing aids. The Ministry also signed an information-sharing agreement with the WSIB in summer 2011.

The Program continues to recover funds from the WSIB when it has been determined that a client is eligible for WSIB funding for a hearing aid due to a workplace-related injury, and it has been in discussions with Veterans Affairs Canada (VAC), which is willing to develop an information-sharing agreement. The Program has implemented new forms that require a client to indicate whether he or she is eligible for WSIB or VAC benefits. If the client indicates eligibility for either, the Program will reject the claim and refer it accordingly. All new forms also seek client consent to allow the Program to share information with the WSIB and VAC.

REGISTRATION OF AUTHORIZERS

Recommendation 9

To lower the risk of assistive devices being approved for funding by authorizers who are not properly registered with the Program, the Ministry of Health and Long-Term Care should:

- *generate links with the professional colleges to enable ongoing monitoring of authorizers' status; and*
- *follow up on those authorizers who do not submit the required Information Update Forms.*

Status

The Ministry indicated that it took the following measures to reduce the risk of devices being approved for funding by authorizers improperly registered with the Program:

- The Program met with regulatory colleges and signed information-sharing agreements representing more than 99% of the Program-registered authorizers. The Program will manually verify the status of those authorizers not covered by an information-sharing agreement by checking the respective regulatory college website.
- The Program regularly reviewed compliance with authorizer agreements. Previously, the Program used to send out Authorizer Confirmation Notices every three years, requesting that authorizers confirm their status as members in good standing of their regulatory colleges. Such confirmation will now be required at least once every year. Failure to meet this requirement may lead to suspension or termination of authorizers' registration with the Program.
- The Program posted a new Authorizers' Roles and Responsibilities document on its website in January 2011. The document collects in one place all of the information contained in program manuals and agreements that pertain to authorizers' roles and responsibilities.

Status of Actions Taken on Standing Committee Recommendations

Information provided to us by the Ministry indicated that significant progress had been made in addressing most of the concerns raised by the Committee in November 2010, but the Ministry acknowledged that it will take additional time to fully address all of them. The status of action taken

on each recommendation at the time of our follow-up was as follows.

VOLUME DISCOUNTS

Committee Concern 1

The Auditor should examine what progress the Ministry has made in capturing volume discounts while still addressing issues related to providing equitable access to the Program across Ontario. If the Ministry is not yet capturing these discounts, it should explain to the Auditor its plan for doing so, including a timeline.

Status

This was addressed in the Status section of our Recommendation 2.

INTER-JURISDICTIONAL PRICE COMPARISONS

Committee Concern 2

The Auditor should assess whether the Ministry is conducting inter-jurisdictional price comparisons in major device categories besides home oxygen pricing. The Ministry should, for example, provide documentation of price comparisons made for various device groups.

Status

This was addressed in the Status sections of our Recommendations 1 and 2.

IT SYSTEM

Committee Concern 3

The Auditor should determine whether the Ministry is meeting its deadlines for implementation of its new IT system and whether the new system is helping to reduce the amount of time required to process applications.

Status

This was addressed in the Status sections of our Recommendations 3, 4, and 6. The Ministry met

its deadline for implementation of a new IT system in June 2011 with Assistive Devices Application Management. According to the Ministry, the new system is expected to reduce data entry time and errors with category-specific, consistent, and easy-to-use forms. It should also help reduce assessment times. Given the newness of the system, actual performance could not be assessed at the time of our follow-up.

CLAIMS BACKLOG

Committee Concern 4

The Auditor should determine whether the Program met its January 2011 deadline to begin making progress on eliminating its claims backlog and also determine the Program's progress in achieving its targeted six to eight week processing timeframe.

Status

A claim-processing backlog developed in 2010 following a 62% increase in demand, aggravated by process issues and a staff shortage. In September 2010, the Program began to track claim-processing times and found that, since March 2011, the Program has been processing claims for major

device categories within the approved service standard of six to eight weeks.

According to data provided by the Program, average claim-processing times for all major and high-volume device categories have been reduced significantly, from over 10 weeks during summer 2010 to five weeks or less in May 2011. For example, average claim-processing time for home oxygen dropped from 23 weeks to three; for mobility aids, from 20 weeks to two; for respiratory devices, from 15 weeks to four; and for hearing aids, from 12 weeks to five.

INCREASED AUDITING AND EVALUATION OF VENDORS

Committee Concern 5

The Auditor should assess whether the Ministry has implemented strengthened procedures to prevent and detect potential program abuses through increased auditing and monitoring of vendors and vendor billing patterns.

Status

This was addressed in the Status sections of our Recommendations 4, 5, and 6.

Bridge Inspection and Maintenance

Follow-up on VFM Section 3.02, 2009 Annual Report

Background

Ontario has about 14,800 bridges. Approximately 2,800 of these are located within the provincial highway system and are the responsibility of the Ministry of Transportation (Ministry). The remaining 12,000 are located in municipalities and are their responsibility.

Responsibility for the safety and maintenance of provincial bridges is set out in the *Public Transportation and Highway Improvement Act* (Act). The Act requires that all provincial and municipal bridges be inspected every two years under the direction of a professional engineer using the Ministry's Ontario Structure Inspection Manual (Inspection Manual). The Inspection Manual requires these biennial inspections to be a "close-up" visual assessment of each element of a bridge to identify any material defects, performance deficiencies, or maintenance and rehabilitation needs.

PROVINCIAL BRIDGES

In our 2009 Annual Report we noted that the Ministry had established comprehensive standards for bridge inspection in the Inspection Manual, and if the standards are followed, the required inspection procedures effectively enable structural deficiencies

to be identified. The Ministry was also conducting bridge inspections on a biennial basis as required.

However, we noted a number of areas where improvements to the Ministry's inspection and maintenance processes would help minimize potential safety risks—such as those caused by falling concrete or by parts of a bridge structure failing to perform their intended function of providing adequate protection to the vehicles travelling on or underneath the structure—and would ensure that bridges for which the province is responsible remain safe. Our observations were as follows:

- According to the Ministry's assessment, more than 180 or 7% of provincial bridges were in poor condition, defined as requiring repair or rehabilitation work within one year of the bridge inspection. We found that, despite their being in most need of repair or rehabilitation, over one-third of these bridges were not included in the Ministry's capital work plan for the upcoming year.
- The Ministry had not ensured that information on critical elements within each bridge was accurate and that all elements were accounted for. The state of these elements is the key to determining a bridge's overall condition and estimating any needed rehabilitation costs. In addition, the Ministry's database of bridge inventory—the Bridge Management

System (BMS)—did not have information on the rehabilitation history for almost one-third of the bridges that were 40 years or older.

- The Inspection Manual requires a detailed visual “close-up” inspection of each bridge element. Normally, this requires the closure of lanes and road shoulders to traffic. For example, without closing a lane, close-up inspection of the critical elements of certain bridges on Highway 401 in the Greater Toronto Area would not be possible, yet there had been no such lane closures for the previous three years at the time of our 2009 audit.
- We found several weaknesses regarding the process for ongoing oversight of inspections. For example:
 - The Inspection Manual stipulates that an inspector needs to spend at least two to three hours at a typical bridge site. However, inspectors were often conducting five or more inspections a day. For example, in the rounds of inspections between 2006 and 2008, we noted that 10 or more bridges were inspected by a single inspector in one day on 36 separate occasions.
 - A significant change in the rating of a bridge’s condition between inspections requires explanation and, potentially, a re-inspection. We noted that the latest inspection results at the time of our 2009 audit showed an improvement in the overall condition rating of over 300 bridges, even though little or no rehabilitation work had been done on these bridges since the previous inspection. In other instances, the overall rating did not change at all between inspections, and reports from the previous inspections were carried forward without any changes. Although in many cases there were photographs on file to indicate that an inspection had been done, when no changes whatsoever in the condition of the bridge had been noted since the last inspection, the adequacy of at least some of these

inspections should have been followed up on, especially on older bridges, because a bridge’s elements typically deteriorate over time.

- We noted that regions tended not to complete many of the maintenance recommendations resulting from biennial bridge inspections. In two of the three regions that we visited, only about one-third of the recommended maintenance work was actually completed, and the third region did not track this work at all.

With respect to the procurement of major projects for bridge design and construction, we noted that the Ministry generally followed a competitive selection process. However, in many of the contracts for design services and construction oversight consulting that we examined, there were changes to the scope of work that resulted in a final price of at least 50% more than the original contract price.

MUNICIPAL BRIDGES

To ensure the safety of municipal bridges, municipalities are also required to perform biennial inspections in accordance with the Inspection Manual. At the time of our audit, we noted that there was no legislation that requires or even enables the Ministry of Transportation or any other provincial ministry to oversee municipalities’ compliance with this requirement. There was also no central database on the number of municipal bridges and their overall condition.

Our survey of municipalities indicated that the average age of municipal bridges was generally higher than that of provincial bridges. However, it was not possible to get an accurate picture of the overall condition of municipal bridges or to make accurate comparisons between municipal and provincial bridges, because municipalities use many different systems to classify and determine the condition of their bridges. Nevertheless, the majority of municipalities (85%) that responded to our survey indicated that they had a backlog of rehabilitation work. Large and growing communities generally

did not have significant backlogs because their infrastructure was newer, in contrast to municipalities with a large number of bridges relative to their population and revenue base, which had more difficulty funding bridge rehabilitation.

The province had provided municipalities with one-time funding for municipal capital projects. However, funding decisions were often made on the basis of population and the network of roads rather than specific needs relating to bridges. As well, the funds were paid close to the end of the province's fiscal year, and many municipalities were not able to properly plan and spend the money. For instance, a significant portion of the funds provided in 2008 remained unspent one year later. Municipalities told us that better asset-management practices supported by more sustainable provincial funding were needed to ensure safety and maximize the lifespan of their bridges. At the time of our audit, a provincial–municipal working group was examining these issues.

STANDING COMMITTEE ON PUBLIC ACCOUNTS

The Standing Committee on Public Accounts held a hearing on this audit in March 2010. In November 2010, the committee tabled a report in the Legislature resulting from this hearing. The report contained nine recommendations and requested the Ministry to report back to the Committee with respect to the following:

- changes being made to ministry policies and practices to identify and differentiate between bridge deficiencies that pose a safety risk and those that indicate a loss in economic value, and whether all provincial bridges rated fair to poor had now been included in the Ministry's five-year capital plans;
- how the Ministry would provide more guidance on the practice of lane and shoulder closures in its Inspection Manual to allow both its staff and contract inspectors to perform consistent and effective bridge inspections;

- whether the Ministry had monitored the effectiveness of its enhanced oversight initiatives and inspection training for its staff and external engineering consultants, and the results of its monitoring, including whether significant increases or decreases in a structure's Bridge Condition Index from one inspection to the next were being followed up on;
- steps the Ministry had taken to better track and explain any incomplete work relative to scheduled maintenance for the year;
- steps the Ministry had taken to integrate missing information and to correct inaccuracies and discrepancies in its inventory of provincial bridges and their elements;
- the Ministry's conclusions stemming from its interim evaluation of its project to track and monitor the variance between estimated and actual design costs, and the results to date of its "smart sourcing" initiative;
- the status of the Roads and Bridges Review Study being conducted jointly by provincial and municipal representatives (the Committee also requested the Ministry to direct the review process to include possible options for the creation of a central oversight body to monitor biennial bridge inspection and maintenance activity at the municipal level);
- the Ministry's views on the merits of having a uniform bridge information and management system among municipalities, along with a report on the feasibility of making the Ministry's BMS available to municipalities for the purpose of providing better information on bridge inspection and maintenance processes at the local level; and
- a proposal that could enable the allocation of infrastructure funds from the province to priority municipal bridge improvement or repair projects where safety is the key criterion.

The Ministry formally responded to the Committee in February 2011. A number of the issues raised by the Committee were similar to our observations. Where the Committee's recommendations are

similar to ours, this follow-up includes the recent actions reported by the Ministry to address the concerns raised by both the Committee and our 2009 audit.

Status of Actions Taken on Recommendations

The Ministry provided us with information in spring 2011 on the current status of the actions taken on our recommendations. According to this information, significant progress has been made in addressing many of the recommendations we made in our *2009 Annual Report* with regard to provincial bridges, although some will require more time to address fully. Our concerns with regard to municipal bridges have been only partially addressed, since data collection and a provincial–municipal review were still under way at the time of this follow-up. The status of action taken on each of our recommendations at the time of our follow-up was as follows.

SAFETY OF PROVINCIAL BRIDGES

Recommendation 1

To ensure that appropriate and timely action is taken on bridges requiring repair and rehabilitation work, the Ministry of Transportation should:

- *strengthen its risk-assessment and priority-setting process, with particular consideration given to bridges identified as being in poor condition, so that any urgently required work is given first priority; and*
- *ensure that government decision-makers receive the information they require to adequately assess both safety and economic risks in order to prioritize the capital needs of Ontario's aging provincial bridges.*

Status

At the time of our follow-up, the Ministry indicated that it had strengthened its policies and procedures to identify and record safety-related defects by requiring that:

- bridge inspectors identify all urgent items in the comments section of the bridge inspection form and notify the appropriate ministry representative; and
- the nature of the work completed or other action performed is also recorded in the comments section of the bridge inspection form to provide a permanent record of the work done.

In addition, mandatory bridge inspection workshops held subsequent to our audit emphasized the process for identifying safety-related deficiencies.

The Ministry also indicated that it now requires the completion of a justification form that explains why any bridge with a Bridge Condition Index (BCI) of less than 60 is not on the five-year capital construction program and what measures are being taken to ensure the safety of the bridge.

The Ministry indicated that, to ensure that government decision-makers receive the information they need to prioritize the capital needs of Ontario's aging provincial bridges, it completed in September 2011 multi-year regional investment plans that list the needs and corresponding investments required for bridges and pavements over a 25-year period. The plans include information on bridge structure needs, construction costs, the recommended year for the improvements, as well as the projected outcome of the investments.

BRIDGE INVENTORY

Recommendation 2

To better ensure that the results of bridge inspections are accurately recorded and to better prioritize and estimate the cost of bridge repair and rehabilitation, the Ministry of Transportation should:

- *more closely monitor inspectors' compliance with the Bridge Inspection Manual so that*

critical bridge information is accurately updated; and

- *act on findings from its quality-assurance review and ensure the completeness and accuracy of information kept in the Ontario Bridge Management System.*

Status

In fall 2009, the Ministry issued a policy memo that requires inspectors to review the accuracy of the information on bridge inventory and the individual elements contained in each bridge as part of the inspection. Ministry engineers are required to conduct spot checks to ensure compliance with this requirement.

The Ministry also initiated a multi-phased project to ensure the accuracy of bridge information in the BMS. The project includes:

- identifying large differences between a bridge's deck area as recorded in its design drawings and its BMS data;
- ensuring that the BMS contains sufficiently detailed information for all bridges (the BMS "key aspects field");
- ensuring that the last rehabilitation date has been entered in the system, where applicable;
- reviewing bridge drawings to ensure that the inventory data in the BMS are accurate for those bridge elements that have the largest impact on the BCI; and
- confirming during field inspections the information on the elements of each bridge contained in its design drawings.

The Ministry indicated that its Bridge Office will review the inventory of all bridges and the data on the elements contained in each, after this information has been corrected at the regional level. This work is scheduled to be completed by December 2012. The Bridge Office's field audits, which involve re-inspections of 50 bridges annually, will now include a review of inventory and bridge element data.

Starting in 2011, the Ministry also increased the frequency of its quality assurance inspections from

a biennial to an annual basis. The inspections now include a review of recommendations from previous quality assurance inspections and a report on the status of those recommendations.

GAINING ACCESS TO BRIDGES FOR INSPECTION

Recommendation 3

To ensure that inspections are carried out in accordance with legislation, the Ministry of Transportation should:

- *arrange for the closure of lanes and shoulders whenever these are required to ensure that an adequate bridge inspection can be carried out;*
- *if closure of lanes and shoulders is not always possible for every bridge inspection, consider a risk-based approach that takes into consideration factors such as the age of the bridge and the feasibility of rotating inspections. Off-peak closures such as at night or on weekends also warrant more consideration to facilitate bridge inspection; and*
- *consider specifying lane and shoulder closures when tenders are issued for inspections to be done by external consultants.*

Status

At the time of our follow-up, the Ministry informed us that the policy memo issued in 2009 makes it mandatory for bridges requiring lane and shoulder closures to be identified and specified in bridge inspection assignments carried out by consultants. The Ministry's regional structural engineers are now required to make an accessibility assessment for each bridge before advertising the assignment. The required number of lane and shoulder closures is communicated to the consultants on the basis of these assessments.

In March 2010, the Ministry developed its "Bridge Inspection Accessibility Guidelines" to be used by regional structural engineers to develop accessibility plans for their bridges. The plans include information on access requirements, such

as lane and shoulder closures; special access equipment required, such as bucket trucks and boats; suspect areas that require an enhanced inspection; and the frequency of the enhanced inspections. The Ministry indicated that in April and June 2010 it delivered workshops to all ministry inspectors on completing the accessibility plans.

At the time of our follow-up, the Ministry informed us that the 2009 inspection cycle had required 50 lane and shoulder closures, and the 2010 inspection cycle had required 100.

INSPECTION OVERSIGHT

Recommendation 4

To ensure that inspections are conducted in accordance with legislation, the Ministry of Transportation should establish a risk-based approach for the ongoing monitoring of inspections. This approach should include:

- *assessing the reasonableness of the number of bridges that external contractors and ministry staff report as having been inspected in any one day to ensure that thorough inspections are being done;*
- *following up on any unusual changes in a bridge's condition since the previous inspection; and*
- *identifying high-risk bridges that should be subject to more in-depth condition surveys.*

The Ministry of Transportation should also consider standardizing its agreements with engineering firms. At a minimum, these agreements should contain provisions regarding the experience and qualifications of staff assigned by the firm to conduct the inspections.

Status

At the time of our follow-up, the Ministry indicated that the September 2009 policy memo requires that regional structural engineers and project managers record an estimate of the minimum inspection time for each bridge, and that estimate is then compared to the actual time taken to inspect the bridge. This

is intended to ensure that the inspector has taken the appropriate amount of time to complete the inspection. The 2010 bridge inspection workshops conducted by the Ministry also addressed consistency in time spent on the inspection process. The Ministry also noted that the BMS has added new data fields that record the time required for inspections and the start- and end-dates of the inspections.

Ministry policies and procedures now require that the regional structural engineer must review any bridges with significant changes in condition (either an increase of more than three points or a decrease of more than five points in BCI values) and that any such change be justified and rationalized by the bridge inspector. The Ministry also indicated that a new data field has been added to the BMS requiring an explanation for unexpected changes in the BCI between inspections.

The Ministry has also developed a standard Request for Proposal (RFP) document for inspections that are outsourced to engineering firms. The RFP now requires all lead inspectors to have a minimum of five years' inspection experience and to have completed the Ministry's bridge inspection course.

BRIDGE MAINTENANCE

Recommendation 5

The Ministry of Transportation should:

- *develop a formal asset-management plan as a basis on which to prioritize the preventative maintenance of bridges; and*
- *promptly carry out preventative maintenance, including the maintenance recommended in bridge inspections.*

Status

At the time of our follow-up, the Ministry indicated that it had instituted an interim process for tracking maintenance work. This process:

- defines the urgent maintenance needs that may affect safety;

- requires that items with the highest priority be completed first and prioritizes the remainder; and
- includes an annual chart to list non-urgent maintenance items for all bridges and record all maintenance work completed, with the information to be returned to the sections responsible for structures within each region.

The Ministry also informed us that its multi-year regional investment plans (discussed previously) include information on optimal preventative maintenance work required and the impact this work has on extending the life of structures. Planned improvements to the BMS will allow the Ministry to create reports on required maintenance work that can be distributed to regional offices.

ONTARIO BRIDGE MANAGEMENT SYSTEM

Recommendation 6

To make the Ontario Bridge Management System more useful, the Ministry of Transportation should:

- ensure that the information on bridge rehabilitation contained in the System is up to date; and
- assess whether the System meets users' needs and whether there are cost-effective ways of improving its performance and capabilities, especially with respect to reporting information needed for rehabilitation and inspection purposes.

Status

At the time of our follow-up, the Ministry indicated that it had updated the rehabilitation history for all bridges and transferred the data to the “Work History” section of the BMS.

The Ministry also informed us that it has made a number of improvements to its BMS, focusing on improving overall system performance as well as data access and reporting capabilities. Ministry documentation indicated that the overall speed of operation of the BMS over the Ministry-wide network has improved. The BMS now allows easier

management of bridge-related documents, such as engineering drawings and inspection photographs and reports. Engineering drawings that were previously contained in a separate document management system have been loaded into the BMS database.

The Ministry indicated that it has started the development of a plan to replace the current BMS.

PROCUREMENT AND CONTRACT MANAGEMENT

Recommendation 7

To ensure value for money on major capital projects and fairness in its procurement process, the Ministry of Transportation should:

- review the application of its two different sets of evaluation criteria for requests for proposals to ensure that they are consistently applied across the regions;
- reassess the evaluation criteria in which the bid price is a relatively minor factor in selecting the winning bidder; and
- given the frequent significant variances between the Ministry's estimated cost of a project and the bidder's cost, examine its internal estimation process as well as the possible impact of the increased trend of relatively few bidders.

Status

At the time of our follow-up, the Ministry informed us that it plans to explore an approach where simple and straightforward engineering assignments may be awarded solely on price, while for larger and more complex projects it would also consider factors such as the consulting engineering firm's past performance and proposed approach to the work.

The Ministry also indicated that it has been monitoring the variance between the estimated and the bidder's cost of design projects and has seen some improvement in this regard. The Ministry informed us that it will continue to monitor the estimated and actual costs of design projects, and if the

average actual costs exceed the estimated costs by 5%, it will analyze the reasons for the variance and implement measures in 2012 to further improve its cost estimates. These measures would include using the detailed breakdown of the bids of past design projects to estimate future design project costs.

To address the increased trend of relatively few bidders, the Ministry indicated that it continues to meet with senior members of the consulting industry to identify opportunities to increase interest in its engineering assignments.

MUNICIPAL BRIDGES

Recommendation 8

To help ensure the safety and proper upkeep of municipal bridges, and as part of its current provincial–municipal review, the Ministry of Transportation should work with municipalities and other stakeholders to:

- *review practices in other large provinces and U.S. states with respect to oversight of municipal responsibilities for bridge maintenance, with the aim of determining whether changes to the current accountability relationship are required;*
- *ensure that the condition of municipal bridges is consistently assessed, updated every two years as required, and publicly reported;*
- *review the Ministry's funding arrangement with municipalities to ensure that the funds provided are effective in sustaining the proper maintenance and rehabilitation of bridges; and*
- *promote good asset-management practices.*

Status

In fall 2009, the Ministry, in conjunction with the Association of Municipalities of Ontario and the City of Toronto, launched a joint provincial–municipal review to develop options for responsibilities and funding arrangements for municipal roads and bridges. A steering committee and three working groups have been established to:

- promote the development of asset management plans for municipal roads and bridges;
- develop objective criteria and a methodology for evaluating the municipal road network and determining which municipal roads are of provincial, municipal, or joint provincial–municipal interest across Ontario; and
- develop a funding framework for municipal roads and bridges that considers municipalities' investment needs and their ability to fund the required infrastructure.

The Ministry indicated that the final recommendations from the working groups were anticipated in fall 2011.

At the time of our follow-up, the Ministry also indicated that a review of municipal bridge oversight practices in most Canadian provinces and some U.S. states was under way, and the information gathered would be considered in assessing options for municipal bridge oversight in Ontario. Final recommendations from this jurisdictional review were also anticipated in fall 2011.

At the time of our follow-up, the Ministry indicated that it continues to provide funding to assist smaller municipalities to collect data on the condition of bridges and input the data in Municipal Data Works (MDW), a web-based system designed to manage municipal tangible capital assets. MDW was developed using the Ontario Structure Inspection Manual's method of conducting bridge inspections. This involves dividing the bridge into 20 to 30 elements and determining the quantity of defects in each element measured by four condition states. Using the inspection results, MDW can also determine the BCI for individual bridges. The system can also store information on the maintenance and rehabilitation needs of individual bridges.

According to the Ministry, as of June 2011, approximately 70% of municipalities either had loaded or were in the process of loading their bridge data into MDW.

Consumer Protection

Follow-up on VFM Section 3.03, 2009 Annual Report

Background

The Ministry of Consumer Services (Ministry) oversees business and industry practices in Ontario's consumer marketplace for the protection of consumers and public safety. It does this by educating the public and businesses, responding to complaints from the public, monitoring and inspecting businesses, and enforcing compliance with a number of consumer protection regulations and laws, such as the *Consumer Protection Act, 2002*.

In the 2010/11 fiscal year, the Ministry carried out these responsibilities with a staff of about 113 (110 in 2008/09) and operating expenditures of approximately \$12.8 million (\$12.6 million in 2008/09).

The responsibility for certain marketplace sectors has been delegated to eight designated administrative authorities (delegated authorities), which are not-for-profit corporations (see Figure 1). The corporations are funded by the industries they oversee and use their industry and technical expertise to protect the public. The Ministry monitors the performance and activities of these delegated authorities.

At the time of our 2009 audit, we noted that the Ministry had made progress in addressing many of the recommendations in our 2003 audit, including recent improvements to its oversight of delegated authorities. Several changes to legislation had

also strengthened consumer protection, and the Ministry had carried out initiatives to promote compliance with consumer protection legislation by certain industries. Nonetheless, we noted that corrective action was required in the following areas:

- The Ministry needed to better promote its mandate and services to consumers. The almost 40,000 inquiries and written complaints it received in the 2008/09 fiscal year represented a 12% drop in volume from peak levels in 2004/05, but the Ministry had done no work to assess the reasons for this decline. Quebec's consumer protection agency, by comparison, received more than 250,000 consumer inquiries and complaints annually. In addition, our own independent external survey indicated that the Ministry would not be among Ontarians' top choices for resolving a complaint.
- The Ministry needed to deal more effectively with problem industries and repeat offenders, such as collection agencies, which had consistently been on the Ministry's Top 10 Complaints list from 2000 through 2008. As well, limited inspection staff resources resulted in no proactive visits during 2008/09 to the types of businesses in the Top 10 Complaints list, and the Ministry initiated only 148 inspections and educational field visits as a direct result of the 6,000 written complaints it received. In addition, the *Consumer Protection Act, 2002*, which covers the vast majority of

Figure 1: The Ministry's Delegated Authorities

Source of data: the most recent published annual report of each delegated authority

Delegated Authority (Year Established)	Primary Legislation Administered and Key Responsibilities	Annual Expenditures (\$ million)	# of Staff
Board of Funeral Services (BoFS) (1914)	<i>Funeral Directors and Establishments Act</i> regulates funeral services; licenses 3,300 businesses and individuals	1.8	10
Electrical Safety Authority (ESA) (1999)	<i>Electricity Act, 1998</i> regulates the use of electricity and electrical equipment; enforces the Ontario Electrical Safety Code; licenses more than 17,000 electrical contractors and electricians	85.2	482
Ontario Motor Vehicle Industry Council (OMVIC) (1997)	<i>Motor Vehicle Dealers Act, 2002</i> regulates about 7,800 motor vehicle dealers and 24,000 salespersons	10.0	78
Real Estate Council of Ontario (RECO) (1997)	<i>Real Estate and Business Brokers Act, 2002</i> regulates 60,000 real estate brokerages, brokers, and salespersons	10.7	87
Tarion Warranty Corporation (Tarion) (1976)	<i>Ontario New Home Warranties Plan Act</i> administers a mandatory new home warranty program; registers 5,400 builders; enrolled more than 1.5 million homes	20.7	250
Technical Standards and Safety Authority (TSSA) (1997)	<i>Technical Standards and Safety Act, 2000</i> licenses, registers, and certifies about 115,000 devices, facilities, contractors, workers for boilers and pressure vessels, operating engineers, amusement and elevating devices, fuels, and upholstered and stuffed articles industries	45.5	340
Travel Industry Council of Ontario (TICO) (1997)	<i>Travel Industry Act, 2002</i> regulates about 2,500 travel retailers and wholesalers	4.0	23
Vintners' Quality Alliance of Ontario (VQA Ontario) (2000)	<i>Vintners Quality Alliance Act, 1999</i> regulates VQA standards for more than 120 registered wineries	1.2	3

businesses, does not give the Ministry certain powers that inspectors in other Ontario government programs and other provinces typically receive, and the lack of these powers hindered the Ministry from identifying and remedying consumer protection violations.

- The Ministry had made some progress since our previous audit in enforcing compliance by cemetery owners with reporting requirements under the *Cemeteries Act*. However, we identified a number of financial discrepancies that the Ministry had not followed up on.
- The Ministry had launched a comprehensive review of delegated authorities on an urgent basis only after a tragic propane explosion in Toronto on August 10, 2008. Four years earlier, the Standing Committee on Public Accounts had recommended that the Ministry conduct such a review.
- The boards of directors of delegated authorities were dominated by representatives of the industries they regulate. The Ministry had not encouraged more representation from government, consumers, and the public on such boards.

- Despite the Ministry's responsibility to oversee the delegated authorities, the Ministry had no right to access delegated authorities' information on matters such as quality assurance programs, strategic plans, executive salary and compensation packages, and board minutes.
- We noted that only one performance measure was reported publicly to cover all consumer protection programs delivered directly by the Ministry, and we questioned whether it was a reliable and meaningful measure.

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

Status of Actions Taken on Recommendations

According to information we received from the Ministry, some progress has been made in addressing all of our recommendations, with significant progress being made on several. The Ministry researched how other provinces promote their consumer protection mandates and services, and what enforcement measures they use, in order to consider whether these could be incorporated into its own practices. The Ministry also has made improvements to its information systems and internal processes to better identify businesses with a history of violations. We recognize that the Ministry will need additional time to fully address several of our recommendations and that the *Consumer Protection Act, 2002* limits its inspection and enforcement powers over businesses that are regulated under this Act. The status of action taken on each recommendation at the time of our follow-up was as follows.

CONSUMER PROTECTION PROGRAMS DELIVERED DIRECTLY BY THE MINISTRY

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

Recommendation 1

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

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

Status

The Ministry informed us that it had conducted comprehensive research of public outreach and awareness practices in other Canadian jurisdictions. The Ministry had identified best practices and was considering them for possible adoption in Ontario. For example, the Ministry noted that Internet applications that facilitate information sharing, such as blogs and social networking, are useful tools for informing and communicating with young consumers.

The Ministry informed us that a media relations campaign began in January 2010 to raise awareness of the Ministry and to inform and educate consumers about their rights and responsibilities. The Ministry said the campaign involved about 650 public outreach initiatives, including media interviews and other events, and covered topics such as moving companies, home renovations, and motor vehicle repairs.

The Ministry acknowledged that three ministry realignments and name changes in the recent past

had likely had the effect of lowering the Ministry's public profile. However, in June 2009, the Ministry of Consumer Services became a stand-alone ministry, and it created a new website in October of that year. Consumer use of the new website has increased steadily—more than 540,000 visits during 2010 and 235,000 during the first three months of 2011, compared to the 7,800 and 28,000 visits during 2007 and 2008, respectively, that we noted in our 2009 report. Twenty-one new informational videos were also created and posted to the Ministry website.

The Ministry also reports some improvement to its service volumes: it received 40,000 phone inquiries and 7,300 written complaints in 2010/11, an increase of about 19% from 2008/09.

The Ministry commissioned a survey in fall 2010 and market research analysis in winter 2011 to gauge the public's awareness of consumer protection and the Ministry. The survey results largely confirmed the results of our 2008 survey—that the public did not regard the Ministry as a top source of help on consumer issues. The Ministry told us it intended to compare results from future surveys against this one so it could measure its progress in increasing awareness of consumer protection legislation and the Ministry's services.

Since fall 2010, the Ministry initiated, completed, and began implementing a long-term Consumer Awareness Strategy. The strategy includes goals for educating the public about their consumer rights and responsibilities, responding to consumers' concerns and issues promptly, and increasing public awareness of the Ministry as a source of consumer information and protection. The strategy also includes activities for achieving these goals and measuring its success.

Registration and Licensing

Recommendation 2

To ensure that its registration processes meet legislative requirements that only businesses that demonstrate financial responsibility and honesty and

integrity are registered and licensed, the Ministry should:

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

Status

The Ministry informed us that it had reviewed and updated its registration and licensing procedures, including documentation requirements, for collection agencies, cemeteries, payday loan units, and bailiffs. Checklists for these sectors were developed and implemented to help ensure that staff reviewed applications in a consistent manner.

The Ministry advised us that if the number and type of complaints about a particular licensed business do not entitle that business to continue to be registered and operate, steps to suspend or revoke the registration would be taken at the time the determination is made, rather than delayed until, for instance, the registration renewal date. However, the Ministry informed us that no business licences had been revoked or suspended in the last two years as a result of a business's history of violations, or for any other reasons.

The Ministry implemented changes to its Consumer Affairs Tracking System (CATS), which is used by staff to record inquiries or complaints by consumers and any response or action taken by the Ministry. The Ministry told us the changes would improve monitoring by tracking issues and flagging violators whose conduct might call for direct ministry intervention.

The Ministry has also created the position of Complaint and Compliance Analyst, and that person is to take proactive measures to address non-compliance by payday loans companies and collection agencies.

Dealing with Consumer Complaints

Recent Initiatives and Information Systems

Recommendation 3

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

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

Status

The Ministry informed us that in winter 2010 it enhanced the Consumer Affairs Tracking System (CATS) in a number of ways:

- Fields have been added to the inspections modules so that staff can record the nature of the inspection or educational field visit and the type of industry and service inspected.
- Data verification checks help ensure that inspectors enter a description of the deficiencies, as well as other required information.
- New reporting capabilities monitor the outcome of all written and verbal complaints received about collection agencies and payday loan companies for a particular time period.

We were also advised that performance appraisal forms for those staff whose jobs include receiving complaints from the public were revised to include an evaluation of the employee's documentation of the complaints and actions taken.

Problematic Industries and Repeat Offenders

Recommendation 4

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

- conduct research to identify best practices in other provinces that can be applied in Ontario

to improve compliance by certain industries and businesses; and

- identify industries and businesses that persistently incur a high number of consumer complaints, assess the effectiveness of its past enforcement activities used against these problematic industries and businesses, and establish effective education and enforcement strategies for dealing with them.

Status

The Ministry informed us that from July 2010 to May 2011 it conducted a survey of compliance techniques and best practices in use in other provinces. It said it plans to use the results, which it summarized in a June 21, 2011 report, to identify strategies that could improve the compliance and enforcement function in Ontario.

The Ministry advised us that it had updated its Investigation Priority Assessment System (IPAS), which annually assigns a relative priority to files that are flagged for investigation, as well as its annual inspection allocation review process, which designates the industries in which inspections and field visits will be made. Due to limited staff resources, the Ministry investigates cases with the potential for higher risk of financial loss to consumers and/or a greater number of complaints and victims. Higher priority is also assigned to those industries identified by government as requiring more attention because of the risks they pose to society and more vulnerable people. The Ministry informed us that compliance and enforcement resources have focused on industries with high complaint volumes, such as the water heater rental industry, home furnishing movers, fitness clubs, and home renovations.

The Ministry retained a consulting firm in spring 2011 to review the operations and organizational structure of its Consumer Protection Branch (Branch). The review determined that for the Ministry to ensure that it applied its resources in the most effective way, its risk-based approach needed to be better defined and embedded in the processes

that govern the way work is prioritized and resources allocated. It also found that the Ministry needed to increase its educational and outreach activities for businesses and consumers.

As well, the Ministry informed us that a number of steps have been taken to improve the Branch's ability to respond to identified risks. Additional resources have been allocated to strengthen its investigation and enforcement program; IPAS was updated and amended to better identify risks, priorities, and appropriate enforcement mechanisms; complaint volume statistics are regularly monitored to identify sectors where targeted compliance action or communications may be warranted; and modifications to CATS have made it easier for the Ministry to access and analyze relevant data.

Inspections and Educational Field Visits

Recommendation 5

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

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

Status

We noted that the Ministry had been able to increase the number of inspections and educational field visits since our 2009 audit from 352 in 2008/09 to 500 in 2010/11 with the addition of inspection staff, as well as a ministry priority to increase inspections of payday loan businesses and of cemetery owners who failed to submit annual filings.

The Ministry engaged the Ministry of Community and Social Services to prepare an inspection-staffing analysis, which was completed March 31, 2011. The analysis concluded that the Ministry had an adequate level of inspection staff for the current volume of requests based on having six inspection staff, including two new staff hired since our 2009 report. However, the analysis only considered the staff resources needed to address internal requests for inspections during 2010; it did not assess whether sufficient inspections were being done to fulfill the Ministry's regulatory mandate and encourage voluntary compliance.

Following is a recent example that illustrates the need to have adequate inspection resources. The Ministry made arrangements for a pilot project in which field service officers from a Ministry of Revenue branch office would conduct inspections or educational field visits for Consumer Services concurrent with their own Revenue inspections. From February 2009 to January 2010, the field service officers conducted 23 inspections under the *Film Classification Act, 2005* of stores that sell DVD videos and 32 field visits under the *Consumer Protection Act, 2002* of motor vehicle repair facilities. In all of these cases, the field service officers identified violations, primarily regarding unlicensed premises selling videos and repair facilities not providing required disclosure to consumers on their signs. In follow-up visits, the Ministry of Consumer Services was able to obtain compliance from all the video vendors, but 29 of 32 motor vehicle repair facilities still had not complied after the follow-up visit. The pilot project with the Ministry of Revenue ended, and there are no current plans to resume the project.

The Ministry noted that the Ministry of Community and Social Services had developed an inspection model that could be used by the Branch to more effectively allocate its compliance and inspection resources to target the identified priorities, including the top 10 complaints the Branch receives. In addition, the Ministry said that implementation of the recommendations from the

spring 2011 review of the Branch's operations and organizational structure would also strengthen its risk-based approach for allocating resources and more effectively focus educational and outreach activities.

The Ministry also told us it was engaged in a partnership with the Ministry of the Environment to use its inspectors to identify contraventions of the *Consumer Protection Act, 2002* relating to waste diversion fees (known as eco fees).

In our 2009 report, we noted that consumer protection legislation in other provinces gives their inspectors powers to enter business premises at any reasonable time and to inspect, audit, or examine any record, goods, or services in the premises, and take copies if needed. The Ministry does have the authority to conduct inspections of registered businesses under powers outlined in specific pieces of legislation, such as legislation pertaining to payday loans and collection agencies. However, the *Consumer Protection Act, 2002*, which covers the vast majority of businesses, does not provide such authority; for these businesses, the Ministry conducts “educational field visits” without the authority to request or inspect books or records. The Ministry said it considered our recommendation and concluded that inspection power under the *Consumer Protection Act, 2002* was not necessary and would not be appropriate because it would be a disproportionate intervention when applied to the broad retail community, and would raise legal risks in its implementation. Instead, the Ministry determined that a “document production power” to require businesses to provide it with copies of documents they use when dealing with consumers—things like contracts, application forms, monthly bill statements and advertising—would be more appropriate, although the documents would only need to be sample documents and not the documents actually completed with consumers. The Ministry indicated that a timetable for making changes to the legislation, if any, would depend on government approval.

Investigations and Enforcement

Recommendation 6

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

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

Status

In our 2009 report we noted that between 2002/03 and 2008/09, there were some large declines in the Ministry's investigation activities and enforcement outcomes. As Figure 2 indicates, the results have been mixed over the past two years.

The Ministry informed us that the *Payday Loans Act, 2008*, which requires registration of payday lenders and loan brokers, is the only statute that includes provisions for imposing administrative monetary penalties. A regulation allowing penalties of \$100 to \$3,000 for violations came into force in July 2009. At the time of our follow-up, the Ministry was preparing a policy framework to be used to ensure consistent application of these penalties for violations by payday loan companies. The Ministry advised us that during the initial round of inspections after the regulation came into force, and in keeping with the Ministry's progressive approach to compliance and enforcement, inspectors issued almost 120 cautions to businesses about contraventions. The Ministry plans to conduct follow-up visits to establishments that received cautions. If contraventions persist, and if the inspectors, exercising their statutory discretion, believe it is appropriate, administrative monetary penalties

Figure 2: Investigation Activities and Enforcement Outcomes by the Ministry's Consumer Protection Branch, 2008/09–2010/11

Source of data: Ministry of Consumer Services

	2008/09	2009/10	2010/11	Changes between 2008/09 and 2010/11 (%)
# of investigations closed	114	131	91	(20)
# of individuals and businesses charged	158	182	124	(21)
# of convictions	161	257	320	100
length of jail time and probation ordered by courts (months)	474	606	787	66
settlements negotiated by investigators prior to prosecution* (\$)	100,283	32,812	72,127	(28)
restitution ordered by courts (\$)	327,656	673,464	430,103	31
amount of court fines levied (\$)	384,850	324,500	317,800	(17)

* This excludes refunds obtained each year through the Ministry's complaints-handling process and mediation services prior to any investigations (\$437,645 in 2008/09; \$334,052 in 2009/10; \$330,099 in 2010/11).

will be issued. (An inspector issued a monetary penalty in April 2011 as a result of deficiencies noted from a follow-up visit.) We were also advised that as more payday loan company inspections are conducted, the reasons for issuing administrative monetary penalties and their effectiveness in achieving compliance will be monitored.

The Ministry told us it considered the possibility of issuing tickets under the *Provincial Offences Act* but rejected this approach—primarily because, under that legislation, it could not issue a ticket that exceeded \$1,000, and it felt that violations of consumer law, which are largely motivated by the prospect of financial gain, require heavier penalties to promote compliance.

As previously mentioned, the Ministry conducted a recent survey of compliance techniques and best practices in other jurisdictions and intends to review the results to see if they are applicable in Ontario. In November 2010, the Ministry also completed research into what information other jurisdictions' consumer protection offices disclosed through on-line postings. This resulted in several recommendations on ways to improve disclosure through the Ministry's Consumer Beware Database on its website. The Ministry advised us that an amendment to the regulation under the *Consumer Protection Act, 2002* would be required for addi-

tional information to be published and that a time frame for such a change is dependent on government approval.

Cemeteries' Trust Accounts

Recommendation 7

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

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

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

Status

The Ministry has made progress in improving and tracking how well cemetery owners comply with their reporting requirements. We were advised

that the overall compliance rate for the filing of 2009 annual returns was 92%. As of August 2011, the Ministry had received 82% of annual returns for 2010. In addition, 97% of trust agreements for large cemeteries (those deemed to pose a higher financial risk) had been submitted and reviewed. Those agreements that had not been submitted were being tracked. The Ministry mailed to cemetery owners an updated guide and instruction sheet with annual return forms in November 2010. The Ministry expected that by the end of the 2011 calendar year the percentage of those in compliance on filing 2010 annual returns would be similar to that of 2009.

The Ministry advised us that it implemented changes to the CATS database to flag trust fund variances and capture information related to trust fund agreements and cemetery trust fund deficiencies. The Ministry said enhancements to CATS now support its processes to ensure that annual statements are reviewed and reconciled and monies are deposited by cemetery owners within the prescribed time limits into care and maintenance trust funds.

The Ministry had not yet explored the option of having cemetery legislation administered by a delegated authority.

MINISTRY OVERSIGHT OF DELEGATED AUTHORITIES

Recommendation 8

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

- *establishing formal comprehensive accountability agreements with each delegated authority that cover financial and operational requirements and that would protect the public's interests;*
- *encouraging a more appropriate and fair balance of representation on boards of directors*

between governments, consumers, the public, and industry;

- *ensuring that it has the necessary authority over delegated authorities to access any relevant information needed, such as information on quality assurance programs and use of financial resources, that would allow for a comprehensive and thorough assessment of their financial and operational performance, and where the Ministry's authority to do so is in question or limited, seeking the legislative changes necessary to grant it unfettered authority in this regard; and*
- *establishing requirements that delegated authorities provide consistent performance information and compare their performance to similar organizations in other jurisdictions.*

Status

We were informed by the Ministry that it entered into a new memorandum of understanding with the Technical Standards and Safety Authority (TSSA) in April 2010 that includes additional corporate reporting requirements and better information-sharing protocols, and that reiterates the new audit provisions in the amended *Technical Standards and Safety Act*. The Ministry also established a new accountability agreement with the Tarion Warranty Corporation (Tarion) in November 2010 that includes additional corporate reporting and information-sharing requirements. At the time of our follow-up, the Ministry was in discussions for revised administrative agreements with the Real Estate Council of Ontario (RECO), the Travel Industry Council of Ontario (TICO), the Ontario Motor Vehicle Industry Council (OMVIC), and the Electrical Safety Authority (ESA). Revised draft agreements had been presented to the authorities, and the Ministry expected new agreements to be in place by fall 2011. It further advised us that accountability requirements for the Board of Funeral Services are incorporated into new legislation expected in 2012 that will govern this sector.

The Ministry had hired a consultant to conduct research on other jurisdictions' practices

on establishing boards of directors for delegated authorities. The study was expected to be completed in September 2011 and was to identify best practices for board appointments, composition and skills, committee structures, and term limits. The Ministry also increased the percentage of board members it appoints on two authorities—from 29% to 46% for the TSSA, a planned increase that had been decided at the time of our 2009 audit and that followed a tragic propane explosion in August 2008; and from 27% to 33% for the TICO, following the sudden bankruptcy of a large travel retailer in April 2009. Ministry-appointed representation on the other boards remains as it did at the time of our 2009 audit, ranging from 25% to 33%.

The Ministry advised us that it continues to regularly receive and review information from all the authorities, including:

- advisory committee meeting minutes;
- business plans;
- annual reports with audited financial statements; and
- quarterly reports that include information on revenues, expenses, and staffing; inspections and enforcements; complaints statistics against member businesses/individuals/authority; and turnaround times for complaints and inspections.

With the exception of Tarion, the Ministry's agreement with the delegated authorities specifically requires that they provide timely information in relation to any matter requested by the Minister. Tarion's accountability agreement requires it to provide the Ministry with an annual fact sheet that contains information not captured in the quarterly reports, and also requires that the CEO of Tarion and the Minister meet periodically to discuss, consult, and share information on the business operations of Tarion.

The Ministry also reiterated that the authorities do not receive public funding. It is the responsibility of the boards of directors of each delegated authority to govern the financial and operational performance of the authorities. Therefore, the Ministry

does not currently request or receive board minutes, audit committee reports, quality assurance assessments, information on consultant expenses, or information on executive and staff salaries and compensation.

With regard to performance reporting, the Ministry advised us it has compiled an inventory of the information that is submitted by the authorities, and is in the process of confirming the performance measures and targets that will be used to track the consumer protection and/or public-safety performance of each authority. New public reporting on these measures and targets will commence for the 2011/12 fiscal year.

MINISTRY PERFORMANCE MEASURES

Recommendation 9

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

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

Status

At the time of our 2009 audit, the Ministry had four performance measures in its 2009/10 Results-based Plan (RbP), which was reported to the public. Only one of these measures covered all of the consumer protection programs delivered directly by the Ministry: customers' satisfaction with the Ministry's handling of consumer phone inquiries and complaints. The other three performance measures pertained to the Ministry's processes for providing oversight of delegated authorities. In its 2010/11 RbP, the Ministry's three measures pertaining to delegated authorities were replaced with one measure on authorities' satisfaction with the Ministry's performance in relationship management and policy development based on an on-line

survey distributed to them in January 2010. The RbP also contained information on results obtained by the Consumer Protection Branch in resolving issues, such as monetary recoveries to consumers and enforcement activities, and cemetery owners' compliance with the requirement that they file annual financial reports.

As previously mentioned, the Ministry was finalizing for each delegated authority the measures and targets to be used to publicly track their consumer protection/public-safety and consumer awareness achievements. This information will be made centrally available through the Ministry's website.

As required under the government's new Service Directive, the Ministry posted the Consumer Protection Branch Service Standard commitment on its website in January 2010. The service standards cov-

ered the time taken to resolve consumer complaints and the timeliness, helpfulness, and courteousness of service provided. The website also included the results for achieving its 2010 targets, which were mostly met or exceeded. However, the Ministry continues to have the same staff member who handled the phone inquiry or complaint also conduct the satisfaction survey at the end of the call.

The Ministry also commissioned a market research and polling firm to survey consumers who had previously contacted the Ministry for help with a consumer issue or with an inquiry. The March 2011 report covered key areas on how the consumers became aware of the Ministry, and the experience and satisfaction with its call centre, website, and information and help received.

Chapter 4

Ministry of Education

Section 4.04

Education Quality and Accountability Office

Follow-up on VFM Section 3.04, *2009 Annual Report*

Background

The Ontario government established the Education Quality and Accountability Office (EQAO) as a Crown agency in 1996, with a mandate to develop and report on province-wide tests of student achievement. Such assessment results are intended to provide reliable and objective data that the Ministry of Education (Ministry) and the province's 72 school boards can use to plan ways of improving student learning.

Each year, the EQAO tests students in all Ontario publicly funded schools in Grades 3, 6, 9, and 10. Grade 3 and 6 students are tested in reading, writing, and mathematics. Grade 9 students are tested only in mathematics. To graduate from high school, all students, including those in private schools, must pass the Ontario Secondary School Literacy Test (OSSLT), which is usually written in Grade 10. The EQAO spent \$33 million in the 2010/11 fiscal year (\$31.7 million in 2008/09), all of it funded by the Ministry.

In our *2009 Annual Report*, we found that the EQAO had adequate procedures and controls for ensuring that its tests accurately reflected the Ministry's curriculum expectations. We also noted that the EQAO, to ensure that the tests' level of difficulty was comparable between years, imposed

strict criteria for the development and field-testing of questions, and thoroughly reviewed test content. The general consensus among stakeholders, including principals and teachers, was that the tests were generally an accurate reflection of students' achievement in meeting the curriculum expectations. However, we identified areas where improvements could be made:

- The EQAO hired an external contractor to visit selected schools to review pre-test preparation, ensure test booklet security, observe the administration of the tests, and undertake other quality-assurance procedures. Overall, the external contractor had reported a high degree of compliance with EQAO administrative procedures, but an improved school selection process was required to reduce the risk of student cheating and non-compliance with administrative procedures. For example, 10 of the province's 72 school boards had not received a visit from the external contractor over the previous five years with respect to the Ontario Secondary School Literacy Test, while a number of private schools with as few as five students taking this test were visited.
- The EQAO must ensure that the up to 1,700 markers it hires and trains are consistent when grading test papers. To do so, it seeds "validity papers" (test papers previously scored by an

expert panel) among the regular papers. The grades the markers give these validity papers are monitored to determine if retraining is required. The EQAO consistently met its target of having 95% of the validity papers graded within one scoring level of the expert panel's score. However, on a per-question basis, the EQAO often did not meet its target of having 70% of the questions having the same grade as that given by the expert panel.

- The EQAO informally reviews the results at the school and school board levels. However, formal analysis and follow-up may be required to ensure that the testing process can be used more effectively to evaluate the reliability of assessment results. For example, we noted that some schools' EQAO results fluctuated by as much as 50% from one year to the next, but these instances were not being systematically flagged for follow-up to determine what accounted for such a dramatic change.
- The EQAO annually reports student test results, as well as results from questionnaires given to students, teachers, and principals on its activities. The school staff we interviewed stated that the questionnaires did not sufficiently allow for feedback on ways to improve the testing process. They also felt that the EQAO should take a bigger role in explaining the assessment process to parents and other stakeholders.

STANDING COMMITTEE ON PUBLIC ACCOUNTS

The Standing Committee on Public Accounts held a hearing on this audit in March 2010. In November 2010, the Committee tabled a report in the Legislature resulting from this hearing. The report contained nine recommendations and requested the Ministry of Education, the Education Quality and Accountability Office (EQAO), and the Ontario College of Teachers to report back to the Committee with respect to:

- whether the Ministry and EQAO have considered other options concerning the matter where principals exempt students from EQAO assessments for acceptable reasons and then assess such students as if they had not achieved the provincial standard, particularly for those schools where a disproportionately large number of students have been exempted;
- the number of exempted students over the previous five years, along with an explanation for any trends occurring over that time frame (EQAO);
- a summary of the EQAO's key findings or conclusions from its investigation into the matter of irregularities and cheating involved in last year's EQAO assessments (which it confirmed in the press), including an outline of any resulting policy or procedural changes it plans to implement;
- what sanctions, if any, the Ontario College of Teachers would recommend be applied to teachers who have been found in violation of the EQAO testing rules;
- whether the EQAO has adopted a formal process to investigate unusual fluctuations in test results and document the steps that it takes in dealing with these, and whether it would consider adding a section explaining such fluctuations in the standard *School Reports* that it issues to every elementary and secondary school in the province;
- the conclusions that the Ministry and the EQAO have drawn from the published results of the EQAO survey of Grade 9 teachers and students that asked whether using the EQAO assessment scores as part of the final term mark influences student achievement on the test, and whether the Ministry has considered a prescribed minimum percentage (as well as the 30% maximum) of the Grade 9 Assessment of Mathematics that would count as part of the student's final term mark;

- the views of the Ministry and the EQAO on how to best make clear to the public the differences between the Ontario English-language and French-language curriculums and the differences in the related EQAO testing, and that the testing results are therefore not comparable; and
- a summary of results from the EQAO on the feedback it received on its pilot communications strategy.

The Ministry, EQAO, and the College formally responded to the Committee on March 30, 2011. A number of the issues raised by the Committee were similar to our observations. Where the Committee's recommendations are similar to ours, this follow-up includes the recent actions reported by the Ministry to address the concerns raised by both the Committee and our 2009 audit.

Status of Actions Taken on Recommendations

According to information received from the EQAO, substantial progress has been made on implementing almost all of the recommendations from our *2009 Annual Report*. Several recommendations—such as a more formal complaints process, an improved approach to selecting schools for quality assurance visits, and a new supervisory back-reading process to improve marker accuracy—were fully implemented. At the time of our follow-up, the EQAO was still assessing some initiatives, such as on-line marker training and more open-ended questions on its questionnaires to principals, teachers, and students. The status of the action taken on each of our recommendations is described in the following sections.

TEST DEVELOPMENT AND ADMINISTRATION

Recommendation 1

To improve the Education Quality and Accountability Office's (EQAO's) test development and administration process and to ensure that student assessments continue to be reliable and objective and that all students are given the opportunity to demonstrate their competence, the EQAO should:

- highlight to principals and teachers any significant changes in the compliance requirements outlined in the guides to administer EQAO testing;
- improve the process for selecting the schools visited by quality assurance monitors to ensure that all school boards and large private schools are periodically monitored;
- assess the equity of including exempt students in the overall assessment results as having not met the provincial standard; and
- identify schools and school boards where the number of exempt students appears to be relatively high and follow up to ensure that exemptions are justified.

Status

In its 2011 Administration Guides, the EQAO has added a "What's New" section that highlights the new procedures and information included for the first time this year. The EQAO has also created new Teacher Bulletins that summarize key administrative points relating to the process before, during, and after the examinations. These bulletins help to further emphasize key compliance requirements and, combined with the redesigned Administrative Guides, help to keep school staff informed of the current testing procedures.

Following our audit in 2009, the EQAO introduced tracking procedures to help ensure that all school boards are visited periodically by quality assurance monitors during testing. The five-year distribution of English and French school boards visited has been examined to identify boards that may be under- or over-represented. When selecting

schools to visit in the current year, the EQAO will replace over-represented school boards with those in the same region that have been visited less often. This will allow the frequency of visits to be more evenly distributed over each five-year period. Additionally, the quality assurance monitors will visit any schools where administrative irregularities or other concerns were noted in the previous year. At the time of our follow-up, these tracking procedures were not in place for private schools. The EQAO has indicated that it will review its process to select large private schools for visits in future years.

The EQAO's public website provides reports on each school that feature an overall assessment result for students who participated in EQAO assessments, as well as an overall result for all students, including those who were exempt from writing the tests. The EQAO is assessing options for reporting and displaying the results for all and participating students on the same page in public reports beginning in 2012.

The EQAO investigates school boards that exceed its threshold of 6% exempt in any one type of assessment (reading, writing, and mathematics). In 2010, four English boards and one French board in the primary and junior levels exceeded this threshold for at least one assessment and therefore were asked for justification or to produce a plan to reduce their exemption rates. In addition, the EQAO asks all school boards to review their individual schools and to discuss any unusually high exemption rates. The EQAO has informed us that exemptions are not permitted for students following the Ontario curriculum in Grade 9 mathematics and the OSSLT, so that it is students participating in locally developed courses who fall into the "exempt" category. When this classification anomaly is accounted for, true exemption rates fall below the level for concern.

ASSESSMENT MARKING AND ANALYSIS

Marking of EQAO Assessments

Recommendation 2

To improve the assessment marking process to ensure that results continue to be valid, consistent, and reliable, the Education Quality and Accountability Office should:

- *consider adopting on-line training for assessment markers;*
- *examine different methods to increase the number of validity reads for each marker, especially early in the marking process; and*
- *consider implementing supervisory backreading to help improve marker accuracy.*

Status

The EQAO has informed us that it worked with a consultant in early 2011 to develop specifications for an on-line training pilot study for markers of the Ontario Secondary School Literacy Test (OSSLT) long writing question. The pilot study (conducted in the summer and fall of 2011) will investigate the feasibility of developing on-line training for markers and implementing it in 2012.

In 2009, the EQAO implemented a formal process to confirm the consistency of its marking by asking markers to score a set number of validity papers per day. The EQAO tracks the average number of validity papers marked to determine if markers are meeting their daily targets. Markers of English-language tests are required to mark 10 validity papers daily; there are usually no validity reads on the first and last day of training, when other tasks need to be completed. For French-language tests, the amount of time to score papers and perform other tasks including training is shorter; therefore, these markers may average as few as five validity papers daily. If markers do not demonstrate sufficient scoring accuracy, the supervisory backreading process is implemented.

This process involves interventions by supervisors. When the scoring supervisor identifies a marker whose marking is not valid, as indicated

by the validity paper scoring reports, the marker receives retraining focusing on the identified problem areas. Once retraining has been completed, the marker independently marks six booklets, which the supervisor then backreads. If the supervisor and the marker score the booklets within the acceptable metrics, the marker is integrated back into full scoring. However, if the scores given by the marker fall outside the acceptable metrics, the supervisor gives the marker further retraining. In this process, the scoring supervisor also reviews the marker's validity reports for the following day.

Assessment Analysis and Follow-up

Recommendation 3

To ensure that assessment results continue to be reliable, consistent, and valid, the Education Quality and Accountability Office (EQAO) should enhance its quality assurance procedures by:

- *implementing a formal complaints process to help determine if there are any trends and to identify potential actions that could prevent non-compliance with assessment guidelines or student cheating;*
- *considering more complete disclosure when test results at a particular school are withheld as a deterrent against non-compliance with assessment guidelines;*
- *outlining in its administration guides potential penalties for violating EQAO policy;*
- *tailoring its quality assurance processes to address unique risks associated with different assessments;*
- *reviewing Grade 9 applied mathematics results to assess where incorporating EQAO results into the student's final mark is effective in motivating students and, if so, suggest a more consistent approach; and*
- *investigating any abnormally large variations in school assessment results from year to year and ensuring that they are justified.*

Status

The EQAO continues to consult with its stakeholders to determine the process by which assessment irregularities can be brought to its attention by members of the education community and/or the public. Such input serves to inform the EQAO of ways in which it can enhance adherence to administration guidelines. The process being developed to ensure the integrity and validity of assessment results is expected to be posted on the EQAO website in the fall of 2011. While this process is intended to guide individuals in bringing issues related to assessment irregularities to the attention of the EQAO, the website will specify that irregularities involving students are to be brought to the attention of the school principal.

In 2010, the EQAO provided the media with a list of schools for which results had been withheld because of administrative irregularities. The EQAO has indicated that it will continue this practice and has compiled a similar list for 2011. In addition, when a school's results are withheld because of administrative irregularities, the public school report and individual student reports indicate this using the symbol "W" in the place of scores and in a separate letter to parents.

The EQAO's 2011 Administration Guides include a section describing various reporting outcomes that may follow if the staff identifies irregularities during testing. For example, no scores are assigned to students if they receive explanations of any concepts or if they are provided with instructional materials. The guide explains that this may have an impact on school and board results. The summary of professional responsibilities distributed to school staff also explains that administrators should not encourage students in any way to revise their responses. Regarding this, it states that "any circumstances that ... may have affected the validity of any student performance ... must be documented and reported to EQAO." In March 2011, the EQAO developed and posted to its website the *Video Guide to Key Administration Procedures*. This video explains that any action taken by educators or

school staff to deliberately contravene test administration procedures constitutes professional misconduct, and states that the EQAO will refer confirmed cases to the Ontario College of Teachers when this is determined to be necessary.

To address the increased risk of teacher or principal interventions in the lower grades, the EQAO has indicated to us that for the 2010/11 school year, it increased quality assurance visits to primary and junior assessments by 21%, while it decreased visits in secondary schools by 34%. EQAO monitors made unannounced return visits to a small number of schools where test administration irregularities were observed during their first visit. To address the higher risk of student collusion in high schools (Grade 9 and OSSLT), the EQAO selects for quality assurance visits all schools where an assessment of the pattern of responses to multiple choice questions yields at least one “high” rating for probable collusion between two students.

In 2011, the EQAO added questions to the teacher questionnaire that surveyed whether or not teachers counted the EQAO Grade 9 mathematics assessment as part of the students’ final course marks. According to Ministry of Education policy, a final course exam must not count for more than 30% of the course mark. Therefore, Grade 9 teachers are allowed to count the Grade 9 assessment of mathematics for up to a maximum of 30%. A vast majority of teachers indicated that they did count the EQAO assessment as part of the final course mark. Approximately 65% of students in the academic course and 40% in the applied course said that their teachers would count the EQAO assessment as part of their final course mark. The number of students achieving the provincial standard was consistently higher among those who said they knew that the EQAO assessment would count than among those who did not. However, according to the EQAO’s survey, there was no consistent pattern in the variation in student achievement according to the weight assigned to the EQAO assessment. The full details and results of this survey will be provided to teachers, principals, school board staff,

and the Ministry of Education for consideration. The EQAO will advise that this information should be included in the course outline and assessment plan provided to students at the beginning of the school year.

In August 2009, the EQAO began identifying schools with significant increases in the previous year in the percentage of students achieving level 3 or above on any one assessment. A significant increase is defined as between 20% and 30%, depending on the previous year’s results; a sliding scale is applied because it is expected that schools with a high percentage of students achieving the provincial standard are less likely to achieve a large gain in the following year. For the 2009/10 school year, 39 school boards were contacted regarding schools with increases that met the criteria for investigation. The responsibility for investigation lies with school superintendents, who involve school principals and central board staff in their information search. Most investigations concluded that improved student performance was due to education programs and other initiatives. The quality assurance report prepared by EQAO noted that, in all cases, the schools with significant increases were able to provide rationales that supported the increases, and there was no evidence of irregularities. For its 2011 reporting, the EQAO has started to include guidance to help principals interpret and explain their school results.

Recommendation 4

To further improve its policies and processes and the procedures designed to produce accurate and reliable reports that can be used to improve student performance, the Education Quality and Accountability Office (EQAO) should:

- *consider formalizing its pilot initiative to provide more open-ended questions for principals, teachers, and students to obtain better feedback on any concerns with the assessment process and ways to improve it;*
- *develop a more formal outreach strategy to give all schools and school boards an opportunity to*

gain further insight into the value of EQAO data and how it can be used to improve student learning; and

- *increase the understanding of parents and the general public of how the assessment process enhances student learning.*

Status

The quality assurance monitors who visit a sample of schools during test administration are given questionnaires that contain open-ended questions to use in their interviews of teachers and principals. The EQAO has indicated that resource constraints keep it from administering open-ended questionnaires directly to all principals, teachers, and students, but that it will consider including new open-ended questions each year to continue obtaining more feedback on its assessment process.

The EQAO has a School Support and Outreach team that conducts regional workshops shortly after the schools receive their results. This team also conducts presentations on specific topics, profiles schools with success stories, organizes seminars, and responds to individual requests for support by boards or schools. According to the EQAO, it has conducted more than 250 of these workshops and presentations since 2009. The EQAO indicated that it would enhance its outreach strategy in 2011

by establishing a section dedicated to outreach on its website, giving presentations to graduating teacher candidates at Ontario faculties of education, providing opportunities for its board members to become involved in outreach, and using digital media to provide other outreach opportunities for educators and parents.

The EQAO has indicated that it has developed a five-year parent engagement strategy to enhance EQAO's parent resources, increase awareness of those resources, build capacity for the education community to engage with parents about EQAO, and continue successful engagement activities. In 2010, the first year of this strategy, EQAO provided principals with new resources and templates for discussing test results with parents. Opinion editorials and parent-focused communications were also included as part of the EQAO's media campaign. A new general information guide for parents was distributed in September 2010 for parents of elementary school students, and in spring 2011 for Grade 9 math and OSSLT students. The EQAO has informed us that its board has requested the development of an information campaign aimed at the general public to be implemented during the 2011/12 fiscal year.

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

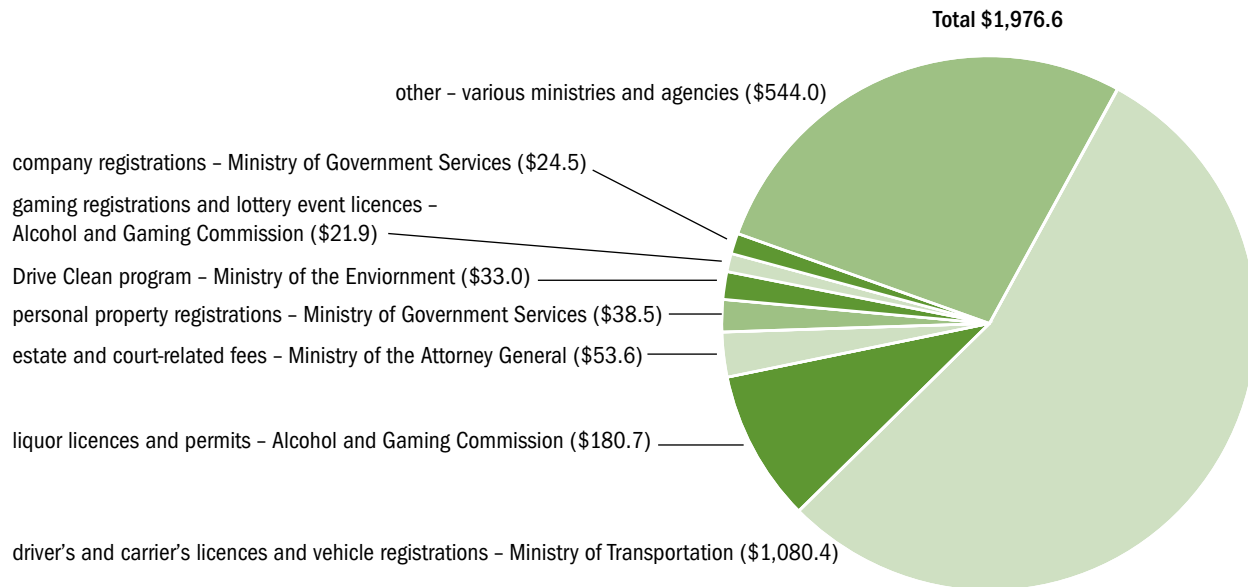
unlawful and therefore may be repayable if they were determined by a court to be a tax that had not been established by enacted legislation or if the fee amounts charged were excessive and did not have a reasonable relationship to the cost of the services provided. Although the Ontario government has 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.

Chapter 4

Section 4.06

Infection Prevention and Control at Long-term-care Homes

Follow-up on VFM Section 3.06, *2009 Annual Report*

Background

Long-term-care nursing homes and homes for the aged (now collectively called long-term-care homes) provide care, services, and accommodations to individuals unable to live independently and requiring the availability of 24-hour care. There are more than 600 such homes in Ontario, caring for about 75,000 residents, most of whom are over 65 years old. In the 2010/11 fiscal year, funding to long-term-care homes by the Ministry of Health and Long-Term Care (Ministry) through the Local Health Integration Networks totalled \$3 billion (\$2.8 billion in the 2008/09 fiscal year), with residents generally also making a co-payment to the home of between \$1,600 and \$2,200 per month.

There is a high risk of infectious organisms/diseases—such as *Clostridium difficile* (*C. difficile*), febrile respiratory illness (FRI) (e.g., colds, influenza, pneumonia), methicillin-resistant *Staphylococcus aureus* (MRSA), and vancomycin-resistant enterococci (VRE)—spreading among residents of long-term-care homes because they often share rooms and generally eat and participate in activities together. As well, older residents are generally more vulnerable to illness. When a resident acquires an

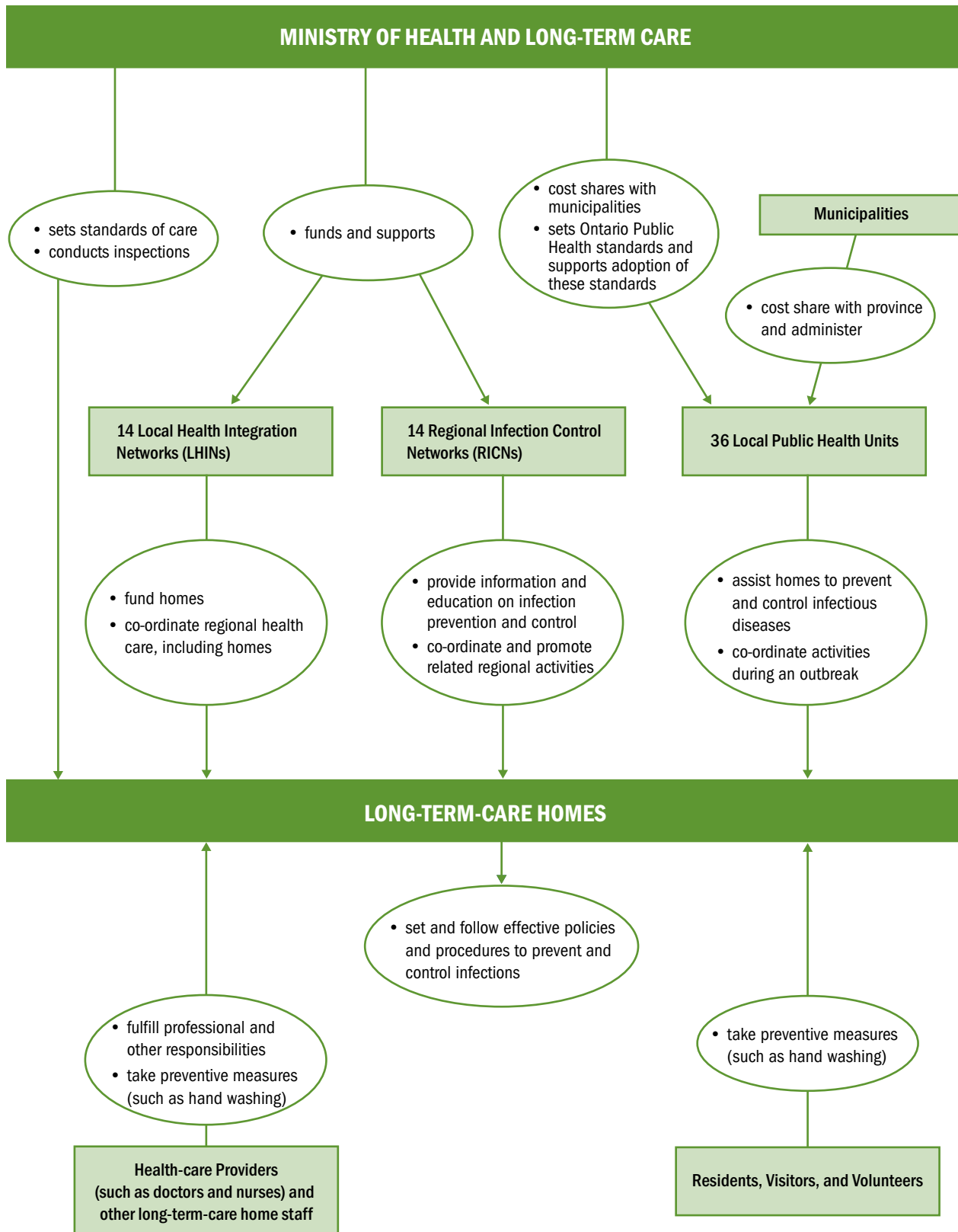
infection in a home, it is considered a health-care-associated infection (HAI). Numerous parties play a role in preventing and controlling the spread of infections in long-term-care homes, as shown in Figure 1.

In 2008, we conducted an audit of infection prevention and control in hospitals. In 2009, we used the knowledge gained on that audit to conduct a similar audit in the long-term-care home environment. We found that all three long-term-care homes we visited—Extendicare York in Sudbury, Nisbet Lodge in Toronto, and Regency Manor in Port Hope—had a number of processes in place to prevent and control HAIs. Furthermore, these homes had all recently conducted their first review of staff compliance with certain hand-hygiene policies, since hand hygiene is the most important activity for controlling the spread of infections. However, we noted areas where these homes could improve their practices. Some of our more significant observations included the following:

- The Ministry did not have information on the total number of cases of HAIs in long-term-care homes. The information collected at the homes we visited was generally not comparable because the homes defined and counted HAIs in different ways.

Figure 1: Selected Key Roles and Responsibilities for Infection Prevention and Control in Long-term-care Homes

Prepared by the Office of the Auditor General of Ontario



- Although the homes visited had policies to screen new residents for FRIs, documentation at two of the homes indicated that just 60% to 80% of new residents sampled were screened. At the third home, there was no evidence of formal screening for FRIs.
- Each home had a policy to test new residents for tuberculosis within 14 days of admission, as required by legislation. One home tested all new residents in our sample, but the other two tested only 70% and 80%, and often much later than within the required 14 days.
- Homes generally did not have unoccupied rooms to move infectious residents into. Although Ontario's Provincial Infectious Diseases Advisory Committee (PIDAC) indicates that residents with an FRI who share a room should have the curtain drawn around their bed, all three homes indicated that they would pull a curtain around a resident's bed only if the resident requested it.
- Although PIDAC recommends cleaning the rooms of residents who have *C. difficile* twice a day, none of the homes did this.
- In the 2008/09 fiscal year, 81 *C. difficile* outbreaks in homes were reported to the Ministry. The increased use of antibiotics has been shown to increase the risk of *C. difficile*. None of the homes had a formulary that lists the antibiotics that physicians can prescribe, as recommended by PIDAC.
- Unlike hospitals, long-term-care homes are not required to report publicly on certain patient-safety indicators, such as health-care-acquired cases of *C. difficile*, MRSA, and VRE, as well as hand-hygiene compliance among health-care workers.
- None of the Infection Prevention and Control Professionals designated by the homes had taken the specific training recommended by PIDAC.

STANDING COMMITTEE ON PUBLIC ACCOUNTS

The Standing Committee on Public Accounts held a hearing on this audit in May 2010. In February 2011, the Committee tabled a report in the Legislature resulting from this hearing. The report contained 11 recommendations and requested that the Ministry report back to the Committee with respect to the following issues:

- how best to ensure that hospitals and long-term-care homes exchange information on patients with infectious diseases who transfer to or from a long-term-care home;
- the steps long-term-care homes would be taking to implement cohorting or isolating patients suspected of having an HAI, especially given the limited availability of private rooms;
- whether the Ministry would be requiring each long-term-care home to publicly report the influenza immunization rates for its residents and staff, and whether the Ministry would also be publicly reporting this information for each long-term-care home;
- the Ministry's assessment of the advantages and disadvantages of mandatory influenza immunization programs for staff of long-term-care homes;
- the steps taken to periodically review the use of antibiotics in each long-term-care home;
- whether homes that had not yet undertaken a Medication Safety Self-Assessment would be required to do so, and, if so, by what date, as well as how frequently the self-assessment would be required to be completed;
- whether the Ministry would be establishing benchmark standards for infection rates in long-term-care homes by type of infection, and whether long-term-care homes would be required to publicly report comparable information on infection rates; and

- the number and percentage of long-term-care homes that then had a trained and certified infection-prevention-and-control professional on staff and, if a home did have one, how infection-prevention-and-control expertise could be accessed if needed.

The Ministry formally responded to the Committee in July 2011. A number of the issues raised by the Committee were similar to our observations. Where the Committee's recommendations are similar to ours, this follow-up includes the recent actions reported by the Ministry to address the concerns raised by both the Committee and our 2009 audit.

Status of Actions Taken on Recommendations

The long-term-care homes and the Ministry provided us with information in spring and summer 2011 on whether and the extent to which they had implemented our recommendations. According to this information, some progress has been made in implementing many of the recommendations we made in our *2009 Annual Report*. The current status of the actions taken by the Ministry and the homes is summarized following each recommendation.

SCREENING

Recommendation 1

To ensure that residents with infectious diseases are identified quickly enough to minimize the risk of the disease spreading to others, long-term-care homes should periodically monitor whether their screening processes are in accordance with the recommendations made by the Provincial Infectious Diseases Advisory Committee and legislative requirements.

Status

At the time of our follow-up, all three of the audited long-term-care homes indicated that they were

monitoring whether their screening policies are in accordance with the recommendations made by the Provincial Infectious Diseases Advisory Committee (PIDAC) and legislative requirements. They noted that they either had updated or were in the process of updating these policies. One of the homes commented that it receives regular notifications of PIDAC updates from its Regional Infection Control Network (RICN), which the home uses to update its practices. Another home commented that its Infection Prevention and Control Committee analyzes its screening processes on a regular basis. This home also noted that it was continuing to work with its local hospital to get the hospital's screening results for patients who will be coming or returning to the home as residents. The third home indicated that it had reviewed compliance with its MRSA and VRE admission and readmission screening protocols for 2009 to 2011 and noted that compliance had improved after the protocols were reinforced with staff. The Ministry indicated that all of the long-term-care homes in Ontario have now implemented a new computerized assessment-and-planning system as part of a ministry initiative. The Ministry noted that this system can help prevent and control infections by having homes monitor and report symptoms more consistently.

RESIDENT CARE

Recommendation 2

In order to better prevent the transmission of infectious diseases:

- *long-term-care homes should monitor whether prevention best practices (such as hand hygiene and the use of personal protective equipment) and infection-specific precautions (such as twice-daily cleaning of rooms of residents who have C. difficile) are conducted in accordance with the recommendations made by the Provincial Infectious Diseases Advisory Committee (PIDAC) and review their monitoring methodology to ensure that abnormally high compliance rates are reflective of actual practices;*

- the Ministry of Health and Long-Term Care should develop guidance to assist homes in determining how best to meet PIDAC's recommendations on isolating and cohorting residents who have or are at high risk of having infectious diseases, given the limited availability of private rooms; and
- long-term-care homes should continue to promote and monitor the immunization of residents and staff.

To help prevent residents from acquiring an infected skin breakdown, long-term-care homes should adopt processes, such as using a sign-off sheet for recording when residents are repositioned, to enable supervisory staff to monitor compliance with established procedures.

Status

At the time of our follow-up, the three audited homes indicated that they were all monitoring their hand-hygiene initiatives. They noted that they had implemented the “Just Clean Your Hands” program, which included staff education and hand-hygiene audits. All three homes also noted that they were providing immediate feedback to staff persons not complying with hand-hygiene protocols. As well, two of the homes were monitoring the use of personal protective equipment, and the third home indicated that it planned to commence monitoring in late 2011. The three homes also indicated that twice-daily cleaning of rooms of residents who have *C. difficile* was now being conducted in accordance with PIDAC recommendations. Two of the homes commented that they used a checklist to ensure compliance, and the third home indicated that it planned to implement, by fall 2011, a checklist for the twice-daily cleaning of the bathrooms of residents with *C. difficile*. One of these homes noted that its manager was reviewing and signing completed housekeeping checklists and that the checklists were also being used to direct room cleaning during outbreaks to minimize the spread and severity of the outbreak. Another home noted that it was providing a commode for any resident with *C. dif-*

ficile who shared a room so that this resident would not share the bathroom with other residents.

The Ministry told us that although it had not issued any specific guidance to homes on isolating or cohorting residents who are at high risk of having infectious diseases, it expected that new room designs (part of its Renewal Strategy, announced in 2007, involving 35,000 older long-term-care home beds) would assist homes in following PIDAC's recommendations. The Ministry further indicated that the strategy's first phase, involving almost 4,100 long-term-care home beds, would be completed by 2015, with the remaining phases being completed within 10 to 15 years. The Ministry also noted that, in the case of the local Public Health Unit declaring an outbreak at a home, ministry inspectors work collaboratively with the Unit to identify strategies and best practices to manage the outbreak.

All three long-term-care homes indicated that they were continuing to promote and monitor the immunization of residents and staff. One home stated that its seasonal influenza campaign included education as well as immunization. Another home commented that it ran influenza clinics for residents, staff, volunteers, and visitors, and provided incentives to staff to get the annual influenza shot. The third home noted that it promoted immunization by displaying posters and other promotional material provided by its local Public Health Unit and Regional Infection Control Network, as well as by providing information to both residents and staff. However, this home commented that its 2011 influenza immunization rates were below expectations. It believed that this was the result of misunderstandings about the H1N1 immunization vaccination. The Ministry highlighted that a regulation under the *Long-Term Care Homes Act, 2007*, which came into force on July 1, 2010, specifically requires long-term-care homes to have an immunization program for both residents and staff.

As for preventing infected skin breakdowns, one home indicated that in October 2010 it implemented a sign-off sheet to record when residents

are repositioned. The other two homes indicated that they had electronic point-of-care systems (that is, patient charting systems that can be used in the same location where the resident's care is provided). One of these homes noted that its system enabled it to create resident-specific monitoring when necessary. This home also indicated that senior staff were informally monitoring resident repositioning when observing the care practices of their staff. The other home noted that, for residents requiring frequent repositioning, staff were documenting the repositioning on the home's electronic point-of-care system. The home indicated that it was also monitoring residents with skin breakdowns and analyzing data relating to newly acquired and worsening skin breakdowns. Furthermore, to help prevent residents from acquiring an infected skin breakdown, the home's wound and skin co-ordinator was assessing resident skin breakdowns weekly and, where needed, also reviewing resident treatment plans, educating staff, and liaising with physicians.

ANTIBIOTIC USE

Recommendation 3

To help prevent antibiotic-resistant organisms and reduce the susceptibility of residents to certain infections, the Ministry of Health and Long-Term Care, in conjunction with other interested stakeholders, should:

- *assist long-term-care homes to develop a drug formulary; and*
- *periodically review the use of antibiotics in long-term-care homes so that follow-up action can be taken where the use of antibiotics seems unusually high.*

Status

The Ministry noted in its follow-up response regarding this recommendation that it was continuing to rely on physicians to determine which antibiotics to prescribe to residents and on pharmacists to regularly review the use of antibiotics at

long-term-care homes. The Ministry also stated that a regulation under the *Long-Term Care Homes Act, 2007* that came into effect July 1, 2010, requires that every long-term-care home develop an interdisciplinary medication management system. The system is to provide for appropriate and safe use of medications, including antibiotics, as well as effective and optimal drug therapy outcomes for residents.

The regulation further requires that each long-term-care home establish a multidisciplinary team to review drug utilization trends and patterns quarterly and take action where necessary. The multidisciplinary team is to include the home's medical director (who is often the physician prescribing medications for many of the home's residents) as well as the home's administrator, the home's director of care, and in most cases a pharmacist. The Ministry indicated that it expected the review of drug utilization trends and patterns to include a review of antibiotic usage. The Ministry also noted that long-term-care homes can reduce the need for antibiotics by encouraging residents to be immunized against specific infectious diseases such as pneumococcal pneumonia, tetanus, and diphtheria.

At the time of our follow-up, all three of the audited homes told us that they were reviewing antibiotic usage quarterly.

SURVEILLANCE

Recommendation 4

To enhance the effectiveness of infection-prevention-and-control programs, the Ministry of Health and Long-Term Care, in conjunction with the long-term-care homes, should:

- *require long-term-care homes to identify and track infections in a consistent and comparable manner, using standard definitions and surveillance methods;*
- *establish reasonable targeted maximum rates/benchmarks for the more prevalent infections; and*

- *look into requiring that long-term-care homes report publicly, as hospitals do, on certain patient-safety indicators, such as cases of C. difficile and hand-hygiene compliance among resident-care staff, using standard definitions and surveillance methods.*

As well, long-term-care homes should ensure that staff, including designated infection-prevention-and-control professionals, have the infection-surveillance training recommended for their position.

Status

The Long-Term Care Homes Act, 2007, which came into force on July 1, 2010, requires that long-term-care homes establish an infection-prevention-and-control program. This includes daily monitoring to detect infections. In addition, the regulation under the Act requires that symptoms indicating the presence of an infection be monitored in accordance with evidence-based practices where they exist and, if there are none, in accordance with prevailing practices. The regulation also requires that symptoms be analyzed daily and reviewed at least monthly to detect trends, for the purpose of reducing the incidence of infection and outbreaks. The Ministry commented that each home decides how best to identify and track infections, rather than there being a standard definition of an infection and standard surveillance methods. Nevertheless, the Ministry was working toward developing standard definitions and surveillance methods. One of the homes indicated that it was using a spreadsheet to track infection data from each unit within the home. The home was using the results to develop an action plan to reduce the number of infections in the home.

At the time of our follow-up, the Ministry indicated that it encourages long-term-care homes to follow basic surveillance principles, including determining rates of respiratory and enteric (gastrointestinal-tract) infections (generally called the baseline rate) that can be compared to future rates of these infections. The Ministry stated that this would enable the long-term-care home to

assess the impact of its infection-prevention-and-control program over time. The Ministry further commented that this was a more appropriate approach than using system-wide benchmarks insofar as a home's rates of certain infections, such as influenza, tend to be more influenced by the presence of the infection in the local community than by the home's infection-prevention-and-control practices.

The Ministry indicated that it had examined whether long-term-care homes should be required to publicly report patient-safety indicators such as HAI rates, as hospitals do. The Ministry noted that it had consulted with the long-term-care homes and other stakeholders and that there was a high level of satisfaction with the current extent of voluntary public reporting through Health Quality Ontario. Although Health Quality Ontario does not provide public information on cases of *C. difficile* or hand-hygiene compliance among resident-care staff, it does report on other patient-safety indicators, such as the percentage of residents with worsening bladder function and the percentage of residents who had a new pressure ulcer (such as a bedsore) or a pressure ulcer that recently got worse. At the time of our follow-up, only about 125 long-term-care homes, including the three homes audited, reported information publicly on the Health Quality Ontario site. However, the Ministry anticipated that all homes would be participating by March 2012. The Ministry also indicated that it would re-evaluate in the future the decision not to have homes publicly report on *C. difficile* and hand-hygiene compliance among resident-care staff.

One home indicated that its infection-control practitioner has attended several infection-control and quality-management workshops held by its Regional Infection Control Network and its Local Health Integration Network. As well, the infection-control practitioner had applied to take a non-acute-care infection-control practitioners' course offered by its Regional Infection Control Network but did not get accepted due to the overwhelming response to the course. Furthermore, this home

noted that infection-control training is provided to all staff in accordance with the requirements of their position. This includes education on routine practices and special precautions, cleaning and disinfection, and hand hygiene.

Another home indicated that its infection-control practitioner was scheduled for a formal surveillance training course at a college in fall 2011. This home also told us that its staff completed general infection-control training in 2010, which included training on hand hygiene and the proper use of personal protective equipment. This home further noted that infection-control training was done again in May 2011.

The third home indicated that it was recruiting a new Assistant Director of Care who would be the home's infection-control practitioner. If the person hired does not have sufficient training in infection prevention and control, the home will arrange for such training. In the interim, the home has access to the expertise of professionals employed by the home's corporate owner, including a person certified in infection control.

Literacy and Numeracy Secretariat

Follow-up on VFM Section 3.07, *2009 Annual Report*

Background

The Ministry of Education (Ministry) is responsible for the system of publicly funded elementary and secondary school education in Ontario. Its responsibilities include developing the primary and secondary school curricula, setting requirements for student diplomas, and providing funding to school boards. The Ministry also set up the Education Quality and Accountability Office (EQAO)—a government agency—to provide independent assessments of student achievement by testing students in reading, writing, and mathematics. The Ministry's Literacy and Numeracy Secretariat (Secretariat), the subject of one of our 2009 audits and this follow-up, was established in November 2004 to help more than 4,000 elementary schools across 72 school boards to meet student-achievement targets. From the time it was established in 2004 to March 31, 2011, the Secretariat spent \$505 million (\$340 million by March 31, 2009), with almost \$423 million (\$288 million by March 31, 2009) transferred to school boards.

The Ontario government made a significant commitment to improving student achievement when, in 2004, it set a goal that 75% of all 12-year-olds (grade 6 students) would score a level-three

standard (approximately a B average) on province-wide testing for reading, writing, and mathematics by 2008. Although the Ministry had not achieved this goal by 2008, substantial progress had been made over the five years previous to our 2009 audit, and the percentage of 12-year-olds achieving the provincial standard increased from an average of 56% in 2003/04 to 65% in 2007/08. We stated at the time of our audit in 2009 that further increasing this percentage would be a challenging undertaking and noted a number of improvements that could be made to help achieve this goal. Some of our more significant observations at the time of the 2009 audit were:

- Although the Secretariat and the school boards we visited had done some limited assessment of the effectiveness of the secretariat programs, further analysis was required if the Secretariat was to ensure that its funding of almost \$288 million had been directed to the initiatives that provide the most benefit.
- School board improvement plans had been initiated to help teachers, principals, and school board staff plan and implement strategies to improve student achievement. The Ministry had developed a framework for an effective improvement-planning process. However, neither the Secretariat nor the boards we visited documented, monitored, or

reported on the plans to the extent necessary to assess whether the plans were contributing to improved student achievement. Also, because it exercised only limited oversight, the Secretariat did not have the information needed to identify patterns and trends among school boards, so it could not identify the most successful initiatives and share them with other boards.

- Secretariat program funding was not always allocated to school boards and schools with the greatest need. Rather, funding allocation was based on average daily enrolment or the reason a given amount of funding went to a school board could not be fully explained by the Secretariat. We found that, for one major program, the board with the greatest number of schools designated as low-performing received only \$17 per student, while several boards with no schools designated as low-performing received more than twice this amount per student.
- The Secretariat routinely uses certain boards as “bankers” to act as distributors of funds to third parties or other school boards. We questioned the need for such arrangements and noted that there is no memorandum of understanding or agreement between the Secretariat and the banker boards outlining respective roles and responsibilities, accountability relationships, reporting requirements, and service levels to be provided. Also, the Secretariat paid banker boards administrative fees that in some cases appeared excessive.

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

STANDING COMMITTEE ON PUBLIC ACCOUNTS

The Standing Committee on Public Accounts held a hearing on this audit in May 2010. In Decem-

ber 2010 the Committee tabled a report in the Legislature resulting from this hearing. The report contained six recommendations and requested that the Ministry of Education report back to the Committee with respect to the following:

- what measures the Ministry is considering to make better use of cohort tracking to assess the progress of the same group of students over time;
- the criteria the Ministry uses to assess school board improvement plans, including an update on the template that the Ministry has developed for the boards to use and how it plans to communicate best practices to all school boards;
- the results of the Ministry’s review of the effectiveness of the Secretariat’s various programs, specifying the review criteria used, the results of previous reviews, and any program changes that have resulted from the reviews;
- the Ministry’s most recent data on the amount of funding allocated to secretariat programs on the basis of needs and the amount based on enrolment, its criteria for assessing whether program money has been spent effectively, whether it has identified any program funding that should be redirected, and the percentage of total funding that was actually spent on the intended services;
- an interim report from the Ministry on its review of lead or banker board use, specifying:
 - whether the Ministry is on track to complete its review by the end of the 2010/11 fiscal year;
 - what initiatives formerly administered by lead/banker boards have been returned to the Ministry;
 - whether the Ministry will continue to use lead/banker boards and, if so, what criteria it will use to select them and to monitor their expenditures; and
 - what criteria the Ministry will use to determine the appropriate levels of payment for

services provided by lead/banker boards and for reviewing their expenses; and

- an update of the Ministry's assessment of data from the study it commissioned to compare the consistency of students' report card marks with their grade 3 and grade 6 EQAO achievement results and whether the Ministry will consider ongoing tracking of the correlation.

The Ministry responded to the Committee in March 2011. A number of the issues raised by the Committee were similar to our observations. Where the Committee's recommendations are similar to ours, this follow-up includes the recent actions reported by the Ministry to address the concerns raised by both the Committee and our 2009 audit.

Status of Actions Taken on Recommendations

According to information received from the Ministry, substantial progress has been made on implementing all of the recommendations in our *2009 Annual Report*. For example, the Ministry reported the completion of thorough reviews of the board improvement-planning process, of all the Secretariat's program initiatives, and of the correlation between report card marks and EQAO results. These reviews resulted in, for example, the development of new criteria for the board planning process and the elimination, revision, or expansion of several programs. The Ministry also completed the implementation of the Ontario Statistical Neighbours System, a system with demographic, school, and student performance information used for program planning, and the Ministry is training all boards in how to use it. The status of the action taken on each of our recommendations at the time of our follow-up was as follows.

MEASURING AND REPORTING ON PROGRAM EFFECTIVENESS

Recommendation 1

The Ministry of Education should develop more comprehensive indicators for measuring and reporting on its effectiveness in improving student achievement. In addition to reporting the percentage of 12-year-olds who are at or above the provincial standard, it should also consider reporting changes in the gap between the top-performing and lower-performing student groups and schools, as well as how specific student cohorts perform over time while participating in the programs and initiatives intended to improve their performance.

Status

The Ministry informed us that it uses EQAO test results over time as one method for measuring improvements in student learning and achievement in grades 3 and 6. Cohort tracking now provides the Ministry with an additional way to assess student progress and gives some insight into the effectiveness of the Ministry's previous efforts to support students. Such tracking has also become one of the means to identify areas where performance could be improved, so that information can be developed about how to focus support on these identified areas of need.

Now that the EQAO has begun to regularly track cohorts of students, the Ministry has determined that most cohorts have been improving in reading, writing, and mathematics. For example, of the 120,000 students who attended school in English-language school boards and who wrote both the grade 3 assessment in 2006/07 and the grade 6 assessment in 2009/10, 10% more met the standard in reading in grade 6 than in grade 3, 6% more met the standard in writing, but 8% fewer met the standard in mathematics. For the 5,700 students who attended school in French-language school boards and who wrote both assessments, the results for reading, writing, and mathematics improved by 24%, 6%, and 20%, respectively.

The Ministry informed us that cohort-tracking data will continue to be used going forward from 2009/10 as a needs assessment and improvement tool for school boards. The Ministry noted that it uses EQAO test results over time for its planning purposes and for selecting priorities. The Ministry also tracks the proportion of students at each EQAO performance level, one through four (similar to letter grades). Level three, equivalent to a B grade, is an indication that the student has demonstrated most of the required skills and is currently at the provincial standard. Cohort tracking also includes analysis of specific groups of students, such as males and females, English- and French-language learners, and students with special needs. It compares the results for specific groups such as these to overall student results to help inform its plans to reduce the gaps in achievement.

The Ministry also indicated that it has introduced changes to the assessment, evaluation, and reporting of elementary student achievement by implementing a new fall progress report that allows teachers to give parents personalized feedback on each student's strengths and on steps required for improvement without grading students.

SCHOOL BOARD IMPROVEMENT PLANS

Recommendation 2

To ensure that the improvement-planning process is sufficient to support boards, administrators, principals, and teachers in helping students to improve results and progress toward the provincial standard in achievement testing, the Ministry of Education should:

- *implement a formal improvement-plan review process to help ensure that all of the necessary components of an effective plan are included;*
- *require that school boards post improvement plans online to enhance accountability and transparency;*
- *consider adopting the practice followed in some other provinces of using a formal contract with school boards that would require school boards*

to periodically report their results in achieving the goals in their improvement plans; and

- *properly document the result of its monitoring efforts along with any required corrective action to be taken and any subsequent follow-up where plans are not complete.*

Status

We were informed that a ministry working group put in place a formal improvement-plan review process that articulates the criteria for good board improvement plans and provides an assessment template for improvement planning. These criteria include:

- assessment of student needs and achievements;
- identification of SMART (specific, measurable, attainable, results-oriented, time-bound) goals;
- development of indicators to measure student achievement;
- identification of required human and financial resources;
- identification of professional learning needs for educators;
- a process for data collection and analysis;
- clearly defined responsibilities for plan implementation and monitoring; and
- comparison of planned results with actual outcomes.

The Ministry's student achievement officers will use these criteria to assess whether board goals are appropriate and are currently being met, and will document their review of the school board plans and provide feedback to boards that includes information on best practices.

The Ministry has also developed a refined version of its School Effectiveness Framework to be used in the board improvement planning process to provide guidance for assessing student and professional learning needs. In addition, the Ministry has developed and provided boards with other resources, such as examples of SMART goals to help set targets and develop indicators for monitoring student achievement.

Although the Ministry advised us that it has not formally required boards to post improvement plans online, we were informed that all boards have done so. The Ministry also noted that it has not entered into any formal contracts with school boards to periodically report their results in achieving the goals in their improvement plans. However, revisions to the *Education Act* pursuant to Bill 177, the *Student Achievement and School Board Governance Act, 2009*, increased the responsibility of boards to report publicly regarding their plans to promote student achievement and well-being.

The Ministry informed us that it has put additional monitoring processes in place, with staff making three annual visits to school boards regarding their improvement plans. The first visit in the fall helps develop the board improvement plan and ensure that the Ministry's criteria are included before the final plan is submitted to the Ministry. The second visit, in the middle of the school year, is used to monitor the plan against the SMART goals, indicators, and targets to identify areas that require corrective action. The final visit, at the end of the school year, is to document, review, and evaluate the impact on student achievement.

MONITORING AND FUNDING OF PROGRAM INITIATIVES

Recommendation 3

To ensure that student achievement initiatives are effective and that limited resources are used appropriately, the Literacy and Numeracy Secretariat should:

- *formally evaluate how well all its program initiatives contribute to improving student achievement, and modify or eliminate the less effective initiatives;*
- *ensure that its program funds are allocated to the areas of greatest need;*
- *ensure that program funds are being spent for the intended purpose;*
- *ensure that expenditures made by the Council of Ontario Directors of Education are appropriately approved and supported; and*

- *reconsider pre-flowing funds to “banker” school boards.*

Status

The Ministry noted that, in 2010, it formalized a three-year plan to assess the Secretariat programs and initiatives. This review was guided by a logic model designed to systematically assess whether a program contributed to student learning and achievement, by aligning program goals, inputs, outputs, activities, and performance measures. Overall, the Ministry indicated that it had performed an initial assessment of all its programs. As a result of this initial review, one initiative, Leader-to-Leader, has been eliminated. Several other initiatives have been revised or expanded since we completed our *2009 Annual Report*. Both external and internal research has been used as input for the assessment of student achievement initiatives, including the following reviews:

- In December 2010, an internal review was completed on the Ontario Focused Intervention Partnership (OFIP) program, which focuses on schools where fewer than 50% of the students met the provincial requirement of level three on EQAO testing. The 2009/10 results for the 137 OFIP schools showed an overall average improvement of five percentage points, and in 62 of these schools more than 50% of the students met the provincial standard. The study noted that the strongest indicator of success reported by the 62 successful schools was their self-assessment using the School Effectiveness Framework. The results of this study were shared with school boards.
- An external study contracted by the Ministry and completed in November 2010, *Collaborative Inquiry and Learning in Mathematics (CILM)*, identified that CILM is an appropriate approach for teaching and learning math. Based on these findings, the Ministry expanded CILM to all boards. In addition, internal research done by the Ministry on the

Student Work Study Teacher Initiative found a number of factors contributing to the success of students' work moving from level two to level three (the provincial standard). The Ministry has shared these success factors with school boards.

- In January 2011, another external study was completed on the Schools on the Move initiative to identify which factors contributed to student achievement in the 32 participating schools that faced challenging circumstances. In particular, it identified four factors contributing to student success that could be transferred to other schools: support for a common code of behaviour throughout the school; a feeling of responsibility among teachers for student learning; teachers' commitment to the notion that all students can learn successfully; and the explicit teaching of literacy skills to students. The Ministry has indicated that it shared these findings with schools in the Ontario Focused Intervention Partnership program.

The Ministry advised us that it analyzes final report-backs from the school boards to assess whether board program funding has been allocated to the areas of greatest need. In our 2009 audit we noted that for almost 70% of the funding over the previous five years, either the funding had been based on student enrolment or the Ministry could not fully explain its allocation method. In the 2010/11 fiscal year, the Ministry indicated that the majority of its program funding was now allocated on the basis of need. In addition, the Ministry indicated that it had instituted further accountability measures for school boards by specifying the funding criteria, reporting requirements, payment schedules, and allowable expenditure categories in transfer payment contracts to help ensure that funds were spent for the purposes intended.

The Ministry advised that it recently approved and released *Administration Fee and Lead Board Guidelines* with criteria for transfer-payment expenditures to third-party organizations, such

as the Council of Ontario Directors of Education (CODE) and boards that act as lead boards.

In the guidelines, clarification is provided with respect to the overall rationale for the selection of lead boards, and the criteria that need to be considered and included in determining whether funding to a lead board is required. These include:

- whether it would be more efficient and effective in delivering the services;
- whether it would provide a more economical delivery to ensure value for money; and
- whether specific expertise resides with the lead board.

CONSISTENCY OF STUDENT ASSESSMENTS

Recommendation 4

To help ensure that students are being assessed in a consistent way, the Ministry of Education should monitor the results from different types of assessment, especially those from report cards and Education Quality and Accountability Office (EQAO) tests, to identify any major discrepancies for follow-up.

Status

In March 2010, the Ministry completed a study that examined the correlation between report card marks and EQAO results for grades 3 and 6. The study found that report card marks and EQAO results appear to be reasonably well aligned and that classroom-based assessments are relatively consistent over time. It also found that report card marks in the two years prior to the EQAO assessments are consistent predictors of EQAO results.

The study found that the relationship between report card marks and EQAO results was virtually the same for grades 3 and 6, and that assessment practices of EQAO and teaching to the curriculum were relatively well aligned. The study also found that report card marks were more closely aligned with EQAO results for female than for male students.

The study also looked into variations between report card marks and EQAO results based on grade level, curriculum, and student gender. The Ministry noted that there will be some variation in these assessments, because the nature and purpose of the large-scale EQAO assessment are very different from those of classroom assessment. The EQAO assessment reflects a point in time, whereas report cards summarize a longer period of time and include consideration of greater specific circumstances pertaining to the student.

The Ministry is reviewing these findings and further reviewing its capacity to perform similar statistical analysis in the future.

ONTARIO STATISTICAL NEIGHBOURS INFORMATION SYSTEM

Recommendation 5

To ensure that all school boards and schools can obtain useful and relevant information to develop

strategies for improving student achievement, the Ministry of Education should consider granting them direct access to the Ontario Statistical Neighbours information system. This would be more cost-effective than school boards having to develop and maintain their own systems.

Status

The Ministry indicated that it has completed the development of the online Ontario Statistical Neighbours system, which gives school boards direct access to useful information necessary for improving student achievement. At the time of our follow-up, 50 of the 60 English district school boards and 11 of the 12 French district school boards had received training from the Ministry. The Ministry expected the training to be complete in fall 2011.

OntarioBuys Program

Follow-up on VFM Section 3.08, 2009 Annual Report

Background

OntarioBuys is a government initiative launched in 2004 to help the broader public sector (BPS) save money when procuring goods and services. The BPS Supply Chain Secretariat, part of the Ministry of Finance (Ministry), is responsible for administering and managing OntarioBuys.

Since the 2004/05 fiscal year, OntarioBuys has provided funding of about \$185 million for two areas: about \$116 million as of March 31, 2011 (\$88 million at the end of the 2008/09 fiscal year), for the formation and/or expansion of collaborative groups called “shared-service organizations” (SSOs) whose members are BPS institutions; and \$69 million as March 31, 2011 (\$61 million at the end of the 2008/09 fiscal year), for 54 projects aimed at helping BPS institutions become more efficient and effective in their supply-chain and other back-office processes. In the 2010/11 fiscal year, the BPS Supply Chain Secretariat incurred total direct operating expenses of \$4.4 million (\$4.8 million in 2008/09).

In our *2009 Annual Report* we reported that, although the government announced in its March 2009 Budget that OntarioBuys had helped BPS organizations—mostly from the hospital sector—redirect \$45 million in savings toward front-line services, almost \$20 million of this reported amount was not redistributed to hospitals to provide front-line services. Rather, it was retained by the SSO that reported the savings to develop

information technology for its back-office processes. The balance of the reported savings came from a number of projects; however, OntarioBuys had not verified these savings nor was it able to demonstrate that they had actually been invested in front-line services.

We also found that, although OntarioBuys had undertaken significant efforts to promote its collaborative supply-chain initiatives, participation in the SSOs, particularly in the education sector, was well below the level required for OntarioBuys to achieve its goals. Our other significant observations included:

- OntarioBuys approved funding for projects on the basis of business cases prepared by BPS organizations that included estimated costs and potential savings. However, the reasonableness of the estimates was often not appropriately assessed. For example, the largest project approved for funding projected savings of \$669 million over five years, but we found that \$294 million of this amount was not included in OntarioBuys’ funding review and that the balance of \$375 million was determined on an arbitrary basis. Subsequent to our audit fieldwork, OntarioBuys revised the estimated savings down to \$113 million over five years.
- The education SSO, which had received \$30 million in OntarioBuys funding by March 31, 2009, committed to sign up 13 of the province’s educational institutions and

1,000 suppliers by June 2009 to participate in a new electronic purchasing system called e-Marketplace. As of June 2009, e-Marketplace had yet to become operational, and no institutions had formally signed up to be members.

- We reviewed a list of project savings that OntarioBuys provided us and found some purported savings to be questionable. For example, our review of savings totalling \$7.3 million for two projects, which were supposed to be completed by December 2006, showed that neither project had been completed by the time of our audit. Subsequent to our review, OntarioBuys revised the total savings for the two projects down to \$1.1 million.
- OntarioBuys did not have program-specific guidelines for consistent and effective monitoring of project progress, with requirements for conducting site visits, documenting work performed, verifying deliverables prior to the release of final payments, and closing files for completed projects.
- In the 2004/05 through 2008/09 fiscal years, the SSOs and BPS organizations involved in the projects spent about \$45 million of the funding provided to them to hire some 270 consultants for a variety of reasons. We reviewed \$15 million of consulting contracts from various projects and found that over 40% did not comply with the competitive procurement requirements of the project funding agreements.

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

Status of Actions Taken on Recommendations

According to the information we received from the BPS Supply Chain Secretariat of the Ministry of

Finance, some progress has been made in addressing all of our recommendations, and substantial progress has been made on most of them.

OntarioBuys informed us that it had embarked upon a strategic planning exercise and a review of the OntarioBuys program following our 2009 audit. It completed the strategic review and finalized the strategic plan in September 2010. Following the review, OntarioBuys streamlined the program, focusing on stabilizing the recently created hospital and education SSOs to maximize long-term benefits, savings, and efficiencies. OntarioBuys also developed improved guidelines and provided training on its new monitoring processes and the new Management Board of Cabinet BPS Procurement Directive to OntarioBuys and BPS staff.

The status of the action taken on each recommendation at the time of our follow-up was as follows.

APPROVAL OF REQUESTS FOR FUNDING

Recommendation 1

To ensure that estimated costs and benefits in business cases are appropriately assessed before being approved, OntarioBuys should:

- *obtain the necessary supporting materials from applicants to appropriately assess the reasonableness of projected savings and estimated costs; and*
- *address identified risks and document actions taken or to be taken to mitigate these risks.*

Status

OntarioBuys informed us that it had developed new guidelines, processes, and tools for assessing business cases to help it ensure that the projected costs and savings are reasonable. All documentation must be completed before the business case review can be signed off by OntarioBuys senior management. Before signing off, senior management must review the completed business case guidelines template and supporting documentation, which includes assessments of the costs, benefits, and risks.

Business cases for projects requesting more than \$1 million in funding are still required to be reviewed by the Ministry of Finance's Internal Audit Services. If OntarioBuys considers it necessary, Internal Audit can also be asked to review projects with less than \$1 million in funding.

In March 2011, Internal Audit released a report that summarized its reviews of funding requests in excess of \$1 million for the 2010/11 fiscal year. The report noted that a common issue identified in its review of project proposals was a need for greater clarity and detail in the business case and supporting documentation in three areas: financial information, specifically the defining of baselines and targets; documentation to support savings; and identification of relevant risks.

OntarioBuys informed us that it is taking a number of actions to address Internal Audit's areas of concern. One of these is referencing the documentation supporting the savings in transfer-payment agreements. Before Internal Audit's report, OntarioBuys had already developed a standardized risk management template to help it identify risks, to document risk analyses and risk mitigation, and to track actions taken for the risks identified. OntarioBuys informed us that, to improve its risk management template, it had begun working with Internal Audit to develop a more detailed risk analysis framework to use in assessing future business cases.

MONITORING OF FUNDED PROJECTS AND EXPENSE CLAIMS

Oversight of the Status of SSOs and Projects and the Achievement of Deliverables

Recommendation 2

To ensure that the shared-service organizations (SSOs) and projects that OntarioBuys funds achieve contract deliverables and that funds are used for the intended purpose, OntarioBuys should:

- *develop monitoring guidelines to assist its staff in consistently conducting appropriate oversight of the SSOs and projects funded; and*
- *monitor, on a timely basis, the progress of funded SSOs and projects against contract deliverables and take appropriate action when there are significant delays.*

Status

OntarioBuys indicated that in 2010 it had developed new Project Monitoring Guidelines outlining the tools and processes necessary to effectively monitor the required deliverables throughout the various phases of a project. The guidelines include guidance on the type of information required in project status reports, management approval requirements, and the extent of review work that staff should do based on the assessment of risks, savings, costs, and other benefits. A project monitoring flowchart of the review and approval process for release of funds was also developed. OntarioBuys staff were trained on the new guidelines and processes in July 2010.

To monitor the progress of projects, OntarioBuys has developed an electronic transfer-payment tracking system, which was fully implemented by September 2010. The information that the system tracks includes the progress of funded projects, funding flows to transfer-payment recipients, transfer-payment forecasts, the names of the members of staff/managers who approved a business case or release of funding, and which staff are responsible for monitoring which projects.

Consulting Services

Recommendation 3

To ensure that significant consulting-service contracts are awarded in an open, fair, and transparent manner, OntarioBuys should monitor broader-public-sector compliance with the required procurement policies.

Status

OntarioBuys indicated that, since May 2010, it has required BPS organizations to complete procurement plans for projects identifying all consulting procurements to occur over the 12 months following a BPS agreement with OntarioBuys. The BPS organization must include in its plan a description of the consulting procurement, the estimated procurement value, the procurement method to be used, the proposed approval authority level, and the approximate month and year it expects to commence the procurement process. It must also indicate whether the procurement could involve extensions or future related contracts.

The BPS organization is also to submit regular status reports, called procurement reports, that include the following information: procurement description; vendor name; final contract price; amount paid to date; procurement method applied; effective date of the contract; contract deliverables achieved; the name of the person approving the contract; and any modifications to the contract terms.

OntarioBuys informed us that its staff uses a risk-based approach to carefully review procurement reports, identifying any discrepancies for follow-up and applicable corrective actions, and comparing the reports with their corresponding procurement plans. The reports are also checked for compliance with Management Board of Cabinet's BPS Procurement Directive.

Review and Approval of Expense Claims

Recommendation 4

To ensure that only appropriate expenses are reimbursed, OntarioBuys should provide the management of shared-service organizations and supply-chain-improvement projects with guidelines on the reimbursement of meal, travel, and hospitality expenses, with maximum limits that are reasonable when compared to those for Ontario government employees.

Status

OntarioBuys indicated that, in March 2010, it developed a *Guideline for Transfer Payment Project Expenses for Travel, Meals, and Hospitality* requiring all transfer-payment recipients receiving funds from OntarioBuys to follow the applicable sections of the Management Board of Cabinet Travel, Meal and Hospitality Expenses Directive. The guideline was incorporated into the transfer-payment agreement schedules for organizations receiving funding from OntarioBuys. OntarioBuys also provided training on these expense requirements to transfer-payment recipients in April and May 2010.

Under the authority of the new *Broader Public Sector Accountability Act, 2010*, Management Board of Cabinet developed a Broader Public Sector Expenses Directive, effective April 1, 2011. This directive replaced the OntarioBuys *Guideline for Transfer Payment Project Expenses for Travel, Meals, and Hospitality*, and OntarioBuys requires BPS organizations to make reimbursements in accordance with the new directive.

The directive requires the designated BPS organizations to establish rules for expenses that are reimbursed from public funding and sets out what organizations need to consider when they are establishing their rules for expenses. BPS organizations were trained on the new directive in February and March 2011.

PERFORMANCE MEASUREMENT

BPS Participation in SSOs and Projects

Recommendation 5

To assist Ontario educational institutions to more effectively generate savings from improved supply-chain-management practices, OntarioBuys should more formally assess the impact of the various collaborative purchasing initiatives already in place in the education sector on the effectiveness of the education shared-service organization (SSO) and assess whether any changes are necessary to the education SSO's business model.

Status

OntarioBuys indicated that it had determined through a formal review of the various collaborative purchasing initiatives and the level of participation of educational institutions that a shared-service organization (SSO) for the education sector continued to be a viable option. We were also informed that, after our 2009 audit, the education SSO eliminated the development and implementation of an electronic purchasing system and focused instead on strategic sourcing and collaborative purchasing initiatives. The SSO submitted a new business case reflecting these changes, and OntarioBuys approved it. A new transfer-payment agreement was signed at the end of June 2011.

Reported Savings

Recommendation 6

To ensure that reported performance results are credible, OntarioBuys should:

- *provide guidelines to shared-service organizations (SSOs) and broader-public-sector institutions on how savings are to be defined and how baselines are to be established and applied for the calculation of savings; and*
- *objectively assess and verify SSOs' and projects' reported savings to ensure that they are valid before publicly disclosing them as results achieved.*

Status

OntarioBuys informed us that it had distributed new guidelines to its funded transfer-payment recipients and shared-service organizations in July 2010 to help them calculate and validate forecasted and actual savings for funded projects. OntarioBuys also indicated that it conducts periodic spot checks to assess whether projects' actual savings are defined in a manner that is consistent with the guidelines.

OntarioBuys has not published project savings since our 2009 audit. OntarioBuys indicated that it would ensure that reported savings are verified in accordance with the savings guidelines prior to public disclosure and that appropriate documentation is maintained.

Other Performance Measures

Recommendation 7

To properly measure and report on performance results, OntarioBuys should:

- *use actual purchase information from funded shared-service organizations (SSOs) to determine whether it has achieved the target percentage of having certain supplies purchased through them; and*
- *develop performance measures and collect the information necessary to assess and report on the redirecting of savings generated by funded SSOs and projects to front-line services.*

Status

OntarioBuys informed us that after our 2009 audit it determined that it would be unable to obtain annually comparable information on total spending in each sector to assess whether the target percentage of savings expected from having certain supplies purchased through the SSOs was actually achieved.

At the time of our follow-up, OntarioBuys was exploring the types of data necessary to determine more appropriate measures of results and had developed a new set of draft performance measures that it expected to finalize by September 2011. The timing and development of the related baselines and targets is to depend on the performance measures that OntarioBuys ultimately selects.

Ontario Disability Support Program

Follow-up on VFM Section 3.09, *2009 Annual Report*

Background

The Ministry of Community and Social Services (Ministry) administers the *Ontario Disability Support Program Act* (Act), which provides income and employment support to more than 270,000 individuals with eligible disabilities as defined by the Act. Total annual Ontario Disability Support Program (ODSP) benefit payments made in the 2010/11 fiscal year amounted to over \$3.5 billion (\$3 billion in 2008/09—which was a 42% increase since the time of our last audit in 2004).

ODSP income support is intended to assist with basic living expenses such as food, shelter, clothing, and personal-needs items. Although employment-support programs are available to ODSP recipients, participation in them is not required. As a result, relatively few ODSP recipients join such programs.

In our *2009 Annual Report*, we found that although the Ministry had implemented a number of the recommendations contained in our *2004 Annual Report*, there had been only limited improvements in determining an applicant's financial eligibility and the amount of assistance to be paid.

The Ministry had established a two-stage process to ensure that only qualified applicants receive income support. The first stage relied solely on

applicants volunteering financial information. To compensate for the risks associated with this, the second stage was third-party verification of certain information provided by the applicant. However, this verification was largely ignored in practice. As a result, the Ministry was not adequately ensuring that only eligible individuals were receiving payments in the correct amounts. Some of the issues identified in our *2009 Annual Report* were as follows:

- Although the Ministry had significantly reduced the average wait time for a medical-disability determination decision, 60% of recipients sampled still received late payments. On average, they experienced a 58-day delay after they had been determined to be medically qualified for payments, which was almost three times longer than the outside limit of 21 days established by the Ministry. These delays in receiving approved benefits offset to a significant degree the good progress made since our 2004 audit in expediting the initial medical determination.
- Oversight procedures were lacking with regard to monitoring and assessing the fairness and consistency of decisions made by individual adjudicators at the Ministry's Disability Adjudication Unit (DAU). Consequently, the rates at which adjudicators

determined that applicants were eligible generally varied from 11% to 49%.

- In the 2008/09 fiscal year, 55% of applicants' appeals to the Social Benefits Tribunal led to the Tribunal overturning the Ministry's initial decision to not approve an applicant for benefits.
- Since 2002, the Ministry had not performed any of the periodic medical reassessments—required by legislation—to ensure continuing eligibility for disability support payments.
- The Ministry relied on one individual to do all the assessment and reassessment work for any given file, yet the individual's work was neither supervised nor reviewed to ensure that the decisions made complied with ministry and legislative requirements.
- The total amount of overpayments for both active and inactive accounts had increased substantially, from \$483 million in 2004 to \$663 million as of March 31, 2009. In many cases, overpayments resulted from what would appear to be recipients fraudulently misrepresenting their circumstances. These overpayments might often have been avoided if the Ministry had more effectively reassessed the eligibility and the amounts to be paid to those individuals identified by its own systems as high-risk or followed up on tips received from the public.
- The Ministry's computerized Service Delivery Model Technology (SDMT) information system still lacked key internal controls, and regional and local offices were not receiving, in an easily understandable format, the information they needed to effectively oversee program expenditures.

STANDING COMMITTEE ON PUBLIC ACCOUNTS

The Standing Committee on Public Accounts held a hearing on this audit in May 2010. In November 2010, the Committee tabled a report in the

Legislature resulting from this hearing. The report contained nine recommendations and requested the Ministry to report back to the Committee with respect to the following:

- whether the Ministry had begun meeting its own target that ODSP clients receive their cheques within 21 days of being approved for benefits and, if not, how long on average clients were waiting to receive their cheques (the Committee also asked the Ministry to consider posting this information on its ODSP website);
- what progress had been made in the area of oversight and review of adjudicator decisions and an assessment of the effectiveness of the Ministry's new process for oversight and review of adjudicator decisions, including an estimate of the percentage of files that get reviewed;
- the outcome of the Ministry's consideration of possible strategies for addressing the Social Benefits Tribunal's high overturn rate, specifically:
 - the current overturn rate;
 - whether the Ministry had established a target for the overturn rate;
 - whether it had introduced measures to ensure that Tribunal members and Ministry staff are using the same criteria to determine disability and make income support decisions, what these criteria are, and how their use is enforced; and
 - whether it had examined the eligibility adjudication process for the Canada Pension Plan Disability benefits (and if not, the Committee asked it to provide a rationale);
- the outcome of the Ministry's review of business processes for processing fraud tips, including what measures it would be introducing to better identify and deal with suspected fraud cases on a more timely basis and current metrics on phone tips, police referrals, convictions, and data on trends;

- whether the Ministry was addressing its backlog of required medical eligibility reassessments, specifically:
 - whether it would be increasing its rate of medical reviews from the current rate of 100 reviews per month;
 - the most recent review results; and
 - whether it would be requesting additional staff to catch up on the backlog;
- an update of the Ministry's discussions with the Ministry of Health and Long-term Care on the design and implementation of the new nutritional supplement program that was to replace the special dietary allowance;
- with respect to overpayments and client debt:
 - how much of the \$663 million in overpayments the Ministry realistically expected to collect and how much should be recommended to be written off;
 - the outcome of its plan to develop a more robust writeoff strategy for client debt;
 - whether it would be holding discussions with the Ministry of Finance to ensure that any writeoff strategy that it develops will comply with the rules set by that Ministry, and if so, when; and
 - its assessment of the root causes for overpayments, including the decisions it had taken on how it will address this issue;
- the main features of its new front-line service delivery model, how this model promotes efficient service delivery, whether it had made an impact on the number of staff that are required to deliver front-line service, and whether the number of sick days taken by caseworkers still averages 20 days per year; and
- what progress the Ministry had made in developing a business case for the replacement of its Service Delivery Model Technology, specifically:
 - how consultations with caseworkers would be incorporated into the process to ensure that the new system meets user needs;

- whether the new system was on track to be implemented by the end of the 2012/13 fiscal year;
- what progress, if any, had been made in determining whether an off-the-shelf system would be suitable and, if a suitable system were found, what changes to the Ministry's work processes would be required to be able to use such a system; and
- what progress, if any, had been made in sequestering management access from caseworker access in the system that the Ministry is currently using.

The Ministry responded to the Committee in March 2011. A number of the issues raised by the Committee were similar to our observations. Where the Committee's recommendations are similar to ours, this follow-up includes the recent actions reported by the Ministry to address the concerns raised by both the Committee and our 2009 audit.

Status of Actions Taken on Recommendations

According to information received from the Ministry between May and September 2011, progress has been made in addressing most of the recommendations in our *2009 Annual Report*, with substantial progress having been made on a few of them. However, more effort and time will be needed before the Ministry is able to fully implement all of our recommendations. For example, further progress will depend on the implementation of several initiatives the Ministry currently has underway, such as recruiting and training 120 new front-line staff to improve service and to help cope with increased pressures and rising caseloads owing to the recent economic downturn; reorganizing and training staff with new tools to strengthen program management and oversight; and implementing a

new information technology system. In addition, in November 2010, the government announced the launch of a major review of the social assistance programs in Ontario.

The status of actions taken on each of our recommendations at the time of our follow-up was as follows.

INITIAL FINANCIAL ELIGIBILITY ASSESSMENT

Recommendation 1

To ensure that an individual's initial financial eligibility for Ontario Disability Support Program benefits is adequately verified, the Ministry of Community and Social Services should:

- *comply in all cases with its own requirements to verify an applicant's declared income and assets with the third parties who have information-sharing agreements with the Ministry; and*
- *conduct supervisory reviews, at least on a sample basis, of the decisions made and files maintained by intake caseworkers to ensure that staff are adhering to Ministry requirements with respect to financial eligibility verification.*

Status

The Ministry indicated that it has developed a new standardized form for third-party verifications in its Service Delivery Model Technology (SDMT) system to document and maintain a record of the results of each third-party check conducted. This new form is expected to provide a consistent approach to documenting third-party checks across the province and to make it easier for staff to find information related to third-party checks conducted. The Ministry also advised us that it has provided optional training to its staff on the Equifax credit reports—a third-party verification procedure—to assist them with reading and understanding the reports.

The Ministry also informed us that in April 2010, it implemented ODSP file reviews using a standardized checklist, and managers have been conducting these file reviews since that time. The results of the

first round of these reviews were evaluated, with the outcome that approximately 60% of the files were found to have no issues with the decisions made or how the files were maintained. However, for the remaining 40% of files, issues were noted, such as third-party checks not being documented and required documents not being on file, which were similar to the findings in our *2009 Annual Report*. The Ministry has since reinforced with its staff the requirements for the areas where issues were noted.

INITIAL DISABILITY DETERMINATION

Recommendation 2

To ensure that all Ontario Disability Support Program applicants are adjudicated fairly and consistently, the Ministry of Community and Social Services should:

- *periodically review a random sample of each adjudicator's files to assess whether the decisions are generally supported and fair; and*
- *monitor the percentage of applicants found to have an eligible disability by each adjudicator and, if there are significant variances, investigate the reasons for them and take corrective action where necessary.*

Status

The Ministry informed us that in March 2010 a formal adjudication file review process was established whereby now the Manager of Adjudications and Medical Policy reviews a sample of approximately 40 adjudicator files each week to determine the appropriateness of the decisions made and to identify any training needs. A file feedback form is to be completed for each review conducted and is provided to the applicable adjudicator at the end of the review. In addition, for any file reviewed where it is recommended that the original decision be overturned, the file is further reviewed by a panel of three individuals who then make a final determination. The Ministry indicated to us that the average overturn rate as a result of the reviews completed to date was approximately 7%.

The Ministry now also regularly monitors performance reports for each adjudicator, including statistics on adjudications, and additional files may be selected for review on the basis of the results reported. When any systemic or ongoing issues are identified from the file review process, corrective action, such as group or targeted training, is taken.

SOCIAL BENEFITS TRIBUNAL APPEALS

Recommendation 3

To reduce the need for, and cost of, appeals and the relatively high rate at which the Social Benefits Tribunal overturns Ontario Disability Support Program eligibility decisions, the Ministry of Community and Social Services should consult and work with the Tribunal to narrow the differences in approach to, and criteria used in, assessing individuals with a disability. In addition, to ensure that its rationale for denying a claim is clearly communicated to the Tribunal, the Ministry should ensure that it is represented by a case-presenting officer at every hearing.

Status

The Ministry informed us that it has entered into a new memorandum of understanding with the Social Benefits Tribunal to clarify the accountability relationships between the two parties, and it is conducting in-depth reviews and analysis twice a year on the Tribunal's disability-related decisions. Although the Tribunal's rate of overturning ministry adjudication decisions is still similar to that at the time of our audit, the Ministry has shared its policies and other information relating to its adjudication process with the Tribunal. However, the Ministry indicated that the Tribunal is an independent body that operates at arm's length from the Ministry and sets its own policy and operational direction.

In addition, the Ministry informed us that it is currently unable to ensure that it is represented by a case-presenting officer at every hearing due to resource limitations.

ELIGIBILITY REASSESSMENTS/ CONSOLIDATED VERIFICATION PROCESS

Financial Eligibility Reassessments

Recommendation 4

To ensure that recipients continue to be financially eligible for Ontario Disability Support Program benefits and to avoid overpayments, the Ministry of Community and Social Services should:

- *ensure that recipients identified as high-risk are prioritized for review;*
- *comply in all cases with its own requirement to verify an applicant's declared income and assets with the third parties with whom the Ministry has information-sharing agreements; and*
- *be more proactive in following up on those tips that come from what appear to be bona fide sources.*

Status

As noted in its response to our 2009 recommendation, as an interim measure the Ministry continues to review a limited sample of cases for financial eligibility based on various periodically assessed risks—for example, Canada Revenue Agency data matches. However, it informed us that it has developed a new risk-based eligibility reassessment process in conjunction with Equifax Canada called the Eligibility Verification Model. This new process is expected to assist in the identification and prioritization of high-risk cases for eligibility reviews by linking ODSP data with Equifax consumer credit databases. Testing of the new process began in October 2010; however, it had not yet been implemented at the time of our follow-up.

As noted earlier, the Ministry indicated that it has developed a new standardized form for third-party verifications in its SDMT system to document and maintain a record of the results of each third-party check conducted. This new form is expected to provide a consistent approach to documenting third-party checks across the province and to make it easier for staff to find information related to third-party checks conducted. The Ministry also

advised us that it has provided optional training to its staff on the Equifax credit reports—a third-party verification procedure—to assist them with reading and understanding the reports. However, the results of recent file reviews undertaken by ODSP managers indicated that not documenting third-party checks remains an issue.

The Ministry informed us that in order to be more proactive in following up on bona fide tips, it has instituted a 15-day standard for ODSP staff to complete a preliminary assessment of all tips received. However, it has not yet verified that the new standard is being met. The Ministry also undertook a review to identify best practices in fraud prevention and detection from other jurisdictions (such as other provinces and the United States) and from its service managers across Ontario. Recommendations were expected in fall 2011.

Management of Outstanding Tasks

Recommendation 5

To ensure that Ontario Disability Support Program benefits are paid only to eligible individuals and in the correct amount, the Ministry of Community and Social Services should monitor case-management activities to ensure that tasks entered into its Service Delivery Model Technology information system are followed up on promptly and that appropriate actions are taken to avoid overpayments.

Status

The Ministry advised us that it undertook a cleanup exercise for outstanding tasks in its computer system whereby it removed 40% of all open tasks from the system after determining that they were redundant. With regard to new tasks being created, we were also advised that the Ministry simplified the programming so that tasks considered unnecessary are no longer generated automatically. In addition, the Ministry now prepares monthly reports that it sends to its managers to assist in identifying overdue tasks on which action must be taken promptly.

Medical Eligibility Reassessments

Recommendation 6

To comply with the Ontario Disability Support Program Act and to ensure that only eligible ODSP recipients continue to receive benefits, the Ministry of Community and Social Services should conduct the required medical reassessments within the legislated time frame.

Status

The Ministry advised us that in May 2009, it began conducting medical reassessments. Initially, approximately 100 cases per month were selected for reassessment from among those recipients with a reassessment date within the last two years. Review packages were sent to the selected recipients to be completed by an approved health-care practitioner and returned to the Ministry within 90 days.

After conducting the reassessments for a year, the Ministry undertook an evaluation of the process to assess its effectiveness and identify areas for improvement. The evaluation included an assessment of the results of the reassessments conducted and a survey of staff on their experience to date. The results of the reassessments indicated that out of 1,553 reviews conducted, approximately 1,077 packages were returned; of those, approximately 76% were confirmed to be still eligible for benefits, and 24% were no longer considered eligible. Benefits for individuals who did not return their review packages were to be suspended until the completed review package was received.

The Ministry also informed us that at the time of our follow-up, medical reassessments for approximately 28,400 recipients were overdue, which represents 45% of all recipients requiring a medical reassessment. We were informed that as of July 2011, medical reassessments had been temporarily suspended due to an increase in new applications received and the need for staff to process those applications.

Income-support Payments to Individuals

Recommendation 7

To ensure that eligible applicants receive the correct financial entitlements within a reasonable time frame, the Ministry of Community and Social Services should ensure that:

- *Ontario Disability Support Program payments start within the prescribed 21 calendar days of the determination that the person has an eligible disability;*
- *all of the information necessary to determine the correct amount of benefits is on file and correctly considered before payments are made; and*
- *suspicious or unusual circumstances, including those relating to the special dietary allowance, are appropriately flagged for additional follow-up.*

Status

At the time of our follow-up, the Ministry had not yet ensured that payments start within the prescribed time period and that all information necessary to determine the correct amount of benefits is on file. However, it has begun hiring an additional 120 new front-line staff and has provided extensive training for staff, which over time should help in these regards.

The Ministry has also implemented a new standardized file review process using standardized checklists and tracking tools, to help determine compliance with program requirements.

With regard to the special dietary allowance, the Ministry undertook a forensic audit to determine the extent of possible misuse of the allowance, which corroborated many of the findings in our *2009 Annual Report*. In March 2010, the government announced plans to eliminate the special dietary allowance and create a new medically based nutritional supplement program for social assistance recipients with severe medical needs that would be administered by the Ministry of Health and Long-Term Care. However, in November 2010, the government announced that the special dietary

allowance would continue, but would be revised to comply with an earlier order of the Human Rights Tribunal of Ontario and to address the recommendations of an expert committee.

The changes to the administration of the special dietary allowance, which took effect in April 2011, included the following:

- removing conditions that the expert committee found to not require a special dietary allowance;
- revising the application form to require recipients to consent to the release of relevant medical information by their physician to support their application;
- requiring ODSP recipients to reapply for the special dietary allowance, which has resulted in a drop of about 23,000 cases receiving the allowance, or a funding impact of about \$2 million per month;
- filing complaints with the College of Physicians and Surgeons where deemed appropriate; and
- confirming that ODSP staff have the legislative authority to determine eligibility for the allowance, including the authority to request additional information or deny an application in cases where the information provided is believed to be false or incorrect.

In addition, the Ministry began to use its information technology system to help identify questionable trends in a timely manner so that appropriate action could be taken to limit potential abuse.

These changes will improve the administration of the special dietary allowance as long as the Ministry ensures that all staff are complying with them.

OVERPAYMENTS

Recommendation 8

To better utilize its limited resources and help maximize the recovery of Ontario Disability Support Program overpayments, the Ministry of Community and Social Services should:

- devote more efforts to minimize overpayments in the first place, given the limitations in recovering significant overpayments from active and inactive recipients;
- ensure that overpayments from inactive accounts are transferred to, and followed up on by, the Ministry's Overpayment Recovery Unit on a timelier basis, with emphasis on accounts that are considered to have the most potential for repayment; and
- assess the validity and collectibility of outstanding overpayments designated as temporarily uncollectible and, where warranted, recommend that they be written off so that attention can be focused on those accounts where collection efforts are likelier to yield results.

Status

The Ministry advised us that in an attempt to minimize overpayments, it has enhanced its information technology system to include a new Benefit Unit Entitlement Report. The report provides a detailed history of a recipient's entitlements, program eligibility details, and overpayments, which will make it easier for staff to understand why the overpayment occurred and to verify the amount. The Ministry expects that the use of this report will assist staff in making more timely eligibility assessments and detecting issues earlier, thereby helping to minimize overpayments. Full-day training was also provided to staff on overpayment processes and referrals to the Overpayment Recovery Unit (ORU).

The Ministry informed us that it has made some improvements to help ensure that overpayments from inactive recipients are transferred to, and followed up on, by the ORU on a timelier basis. For example, it has begun to electronically transfer overpayments to the ORU, allowing for a more timely transfer of data between the two offices and reducing the time spent on manual data entry. In addition, the ORU now accepts payment by pre-authorized debit, to make it easier and faster for payments to be made and reduce the frequency of paper payments and dishonoured payments. The

ORU has also increased its own efficiency to free up staff to focus more on collection efforts—by, for example, combining notification letters to reduce the referral time to the Canada Revenue Agency, and enhancing its database to eliminate some labour-intensive processes.

With regard to assessing the validity and collectibility of overpayments and writing off those that are warranted, the Ministry established the Social Assistance Overpayment Recovery Working Group in February 2010 to thoroughly review its overpayment policies and recovery practices, to research industry standards, and to develop strategies for improving the Ministry's current collection efforts. A report was issued in December 2010 and an implementation plan was subsequently developed that resulted in, among other things, the writeoff of approximately \$118 million in uncollectible overpayments. The writeoff of these uncollectible accounts should allow the Ministry to better focus its collection efforts on accounts that have a better chance of being collected.

Then in March 2011, the Ministry undertook a review of the collectibility of the remaining overpayments to determine if further accounts could be written off, but at the time of our follow-up no additional accounts had been written off.

CASE MANAGEMENT

Workload

Recommendation 9

To ensure that Ontario Disability Support Program caseworkers can effectively carry out their responsibilities, the Ministry of Community and Social Services should:

- assess caseworkers' responsibilities and work processes to establish reasonable caseload benchmarks in each of the 44 local offices; and
- strengthen efforts to monitor sick leave and set targets for reducing absenteeism to more reasonable levels.

Status

At the time of our follow-up, the Ministry had not yet established reasonable caseload benchmarks for each of its local offices. However, it advised us that in order to effectively manage growing caseloads, to enhance program integrity, and to improve customer service, a new service delivery and staffing model was implemented in January 2011. Before the new model was implemented, new province-wide business processes were released and extensive training was provided. The new model included the reorganization of the core ODSP positions and the addition of 120 new front-line staff, which should help the Ministry to equalize its caseloads across its local offices. The Ministry was in the process of recruiting across the province to fill these new positions. The Ministry has also developed a

new Operational Indicators Report, which provides management with information on caseloads and assists in decision-making.

With regard to strengthening efforts to monitor sick leave and set targets for reducing absenteeism, the Ministry informed us that it has adopted a case management approach to managing staff attendance, which involves meeting with staff when they have incurred six sick days and using monthly reports to monitor sick days taken and to identify sick-leave issues. The Ministry provided us with updated statistics on sick days for the three regions whose sick-leave averages for 2008, as noted in our 2009 audit, were more than 20 days; the average for those three regions for 2009 had been reduced to 15 days per year.

Ontario Research Fund

Follow-up on VFM Section 3.10, *2009 Annual Report*

Background

The Ontario Research Fund (Fund) was created in 2004 to “support scientific excellence by supporting research that can be developed into innovative goods and services that will boost Ontario’s economy.” The Ministry of Research and Innovation (Ministry), itself created in 2005, is responsible for the Fund, which focuses on activities that support Ontario’s knowledge economy and create high-value jobs.

The Fund makes grants to cover the direct and indirect operational costs of research through its Research Excellence Program. It supports the capital costs of research through its Large Infrastructure Program and Small Infrastructure Program.

Total spending on these programs in the seven years between the Fund’s inception in 2004 and the end of the 2010/11 fiscal year was \$569 million (\$303 million in the five years from 2004/05 through 2008/09), with total announced program commitments from 2004/05 through 2010/11 of \$1.077 billion (\$623 million from 2004/05 through 2008/09). The Ministry has approximately 15 staff involved in delivering these programs.

In our 2003 audit of the Science and Technology Division of the former Ministry of Enterprise, Opportunity, and Innovation, we reported significant concerns about the lack of effective governance and accountability mechanisms. The

consolidation of operating and capital research funding into one program managed and administered by the Ministry helped address these concerns. However, in our *2009 Annual Report*, we noted that there were still a number of areas that required improvement.

Some of our most significant observations were as follows:

- The Fund’s overall mandate emphasizes the support of research that will provide economic and social benefits for the people of Ontario through the commercialization of such research. However, most of the \$623 million committed to projects at the time was for basic theoretical research that was not focused on commercial potential.
- The Ministry measured the performance of its projects against three targets: the dollar value of investments made by the private sector, the number of individuals with enhanced skills involved in its projects, and the number of active licences for intellectual property rights resulting from Ministry-funded projects. However, it did not measure the Fund’s contribution to the overall goal of creating high-paying jobs and commercializing research.
- The Ministry based its Large Infrastructure Program funding decisions on the decisions of the Canada Foundation for Innovation (CFI). As a result, we noted that the Fund granted \$41.5 million to projects that did not directly support Ontario’s strategic priorities.

- The Ministry relied on the CFI to monitor Research Infrastructure Program grants and did not sufficiently assess or review the CFI's work to ensure that funding commitments worth more than \$300 million at that time were being spent for the approved purpose.
- Ontario's colleges tend to focus on applied programs and research, and on helping small- and medium-sized businesses develop technologies and processes for the marketplace. However, the Fund had awarded no grants directly to colleges. It was our view that the Ministry should assess the potential benefits of applied-research projects that address both the unique needs of Ontario's colleges and offer enhanced commercialization potential.
- The Ministry received reports from grant recipients as part of the monitoring process for the Research Excellence Program. However, we found that the Ministry performed no formal monitoring of these reports to ensure that program funds were being spent for the intended purpose.

Status of Actions Taken on Recommendations

According to information received from the Ministry of Research and Innovation (Ministry), some progress was made on implementing all of the recommendations in our *2009 Annual Report*, with substantial progress being made on several, including:

- implementation of a new process called the Ontario First approach to ensure that research infrastructure projects co-funded with the federal Canada Foundation for Innovation (CFI) provide strategic benefits to Ontario;
- launch of the Fund's College-Industry Innovation Fund to provide co-funding with the CFI

to meet the research infrastructure needs of Ontario colleges; and

- development of a computer system called eRIMS to improve the accountability and transparency of the grant application, adjudication, and contract-management processes.

For some recommendations, further progress will depend on data collection and reporting of new proposed performance measures in late 2011 and early 2012, and the development of an information-sharing agreement with the CFI that sets out the responsibilities of each party in sharing monitoring, audit, and site-visit reports. The current status of action taken on each of our recommendations is as follows.

PROGRAM OBJECTIVES, BENEFITS, AND REPORTING EFFECTIVENESS

Program Objectives

Recommendation 1

To ensure that the Ontario Research Fund (Fund) program supports the Ministry of Research and Innovation's (Ministry's) overall strategy of job creation and is consistent with the Fund's commercialization objective, the Ministry should place more emphasis on funding projects that have viable commercial potential.

Status

The Ministry informed us that it continues to emphasize commercial potential as one of the key assessment criteria for research proposals, although it has implemented no new project-application policies and procedures.

Proposals under the Research Excellence Program are formally evaluated by peer-review panels that include at least two commercialization experts who help assess each application's market potential, while technology-development proposals for the Large Infrastructure Program must provide commercialization plans. The importance of potential commercialization has also been reiterated in program guidelines and project contracts.

The Ministry indicated that it does not formally track the percentage of funds granted under the Research Excellence or Research Infrastructure programs that have commercial value. However, it continues to collect and report preliminary data on patents granted, new and active licences established, and spinoff companies created. The Ministry also collects anecdotal evidence of commercialization in the form of success stories shared by researchers.

In 2011, the Ministry began to evaluate a revised annual progress report for projects under the Research Excellence Program intended to capture more information on commercialization achievements, including the number of spinoff firms created and new employees hired. As more data becomes available, the Ministry plans to perform more in-depth analysis of research projects to compare actual commercialization activity with intended goals.

Benefits of Research Projects

Recommendation 2

To better promote the commercialization of research done at Ontario's publicly funded research institutions and ensure that the social and economic benefits of the research are retained in Ontario, the Ministry of Research and Innovation should continue to review best practices for intellectual property management in other jurisdictions and, on the basis of the best practices identified, implement consistent guidelines for the management of intellectual property across Ontario's publicly funded research institutions.

Status

The Ministry informed us that, in December 2010, it consulted with Industry Canada to share information on effective practices in the field, and it researched intellectual-property ownership models at Ontario universities. As part of the study, the Ministry also examined other jurisdictions in Canada and the United States to identify best practices in this field.

The Ministry concluded from its research that approaches vary widely among universities, with no consensus as to what works best. The study also noted that there is no clear link between intellectual-property ownership policy and the rate of commercialization of research at universities. The Ministry informed us that it concluded from its research that no single approach is ideal for all situations, so it has implemented no standard guidelines in this area. However, the Ministry continues to talk to its federal and provincial counterparts, and plans to encourage the development of intellectual-property models and approaches that will maximize the benefits to Ontario.

Measuring and Reporting on Program Effectiveness

Recommendation 3

To improve its accountability to the public and its ability to measure the results being obtained for the grants provided by the Ontario Research Fund (Fund), the Ministry of Research and Innovation should:

- *develop program-specific measures, targets, and benchmarks to assess the Fund's contributions to its overall goals of supporting job creation and the commercialization of research; and*
- *periodically report to the Legislature and the public on the achievement of these measures.*

Status

In 2010, the Ministry engaged a consultant to assess the performance of many of its programs and their contribution to job creation in Ontario. The report found that more than 7,000 jobs created in Ontario were attributable directly or indirectly to the Fund since its inception in 2004, although the report noted that there were gaps in the Ministry's data. The report further indicated that bigger programs like the Fund contribute proportionately more to job creation than smaller ones.

In 2011, the Ministry contracted an independent research firm to collect and analyze the information needed to assess the long-term outcomes of

Ministry-funded programs, including the Fund. As part of the study, the firm sent an on-line questionnaire to 1,274 researchers and companies, and followed up with 129 interviews with senior representatives of organizations that received direct or indirect funding through ministry programs. The study noted some key findings attributable to ministry funding, including:

- significant research discoveries or technology developments, such as a new process, product, or service;
- the number of jobs created, with the proportion that were high-paying and low-paying, and the proportion of high-skilled versus low-skilled; and
- the number of spinoff companies created.

The Ministry anticipates that the proposed performance measures derived from the study will be implemented in fall/winter 2011/12.

PROJECT SELECTION

Research Excellence Program

Recommendation 4

To ensure that the Research Excellence Program follows a selection process that is not only fair and transparent but promotes the program's goals, the Ministry of Research and Innovation should ensure that all approved proposals meet program-eligibility requirements.

Status

The Ministry informed us that the Fund will no longer support projects that fail to meet eligibility requirements. In 2009, for example, the Ministry excluded two high-performance computing projects because they did not meet the Research Excellence Program's eligibility requirements. Although the projects were important to Ontario researchers, the Research Excellence Program's Advisory Board recommended that the Program was not the best mechanism for funding such projects and suggested, instead, a separate process to fund proposals that do not strictly meet the Program's eligibility

requirements. The Minister upheld the Board's recommendation, and the Ministry provided short-term funding to these projects through a special request to Treasury Board.

The Ministry is currently reviewing options for the most cost-effective ways to fund projects like the high-performance computing platforms. A report outlining the different options for funding and delivery of such projects, with recommendations on preferred approaches, was expected for fall 2011. In addition, the Ministry reiterated in updated program guidelines on its website that projects such as the high-performance computing platforms are ineligible for Ontario Research Fund/Research Excellence support.

Research Infrastructure Program

Recommendation 5

To ensure that projects funded by the Research Infrastructure Program are economically beneficial to Ontario, the Ministry of Research and Innovation should:

- only fund projects that are highly aligned with Ontario's priorities; and
- consider funding projects that have not applied to, or received funding from, the Canada Foundation for Innovation, if they offer significant benefits to Ontario.

Status

In 2009, the Ministry implemented an Ontario First approach to funding decisions for the Large Infrastructure Program, under which it no longer automatically matches CFI investments. Instead, funding decisions are now based on a proposal's strategic benefits to Ontario and its scientific merits. The Ministry will co-fund projects only where provincial and federal priorities are aligned.

The Ministry established five expert strategic review panels in various sectors such as health sciences and clean technologies to review and assess the strategic value of 172 funding requests in 2009. Each panel consisted of 10 experts from the

academic and business communities who in their recommendations for project funding considered CFI expert-committee reports. To help guide panel reviews, the Ministry also provided assessment forms requiring panellists to consider key issues relating to the strategic value to Ontario of the proposals. Panels were asked to group proposals into priority categories and on the basis of that advice, the Fund's Advisory Board made funding recommendations to the Minister, who made the final approvals.

As a result of the new Ontario First approach, the Ministry provided \$243.3 million in funding to priority projects for Ontario in the 2009 infrastructure competition. The Ministry also funded four projects that did not receive CFI funding but were a priority for Ontario, and it chose not to fund seven proposals that received CFI assistance because they did not rank as high as others in terms of strategic benefit to Ontario.

In addition, the Ministry informed us that it formed a working group to provide feedback on ways to improve the Ontario First process in 2012 for future large infrastructure competitions, and to continue to ensure that Ontario derives a strategic benefit from all research infrastructure projects that get provincial funding.

Colleges and Smaller Institutions

Recommendation 6

To ensure that the Ontario Research Fund selection process is accessible to all eligible applicants, and to help meet the program's overall goal of commercialization of research, the Ministry of Research and Innovation should work with colleges, smaller institutions, and federal research agencies to ensure that the specific requirements and infrastructure needs of Ontario colleges and smaller institutions that focus on applied research are given appropriate consideration.

Status

The Ministry informed us that it communicated with all 24 Ontario colleges and with their advo-

cacy organization as part of its funding selection process for the Research Excellence Program. The Ministry also launched its College-Industry Innovation Fund (Innovation Fund) program to provide co-funding (\$10 million) with a similar CFI program. The Innovation Fund's purpose is to bolster the capacity of Ontario colleges to support businesses by providing an industry-relevant research infrastructure that fosters partnerships with the private sector.

The Ministry said that it invited all colleges to information sessions about the Innovation Fund competition in 2011, and encouraged them to seek assistance from the Ministry for their applications. The Ministry also set up a website to inform colleges of program details. Notices of intent to apply to this fund were to be submitted for the first time in June 2011, and 14 colleges submitted applications.

In addition, the Ministry informed us that two college representatives were appointed to the Ontario First Working Group, alongside two from the Ontario Council on University Research and two from the Council of Academic Hospitals of Ontario. The Working Group provided input on the adjudication process to be used in the 2012 Large Infrastructure Program competition.

The Ministry also indicated that it will continue to look for ways to strengthen research capacity in colleges and smaller institutions. In 2009, for example, it committed \$10.2 million over three years to the Colleges Ontario Network for Industry Innovation (Network) to allow it to expand to 20 colleges from 10. The Network, founded in 2006, began as an applied research and development network of leading post-secondary institutions with a goal to help small- and mid-sized enterprises solve technical problems, adapt new technologies for the marketplace, and develop new or improved products and processes.

In the most recent round of Ontario Research Fund proposals, there were seven funding submissions from colleges—five for the Large Infrastructure Program (October 2008) and two for the

Research Excellence Program (October 2010). One of these seven submissions was selected, and the college received funding for its proposal.

PROJECT MONITORING

Research Excellence Program

Recommendation 7

To ensure that Research Excellence Program grants are used for the purposes intended and that project performance is effectively monitored, the Ministry of Research and Innovation should:

- *implement a process to identify and follow up on projects that are not reporting quarterly as required;*
- *perform routine, formal monitoring visits to verify the information submitted by grant recipients, to ensure that program funds are being used for the approved research and that research milestones have been met; and*
- *develop clear guidelines for what independent audits are expected to accomplish and report, ensure that audit reports are received when due, and follow up on issues they identify on a timely basis.*

Status

The Ministry informed us that it established a working group for the Research Excellence Program to conduct a review of program systems, including guidelines, contracting, and project-management processes, to improve expenditure management and accountability.

The Ministry also advised us that a Contract Management Tool (CMT) has been implemented in its research-awards database to assist with the management and monitoring of contract compliance of all Research Excellence projects. The CMT was incorporated into the approvals process for program reporting in mid-2010 and provides a mechanism for collecting financial and performance information over the life of a project. This will enable quick identification of projects that are not meeting contracted reporting dates so that program

staff can take follow-up action. To date, CMT reports have been used to ensure that the Program receives quarterly requests for payments from recipients, and to track the amounts paid out.

The Ministry also informed us that it makes site visits to funded projects, but there is currently no formal process or schedule regarding these visits. The development of a formal process is to be discussed as part of a business transformation project that is currently under way.

In addition, the Ministry indicated that it continues to work with its internal audit department on implementing strengthened program-monitoring processes, including at least two audits each year of selected recipients that receive a large number of grants. In May 2011, the Ministry released the first such audit report of two funding recipients, including responses from the recipients. The audits found that there was generally adequate governance over contracts, and that recipients complied with contract terms and with the government's transfer-payment accountability directive. The audits also noted areas for improvement, including program monitoring and timeliness of project reporting.

Research Infrastructure Program

Recommendation 8

To more effectively monitor Research Infrastructure Program grants and ensure adequate co-ordination of oversight processes with the Canada Foundation for Innovation (CFI), the Ministry of Research and Innovation should:

- *periodically obtain and review the CFI monitoring reports and audits for selected larger Ontario-funded projects to ensure that provincial funds are being used for their intended purpose and funded institutions comply with program policies and guidelines;*
- *assess the need for ministry staff to conduct site visits, especially on the larger projects; and*
- *establish a formal agreement with the CFI that clearly defines the roles and expectations of each*

party in the oversight processes for co-funded projects.

Status

In May 2011, ministry and CFI staff met to discuss creation of a formal information-sharing agreement for project oversight. They planned to develop an agreement to set out the responsibilities of each organization in sharing of monitoring, audit, and site-visit reports. The Ministry planned to have a memorandum of understanding in place with the CFI by December 2011, at which time it expected to regularly obtain and review audit and monitoring reports, and collaborate with the CFI on site visits. The Ministry and its internal audit department have also been discussing greater Ministry–CFI co-operation, including a review of past projects audited by the CFI to look for possible gaps in CFI monitoring. The Ministry expected to begin receiving audit reports from the CFI in fall 2011.

PROGRAM ADMINISTRATION

Information Systems

Recommendation 9

To ensure that the Ministry of Research and Innovation has the information needed to effectively oversee its Ontario Research Fund program, its information system should provide ministry staff with timely program-level and project-specific information.

Status

The Ministry informed us that it launched the Electronic Research and Innovation Management System (eRIMS) project in November 2009 to implement an electronic grants-management system. The system aims to enhance customer service and improve the accountability and transparency of the grant application, adjudication, and management process.

The Ministry indicated that the scope of the project includes automation or streamlining of the following grant-management processes:

- application submission, allowing applicants to complete and submit application forms on-line;
- application eligibility processing;
- peer-review management;
- application adjudication and selection;
- timely communication of key decisions;
- contracts and payment authorizations;
- disbursement and report-back requirements; and
- project management, including project budgeting, accounting, information management, and performance measurement.

The Ministry informed us that it selected the Premier’s Discovery Awards program as the pilot program for eRIMS to test the processes using transactions from an actual project. According to the Ministry, some core functionality issues discovered during the pilot have been resolved and as of August 2011, the application was in the final testing stage. After the completion of testing, the Ministry will roll out the system for its Premier’s Discovery Awards program, with more programs to be added shortly thereafter.

Private-sector Partner Contributions

Recommendation 10

To provide assurance that in-kind private-sector contributions are fairly valued, the Ministry of Research and Innovation should:

- ensure that grant recipients comply with the policies adopted for the program to assess the value of in-kind contributions; and
- periodically verify that independent valuations of substantial in-kind contributions have been performed to support values reported by grant recipients.

Status

The Ministry advised us that it removed from the Research Excellence Program guidelines a reference to CFI policy on the valuation of in-kind contributions. It also published more specific

guidelines on how to determine the value of some eligible in-kind contributions, and defined others that are ineligible.

The Ministry informed us that it continues to assess in-kind contributions from private-sector partners during the contracting process, as it did at the time of our 2009 audit. However, it has stated more clearly in its latest guidelines the level of detail required in supporting documents.

With regard to the Research Infrastructure Program, the Ministry continues to rely on CFI due diligence to ensure that reliable valuations are done in accordance with the federal guide on the audit of contributions. Although it has not reviewed CFI work in this area, the Ministry was working with the federal organization on a new agreement about verifications.

After consulting stakeholders, the Ministry concluded that requiring third-party verifications would be unreasonable, given that it can be difficult to find the appropriate expertise and that obtaining such verifications is often prohibitively expensive relative to the funding provided.

Instead, the Ministry relies on the institutions and their private-sector partners to justify how they determined the value of in-kind contributions. The Ministry has indicated that it requires the institutions to provide support to justify the value of all in-kind contributions, regardless of the amount. An institution must, for example, attest to the fact that the valuations for services from its staff are based on actual salaries and benefits of those staff.

Ontario Works Program

Follow-up on VFM Section 3.11, *2009 Annual Report*

Background

Under the *Ontario Works Act, 1997*, the Ministry of Community and Social Services (Ministry) provides income and employment assistance to 260,000 individuals who are unemployed, along with their qualifying family members for a total of approximately 474,000 people. The income assistance is intended to help recipients with basic living expenses such as food, clothing, and shelter, while the employment assistance includes a variety of activities designed to increase employability and help recipients obtain paid employment in order to become self-reliant. For the 2010/11 fiscal year, the Ministry's Ontario Works expenditures totalled over \$2.4 billion—\$2 billion for income assistance, \$189 million for employment assistance, and \$247 million for program administration (\$1.9 billion in 2008/09—\$1.5 billion for income assistance, \$171 million for employment assistance, and \$194 million for program administration).

The Ontario Works program is delivered on behalf of the Ministry by 47 Consolidated Municipal Service Managers and District Social Services Administration Boards as well as 101 First Nations, all referred to as service managers. A service manager is typically either a large municipality or a grouping of smaller ones, and each is accountable to one of the Ministry's nine regional offices. The Ministry and the service managers share the total

financial and employment assistance costs of the Ontario Works program. The Ministry, which currently pays 81% of these costs, has committed to start gradually increasing its share in 2010 until it pays 100% in 2018. Administrative costs will continue to be shared on a 50/50 basis.

In our *2009 Annual Report*, we noted that although the Ministry had implemented a number of the recommendations contained in our last audit of the program in 2002, there had been limited improvement in the overall administration of the program since that time. It remained our view that the Ministry still had inadequate oversight and assurance that only eligible individuals received the correct amount of financial assistance.

Our more significant concerns about the Ministry's oversight of Ontario Works program delivery by the service managers, noted in our *2009 Annual Report*, included the following:

- During the Ontario Works application process, service managers relied on individuals to provide almost all of the information used to assess their eligibility for assistance and seldom undertook the required third-party verifications designed to help assess the completeness and accuracy of the information provided by applicants.
- Benefits for such things as community and employment start-up activities were often paid without any evidence that the activity had occurred and in amounts that exceeded the established maximums.

- The total amount spent on the special dietary allowances had increased from \$5 million in the 2002/03 fiscal year to more than \$67 million during 2008/09, and we noted that many special dietary allowances were being paid under questionable circumstances.
- Unrecovered overpayments to about 350,000 current and former Ontario Works recipients had increased 45%, from \$414 million in February 2002 to \$600 million as of March 31, 2009. Efforts by service managers to recover these overpayments had been minimal, possibly owing to the lack of financial incentive for them to do so.
- Many tips from the fraud hotline had been either inadequately investigated or ignored.
- The Ministry did not have enough information to assess whether employment assistance funds were being used as intended and were helping people obtain employment.
- The Ministry's examination of a sample of service managers' reimbursement claims for the Ministry's share of program costs did not occur annually as required, nor did the examinations ensure that submitted claims were complete, accurate, and based on actual payments made to assistance recipients.

Despite improvements to the Ministry's Service Delivery Model Technology (SDMT) information system, which has been used by service managers to deliver the Ontario Works program since 2002, we continued to have concerns about the system's reliability and its known deficiencies.

Status of Actions Taken on Recommendations

In our 2009 report on the Ontario Works program, the Ministry agreed with all of our recommendations, and in its responses to our recommendations indicated that it was going to take the necessary

corrective actions. At the time of our follow-up, the Ministry had several initiatives under way, such as a new monitoring framework to assist with program oversight and compliance with program requirements, a new IT system, and a new system to prioritize high-risk cases for review to help ensure that only eligible recipients continue to receive assistance. However, it will take more time before the initiatives can be fully implemented. In addition, in November 2010, the government announced the launch of a major review of the social assistance programs in Ontario. However, insufficient monitoring of service managers remains a concern. Consequently, the Ministry does not yet have adequate assurance that, for example, recipients are financially eligible for Ontario Works benefits, either initially or on an ongoing basis, and that payments are being made in the correct amount. The Ministry has made a significant effort to enhance controls over the special dietary allowance and improve processes for the recovery of overpayments, and has implemented a new funding model.

The status of actions taken on each of our recommendations at the time of our follow-up was as follows.

MINISTRY OVERSIGHT AND CONTROL OF PROGRAM DELIVERY

Initial Financial Eligibility Assessment

Recommendation 1

To ensure that an individual's initial financial eligibility for Ontario Works benefits is adequately determined and that the correct amount of assistance is paid, the Ministry of Community and Social Services should make certain that Consolidated Municipal Service Managers:

- visually verify documents or obtain copies of all documents required to establish an individual's identity and legal status in Canada, especially Social Insurance Number cards; and
- comply in all cases with the requirement to verify an applicant's declared income and

assets with the third parties who have entered into information sharing agreements with the Ministry.

Status

The Ministry had made limited progress in addressing this recommendation at the time of our follow-up. However, over the longer term, the Ministry informed us that it expects to improve its oversight of service managers by developing a new, more effective social assistance computer system, to be implemented by April 2013, and by introducing a risk-based monitoring framework, which is expected to be rolled out in April 2012.

As an interim strategy, the Ministry conducted compliance reviews using a risk-based approach at all Ontario Works delivery sites during the first half of 2011 to evaluate compliance with legislation, regulations, and policy directives. These reviews targeted the following high-risk program areas, selected on the basis of the findings in our 2009 report: intake and application, overpayments, discretionary benefits provided to recipients, and participation agreements. However, the outcome of these reviews was not available at the time of our follow-up.

The Ministry also told us that it has provided optional training to service manager staff on the Equifax credit reports—a third-party verification procedure—to assist them with reading and understanding the reports. In addition, the Ministry amended the Ontario Works policy directives to strengthen its requirements regarding third-party verifications.

Financial Eligibility Reassessments

Recommendation 2

To ensure that recipients continue to be financially eligible for Ontario Works benefits and to avoid overpayments, the Ministry of Community and Social Services should make certain that Consolidated Municipal Service Managers:

- *complete financial reassessments on each recipient at least once every 12 months as required;*
- *use the Ministry-prescribed checklist when conducting a financial reassessment and obtain sufficient documentation, including third-party verifications, to support the outcome of the review; and*
- *help ensure that the risk flags in the Service Delivery Model Technology system are effective and are used to prioritize high-risk cases for review.*

Status

As already noted, the Ministry advised us that it is developing a new, more effective computer system, to be implemented by April 2013, and a risk-based monitoring framework to strengthen program monitoring and compliance with legislation, regulations, and policy directives, which is expected to be rolled out in April 2012. When implemented, these new initiatives are expected to help identify areas of non-compliance with program requirements, which will provide a basis for taking corrective action. Until then, the Ministry has no assurance that service managers are completing financial reassessments on each recipient at least every 24 months as currently required or that they are using the Ministry-prescribed checklist and obtaining sufficient documentation, including third-party verifications, in order to support the outcome of the review.

With regard to our recommendation on prioritizing high-risk cases for review, the Ministry informed us that it has developed a new risk-based eligibility reassessment process in conjunction with Equifax Canada, called the Eligibility Verification Model. This new model is expected to assist in the identification and prioritization of high-risk cases for eligibility reviews by linking Ontario Works data with Equifax consumer credit databases. Testing of the new process began in October 2010, but it had not yet been implemented at the time of our follow-up.

Other Income Reporting

Recommendation 3

To ensure that financial assistance provided by Ontario Works is in the correct amount and to minimize overpayments, the Ministry of Community and Social Services should make certain that Consolidated Municipal Service Managers receive a monthly income report from each recipient, unless they waived the requirement for sound reasons that are documented on file. If it is the Ministry's intention that Consolidated Municipal Service Managers require the report on an exception basis only, that should be more clearly communicated.

Status

The Ministry informed us that it has reviewed and revised its income reporting directive to clarify and provide examples of conditions where the monthly reporting requirement can be waived, and to strengthen the documentation requirements to now include current income at the time of the waiver, the length of time the waiver is to be in place, and the need to review the waiver on a regular basis. However, without conducting any follow-up or verification reviews at the service managers, these revisions, in themselves, do not provide assurance to the Ministry that the required monthly income reports are now being received on a consistent basis.

Other Financial Assistance and Benefits, and Special Dietary Allowance

Recommendation 4

To ensure that supplemental financial assistance and benefits provided under the Ontario Works program are reasonable and appropriate, the Ministry of Community and Social Services should make certain that Consolidated Municipal Service Managers:

- *comply with the requirement to document the need and eligibility for supplemental financial assistance and benefits, and provide such assistance and benefits within the established maximum amounts; and*

- *obtain the required documentation to assess and substantiate the reasonableness of costs reimbursed.*

In addition, the Ministry should review the special dietary allowance with a view to limiting its possible abuse.

Status

As mentioned previously, as a long-term strategy, the Ministry expects that the new social assistance computer system and risk-based monitoring framework it is developing will strengthen program monitoring of legislative, regulatory, and policy requirements. In the interim, the Ministry completed compliance reviews targeting high-risk program areas identified in our 2009 report, including supplementary benefits provided to recipients. However, the outcome of these reviews was not available at the time of our follow-up.

With regard to the special dietary allowance, the Ministry undertook a forensic audit to determine the extent of possible misuse of the allowance, which corroborated many of the findings in our *2009 Annual Report*. In March 2010, the government announced plans to eliminate the special dietary allowance and create a new medically based nutritional supplement program for social assistance recipients with severe medical needs that would be administered by the Ministry of Health and Long-Term Care. However, in November 2010, the government announced that the special dietary allowance would continue, but would be revised to comply with a previous order of the Human Rights Tribunal of Ontario and with the recommendations of an expert committee.

The changes to the administration of the special dietary allowance, which took effect in April 2011, included the following:

- removing from the list of eligible conditions those that the expert committee found to not require a special dietary allowance;
- revising the application form to require recipients to consent to the release of relevant

medical information by their physician to support their application;

- requiring Ontario Works recipients to reapply for the special dietary allowance, which has resulted in a drop of about 14,500 cases receiving the allowance, or a funding impact of about \$2.6 million per month;
- filing complaints with the College of Physicians and Surgeons where deemed appropriate; and
- confirming that service managers and their staff have the legislative authority to determine eligibility for the allowance, including the authority to request additional information or deny an application in cases where the information provided is believed to be false or incorrect.

In addition, the Ministry began to use its IT system to help identify questionable trends in a timely manner so that appropriate action could be taken by service managers.

Although these changes are intended to improve the administration of the special dietary allowance, the Ministry will still need to monitor the service managers to ensure that they are complying with the new requirements in order to limit potential abuse of the allowance.

Overpayments

Recommendation 5

To better utilize its limited resources and maximize the recovery of previous overpayments, the Ministry of Community and Social Services should:

- *ensure that Consolidated Municipal Service Managers assess the collectibility of all outstanding overpayments—particularly those designated as temporarily uncollectible—and, where warranted, recommend that the overpayments be written off so that more focus can be placed on those accounts where collection efforts are more apt to yield results; and*
- *evaluate the merits of the 2006 pilot project that transferred some overpayments to the Ministry's*

Overpayment Recovery Unit and, if necessary, consider implementing other alternatives for bringing a more intensive and focused collection effort to bear on those inactive accounts that have a greater likelihood of collection.

Status

In February 2010, the Ministry established the Social Assistance Overpayment Recovery Working Group to thoroughly review its overpayment policies and recovery practices, to research industry standards, and to develop strategies for improving the Ministry's collection efforts. This group also reviewed the 2006 pilot project involving the Ministry's Overpayment Recovery Unit (ORU).

The working group issued a report in December 2010 and an implementation plan was developed for, among other things, the writeoff of uncollectible overpayments. A review was then undertaken of existing overpayments and, as a result, certain overpayments deemed to be uncollectible were recommended for writeoff. At the time of our follow-up, the majority (about \$80 million worth) of these uncollectible accounts had been written off. The writeoff of these uncollectible accounts should allow the Ministry and service managers to better focus their collection efforts on accounts that have a better chance of being collected.

The working group also reviewed the operations of the ORU in the 2006 pilot project and the results it achieved, and recommended that the program be expanded to all service managers, since the amounts collected exceeded the cost of the collection efforts. It also recommended improvements aimed at achieving more effective and cost-efficient results, such as having a common IT system for the service managers and the ORU, and conducting efficiency reviews at both offices to avoid duplication.

Potentially Fraudulent Claims

Recommendation 6

To ensure that only eligible individuals receive financial assistance and that adequate action is taken

when suspected fraud is reported, the Ministry of Community and Social Services should ensure that Consolidated Municipal Service Managers:

- in a timely manner, follow up on all fraud tips and investigate those that appear to be legitimate; and
- where the investigation indicates that a potential fraud has occurred, provide sufficient evidence to justice authorities to enable them to pursue prosecution of the perpetrators.

Status

The Ministry has made limited progress in addressing this recommendation. It advised us that, as a first step, it undertook a review to identify best practices in fraud prevention and detection from other jurisdictions and from its service managers across Ontario, with recommendations being expected in fall 2011.

For cases where an investigation indicates that a potential fraud has occurred, the Ministry is in the process of negotiating a provincial protocol with the Ontario Provincial Police that, when completed, can be used as a model for service managers in developing protocols for referring potential fraud cases to their own local policing authorities.

Participation Agreements

Recommendation 7

To ensure that the Ontario Works program is effective in transitioning recipients to paid employment and self-reliance, the Ministry of Community and Social Services should monitor Consolidated Municipal Service Managers to make certain:

- that participation agreements are on file for all Ontario Works recipients and that each agreement is reviewed and updated every three months as required;
- that the reasons for deferring participation agreement requirements are adequately supported and documented on file;
- that caseworkers assess recipients' skills and experience, and document caseworker input in

determining the most appropriate activities to help recipients transition to financial independence; and

- that the Ministry review the reasonableness of service managers' allowing—often for prolonged periods of time—independent job-search activities as the primary employment assistance activity to nearly two-thirds of all recipients.

Status

The Ministry has not made significant progress to date in addressing this recommendation. It conducted compliance reviews during the first half of 2011 at all Ontario Works delivery sites to evaluate compliance with legislation, regulations, and policy directives, including participation agreement requirements. However, the results of these reviews had not been summarized or reported on at the time of our follow-up.

In addition, the Ministry had not yet addressed our recommendation to ensure that caseworkers assess the skills and experience of recipients to help determine the most appropriate activities for them, nor had it reviewed the reasonableness of letting applicants conduct independent job-search activities over prolonged periods.

Tasks

Recommendation 8

To ensure that Ontario Works benefits continue to be paid only to eligible individuals and in the correct amount, the Ministry of Community and Social Services should monitor whether Consolidated Municipal Service Managers are making reasonable efforts to address all system-identified tasks that require action or follow-up.

Status

The Ministry advised us that it undertook a cleanup exercise for outstanding tasks in its computer system whereby it removed 40% of all open tasks from the system after determining that they were redundant. With regard to new tasks being created, we were also advised that the Ministry

has simplified the programming so that tasks considered unnecessary are no longer generated automatically. However, the Ministry does not currently monitor service managers to determine that they are making reasonable efforts to address all system-identified tasks that require action or follow-up.

Ministry Monitoring of Consolidated Municipal Service Managers

Recommendation 9

To ensure that subsidy claims are reimbursed in the correct amount based on reliable information provided by the Consolidated Municipal Service Managers, the Ministry of Community and Social Services should:

- *conduct at least one subsidy claims examination per service manager annually as required and do so on a timely basis;*
- *make certain that work conducted during subsidy claims examinations is adequately completed and demonstrates whether the claim is based on complete and accurate information about payments to assistance recipients; and*
- *make certain that adequate supporting documentation is submitted by the service managers and reviewed by the Ministry prior to payment.*

Status

The Ministry no longer conducts subsidy claims examinations but is currently developing a risk-based framework to help strengthen program monitoring and compliance with legislation, regulations, and policy directives, which is expected to be rolled out in April 2012. As part of the new framework, the Ministry plans to use operational reports to monitor program delivery, which will include data related to financial expenditures and subsidy claims. These reports will also be used as inputs to the Ministry's risk assessment to determine whether intervention or corrective action is required.

To assist in making certain that adequate supporting documentation is submitted by the

service managers and reviewed by the Ministry prior to payment, the Ministry was in the process of developing two new guides—a Subsidy Claim Preparation Guide to assist service managers and a Subsidy Claims Approval and Review Guide for ministry staff. These guides were still in draft format at the time we were conducting our follow-up.

Program Administration Costs

Recommendation 10

To ensure that Ontario Works administration is funded equitably across the province, the Ministry of Community and Social Services should:

- *establish more needs-based funding of administrative costs that reflects variations in caseloads; and*
- *obtain better information about actual administrative costs being incurred.*

Status

The Ministry informed us that in April 2011 it implemented a new funding model for Ontario Works with the goal of providing a responsive and equitable approach to funding. This new approach combines Ontario Works administration and employment assistance funding into one allocation, giving service managers the flexibility to determine how best to allocate funding for all aspects of program delivery while simplifying financial reporting. Funding provided to service managers is based on an amount of \$2,016 per case.

We were advised that this new funding must be spent on eligible program delivery costs as outlined by the Ministry, such as staffing, benefits, travel, and the purchase of services for employment assistance activities. In order to help ensure that funds are spent as required, service managers must report quarterly to the Ministry on how the funds were spent, with the amounts broken down by the type of eligible expense. A portion of this funding may be recovered by the Ministry if it is spent on ineligible activities or if it does not achieve expected program outcomes.

Employment Assistance Costs

Recommendation 11

To ensure that employment services are effective in helping recipients find employment and represent value for money spent, the Ministry of Community and Social Services should:

- *assess the effectiveness of the various types of employment assistance being offered by each Consolidated Municipal Service Manager, particularly the independent job search when recipients are assigned to it for long periods of time; and*
- *make certain that all employment assistance funding is spent prudently and for the intended purpose.*

Status

The Ministry has not yet assessed the effectiveness of the various types of employment assistance offered by the service managers, including the appropriateness of independent job search.

As mentioned previously, the Ministry implemented a new funding approach for Ontario Works in April 2011 in which a portion of funding is based on employment outcomes. It combines Ontario Works administration and employment assistance funding into one allocation, giving service managers the flexibility to determine how best to allocate funding for program delivery. Service managers are now required to report detailed information on their eligible expenditures to the Ministry on a quarterly basis, as opposed to providing it only at year-end, as in the past.

Measuring the Performance of the Ontario Works Program and Consolidated Municipal Service Managers

Recommendation 12

The Ministry of Community and Social Services should build on its planned results-assessment for employment assistance funding by developing performance measures that will enable it to evaluate the

effectiveness of the administration of the much larger income assistance aspect of Ontario Works over time.

Status

The Ministry has not yet identified specific performance measures to enable it to evaluate the effectiveness of the program's income assistance component, which accounts for more than 80% of total program costs.

It has, however, developed a quarterly Operational Indicators Report for the service managers to report relevant information to support operational management and decision-making. The report provides a snapshot of the health of social assistance delivery through the use of specific indicators for workload, case management, customer service, accountability, and finance. The goals of collecting this information are to support early detection of problems or operational issues, provide context for perceived trends and anomalies, and identify areas that need more detailed monitoring.

SERVICE DELIVERY MODEL TECHNOLOGY SYSTEM

Recommendation 13

To ensure that Consolidated Municipal Service Managers can rely on systems and reports to produce proper payments, and accurately record and manage information regarding those payments, the Ministry of Community and Social Services should address the Service Delivery Model Technology system deficiencies noted in this report, including those that prevent service manager staff from having the information they need to effectively manage program expenditures.

Status

In November 2009, the government approved the Social Service Solution Modernization Project, which will replace the current system. This new application is intended to provide greater flexibility to respond to policy and program changes, support effective service delivery, and enhance audit and controllership capability. The total cost of the new system is estimated to be \$165 million, plus

maintenance costs of \$37 million up to the implementation date.

According to the Ministry, the project was on track at the time of our follow-up and will be implemented in two phases:

- The first phase is an on-line application for social assistance that was implemented province-wide, excluding the City of Toronto and First Nations communities, in May 2011. The Ministry informed us that the City of Toronto would continue to use its own on-line application until October 2011, at which time it would adopt the provincial system.
- The second phase is the replacement of the current system, which will be implemented in spring 2013.

Social Housing

Follow-up on VFM Section 3.12, 2009 Annual Report

Background

Social housing is rental accommodation developed with government assistance for a range of low- and moderate-income households, including families with children, couples, singles, and seniors. It can be owned by governments, as in the case of public housing, or by non-profit or co-operative organizations. In Ontario, households in social housing that receive a subsidy to help pay rent typically pay a maximum rent equal to about 30% of their total pre-tax income.

Most social housing in Ontario was built between the mid-1960s and the mid-1990s by the Canada Mortgage and Housing Corporation (CMHC) and the provincial government. In December 2000, the province passed the *Social Housing Reform Act, 2000*, which required municipalities to assume responsibility for social-housing programs previously administered by the CMHC and the province. The province designated 47 regional Consolidated Municipal Service Managers (Service Managers) to administer social-housing programs at the local level. At the end of the 2010/11 fiscal year, there were about 260,000 units of social housing in Ontario, consisting of 100,000 public-housing units and 160,000 non-profit and co-operative units, essentially the same numbers as at the time of our *2009 Annual Report*.

Both from a value-for-money perspective and from the perspective of those who live there, it is critical that social housing be maintained in good condition. As well, sufficient and affordable social housing can also have a significant impact on the health and safety of those Ontarians who depend on subsidized housing for a place to call home. However, in our *2009 Annual Report* we reported that the Ministry of Municipal Affairs and Housing (Ministry) collected little information on how well the \$40 billion in social-housing stock was being maintained or whether there was an adequate supply to meet local needs. Our observations included:

- As of December 31, 2008, the number of households on waiting lists for social housing across the province totalled about 137,000. In many urban centres, the average wait time to secure accommodation was more than five years—and one municipality had reported a wait time of 21 years for all categories of tenants except seniors.
- The deteriorating condition of social-housing stock—particularly the public-housing portfolio, whose units were an average of 40 years old—had been a significant and growing concern for municipalities. In 2006, for instance, the Toronto Community Housing Corporation identified immediate capital-repair needs of \$300 million for its 60,000 public-housing units. However, the Ministry had no up-to-date and reliable information on the overall

condition of the social-housing stock on a province-wide basis.

- A large number of the federal government's funding agreements with housing providers would start to expire in 2015, with no guarantee that they would be renewed. Without continued funding, some existing social-housing projects would not be financially viable, even though Service Managers would still be required by law to maintain the prescribed minimum number of housing units. The Ministry had no firm plans to address concerns regarding this possible ending of federal funding.
- In partnership with the federal government, Ontario had in recent years provided Service Managers with some additional funding for new housing programs. There was a general lack of reporting on the success of these programs. For example, although one such program increased the supply of housing, the stipulated rent to be charged for more than half the units would not be considered affordable for households on, or eligible to be on, waiting lists. Better reporting and oversight was needed to ensure that these stimulus investments are spent cost-effectively and achieve the desired results.

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

Status of Actions Taken on Recommendations

On the basis of information provided by the Ministry, we concluded that it had made some progress on all of our recommendations, with significant progress being made on Recommendation 1. The status of action taken on each of our 2009 recom-

mendations at the time of our follow-up was as follows.

PROVINCIAL STRATEGY ON SOCIAL HOUSING

Recommendation 1

To better define and fulfill the province's roles for ensuring sustainable, well-maintained social housing, the Ministry of Municipal Affairs and Housing should:

- *establish a comprehensive strategic plan that includes measurable goals and performance outcomes;*
- *work with municipalities to ensure a co-ordinated and integrated housing strategy within the province, and gather the information necessary to monitor progress on the strategy and on the goals and outcomes established; and*
- *consider requiring all Consolidated Municipal Service Managers to develop local strategic plans, and encourage the sharing of best practices in developing such plans.*

Status

In our *2009 Annual Report*, we found that despite the significant change in the responsibilities for delivery of social housing, there was no provincial strategy to ensure the continued provision of sufficient and well-maintained housing. We also found at the time that the Ministry's latest Results-based Plan, a document that all Ontario government ministries are required to submit to help ensure that their programs achieve the desired outcomes, lacked measurable outcomes for success.

The Ministry agreed with our recommendation and indicated in its response to our *2009 Annual Report* that it had then completed "over 13" public consultations with key stakeholders across the province to initiate the development of a comprehensive housing strategy and to develop social-housing performance measures that all municipalities would be required to report on annually.

The Ministry released its new Long-Term Affordable Housing Strategy (Strategy) in November 2010.

The Strategy included passing legislation that would support a community-centred approach with increased flexibility for adapting to the different needs of local communities and would simplify the rent-geared-to-income calculation process.

The Strategy also included a commitment to work with the Canada Revenue Agency to create an automated income-tax-based system for determining the income of social-housing applicants and tenants. The Ministry further informed us that the Strategy would be supported by a number of performance measures to track progress, including housing measures, affordability indicators, tenant satisfaction surveys, and Service Manager measures to track progress in meeting local needs.

Although draft social- and affordable-housing indicators had been developed for the Ministry's Municipal Performance Measure Program at the time of our follow-up, these measures were still being evaluated to ensure alignment with the new Strategy and to minimize duplication. The Ministry also acknowledged that several other measures were still under development, and that it would take some time working with Service Managers to complete this exercise.

The *Strong Communities through Affordable Housing Act, 2011* (Act) received Royal Assent in May 2011, and most components of the Act will come into force on January 1, 2012. The Ministry informed us that once the Act takes effect, local Service Managers will be required to develop local housing and homelessness plans that address local community priorities and better target housing resources to people in need. The Ministry also indicated that it had developed a new framework for how housing and homelessness plans should support local communities. A regulation under the Act requires that such plans be in place by January 1, 2014.

SUFFICIENT AND WELL-MAINTAINED SOCIAL HOUSING

Recommendation 2

To help provide sufficient social housing efficiently and make the most of available funding, the Ministry of Municipal Affairs and Housing should work with Consolidated Municipal Service Managers to:

- *establish more comprehensive reporting of information on social-housing portfolios and wait times so this can be taken into consideration in addressing the housing needs of individual municipalities;*
- *identify ways to better and more equitably address the issue of lengthy wait times in many municipalities; and*
- *better co-ordinate housing and other support services with other provincial and municipal stakeholders.*

Status

In our *2009 Annual Report*, we noted that since the devolution of housing responsibilities to the municipal level, ministry oversight activities had been minimal, and that the Ministry had little information on the often lengthy wait times for social housing, local vacancy rates, or details regarding the condition of the housing stock. We also noted that there were three provincial ministries that administer more than 20 housing and related programs, and that co-ordination among these programs was often lacking, resulting in a fragmented and often inefficient approach to meeting client needs.

The Ministry indicated in its response to our *2009 Annual Report* that it agreed with our recommendation and would consider it in the development of a new housing strategy. The Ministry also informed us that it would work with municipalities to identify other areas where additional and consistent information was available and could be of use to the Ministry. Furthermore, the Ministry advised us at the time that it would work to develop a consolidated housing service that better co-ordinated its housing and other support services with other provincial and municipal stakeholders.

During our follow-up, the Ministry informed us that once the *Strong Communities through Affordable Housing Act* takes effect, each Service Manager will be required to establish a tenant selection system. The Act provides flexibility for Service Managers to adopt alternatives to the currently predominant first-come, first-served approach. In February 2011, when the Ministry hosted a stakeholder session exploring alternative selection systems, some stakeholders suggested new information and reporting requirements to support such alternatives. The Ministry advised us that it is considering these stakeholder suggestions.

Recommendation 3

To ensure that the housing stock is safe and of acceptable quality and that it will achieve its expected service life, the Ministry of Municipal Affairs and Housing should work with Consolidated Municipal Service Managers to:

- carry out periodic building-condition assessments and ensure that such information is summarized on a province-wide basis; and
- develop an effective funding and financing strategy for raising the capital investment required to reduce the capital maintenance backlog and sustain proper maintenance of housing stock, including consideration of requirements that a capital reserve be established for public-housing stock.

The Ministry should also continue to work with the Social Housing Services Corporation to assess the cost/benefit of implementing modern energy-efficient measures, and facilitate adoption of such measures by housing providers.

Status

In our *2009 Annual Report*, we noted that the Ministry did not have up-to-date and reliable information on the condition of the province's social-housing stock or on the maintenance and asset management practices of its Service Managers. We further noted that the condition of the housing stock had deteriorated over the decade since the devolution of responsibilities to municipalities.

In its response to our *2009 Annual Report*, the Ministry indicated that it had helped establish an Asset Management Centre for Excellence in 2008 to provide support and expertise that social-housing providers could draw upon in maintaining their buildings. It also indicated that most social-housing providers could apply to Infrastructure Ontario for low-cost capital loans under the government's 2008 Poverty Reduction Strategy. With respect to implementing energy-efficient measures, the Ministry further informed us at the time that \$70 million was targeted for renewable-energy initiatives under a new federal-provincial \$704 million Social Housing Renovation and Retrofit Program.

At the time of our follow-up, the Ministry informed us that its Asset Leveraging Working Group was still considering the feasibility and merit of a number of proposals for refinancing and renewing the province's deteriorating social-housing portfolio. In the meantime, the Ministry had allocated \$352 million in the 2009/10 fiscal year and another \$352 million in 2010/11 for renovation and retrofit work. It indicated that these funds, combined with a \$100-million allocation for capital investment in the 2008/09 fiscal year, were intended to have a significant impact on the capital-repair backlog for social housing. The Ministry also updated us on the status of the renewable-energy initiatives, indicating that almost \$73 million had been committed for installation of solar voltaic, geothermal, and solar thermal systems.

FEDERAL FUNDING OF SOCIAL HOUSING

Recommendation 4

To mitigate the possible impact of continuing decreases in federal funding on the supply of social housing, the Ministry of Municipal Affairs and Housing should:

- develop a plan for options, should negotiations with the federal government for continued funding for the social-housing portfolio be unsuccessful;

- *work with Consolidated Municipal Service Managers on alternatives to the current system of maintaining the required number of housing units with an aim to better match the supply of social housing to the demand in each municipality;*
- *review its current methodology to ensure funding allocations are fair and federal funds are spent on eligible housing programs; and*
- *provide a full and public accounting of how all federal funding provided for social housing was spent.*

Status

In our *2009 Annual Report*, we noted that federal government operating agreements with housing providers had begun expiring, with a large number of agreements set for expiry starting in 2015. The federal government at the time provided (and continues to provide) most of the funds for social housing, and has made no commitment to renew this funding as the agreements expired. We further noted that the Ministry had no contingency plan for addressing this issue, and that under the province's *Social Housing Reform Act, 2000*, Service Managers were required to maintain a prescribed minimum number of rent-geared-to-income units regardless of funding. Some Service Managers had also voiced concerns that both the number and composition of housing units they were responsible for had never properly reflected the demographics and housing demands in their local area, and that this disconnect had worsened over the past decade since the province had devolved social-housing responsibilities to municipalities. We also questioned whether the full amount of federal funds provided had actually been spent on social housing as required by the federal–provincial Social Housing Agreement.

In its response to our *2009 Annual Report*, the Ministry indicated that a number of municipal expenditures were being transferred to the provincial level that would free up an estimated \$1.5 billion annually that could be used to respond to social housing and other local priorities. The

Ministry also committed to working with Service Managers to clarify the level of discretion they have to change the composition of their social-housing units and indicated that it would review its current methodology for allocating federal funding. The Ministry further committed to considering how best to report on how federal funding under the Social Housing Agreement was spent.

At the time of our follow-up, the Ministry informed us that it had collaborated on a joint working group with its federal and municipal counterparts to assess the viability of Canada's existing housing stock. The working group's draft report, completed in fall 2010, highlighted concerns over the viability of the existing stock should the federal funding stop and provided a business case for the federal government's consideration of further investments in social housing. Meanwhile, the Ministry's new Strategy commits the province of Ontario to engaging other provinces, territories, and the federal government in creating a framework for long-term, flexible funding for affordable housing.

With respect to federal funding allocations, the Ministry informed us that it was currently reviewing its methodology for distributing these monies. This review is scheduled for completion in March 2012, at which time Social Housing Agreement funding for the 2012/13 through 2017/18 fiscal years is to be finalized and published in the Ontario Gazette.

FUTURE FUNDING INITIATIVES

Recommendation 5

To ensure that funding provided achieves the desired social-housing impact, the Ministry of Municipal Affairs and Housing should require that:

- *each new funding program is supported by a detailed business case; and*
- *adequate accountability mechanisms for reporting on the results achieved by Service Managers for the funds provided be put in place for all funding programs.*

In addition, the Ministry should make any necessary changes to ensure it has the resources and organizational capacity to properly monitor the effectiveness of funding it provides to Service Managers.

Status

In our *2009 Annual Report*, we found that although the province had begun to fund some new housing programs, none had been subject to a business-case analysis that detailed all the costs and benefits of the initiative. We also noted that there were virtually no accountability or reporting requirements for assessing the impact of the funding provided.

In its response to our *2009 Annual Report*, the Ministry indicated that it would review its current practice in developing business cases to identify and implement any necessary improvements. It also committed to reviewing the existing accountability mechanisms established for reporting on results by municipalities and to assessing its current resource requirements to enable it to monitor the effectiveness of funding provided to Service Managers.

At the time of our follow-up, the Ministry informed us that it had reviewed the provincial Performance Measurement Guide and Treasury Board submissions related to new funding initiatives, as well as program guidelines and agreements. As a result of this review, the Ministry advised us that sufficient mechanisms were in place that outline the accountability and performance measurement requirements for these programs.

The Ministry further informed us that best practices had been developed for program guidelines and performance measurement that support the recognition of the different sizes and capacities of the various Service Managers. Based on these best practices, guidelines for the rent supplement program were being revised. The Ministry also informed us that performance measures for the initiatives and programs under the new long-term Strategy were under development as well.

Teletriage Health Services

Follow-up on VFM Section 3.13, *2009 Annual Report*

Background

Ontario's teletriage health services provide callers from Ontario area codes with free, confidential telephone access to a registered nurse for health-care advice and information. The services comprise Telehealth Ontario—available to all Ontario callers 24 hours a day, seven days a week—and the Telephone Health Advisory Service (THAS)—available Monday to Friday, 5 p.m. to 9 a.m., and all day on weekends and holidays, to 9.5 million patients (8.4 million in the 2008/09 fiscal year) enrolled with physicians participating in various primary-health-care arrangements, such as Family Health Teams. For THAS callers, nurses can access the on-call physician from the caller's physician's practice, and, if needed, the physician may speak directly with the caller.

The Ministry of Health and Long-Term Care (Ministry) contracts with a private service provider to deliver the teletriage health services. The service provider employs almost 300 registered nurses at its five call centres located throughout Ontario. All calls are handled in one virtual queue, with the first available nurse at any of the service provider's locations answering the call. The nurses use their clinical judgment in conjunction with medical decision support software to assist callers.

During the 2010/11 fiscal year, 896,000 calls were responded to by the service provider (905,000 calls in 2008/09), and payments to the service provider totalled \$39 million (\$35.1 million in 2008/09).

We noted in our *2009 Annual Report* that the Ministry had contracted for the delivery of teletriage health services using a competitive process and that the contract included a number of key performance requirements, mostly dealing with timely access to services. Although only a small portion of Ontario's population uses the services, our independent survey indicated that those who used Telehealth Ontario were generally satisfied. However, we believed that improvements could be made to both Telehealth and THAS to enhance the services and better communicate their availability. Our observations included the following:

- Not only had the number of calls to teletriage health services been declining over the previous few years, but the number of calls as a proportion of the population was significantly lower in Ontario than that for similar services offered in Alberta and Quebec. Furthermore, although over 60% of Ontarians were eligible to use THAS, only 1% of eligible individuals used it in 2008/09.
- British Columbia and Quebec had already begun using the easily remembered "811" phone number for their teletriage health

services, and certain other provinces were planning to adopt that phone number. Quebec reported a 15% increase in call volume following its implementation. At the time of our audit, Ontario had no plans to adopt the “811” phone number.

- The service provider’s records indicated that about 25% of the callers in the live queue hung up before their call was answered. We calculated that 85% of callers who waited spoke to a nurse within 23 minutes. Eighty-five percent of callers who left a call-back number spoke to a nurse within 34 minutes.
- Physicians who were on call to THAS had to be paged more than once in over 70% of calls requiring a page during 2008, and 9% of pages were never returned.
- Although advice to callers deviated from the clinical guidelines and protocols only 5% of the time in 2008/09, almost 30% of the deviations did not indicate the reason for not following the guidelines.
- Although the proposal submitted by the service provider to the Ministry in 2007 indicated that the service provider’s nurses would have at least three years of any type of nursing experience, 20% of our sample of nurses hired in 2008 had less experience than that.
- Because callers were not asked to provide their Ontario health card number to the service provider, it was not practicable to check Ontario Health Insurance Plan records to determine whether the caller followed the advice given. This would show, for instance, whether the teletriage health services were influencing callers to use the most appropriate health service, such as going to a hospital or seeing their family doctor the next day.
- Unlike most provinces we spoke with, Ontario generally did not tape calls for subsequent quality assurance review. Rather, the service provider’s quality assurance reviewers sampled calls only as they were taking place and seldom did so during peak periods, when

nurses experience pressure to respond to waiting callers within established time frames. The quality of advice was also not independently evaluated.

- In 2008/09, the Ministry paid the service provider about \$39 for each of the first 900,000 registered calls to teletriage health services and about \$27 per call after that. Teletriage health services costs for the three other provinces that shared cost information with us averaged about \$20 per call. The Ministry had not determined the reason for the significant difference.
- The Ministry had not recently assessed the effectiveness of the teletriage health services.

STANDING COMMITTEE ON PUBLIC ACCOUNTS

The Standing Committee on Public Accounts held a hearing on this audit in April 2010. In October 2010, the Committee tabled a report in the Legislature resulting from this hearing. The report contained nine recommendations and requested the Ministry to report back to the Committee with respect to the following:

- the results of its survey on public awareness and use of teletriage health services, including measures to ensure that THAS is better communicated to patients, and whether new measures were being considered to address the underutilization of teletriage health services by certain segments of the population, as well as the timeline for introducing any new measures to address the survey results;
- the results of the Ministry’s business case analysis on the costs and benefits of introducing an “811” number in Ontario;
- whether the service provider had changed its calculation of the average-wait-time measure to start when the call was first received rather than starting when the caller was put in the queue to wait to talk to a nurse, and any

measures that are being considered to address excessive wait times;

- what steps had been taken to reduce the number of unanswered physician pages, including the results of discussions with the Ontario Medical Association and any technological improvements being considered;
- its assessment, in conjunction with the service provider, of the impact of the work-from-home option to enhance nurse recruitment and retention while maintaining safeguards to protect the privacy of callers;
- the results of the Ministry's deliberations on whether callers should be asked for their Ontario health card number;
- whether taping calls to allow for enhanced quality assurance processes would be acceptable to the Office of the Information and Privacy Commissioner, and the Ministry's current position on this issue;
- actions taken by the Ministry to reduce the overall cost of the teletriage health services program; and
- the results of the service provider's assessment of whether an Ontario-based company could perform the call centre translation services.

The Ministry formally responded to the Committee in March 2011. A number of the issues raised by the Committee were similar to our observations. Where the Committee's recommendations are similar to ours, this follow-up includes the recent actions reported by the Ministry to address the concerns raised by both the Committee and our 2009 audit.

Status of Actions Taken on Recommendations

The service provider as well as the Ministry provided us with information in spring 2011 on the

current status of our recommendations. According to this information, significant progress has been made in implementing about half of the recommendations we made in our *2009 Annual Report*, while some progress has been made on the rest, which will require more time to be fully addressed. The current status of the actions taken by the service provider and the Ministry are summarized following each recommendation.

ACCESS TO TELETRIAGE SERVICES

Recommendation 1

In order to provide more accessible teletriage health advice and information, the Ministry should:

- consider the continued need for a separate Telephone Health Advisory Service (THAS) or options for increasing the level of awareness and acceptance of teletriage services, especially among individuals eligible to use THAS and among those demographic groups, such as seniors, that underutilize the services; and
- explore the use of an easily remembered phone number, such as "811" (which is used or being planned for in several other large provinces), for both Telehealth Ontario and THAS.

Status

At the time of our follow-up, the Ministry indicated that it has a contractual obligation with physicians to provide THAS and that any changes would be discussed in upcoming negotiations with the Ontario Medical Association. The Ministry also noted that it completed a survey in March 2010 that provided the Ministry with information on the level of Ontarians' awareness of teletriage health services. Commencing in November 2010, and partly in response to the survey information, the Ministry conducted a campaign meant to educate Ontarians regarding health-care choices, including Telehealth Ontario. The Ministry further indicated that significantly more calls were received by the service provider during December 2010 and January 2011, including significantly more calls to THAS. The

Ministry also noted that although the number of calls increased, the caller demographic groups remained similar to other months.

As part of a 2010 jurisdictional scan of teletriage health services in five other Canadian jurisdictions, the Ministry included questions to help it explore the use of an easily remembered phone number, such as “811.” The Ministry found that provinces that implemented an “811” number subsequently experienced increases of up to 15% in the volume of calls made to their teletriage health services. At the time of our follow-up, the Ministry indicated that an “811” number could be implemented in Ontario only if any increased call volumes could be handled by the service provider with little to no increase in total funding. In this regard, the Ministry noted that the service provider has implemented a couple of initiatives to handle more calls without increasing the resources used to do so. As yet, however, no decision has been made on whether or not to introduce “811” in Ontario.

CALL MANAGEMENT

Recommendation 2

To help ensure that all callers’ questions are answered within a reasonable time frame, the Ministry should:

- *ask the service provider to instruct its nurses to redirect information requests for phone numbers and addresses of community services to non-nursing staff;*
- *review alternative ways to promote timely physician responses to pages for Telephone Health Advisory Service callers, such as financial penalties when on-call physicians do not respond when paged or financial incentives for those physicians who consistently exceed standards; and*
- *require the service provider to measure the wait time for callers from the time the call was initially received for both the live and call-back queues.*

As well, to ensure that caller information remains confidential:

- *the service provider should sign agreements with its vendors that handle confidential caller information, such as those providing its translation and off-site storage services, to maintain appropriate physical and electronic security, in accordance with its contract with the Ministry; and*
- *the Ministry should ensure that periodic vulnerability and penetration testing is completed at the service provider to identify and correct any security weaknesses.*

Status

The Ministry indicated that, effective March 2011, the role of the service provider’s non-clinical staff was expanded to answer calls requesting information about community services, rather than having nurses answer these calls. The service provider further clarified that although the non-clinical staff now respond to callers requesting information on local services, nurses still respond to callers requesting health information or requiring symptom assessment.

The Ministry sent two bulletins to physicians in fall 2010 regarding after-hours requirements, which highlighted the physician’s responsibilities for responding to pages from the Telephone Health Advisory Service. Further, the Ministry indicated that it now receives and reviews monthly reporting from the service provider regarding how many pages, for each group of primary-care physicians, are not being answered within 30 minutes, and how many are not answered at all. However, at the time of our follow-up, the Ministry noted that financial penalties could not be imposed for pages not returned within 30 minutes, because its agreements with the physicians do not include time limits for answering pages. Potential changes to the existing agreements would have to be negotiated with the Ontario Medical Association.

At the time of our follow-up, the Ministry indicated that, because of technology limitations, the service provider was unable to measure wait times for callers from the time a call is initially received.

However, the Ministry now receives reports on and monitors the wait times experienced by callers who remain on the phone in the live queue, as well as wait times for callers to receive a call back from a nurse.

With respect to maintaining appropriate physical and electronic security for confidential caller information, the service provider indicated that it signed agreements with its vendors in early 2010 that included requirements related to the *Personal Health Information Protection Act*, in accordance with its contract with the Ministry.

The Ministry noted that a Threat Risk Assessment for teletriage health services was completed in 2008, and that penetration testing was completed in March 2011. The Ministry, in conjunction with the service provider, reviewed the results of the penetration testing and determined that, while there were no urgent security issues, the items noted would be followed up.

ADVICE TO CALLERS

Recommendation 3

To better ensure that callers to teletriage services receive and follow the most appropriate advice to address their health concerns, the service provider should:

- *hire nurses who have at least three years of nursing experience, including at least one year of acute-care or clinical experience, in accordance with its proposal to secure the contract to provide teletriage services and its internal policies;*
- *ensure that nurses complete their ongoing training in accordance with policies; and*
- *require nurses to document the reason for providing advice that does not follow a clinical guideline or protocol.*

As well, to better determine the impact of the advice provided to callers, the Ministry, in conjunction with the service provider, should develop a process (such as obtaining Ontario health card numbers and following up on a sample of the callers' subse-

quent actions) for periodically assessing the extent to which callers follow the nurses' advice.

Status

At the time of our follow-up, the Ministry indicated that it had discussed the qualifications of newly hired nurses with the service provider, and as a result, the service provider had committed to hiring only nurses with at least three years of experience, including at least one year of acute-care or clinical experience. The service provider noted that all nurses hired since March 2010 had these qualifications at the time of hire.

The Ministry noted that the service provider has established a new quality assurance department, which has implemented nurse training and coaching schedules. The service provider further commented that the revised ongoing training requirements for nurses commenced January 1, 2010, and that attendance is tracked. Information on compliance with the training requirements is reported on a monthly basis to the service provider's quality assurance department and on a quarterly basis to the Medical Liaison Committee, of which the Ministry is a member.

The Ministry stated that the service provider has adjusted its call management process such that nurses are now required to document, before completing a call, the reason for providing advice that deviates from clinical protocols.

At the time of our follow-up, the Ministry indicated that it was continuing to review the feasibility of obtaining Ontario health card numbers for the purpose of tracking whether callers followed the advice provided by the teletriage health service's nurses. The Ministry expected to have a decision by fall 2011. The Information and Privacy Commissioner advised the Ministry that obtaining Ontario health card numbers is acceptable from a privacy perspective. However, the Ministry indicated that it remained concerned that collecting Ontario health card numbers could cause wait times for callers as well as costs to increase because the average length of calls could increase due to

the time it takes callers to find their health card. As an alternative, the Ministry is considering a project to determine the extent to which callers to the Telephone Health Advisory Service (THAS) follow the advice they receive, because calls to THAS are automatically matched to Ontario health card numbers through the callers' physicians. The Ministry also indicated that it would be conducting an external evaluation of the teletriage health services to address whether the services provide appropriate health advice to Ontarians and are useful. This evaluation was expected to commence in fall 2011 and be completed by summer 2012.

QUALITY ASSURANCE

Recommendation 4

To better ensure the quality of teletriage services and identify areas for improvement:

- *the service provider should have independent reviewers conduct an established number of random audits on calls received at different times of the day and on different days of the month, including weekends and holidays;*
- *the service provider should periodically analyze the overall issues noted in call audits and complaints by call centre and by nurse to determine whether there are any systemic issues or trends that warrant follow-up; and*
- *the Ministry should conduct periodic independent satisfaction surveys of individuals impacted by teletriage services, including callers, physicians, and emergency department staff.*

The Ministry should request the Information and Privacy Commissioner's input on whether calls to the service provider can be taped for periodic review to determine the appropriateness of advice provided by teletriage nurses. If calls are not taped for periodic review, the Ministry should seek another way to obtain independent assurance on the appropriateness of advice provided by teletriage nurses (for example, through the use of mystery callers).

Status

At the time of our follow-up, the service provider indicated that it established its new quality assurance department in August 2010 and implemented updated quality monitoring processes in September 2010. Quality analysts, who do not have a direct reporting relationship with the nurses they review, monitor a random sample of calls each month. These samples comprise calls received at various times of the day and on various days of the month, including weekends and holidays. The service provider's revised policy requires that each quality analyst review at least eight calls a day, so that a minimum of two calls per nurse are monitored each month.

The service provider stated that issues identified as a result of call audits and complaints are reviewed at each call centre monthly. With respect to call audits, the service provider indicated that it was developing a process for analyzing trends by call centre and nurse, which it planned to implement by fall 2011. With respect to complaints, the service provider noted that it tracks data by nature of complaint, because detailed data are not readily available that would allow analysis of complaints by call centre or by nurse. The service provider uses this information to identify systemic complaints. The service provider noted that in 2009, it introduced additional training initiatives to address systemic issues that had been identified.

The Ministry noted that the previously mentioned evaluation of the teletriage health services will include satisfaction surveys for teletriage stakeholders, including callers, physicians, and emergency department staff.

The Ministry stated that the Information and Privacy Commissioner had advised that recording calls for the purpose of quality assurance would be acceptable as long as the callers were told in advance and could request not to be recorded. As a result, the service provider is now recording calls, with selected calls being reviewed by its quality assurance team to determine whether appropriate advice is being provided by teletriage nurses. As

well, the Ministry indicated that it is arranging an internal audit, anticipated to start in winter 2012, which will review among other things the service provider's adherence to its standards and processes for call recording and quality assurance.

PAYMENTS FOR TELETRIAGE SERVICES

Recommendation 5

To ensure that the amount paid for teletriage services is reasonable in comparison to other jurisdictions and in accordance with the Ministry's contract with the service provider, the Ministry should:

- *obtain information on the delivery of teletriage services in other provinces to determine whether there are areas where Ontario's teletriage services could be delivered more economically; and*
- *confirm that payments made to the Ontario Pharmacists' Association's Medication Information Service are reasonable, based on the actual number of calls that the Telehealth Ontario service provider reports having referred to the Medication Information Service.*

Status

The Ministry's previously mentioned 2010 jurisdictional scan of teletriage health services included a request for information regarding the cost per call of the services. According to the Ministry, it received only high-level information on costs in other Canadian jurisdictions, and these costs varied based on the different standards and types of services offered in these jurisdictions. Therefore, to help ensure that Ontario's teletriage health services are as cost-effective as possible, the Ministry obtained a proposal from the service provider to modify the current call management process with a goal of creating efficiencies. According to the Ministry, one resulting change, effective March 2011, was to expand the role of the service provider's non-clinical staff to include answering calls requesting information about community services. This change enables nurses, who previously handled these information requests, to be available for additional

health-care-related calls. Further, the Ministry noted that in conjunction with the service provider, and with input from the College of Nurses of Ontario (which governs both registered nurses and registered practical nurses), it is exploring the possibility of having registered practical nurses (RPNs), rather than registered nurses, answer certain types of calls to the teletriage health services. The service provider indicated that the use of non-clinical staff, as well as the possible use of RPNs, where appropriate, could reduce the cost per call of teletriage health services in Ontario. The cost per call has risen to more than \$43, about a 12% increase since the 2008/09 fiscal year. As well, the Ministry noted that its planned evaluation of the teletriage health services may also help in determining ways in which calls could be managed more efficiently.

With respect to ensuring that payments made to the Ontario Pharmacists' Association's Medication Information Service are based on the actual number of calls it handles, the Ministry stated that the Association and the service provider now meet monthly to reconcile call volumes. The Ministry indicated that this approach has resolved the concern we raised during our 2009 audit.

EFFECTIVENESS OF TELETRIAGE SERVICES

Recommendation 6

To better ensure that teletriage services are meeting their objectives, the Ministry, in conjunction with the service provider, should expand the performance standards to include indicators on callers who wait in the live queue (including how long they wait and how many hang up before speaking to a nurse) and on the quality of the nurses' advice.

As well, because it has been almost five years since the effectiveness of the teletriage services in meeting their established objectives has been assessed, the Ministry should consider conducting a formal evaluation. One area to consider including in the evaluation is an assessment of whether using a teletriage service improves callers' health-related decision-making.

Status

At the time of our follow-up, the Ministry indicated that in April 2010 it began receiving monthly reports from the service provider on wait times for callers in the live queue. More specifically, these reports indicate how long callers wait in the live queue until one of the following three events occurs: a nurse answers the call; the caller leaves a message asking to be called back; or the caller hangs up. The Ministry also indicated that in April 2011 it began receiving monthly reports from the service provider on the results of its call audits, which reflect the quality of the nurses' advice to callers.

The Ministry noted that the previously mentioned evaluation of the teletriage health services will review whether the services are meeting their intended objectives, including whether the program is improving consumer health education and callers' health-related decision-making. It will also identify ways to better meet those objectives.

Chapter 4

Section 4.14

Unfunded Liability of the Workplace Safety and Insurance Board

Follow-up on VFM Section 3.14, *2009 Annual Report*

Background

The Workplace Safety and Insurance Board (WSIB) is a statutory corporation created by the *Workplace Safety and Insurance Act, 1997* (Act). Its primary purpose is to provide income support and fund medical assistance to workers injured on the job. The WSIB receives no funding from the government; it is financed through premiums charged on the insurable payrolls of employers. The government has the sole responsibility for setting benefits and coverage through legislation, while the WSIB has responsibility for setting premium rates.

In our *2005 Annual Report*, we noted that the assets in the WSIB's insurance fund were substantially less than what was needed to satisfy the estimated lifetime costs of all claims currently in the system, thus producing what is known as an "unfunded liability," which stood at \$6.4 billion at that time.

In the review that appeared in our *2009 Annual Report*, we observed that, as of December 31, 2008, the unfunded liability stood at \$11.5 billion, an increase of \$3.4 billion from the previous calendar year (by December 31, 2010, the unfunded liability

was \$12.4 billion and had almost doubled in size since 2006). Our review expressed the concern that the growth and magnitude of the unfunded liability posed a risk to the system's financial viability and ultimately could result in the WSIB being unable to meet its existing and future financial commitments to provide worker benefits. Eliminating or reducing the unfunded liability required that four key levers—legislated benefits, coverage, premium rates, and investments—work effectively in tandem. We observed that the WSIB and the government may have to commit to a different strategy with respect to these levers if the unfunded liability is to be addressed within a reasonable period of time.

Our other observations included the following:

- The WSIB's funding ratio of assets to liabilities was 53.5%, considerably lower than that of any of the four other large provincial boards we reviewed in British Columbia, Alberta, Manitoba, and Quebec, which averaged 102%. In each of these four provinces, legislative and policy differences are key factors that contributed to their higher funding ratios.
- The WSIB and governments have sought over the last two decades to satisfy simultaneously two major stakeholders: employers, who wanted lower premiums, and workers, who

wanted higher benefits. This has undoubtedly affected the size of the current unfunded liability.

- The WSIB's ability to eliminate the unfunded liability has to some extent been limited by the government's control over benefit changes and over which businesses and industries are covered by the system. For example, in Ontario, 72.6% of the workforce was covered by the system as of 2007, compared to 93.1% in British Columbia and 93.4% in Quebec.
- Annual premium revenues in recent years have not been enough to cover benefit costs. Premiums have increased by an average of only 1% each year since 2001, at the same time as the WSIB was reporting average annual deficits of more than \$900 million.
- Benefit and health-care costs have risen steadily over the last 10 years as a result of workers staying on benefits longer and receiving increases in those benefits as a result of legislative changes.
- The WSIB's 15-year average rate of return on its investments from 1994 to 2008 was 6.6%. Given that future benefit costs are expected to rise at 7% annually, investments must earn more than 7% before any reduction of the unfunded liability can be realized solely from investment returns.

Our 2009 review of the unfunded liability did not make specific recommendations, but rather discussed the factors contributing to the growth of the unfunded liability and the initiatives being undertaken by the WSIB to address it. The WSIB responded to the issues we raised and acknowledged that it would need to take significant actions to get its financial affairs in order. We have structured this follow-up of our review on the basis of discussions with the President and other senior officials of the WSIB, and a formal written update the WSIB provided to us.

STANDING COMMITTEE ON PUBLIC ACCOUNTS

The Standing Committee on Public Accounts held a hearing on this review in February 2010. In October 2010, the Committee tabled a report in the Legislature resulting from this hearing. The report contained 10 recommendations and requested that either the Ministry of Labour or the WSIB report back to the Committee with respect to the following:

- whether the Ministry believes that the WSIB should continue to govern its own financial affairs and address the unfunded liability itself, including the Ministry's views of the benefits and drawbacks of opening up WSIB appointments to public application;
- the outcome of the WSIB's consultations on whether there is support for legislative changes that would require the WSIB to become fully funded in time;
- the outcome of the WSIB's review of premium rate-setting, including a timeline and the expected impact on premium rates if the review recommends changes to the way they are set;
- the WSIB's strategy to manage rising occupational disease claims and the impact it anticipates these claims will have on its unfunded liability;
- the outcomes of the Ministry's examination of its options for more comprehensive coverage levels for Ontario workers;
- the WSIB's assessment of how it expects implementation of changes to the Labour Market Re-entry (LMR) Program to impact both the duration of claims and the unfunded liability;
- the outcome of the WSIB's implementation of its narcotic control program, including cost savings that have accrued from it and whether it has had an impact on the duration of claims;
- the status of the implementation of recommendations made in the Chair's Report on Stakeholder Consultations;

- whether the WSIB had achieved its target of a 7% reduction in new claims in 2009 and, if not, the action it had taken in 2010 on this issue; and
- what progress the WSIB had made in drafting a strategy by December 31, 2010, to address its unfunded liability, including the results of its anticipated strategic plan and planned reduction in the unfunded liability over the next five years.

Formal responses to the Committee's recommendations were provided by the WSIB on December 14, 2010, and April 4, 2011, and by the Ministry of Labour (Ministry) on February 2, 2011. Where the Committee's recommendations were similar to ours, this follow-up includes the recent actions reported by the Ministry and the WSIB to address the observations raised by both the Committee and our 2009 audit.

Status of Actions Taken on Issues Raised

According to the information we received from the WSIB and discussions with senior management regarding the issues raised in our 2009 review, the WSIB had made progress in introducing a number of initiatives to address the unfunded liability. As well, legislation has been passed that, subject to proclamation, would require that the WSIB reach a prescribed level of funding within a specified time frame. The funding and time frame are to be established by regulation that will take the results of the current independent funding review into consideration.

The following update has been organized on the basis of the key initiative areas identified in the WSIB's 2011–2013 Corporate Business Plan. We have prefaced each section with relevant observations from the review that appeared in our *2009 Annual Report*.

SUFFICIENT FUNDING—FOCUS ON THE UNFUNDED LIABILITY AND STRIVE TO SIGNIFICANTLY REDUCE IT

Observations

- *Both the WSIB and the government may have to commit to a different strategy with respect to the setting of premium rates and benefits if the WSIB is to eliminate the unfunded liability within a reasonable period.*
- *Section 96 (2) of the Act states: "The Board has a duty to maintain the insurance fund so as not to unduly or unfairly burden any claims of Schedule 1 employers in future years with payments under the insurance plan in respect of accidents of previous years." Clearly, the very existence of the unfunded liability demonstrates that, over the years, the province's employers have not fully funded the costs of injuries and occupational diseases, so these liabilities will need to be funded by future employers. Thus, employers in currently declining industry sectors have transferred workplace-safety financial obligations to other current and future generations of employers.*
- *Eliminating or reducing the unfunded liability requires the interaction of four key levers—legislated benefits, coverage, premium rates, and investments—to work effectively in tandem. The inability to eliminate the WSIB's unfunded liability over the last two decades has been owing in part to the WSIB's desire to satisfy all the stakeholders.*

Status

The WSIB indicated that the following actions had been taken in response to these issues:

- The WSIB launched an independent funding review seeking advice from stakeholders. The review, led by an external academic, provides the opportunity for employers, workers, and other interested parties to make presentations. It is designed to provide the WSIB with advice on issues such as how to achieve full funding of the insurance fund, the design of

the employer incentive programs, and the effectiveness of the rate-group structure and the premium-setting methodology.

- Legislative amendments to the Act have been passed and proclaimed by the Legislature. These amendments provide the WSIB with more autonomy to govern its own financial affairs.
- Legislative amendments to both the *Workplace Safety and Insurance Act* and the *Occupational Safety and Insurance Act* (Bill 160) have been passed with the intent of promoting the integration of the prevention and enforcement elements of the occupational health and safety system. These measures include the transfer of the WSIB's prevention mandate to the Ministry of Labour. This will also allow the WSIB to concentrate on its insurance function.
- The WSIB established an Actuarial Advisory Committee to provide general advice and counsel to the President and CEO.

REVENUE MUST COVER COSTS—OPTIMIZE PREMIUM AND INVESTMENT REVENUES AS A CRITICAL MEASURE OF FISCAL HEALTH

Observations

- Premium revenues have not increased enough to offset the costs of the benefits that are mandated under the Act. Benefit expenses increased by about 7% annually from 1999 through 2008, but premium revenues increased by an average of only 3% during the same period.
- Ontario will eventually need to increase its premium rates if it hopes to make any progress toward eliminating its unfunded liability—unless downward revisions are made to the current benefits structure or investment returns recover dramatically.
- Having too few investments relative to the WSIB's liabilities and liquidating investments to pay current operating expenses and benefit claims typically have a significant negative

impact on the size of the unfunded liability and fiscal sustainability of the WSIB.

Status

The WSIB indicated that, in response to these issues, it had:

- put into place a 2% increase in the average annual premium rate for 2011, with a further 2% increase planned for 2012;
- begun addressing the sources of revenue leakage, including employers' arrears and payment avoidance, as well as non-compliance strategies; and
- implemented its Strategic Investment Plan reflecting a more conservative investment strategy with a focus on reduced volatility.

RIGHT-SIZING COSTS—REDUCE TOTAL BENEFIT COSTS THROUGH REDUCING WORKPLACE FATALITIES, INJURIES, AND ILLNESSES, AND PROMOTING EARLY RECOVERY AND RETURN TO WORK

Observations

- Benefit and health-care costs have been rising over the last 10 years. These cost increases—in particular, benefit cost increases arising from increases in the amount of time that workers are staying on benefits and increases in benefits arising from legislative changes—have contributed to the unfunded liability.
- Health-care costs paid by the WSIB on behalf of workers receiving benefits averaged 16% of total benefit costs over the 1999–2008 period. But in that same period, these health-care costs more than doubled—rising from \$238 million in 1998 to \$619 million in 2008. One of the primary drivers of increased health-care costs is the increased number of narcotic prescriptions for analgesia (pain relief).
- Employer incentive programs were not providing the desired outcomes. If claims duration in general is increasing, rebates should decrease and/or surcharges should increase correspondingly.

A study noted that the opposite was occurring: employers were still being rewarded even as their injured-worker claims duration was increasing.

Status

The WSIB indicated that it had taken the following actions in response to these issues:

- It had implemented a new Work Reintegration Model to improve return-to-work outcomes. The model involves more early involvement and the use of work transition specialists.
- It was more carefully managing employer incentive programs, with the result that the imbalance of refunds exceeding surcharges was the lowest that it had been in the past 16 years.
- It had introduced a more appropriate graduated narcotic therapy for injured workers.
- It had initiated a value-for-money audit to report on the effectiveness and efficiency of the WSIB's claims management process.

Review of Government Advertising

INTRODUCTION

In reviewing our activities this past year with regard to the *Government Advertising Act, 2004* (Act), I wanted first to highlight an observation made in Australia, where the national and state governments have considered a variety of actions to ensure that public funds do not pay for partisan ads. Specifically, I was heartened to come across this recommendation in the 2008 report of a Legislative Committee in New South Wales, Australia: “That the Premier entrust the Auditor General with oversight responsibility for government advertising, with the Auditor General’s powers **to be modelled on those of the Auditor General in Ontario, Canada** [emphasis added].”

It is encouraging to note that after six years of existence, the Act may well be the gold standard by which other jurisdictions measure themselves in their drive to ensure that no public money is spent on partisan advertising.

The Act took effect in December 2005 after two years of debate in the Legislature—and several years of discussion prior to that—as legislators questioned the appropriateness of a government using public funds for advertising that could be considered to further its own partisan interests.

The main intent of the Act is to prohibit government advertising that may be viewed as promoting the governing party’s political interests by fostering a positive impression of the government or a negative impression of any group or person critical of

the government. Under the Act, most government advertisements must be submitted to and approved by the Auditor General before they can be used. The full text of the Act can be found at www.e-laws.gov.on.ca.

This chapter, which satisfies the legislative requirements in the Act as well as in the *Auditor General Act* to report annually to the Legislative Assembly, outlines the work we have done over the past year to ensure that the Act is adhered to.

Overview of the Advertising Review Function

Under the Act, the Auditor General is responsible for reviewing specified types of government advertisements to ensure that they meet legislated standards. Above all, they must not contain anything that is, or could be interpreted as being, primarily partisan in nature.

The Act outlines standards each advertisement must meet and states that “an item is partisan if, in the opinion of the Auditor General, a primary objective of the item is to promote the partisan political interests of the governing party.”

The Act also provides the Auditor General with the discretionary authority to consider additional factors in determining whether a primary objective of an item is to promote the partisan political

interests of the governing party (see the “Other Factors” section later in this chapter).

WHAT FALLS UNDER THE ACT

The Act applies to advertisements that government offices—specifically, government ministries, Cabinet Office, and the Office of the Premier—propose to pay to have published in a newspaper or magazine, displayed on a billboard, or broadcast on radio or television. It also applies to printed matter that a government office proposes to pay to have distributed to households in Ontario either by bulk unaddressed mail or by another method of bulk delivery. Advertisements meeting any of these definitions are known as “reviewable” items and must be submitted to my Office for review and approval before they can run.

The Act excludes from review any job advertisement or notice to the public required by law. Also excluded are advertisements on the provision of goods and services to a government office and those on urgent matters affecting public health or safety.

Although the following are not specifically excluded by the Act, we have come to a mutual understanding with the government that they are not subject to the Act:

- electronic advertising on government websites or any public site, except for web pages identified and promoted in a reviewable item (see the “Websites” subsection later in this chapter); and
- brochures, pamphlets, newsletters, news releases, consultation documents, reports, and other similar printed matter, materials, or publications.

The Act requires government offices to submit every reviewable item to the Auditor General’s Office for review. The government office cannot publish, display, broadcast, distribute, or disseminate the submitted item until the head of that office, usually the deputy minister, receives notice, or is deemed to have received notice, that the advertisement has been approved.

The Auditor General’s Office, by regulation, has seven business days to render its decision. If we do not give notice within this time, the government office is deemed to have received notice that the item meets the standards of the Act, and the item may be run.

If my Office notifies the government office that the item does not meet the Act’s standards, the item may not be used. However, the government office may submit a revised version of the rejected item for another review. As with the first submission, my Office has seven days to render its decision.

Once an item has been approved, a government office may use it for the next 12 months. However, my Office can rescind an approval if we determine that new circumstances have changed the context in which the ad appears. Under the Act, all decisions of the Auditor General are final.

A pre-review is also available to government offices wishing us to examine an early version of an item. This can be a script or storyboard, provided that it reasonably reflects the item as it is intended to appear when completed. Pre-reviews help limit the investment of time and money spent to develop items containing material that could be deemed objectionable under the Act.

If material submitted for pre-review appears to violate the Act, we provide an explanation to the government office. If it appears to meet the standards of the Act, we so advise the government office. However, before the item can be used, the government office must submit the finished item for review to ensure that it still meets the standards of the Act.

A pre-review is strictly voluntary on our part and is outside the statutory requirements of the Act.

STANDARDS FOR PROPOSED ADVERTISEMENTS

In conducting its review, the Auditor General’s Office first determines whether the proposed advertisement meets the standards of the Act. These are:

- The item must be a reasonable means of achieving one or more of the following objectives:
 - to inform the public of current or proposed government policies, programs, or services;
 - to inform the public of its rights and responsibilities under the law;
 - to encourage or discourage specific social behaviour in the public interest; and/or
 - to promote Ontario, or any part of the province, as a good place to live, work, invest, study, or visit, or to promote any economic activity or sector of Ontario's economy.
- The item must include a statement that it is paid for by the government of Ontario.
- The item must not include the name, voice, or image of a member of the Executive Council (cabinet) or a member of the Legislative Assembly (unless the primary target audience is located outside Ontario, in which case the item is exempt from this requirement).
- The item must not have as a primary objective the fostering of a positive impression of the governing party, or a negative impression of a person or entity critical of the government.
- The item must not be partisan; that is, in the opinion of the Auditor General, it cannot have as a primary objective the promotion of the partisan interests of the governing party.
- contain subject matter relevant to government responsibilities (that is, the government should have direct and substantial responsibilities for the specific matters dealt with in the item);
- present information objectively, in tone and content, with facts expressed clearly and accurately, using unbiased and objective language;
- emphasize facts and/or explanations, not the political merits of proposals; and
- enable the audience to distinguish between fact on the one hand and comment, opinion, or analysis on the other.
- Items should not:
 - use colours, logos, and/or slogans commonly associated with any recognized political party in the Legislative Assembly of Ontario;
 - inappropriately personalize (for instance, by attacking opponents or critics);
 - directly or indirectly attack, ridicule, or criticize the views, policies, or actions of those critical of the government;
 - be aimed primarily at rebutting the arguments of others;
 - intentionally promote, or be perceived as promoting, political-party interests (to this end, consideration is also given to such matters as timing of the message, the audience it is aimed at, and the overall environment in which the message will be communicated);
 - deliver self-congratulatory or political-party image-building messages;
 - deal with matters such as a policy proposal where no decision has yet been made, unless the item provides a balanced explanation of both the benefits and the disadvantages;
 - present pre-existing policies, products, services, or activities as if they were new; or
 - use a uniform resource locator (URL) to direct readers, viewers, or listeners to a

OTHER FACTORS

In addition to the specific statutory standards above, the Act allows the Auditor General to consider additional factors to determine whether a primary objective of an item is to promote the partisan interests of the governing party. In general, these additional factors relate to the overall impression conveyed by the ad and how it is likely to be perceived. Consideration is given to whether it includes certain desirable attributes and avoids certain undesirable ones. These are:

- Each item should:

“first click” web page with content that may not meet the standards required by the Act (see “Websites” in the following section).

OTHER REVIEW PROTOCOLS

Since taking on responsibility for reviewing government advertising, my Office has tried to clarify, in co-operation with government offices, areas where the Act is silent. What follows is a brief discussion of the main areas that have required clarification over the years.

Websites

Although websites are not specifically reviewable under the Act, we believe that a website used in an advertisement is seen as an extension of the ad. Following discussions with the government, we came to an agreement that the first page or “click” of a website accessed by using the URL in a reviewable item would be included in our review. We agreed not to consider web pages beyond the first click, unless that first click is a gateway page, in which case we review the next page. We examine reviewable web pages for any information or messages that may not meet the standards of the Act. For example, the page must not include a minister’s name, voice, or photograph, nor deliver self-congratulatory, party image–building messages, or messages that attack the policies, opinions, or actions of others.

Event/Conference Program Advertisements and Payments in Kind

Government advertisements sometimes appear in programs and other materials distributed at public events such as conferences, trade shows, and exhibitions. In considering this type of advertisement, we concluded that it should be subject to the Act because the programs usually follow the same format and serve a similar purpose as magazines and other print media. On the issue of payment for

these advertisements, government offices often make in-kind or financial contributions to an event, including paid sponsorship. Therefore, we consider the “free” advertisement to have been indirectly paid for.

Our rationale was based on the fact that the free advertisement is typically granted after the government office has made a financial contribution or sponsored the event. Government officials have agreed with this approach, and these items must be submitted for review.

Third-party Advertising

Government funds provided to third parties are sometimes used for advertising. The government and my Office have agreed that third-party advertising must be submitted for review if it meets all of the three following criteria:

- a government office provides the third party with funds intended to pay part or all of the cost of publishing, displaying, broadcasting, or distributing the item;
- the government grants the third party permission to use the Ontario logo or another official provincial visual identifier in the item; and
- the government office approves the content of the item.

Government Recruitment Advertisements

As previously noted, the Act excludes job advertisements from review. We have interpreted this exemption as applying to advertising for specific government jobs, but not to broad-ranging generic recruitment campaigns. The government has agreed with our interpretation and, as a result, generic recruitment campaigns must be submitted to my Office for review.

External Advisers

Under the *Auditor General Act*, the Auditor General can appoint an Advertising Commissioner to assist in fulfilling the requirements of the *Government Advertising Act, 2004*. However, instead of appointing one Advertising Commissioner, my Office has engaged a number of external advisers to assist us in the ongoing review of items submitted for review. The following advisers have been engaged by my Office during the 2010/11 fiscal year:

- Rafe Engle is a Toronto lawyer specializing in advertising, marketing, communications, and entertainment law. He is also the outside legal counsel for Advertising Standards Canada, and Chair of its National Consumer Response Council. Before studying law, Mr. Engle acquired a comprehensive background in media and communications while working in the advertising industry.
- Jonathan Rose is Associate Professor of Political Studies at Queen's University. He is a leading Canadian academic with interests in political advertising and Canadian politics. Professor Rose has written a book on government advertising in Canada and a number of articles on the way in which political parties and governments use advertising.
- Joel Ruimy is a Toronto communications consultant with three decades of experience as a journalist, editor, and producer covering Ontario and national politics in print and television.
- John Sciarra is the former director of operations in my Office. He was instrumental in leading the implementation of our advertising review function and in drafting the guidelines that help ministries comply with the Act.

These advisers provided invaluable assistance in our review of government advertising this past fiscal year.

Advertising Review Activity, 2010/11

RESULTS OF OUR REVIEWS

During the 2010/11 fiscal year, we reviewed 1,082 individual advertising items in 165 submissions, with a total value of \$50 million. This compares to 159 submissions, comprising 600 individual ads, with a value of more than \$40 million last year.

We gave our decision in all cases within the required seven business days. The length of time required for a review and decision can vary, depending on the complexity of the ad and on the other work priorities of our review panel. Nevertheless, average turnaround time during the past fiscal year was 3.5 business days.

We also received and examined 22 pre-review submissions at a preliminary stage of development. Because pre-reviews are strictly voluntary on our part and outside the statutory requirements of the Act, they are second in priority to finished items. We nonetheless make every effort to complete them within a reasonable time. The average turnaround time for pre-review submissions in the 2010/11 fiscal year was 5.9 business days.

Of all the final submissions received in the 2010/11 fiscal year, we rejected two:

- A newspaper advertising campaign relating to the 10% rebate on electricity bills under the Ontario Clean Energy Benefit was rejected on the grounds that its primary objective was to foster a positive impression of the government party, contrary to section 6(1)5 of the Act. After reworking the campaign, the Ministry of Energy resubmitted it and we approved it.
- A template for a newspaper ad announcing “expanded” diabetes programs across the province was rejected primarily for failing to provide evidence that the program had in fact been expanded in every location. The Ministry of Health and Long-Term Care did not resubmit the ad.

We also rescinded previously granted approval for three other digital video and television ads that were part of a campaign on medical wait times from the Ministry of Health and Long-Term Care after the Liberal Party of Ontario released an ad with strikingly similar visuals on the same subject.

We also noted two contraventions of the Act—advertisements that ran without having first been submitted to us for review, as follows:

- For the second straight year, the Ontario Provincial Police, which is overseen by the Ministry of Community Safety and Correctional Services, ran ads that it had not first submitted for review. The OPP advised that the contraventions were due to a lack of familiarity with the Act. We determined that had these six ads been submitted, they would have been approved.
- More than 100 ads in various media relating to Huronia Historical Parks and Fort William Historical Park ran without first having been submitted for review. These attractions are part of the Ministry of Tourism and Culture and thus covered by the Act. The Ministry advised us it has taken steps to ensure that the parks will submit all future ads for review. The ads that ran in contravention of the Act would likely have been approved if they had been submitted for review.

As well, we also had serious concerns on a number of pre-review submissions. In almost all instances, these were revised, resubmitted, and subsequently approved.

OTHER MATTERS

Election Timing

We noted in our *2007 Annual Report* that the decision to hold provincial elections on fixed dates every four years made it “important to consider how publicly funded government advertising should be dealt with in a pre-election period.”

At the time, we warned that “noticeable changes in the character, content, emphasis, or volume of government advertising in the period before a general election may be perceived as giving the governing party an advantage,” and added that we “would consider not only the content of each advertising item, but also the current political circumstances and the timing of the planned publication or dissemination of the item.”

We found issues with a few submissions in the months leading up to the most recent election on October 6, 2011—for example, the Ministry of Health and Long-Term Care failed to provide the required notification of its plans to buy additional air time for previously approved radio and television ads.

We also rejected two submissions and cited a third in violation of the Act in the months leading up to the election, as follows:

- We rejected a radio campaign promoting the availability of free vaccinations for the rotavirus because it loosely resembled a Liberal Party of Ontario commercial on the medical screening of newborn infants. The Ministry of Health and Long-Term Care reworked the ad and resubmitted it, and we approved it.
- We rejected a print and radio campaign about agricultural risk-management programs because it violated section 6(1)5 of the Act, which says that an ad must not have as a primary objective to “foster a positive impression of the governing party.” After quickly reworking the campaign, the Ministry of Agriculture, Food and Rural Affairs resubmitted it and we approved it.
- We found an approved Ministry of Finance campaign on Ontario Savings Bonds in violation after the first-click web page promoted in the ad contained a reference to the “McGuinty government,” in contravention of section 6(1)3 of the Act, which says ads “must not include the name, voice or image of a member of the Executive Council or a member of the Assembly.” The Ministry quickly corrected it.

We would also like to point out a possible limitation to the Act relating to a mail insert from the Ministry of Energy that was included with electricity bills just prior to the election. The insert touted the Ontario Clean Energy Benefit, the government's 10% reduction on electricity bills for the next five years. We understand that utilities were required by the Ministry to include these inserts. Such inserts are not subject to the Act, which covers only undressed bulk mail. However, we were concerned that the inserts, some of which arrived in mailboxes less than a month before the provincial election, could be seen as violating the intent of the Act. The insert likely would not have passed our review if it had been submitted to us. We expressed similar concerns last year regarding an insert included with HST rebate cheques. Both these examples highlight a possible limitation of the Act with respect to such inserts.

Internet Advertising

In our *2010 Annual Report*, we cited an instance of a government ad running on-line that was similar to an ad we identified in 2009 as not meeting the required standards of the Act. We noted at the time that this underscored the limitations of the Act, which does not cover Internet advertising, a fast-growing segment of the advertising market.

In the 2010/11 fiscal year, we noted that many reviewable ad campaigns included Internet components, some of which could have been found in violation of the Act had they been subject to our review. With the total value and number of Internet ads continuing to grow, the government should consider whether including Internet ads in the Act warrants consideration.

Ministry of Infrastructure

In September 2009, the then Ministry of Energy and Infrastructure submitted a television ad, called "Connects," for pre-review. We indicated at the time that the ad, which dealt with the merits of infra-

structure, would likely not meet the standards of the Act because it contained little information and appeared self-congratulatory. The Ministry did not revise or resubmit the ad.

In May 2011, we learned that Infrastructure Ontario, a provincial Crown corporation not governed by the Act, intended to launch a television campaign using an ad very much like the "Connects" one we had rejected almost two years earlier.

We advised the Ministry of Infrastructure of our concern that the Ministry may have knowingly allowed one of its agencies—an agency that reports to the Minister of Infrastructure—to run advertising very similar to advertising that had already been submitted in 2009 for pre-review and that had been found by my Office to have failed to meet the standards of the Act.

In response, a senior official of Infrastructure Ontario advised us that his staff were unaware of the 2009 version of the ad, prepared by the same agency that created the 2011 version. They expressed dissatisfaction with the fact that the ad agency was not more forthright in letting them know it was a second attempt at airing essentially the same ad that had been turned down previously.

Our Office was informed by Infrastructure Ontario in September 2011 that the ad had not run.

Expenditures on Advertisements and Printed Matter

The *Auditor General Act* requires that the Auditor General report annually to the Legislative Assembly on expenditures for advertisements, printed matter, and messages that are reviewable under the *Government Advertising Act, 2004*.

Figure 1 contains expenditure details of individual advertising campaigns reported to us by each ministry for media-buy costs; agency creative costs;

third-party production, talent, and distribution costs; and other third-party costs, such as translation.

In order to test the completeness and accuracy of the reported advertising expenditures, my Office reviewed randomly selected payments to suppliers of advertising and creative services and their supporting documentation at selected ministries. We also performed certain compliance procedures with respect to the requirements of sections 2, 3, 4, and 8 of the *Government Advertising Act, 2004*, which pertain to submission requirements and prohibition on the use of items pending the Auditor General's review. We found no matters of concern in our review work.

Figure 1: Expenditures for Reviewable Advertisements and Printed Matter under the *Government Advertising Act, 2004*, April 1, 2010–March 31, 2011

Source of data: Ontario government offices

Ministry/Campaign Title	# of Submissions	# of Items	Third-party Costs (\$)				
			Agency Fees	Production	Talent	Bulk Mail	Other
Agriculture, Food and Rural Affairs							
Foodland Ontario ²	4	51	173,675	989,886	55,334	–	228
Invest in Ontario ²	1	2	–	–	–	–	–
Ontario's Bio Advantage	1	1	–	–	–	–	–
Pick Ontario Freshness ¹	–	–	–	–	–	–	–
Royal Winter Fair	1	1	–	–	–	–	–
Cabinet Office							
Institute of Public Administration of Canada	1	1	–	–	–	–	–
Children and Youth Services							
Ontario Child Benefit	2	19	31,900	27,910	22,500	–	5,700
Citizenship and Immigration							
Global Experience Ontario	1	1	–	–	–	–	–
Order of Ontario	1	23	–	5,386	–	–	–
Remembrance Day	1	3	–	946	–	–	–
Community Safety and Correctional Services							
OPP ⁴	–	6	–	–	–	–	–
Public Notice – Security Industry Workers ¹	–	–	–	–	–	–	–
RIDE	2	2	–	–	14,427	–	–
RIDE ¹	–	–	–	78	–	–	–
Economic Development and Trade							
Business Immigration	1	10	5,143	7,000	–	–	2,815
Domestic Business Programs	1	4	241,485	388,253	95,100	–	1,820
Go North ¹	–	–	–	–	–	–	–
Go North ²	6	24	189,508	30,186	–	–	9,507
Invest Ontario ¹	–	–	–	–	–	–	–
Invest Ontario ²	15	92	846,563	153,959	56,942	–	26,970
Ontario Exports	3	10	12,325	3,475	–	–	1,739
Ontario Exports ¹	–	–	–	–	–	–	–
Education							
Education Summit	1	2	–	–	–	–	–
Full-day Kindergarten ²	7	62	249,076	361,366	148,165	–	16,833
Kidstreet	1	1	–	–	–	–	–
Speak Up	1	1	–	–	–	–	–

1. ad submission from 2009/10, with more expenditures in 2010/11

2. ad submission from 2010/11, with more expenditures in 2011/12

4. contravention—ad was not submitted for review

9. negative total due to media credits being applied

TV	Media Costs (\$)			Ad Value [†] (\$)	Campaign Total (\$)
	Radio	Print	Out-of-Home*		
2,865,421	528,854	–	341,825	–	4,955,223
–	–	4,961	–	–	4,961
–	–	–	–	3,500	3,500
–	1,885	–	–	–	1,885
–	–	–	–	2,850	2,850
–	–	–	–	4,000	4,000
–	45,784	244,191	–	–	377,985
–	–	1,250	–	–	1,250
–	–	141,019	–	–	146,405
–	–	26,576	–	–	27,522
–	–	330	–	–	330
–	–	61,366	–	–	61,366
256,949	–	–	19,642	–	291,018
-2,510	–	–	–	–	-2,432 ⁹
–	–	199,569	–	–	214,527
834,721	–	86,241	–	–	1,647,620
–	–	45,465	–	–	45,465
–	–	625,509	–	3,740	858,450
-34,175	–	-21,770	-17,284	9,600	-63,629 ⁹
2,062,017	–	3,398,137	598,445	4,060	7,147,093
–	–	2,078	–	–	19,617
–	–	42,628	–	5,000	47,628
–	–	–	–	10,821	10,821
3,558,749	–	279,748	–	–	4,613,937
–	–	–	–	1,413	1,413
–	–	–	–	30,000	30,000

* Out-of-Home advertising includes, for example, billboards and transit posters.

† Ad Value denotes the value of an ad space provided to government offices at no cost, often where the government has provided funding for a related event/publication.

Ministry/Campaign Title	# of Submissions	# of Items	Third-party Costs (\$)				
			Agency Fees	Production	Talent	Bulk Mail	Other
Energy and Infrastructure							
Infrastructure ¹	—	—	—	—	—	—	—
Long-term Energy Plan ²	3	11	122,527	463,177	1,364	—	368,219
Long-term Energy Plan ³	1	4	—	—	—	—	—
Environment							
Public Notice – Air Standards	2	3	—	575	—	—	—
Public Notice – Environmental Sampling	1	1	—	375	—	—	—
Finance							
Children's Activity Tax Credit	4	61	198,143	159,934	12,430	—	19,492
Ontario Budget ²	2	24	42,848	42,558	—	—	—
Ontario Savings Bonds	2	37	108,936	95,096	75,340	—	10,385
Government Services							
1-888-Business Info Line	1	4	—	6,007	—	—	2,048
Smartmoves ¹	—	—	—	4,900	—	—	256
Taking the Lead – ServiceOntario	1	2	—	—	—	—	4
Taking the Lead – ServiceOntario ¹	—	—	—	—	—	—	2,162
Validation Sticker Renewal	1	19	15,600	9,200	—	—	2,682
Health and Long-Term Care							
Diabetes Programs ³	1	1	—	—	—	—	—
Health Care Connect	1	2	2,013	9,431	—	—	775
Health Care Options ²	13	54	122,194	91,540	—	—	56,149
Health Care Options ⁶	3	12	25,046	1,074,554	65,093	1,205	9,801
HealthForceOntario ⁸	1	1	—	—	—	—	—
MedsCheck for Diabetes Patients	1	2	—	10,944	1,435	2,100	731
Public Notice – Diabetes ¹	—	—	—	—	—	—	—
Public Notice – Northern Health Care Services Co-ordination	1	6	—	—	—	—	—
Seasonal Flu	5	68	20,528	20,158	12,062	—	4,039
Stand Up to Diabetes	4	50	—	20,400	—	—	—
Health Promotion and Sport							
Diabetes ²	2	3	175,628	172,230	—	—	1,995
EatRight Ontario ¹	—	—	—	—	—	—	—
Healthy Living	1	2	333,955	454,743	—	—	—
World Junior Baseball ²	1	1	1,105	—	—	—	—
Labour							
Employment Standards	1	10	—	26,837	—	—	2,962
Falls Prevention ⁵	2	15	—	—	—	—	—

1. ad submission from 2009/10, with more expenditures in 2010/11

2. ad submission from 2010/11, with more expenditures in 2011/12

3. violation—ad was reviewed and did not meet the required standards

5. costs incurred by WSIB

6. approval withdrawn (see the "Results of Our Reviews" section earlier in this chapter)

8. costs incurred by HealthForceOntario

9. negative total due to media credits being applied

Media Costs (\$)				Ad Value† (\$)	Campaign Total (\$)
TV	Radio	Print	Out-of-Home*		
-1,513	—	—	—	—	-1,513 ⁹
899,009	644,462	—	—	—	2,498,758
—	—	—	—	—	—
—	—	2,853	—	—	3,428
—	—	2,588	—	—	2,963
—	577,004	582,396	168,810	—	1,718,209
—	—	62,094	—	—	147,500
798,725	145,687	499,562	276,209	—	2,009,940
—	—	71,667	—	—	79,722
—	—	19,586	—	—	24,742
—	—	3,980	—	—	3,984
—	—	369,497	—	—	371,659
—	—	37,723	—	—	65,205
—	—	—	—	—	—
—	—	104,083	—	—	116,302
—	10,157	1,632,489	263,488	—	2,176,017
2,567,247	—	—	—	—	3,742,946
—	—	—	—	—	—
—	562,330	—	—	—	577,540
—	—	311,891	—	—	311,891
—	—	19,053	—	—	19,053
—	1,366,943	—	491,029	—	1,914,759
—	—	999,534	—	3,250	1,023,184
—	—	—	—	—	349,853
—	—	5,766	—	—	5,766
1,057,934	—	—	—	—	1,846,632
—	—	—	—	650	1,755
—	—	129,503	—	—	159,302
—	—	—	—	—	—

* Out-of-Home advertising includes, for example, billboards and transit posters.

† Ad Value denotes the value of an ad space provided to government offices at no cost, often where the government has provided funding for a related event/publication.

Ministry/Campaign Title	# of Submissions	# of Items	Third-party Costs (\$)				
			Agency Fees	Production	Talent	Bulk Mail	Other
Labour (continued)							
Jobs Protection Office	1	2	–	2,500	–	–	–
Safe at Work Ontario	1	1	–	1,978	–	–	–
Municipal Affairs and Housing							
Public Notice – Provincial Policy Statement Review	1	2	–	632	–	–	110
Natural Resources							
Bear Wise	1	8	–	650	–	–	–
Bear Wise ¹	–	–	–	–	–	–	–
Chronic Wasting Disease	1	1	–	–	–	–	–
FireSmart Wildfire Prevention ¹	–	–	–	100	–	–	–
FireSmart Wildfire Prevention ²	2	30	–	685	–	–	6
Forest Resource Management ¹	–	–	–	–	–	–	–
Kids Fish Art Contest	1	1	–	100	–	–	–
Lake Ontario Atlantic Salmon Restoration	1	1	–	375	–	–	–
Land Management ²	8	8	–	–	–	–	–
Ontario Parks ¹	–	–	–	–	–	–	–
Ontario Parks ²	15	17	–	–	–	–	–
Outdoors Card	1	1	–	150	–	–	–
Species at Risk	2	2	–	356	–	–	–
Youth Employment	1	1	–	175	–	–	–
Northern Development, Mines and Forestry							
GO North ⁷	–	–	–	–	–	–	–
Northern Ontario Energy Credit ²	3	11	275,625	267,793	–	–	7,500
Northern Ontario Heritage Credit ²	2	4	–	–	–	–	–
Public Notice - Forest Tenure and Pricing Review	1	2	–	2,300	–	–	–
Research and Innovation							
Invest Ontario ⁷	–	–	–	–	–	–	–
Revenue							
Comprehensive Tax Reform ¹	–	–	3,696	–	–	–	–
Ontario's Tax Plan	9	55	106,015	51,680	27,990	589,803	45,705
Tax Credits ²	3	40	344,247	174,637	16,611	–	–
Tourism and Culture							
Fort William Historical Park ⁴	–	49	–	–	–	–	–
Huronian Historical Parks ⁴	–	67	–	5,540	–	–	–
Training, Colleges and Universities							
Employment Ontario ¹	–	–	–	–	–	–	–

1. ad submission from 2009/10, with more expenditures in 2010/11

2. ad submission from 2010/11, with more expenditures in 2011/12

4. contravention—ad was not submitted for review

7. ad developed by another ministry, but used by this ministry

Media Costs (\$)				Ad Value† (\$)	Campaign Total (\$)
TV	Radio	Print	Out-of-Home*		
–	–	2,125	–	–	4,625
–	–	–	–	2,490	4,468
–	–	23,403	–	–	24,145
20,452	–	95,117	2,996	–	119,215
–	–	93,983	–	–	93,983
–	–	1,369	–	–	1,369
–	–	1,693	–	–	1,793
–	–	699	–	–	1,390
–	–	916	–	–	916
–	–	–	–	8,350	8,450
–	–	–	–	11,140	11,515
–	–	3,609	–	2,775	6,384
–	–	7,516	–	–	7,516
–	–	17,190	–	–	17,190
–	–	–	–	8,350	8,500
–	–	34,284	–	–	34,640
–	–	–	–	7,300	7,475
–	–	1,966	–	–	1,966
121,929	122,984	111,261	–	–	907,092
–	–	1,290	–	13,355	14,645
–	–	30,978	–	–	33,278
–	–	–	–	21,900	21,900
–	531,681	716,201	–	–	1,251,578
–	935,740	1,114,004	–	–	2,870,937
–	–	–	–	–	535,495
–	27,448	109,125	182,462	–	319,035
44,955	16,663	58,150	2,700	350	128,358
–	–	–	–	4,250	4,250

* Out-of-Home advertising includes, for example, billboards and transit posters.

† Ad Value denotes the value of an ad space provided to government offices at no cost, often where the government has provided funding for a related event/publication.

Ministry/Campaign Title	# of Submissions	# of Items	Third-party Costs (\$)				
			Agency Fees	Production	Talent	Bulk Mail	Other
Training, Colleges and Universities (continued)							
International Education	1	1	–	–	–	–	–
Postsecondary Awareness & Public Education	2	66	325,141	625,014	56,966	–	21,801
Study in Ontario	1	1	–	–	–	–	1,805
Transportation							
Veterans Graphic Licence Plates	1	2	4,293	2,008	11,856	–	–
Total	165	1,082	3,977,215	5,767,777	673,615	593,108	624,239

1. ad submission from 2009/10, with more expenditures in 2010/11

TV	Media Costs (\$)			Ad Value† (\$)	Campaign Total (\$)
	Radio	Print	Out-of-Home*		
–	–	5,391	–	–	5,391
1,289,855	–	791,174	300,283	–	3,410,234
–	–	4,545	–	–	6,350
556,639	–	10,393	–	–	585,189
16,896,404	5,517,622	13,227,945	2,630,605	159,144	50,067,674

* Out-of-Home advertising includes, for example, billboards and transit posters.

† Ad Value denotes the value of an ad space provided to government offices at no cost, often where the government has provided funding for a related event/publication.

The Standing Committee on Public Accounts

Appointment and Composition of the Committee

Members of the Standing Committee on Public Accounts (Committee) are appointed under the Standing Orders of the Legislative Assembly. The number of members from any given party reflects that party's representation in the Legislative Assembly. All members except the Chair are entitled to vote on motions, while the Chair may only vote to break a tie. The Committee is established for the duration of the Parliament, from the opening of its first session immediately following a general election to its dissolution.

In accordance with the Standing Orders, a Standing Committee on Public Accounts was appointed on December 10, 2007, for the duration of the 39th Parliament. The membership of the Committee as of September 2011 was as follows:

Norm Sterling, Chair, Progressive Conservative
Peter Shurman, Vice-chair, Progressive Conservative
Wayne Arthurs, Liberal
Aileen Carroll, Liberal
France G elinas, New Democrat
Jerry Ouellette, Progressive Conservative
David Ramsay, Liberal
Liz Sandals, Liberal
David Zimmer, Liberal

Role of the Committee

The Committee examines, assesses, and reports to the Legislative Assembly on a number of issues. These include the economy and efficiency of government and broader-public-sector operations, the effectiveness of programs in achieving their objectives, and any issues that arise with respect to Ontario's Public Accounts. The Committee holds a number of hearings throughout the year relating to matters raised in our Annual Report or our special reports and presents its observations and recommendations to the Legislative Assembly. Under sections 16 and 17 of the *Auditor General Act*, the Committee may also request that the Auditor General examine any matter in respect of the Public Accounts or undertake a special assignment on its behalf.

AUDITOR GENERAL'S ADVISORY ROLE WITH THE COMMITTEE

In accordance with section 16 of the *Auditor General Act*, the Auditor General and senior staff attend committee meetings to assist the Committee with its reviews and its hearings relating to our Annual Report and Ontario's Public Accounts.

Committee Procedures and Operations

The Committee may meet weekly when the Legislative Assembly is sitting, and, with the approval of the House, at any other time of its choosing. All meetings are open to the public except for those dealing with the Committee's agenda or the preparation of its reports. All public committee proceedings are recorded in Hansard, the official verbatim report of government debates, speeches, and other Legislative Assembly proceedings.

The Committee identifies matters of interest from our Annual Report or our special reports and conducts hearings on them. It typically focuses on reports from the value-for-money chapter of our Annual Report for review. In recent years, each of the three political parties has selected three audits or other sections from our Annual Report to hold hearings on. The Committee also considers whether to hold hearings on any special reports we have tabled during the year.

At each hearing, the Auditor General, along with the Committee's researcher, briefs the Committee on the applicable report section and the responses to our findings and recommendations from the ministry, Crown agency, or organization in the broader public sector that was the subject of the audit. The Committee then requests that senior officials from the auditee(s) appear at the hearing and respond to questions from committee members. Because our Annual Report deals with operational, administrative, and financial rather than policy matters, ministers are rarely requested to attend. Once its hearings are completed, the Committee reports its comments and recommendations to the Legislative Assembly.

The Clerk of the Committee also requests that those auditees that were not selected for hearings update the Committee on what actions they are taking to address the concerns raised in our reports.

MEETINGS HELD

The Committee met 19 times during the October 2010–June 2011 period. Some of these meetings were held to complete Committee reports about the hearings on sections from both our 2009 and 2010 Annual Reports as well as on our October 2009 *Special Report on Ontario's Electronic Health Records Initiative*.

Four value-for-money audit sections and two follow-up sections from our *2010 Annual Report* were chosen for hearings in 2011, as follows:

- 3.03–Family Responsibility Office;
- 3.07–Infrastructure Stimulus Spending;
- 3.08–Municipal Property Assessment Corporation;
- 3.09–Non-hazardous Waste Disposal and Diversion;
- 4.05–Commercial Vehicle Safety and Enforcement Program; and
- 4.11–Hospital Board Governance.

REPORTS OF THE COMMITTEE

The Committee issues reports and letters on its work for tabling in the Legislative Assembly. These reports and letters summarize the information gathered by the Committee during its meetings and include the Committee's comments and recommendations. Once tabled, all committee reports and letters are publicly available through the Clerk of the Committee or on-line at www.ontla.on.ca.

Committee reports typically include recommendations and request that management of the ministry, agency, or broader-public-sector organization provide the Committee Clerk with responses within a stipulated time frame. Our Office reviews these responses, and, in any subsequent audits of that operational area, we take the Committee's recommendations into consideration.

During the period from October 2010 through June 2011, the Committee tabled the following 17 reports stemming from hearings held on sections

from our 2009 and 2010 Annual Reports (AR) as well as on one of our special reports:

- *Unfunded Liability of the Workplace Safety and Insurance Board* (Section 3.14, 2009 AR) (tabled on October 5, 2010);
- *Unspent Grants* (Chapter 2, 2009 AR) (tabled on October 20, 2010);
- *Teletriage Health Services* (Section 3.13, 2009 AR) (tabled on October 26, 2010);
- *Bridge Inspection and Maintenance* (Section 3.02, 2009 AR) (tabled on November 1, 2010);
- *Ontario's Electronic Health Records* (October 2009 Special Report) (tabled on November 4, 2010);
- *Ontario Disability Support Program* (Section 3.09, 2009 AR) (tabled on November 24, 2010);
- *Education Quality and Accountability Office* (Section 3.04, 2009 AR) (tabled on November 25, 2010);
- *Literacy and Numeracy Secretariat* (Section 3.07, 2009 AR) (tabled on December 6, 2010);
- *Infection Prevention and Control at Long-term-care Homes* (Section 3.06, 2009 AR) (tabled on February 28, 2011);
- *Assistive Devices Program* (Section 3.01, 2009 AR) (tabled on May 18, 2011);
- *Commercial Vehicle Safety and Enforcement Program* (Section 4.05, 2010 AR) (tabled on May 18, 2011);
- *Infrastructure Stimulus Spending* (Section 3.07, 2010 AR) (tabled on May 18, 2011);
- *Hospital Board Governance* (Section 4.11, 2010 AR) (tabled on May 18, 2011);
- *Municipal Property Assessment Corporation* (Section 3.08, 2010 AR) (tabled on May 30, 2011);
- *Family Responsibility Office* (Section 3.03, 2010 AR) (tabled on May 30, 2011);
- *Non-hazardous Waste Disposal and Diversion* (Section 3.09, 2010 AR) (tabled on May 30, 2011); and
- *Public Accounts Committee Best Practice: Assistive Devices Program* (Section 3.01, 2009 AR) (tabled on May 30, 2011).

The last report described the Committee's process in following up on its earlier (May 18) report stemming from our 2009 audit of the Assistive Devices Program.

CANADIAN COUNCIL OF PUBLIC ACCOUNTS COMMITTEES

The Canadian Council of Public Accounts Committees (CCPAC) consists of delegates from federal, provincial, and territorial public accounts committees from across Canada. CCPAC holds a joint annual conference with the Canadian Council of Legislative Auditors to discuss issues of mutual interest.

The 32nd annual conference was hosted by Nova Scotia and was held in Halifax from August 28 to 30, 2011.

The Office of the Auditor General of Ontario

The Office of the Auditor General of Ontario (Office) serves the Legislative Assembly and the citizens of Ontario by conducting value-for-money and financial audits and reviews and reporting on them. By doing this, the Office helps the Legislative Assembly hold the government, its administrators, and grant recipients accountable for how prudently they spend public funds and for the value they obtain, on behalf of Ontario taxpayers, for the money spent.

The work of the Office is performed under the authority of the *Auditor General Act*. In addition, under the *Government Advertising Act, 2004*, the Auditor General is responsible for reviewing and deciding whether or not to approve certain types of proposed government advertising (see Chapter 5 for more details on the Office's advertising review function). Both acts can be found at www.e-laws.gov.on.ca.

In an election year, the Auditor General is also required to review the reasonableness of the government's pre-election report on its expectations for the financial performance of the province over the next three fiscal years. Because 2011 was an election year, the government issued its pre-election report on April 26, 2011, and the results of our review were released on June 28, 2011.

General Overview

VALUE-FOR-MONEY AUDITS IN THE ANNUAL REPORT

About two-thirds of the Office's work relates to value-for-money auditing. The Office's value-for-money audits are assessments of how well a given "auditee" (the entity that we audit) manages and administers its programs or activities. The auditees that the Office has the authority to conduct value-for-money audits of are:

- Ontario government ministries;
- Crown agencies;
- Crown-controlled corporations; and
- organizations in the broader public sector that receive government grants (for example, agencies that provide mental-health services, children's aid societies, community colleges, hospitals, long-term-care homes, school boards, and universities).

The *Auditor General Act* (Act) [in subclauses 12(2)(f)(iv) and (v)] identifies the criteria to be considered in this assessment:

- Money should be spent with due regard for economy.
- Money should be spent with due regard for efficiency.
- Appropriate procedures should be in place to measure and report on the effectiveness of programs.

We also examine the level of service that is being provided to the public and, where possible, compare it to the best practices of other jurisdictions that deliver similar services.

The Act requires that, if the Auditor General observes instances where the three value-for-money criteria have not been met, he or she report on them. The Act also requires that he or she report on instances where the following was observed:

- Accounts were not properly kept or public money was not fully accounted for.
- Essential records were not maintained or the rules and procedures applied were not sufficient to:
 - safeguard and control public property;
 - check effectively the assessment, collection, and proper allocation of revenue; or
 - ensure that expenditures were made only as authorized.
- Money was expended other than for the purposes for which it was appropriated.

Assessing the extent to which the auditee was controlling against these risks is technically “compliance” audit work but is generally incorporated into both value-for-money audits and “attest” audits (discussed in a later section). Other compliance work that is typically included in our value-for-money audits is:

- identifying the key provisions in legislation and the authorities that govern the auditee or the auditee’s programs and activities as well as those that the auditee’s management is responsible for administering; and
- performing the tests and procedures we deem necessary to obtain reasonable assurance that the auditee’s management has complied with these key legislation and authority requirements.

Government programs and activities are the result of government policy decisions. Thus, we could say that our value-for-money audits focus on how well management is administering and executing government policy decisions. However, although we may provide information on the

impacts of government policy, we do not opine on the merits of government policy. Rather, it is the Legislative Assembly that holds the government accountable for policy matters. The Legislative Assembly continually monitors and challenges government policies through questions during legislative sessions and through reviews of legislation and expenditure estimates.

In planning, performing, and reporting on our value-for-money work, we follow the relevant professional standards established by the Canadian Institute of Chartered Accountants. These standards require that we have processes for ensuring the quality, integrity, and value of our work. Some of the processes we use are described below.

Selecting What to Audit

The Office audits major ministry programs and activities at approximately five- to seven-year intervals. We do not audit organizations in the broader public sector and Crown-controlled corporations on the same cycle because there are such a great number of them and their activities are so numerous and diverse. Since our mandate expanded in 2004 to allow us to audit these auditees, our audits have covered a wide range of topics across a broad range of sectors, including health (hospitals, long-term-care homes, and mental-health service providers), education (school boards, universities, and colleges), and social services (children’s aid societies and social service agencies), as well as several large Crown-controlled corporations.

In selecting what program, activity, or organization to audit each year, we consider how great the risk is that an auditee is not delivering public services in a cost-effective manner. To help us choose higher-risk audits, we consider factors such as:

- the results of previous audits and related follow-ups;
- the total revenues or expenditures involved;
- the impact of the program, activity, or organization on the public;

- the complexity and diversity of the auditee’s operations;
- recent significant changes in the auditee’s operations; and
- the significance of the issues an audit might identify.

Another factor we take into account in the selection process is what work the auditee’s internal auditors have completed or planned. Depending on what that work consists of, we may defer an audit or change our audit’s scope to avoid duplication of effort. In other cases, we do not diminish the scope of our audit but rely on and present the results of internal audit work in our audit report.

Setting Audit Objectives, Audit Criteria, and Assurance Levels

When we begin an audit, we set an objective for what we want to achieve. We then develop suitable audit criteria that cover the key systems, policies, and procedures that should be in place and operating effectively. Developing criteria involves extensively researching sources such as recognized bodies of experts; other bodies or jurisdictions delivering similar programs and services; management’s own policies and procedures; applicable criteria successfully applied in other audits or reviews; and applicable laws, regulations, and other authorities. To further ensure their suitability, the criteria we develop are discussed with the senior management responsible for the program or activity at the planning stage of the audit.

The next step is designing and conducting tests and procedures to address our audit objective and criteria, so that we can reach conclusions on them. Each audit report has a section titled “Audit Objective and Scope,” in which the audit objective is stated.

Conducting tests and procedures to gather information has its limitations. We therefore cannot provide what is called an “absolute level of assurance” that our audit work identifies all significant matters. Other factors also contribute to this. For

example, we may conclude that the auditee had a control system in place for a process or procedure that was working effectively to prevent a particular problem from occurring; but auditee management or staff are often able to circumvent such control systems, so we cannot guarantee that the problem will never arise. Also, much of the evidence available for concluding on our objective is more persuasive than it is conclusive, and we must rely on professional judgment in much of our work—for example, in interpreting information.

For all these reasons, the assurance that we plan for our work to provide is at an “audit level”—the highest reasonable level of assurance that we can obtain using our regular audit procedures. Specifically, an audit level of assurance is obtained by interviewing management and analyzing the information it provides; examining and testing systems, procedures, and transactions; confirming facts with independent sources; and, where necessary because we are examining a highly technical area, obtaining expert assistance and advice.

With respect to the information that management provides, under the Act we are entitled to have access to all relevant information and records necessary to the performance of our duties. Out of respect for the principle of Cabinet privilege, we do not seek access to the deliberations of Cabinet. However, the Office can access virtually all other information contained in Cabinet submissions or decisions that we deem necessary to fulfill our responsibilities under the Act.

Infrequently, the Office will perform a review rather than an audit. A review provides a moderate level of assurance, obtained primarily through inquiries and discussions with management; analyses of information that management provides; and only limited examination and testing of systems, procedures, and transactions. We perform reviews when, for example, providing a higher level of assurance has prohibitive costs or is unnecessary, or other factors relating to the nature of the program or activity make a review more appropriate than an audit. This year, we conducted a review, contained

in Chapter 3 of this report, of the electricity sector's stranded debt. In the 2009 audit year, we conducted a review of the unfunded liability of the Workplace Safety and Insurance Board, which was well received by the Standing Committee on Public Accounts.

Communicating with Management

To help ensure the factual accuracy of our observations and conclusions, staff from our Office communicate with the auditee's senior management throughout the value-for-money audit or the review. Before beginning the work, our staff meet with management to discuss the objective and criteria and the focus of our work in general terms. During the audit or review, our staff meet with management to review progress and ensure open lines of communication. At the conclusion of on-site work, management is briefed on the preliminary results of the work. A draft report is then prepared and discussed with the auditee's senior management. The auditee's management provides written responses to our recommendations, and these are discussed and incorporated into the draft report. The Auditor General finalizes the draft report (on which the Chapter 3 section of the Annual Report will be based) with the deputy minister or head of the agency, corporation, or grant-recipient organization, after which the report is published in the Annual Report.

SPECIAL REPORTS

As required by the Act, the Office reports on its audits in an Annual Report to the Legislative Assembly. In addition, the Office may make a special report to the Legislative Assembly at any time, on any matter that, in the opinion of the Auditor General, should not be deferred until the Annual Report.

Two sections of the Act authorize the Auditor General to undertake additional special work. Under section 16, the Standing Committee on Public Accounts may resolve that the Auditor General must examine and report on any matter respecting the Public Accounts. Under section 17, the Legisla-

tive Assembly, the Standing Committee on Public Accounts, or a minister of the Crown may request that the Auditor General undertake a special assignment. However, these special assignments are not to take precedence over the Auditor General's other duties, and the Auditor General can decline such an assignment requested by a minister if he or she believes that it conflicts with other duties.

In recent years, when we have received a special request under section 16 or 17, our normal practice has been to obtain the requester's agreement that the special report will be tabled in the Legislature on completion and made public at that time.

Over the past five years, we have issued eight special reports, as well as two reports reviewing the government's pre-election report on Ontario's finances. No special audits were requested during the 2010/11 audit year.

ATTEST AUDITS

Attest audits are examinations of an auditee's financial statements. In such audits, the auditor expresses his or her opinion on whether the financial statements present information on the auditee's operations and financial position in a way that is fair and that complies with certain accounting policies (in most cases, with Canadian generally accepted accounting principles). As mentioned in the overview of value-for-money audits, compliance audit work is often incorporated into attest audit work. Specifically, we assess the controls for managing risks relating to improperly kept accounts; unaccounted-for public money; lack of recordkeeping; inadequate safeguarding of public property; deficient procedures for assessing, collecting, and properly allocating revenue; unauthorized expenditures; and not spending money on what it is intended for.

The Auditees

Every year, we audit the consolidated financial statements of the province and the accounts of

many agencies of the Crown. Specifically, the Act [in subsections 9(1), (2), and (3)] requires that:

- the Auditor General audit the accounts and records of the receipt and disbursement of public money forming part of the province’s Consolidated Revenue Fund, whether held in trust or otherwise;
- the Auditor General audit the financial statements of those agencies of the Crown that are not audited by another auditor;
- public accounting firms that are appointed auditors of certain agencies of the Crown perform their audits under the direction of the Auditor General and report their results to the Auditor General; and
- public accounting firms auditing Crown-controlled corporations deliver to the Auditor General a copy of the audited financial statements of the corporation and a copy of the accounting firm’s report of its findings and recommendations to management (typically contained in a management letter).

Chapter 2 discusses this year’s attest audit of the province’s consolidated financial statements.

We do not generally discuss the results of attest audits of agencies and Crown-controlled corporations in this report. Agency legislation normally stipulates that the Auditor General’s reporting responsibilities are to the agency’s board and the minister(s) responsible for the agency. Our Office also provides copies of our independent auditor’s reports and of the related agency financial statements to the deputy minister of the associated ministry, as well as to the Secretary of the Treasury Board.

Where an agency attest audit notes areas where management must make improvements, the auditor prepares a draft findings report and discusses it with senior management. The report is revised to reflect the results of that discussion. After the draft report is cleared and the agency’s senior management responds to it in writing, the auditor prepares a final report, which is discussed with the agency’s audit committee if one exists. If a matter were so significant that we felt it should be brought to the

attention of the Legislature, we would include it in our Annual Report.

Exhibit 1, Part 1 lists the agencies that were audited during the 2010/11 audit year. The Office currently contracts with public accounting firms to audit a number of these agencies on the Office’s behalf. Exhibit 1, Part 2, and Exhibit 2 list the agencies of the Crown and the Crown-controlled corporations, respectively, that public accounting firms audited during the 2010/11 audit year.

OTHER STIPULATIONS OF THE AUDITOR GENERAL ACT

The *Auditor General Act* came about with the passage, on November 22, 2004, of Bill 18, the *Audit Statute Law Amendment Act*, which received Royal Assent on November 30, 2004. The purpose of Bill 18 was to make certain amendments to the *Audit Act* to enhance the ability of the Office to serve the Legislative Assembly. The most significant amendment contained in Bill 18 was the expansion of the Office’s value-for-money audit mandate to organizations in the broader public sector that receive government grants. This *2011 Annual Report* marks the sixth year of our expanded audit mandate.

Appointment of Auditor General

Under the Act, the Auditor General is appointed as an officer of the Legislative Assembly by the Lieutenant Governor-in-Council—that is, the Lieutenant Governor appoints the Auditor General on and with the advice of the Executive Council (the Cabinet). The appointment is made “on the address of the Assembly,” meaning that the appointee must be approved by the Legislative Assembly. The Act also requires that the Chair of the Standing Committee on Public Accounts—who, under the Standing Orders of the Legislative Assembly, is a member of the official opposition—be consulted before the appointment is made (for more information on the Committee, see Chapter 6). The last two Auditors General were selected through a formal competitive

selection process, with members from each political party sitting on the selection committee.

Independence

The Auditor General and staff of the Office are independent of the government and its administration. This independence is an essential safeguard that enables the Office to fulfill its auditing and reporting responsibilities objectively and fairly.

The Auditor General is appointed to a 10-year, non-renewable term, and can be dismissed only for cause by the Legislative Assembly. Consequently, the Auditor General is able to maintain an arm's-length relationship with the government and the political parties in the Legislative Assembly and is thus free to fulfill the Office's legislated mandate without political pressure.

The Board of Internal Economy (Board)—an all-party legislative committee that is independent of the government's administrative process—reviews and approves the Office's budget, which is subsequently laid before the Legislative Assembly. As required by the Act, the Office's expenditures relating to the 2010/11 fiscal year have been audited by a firm of chartered accountants, and the audited financial statements of the Office are submitted to the Board and subsequently must be tabled in the Legislative Assembly. The audited statements and related discussion of expenditures for the year are presented at the end of this chapter.

CONFIDENTIALITY OF WORKING PAPERS

In the course of our reporting activities, we prepare draft audit reports and findings reports that are considered to be an integral part of our audit working papers. It should be noted that these working papers, according to section 19 of the *Auditor General Act*, do not have to be laid before the Legislative Assembly or any of its committees. As well, because our Office is exempt from the *Freedom of Information and Protection of Privacy Act*, our draft reports and audit working papers, which include all infor-

mation obtained during the course of an audit from the auditee, cannot be accessed from our Office, thus further ensuring confidentiality.

CODE OF PROFESSIONAL CONDUCT

The Office has a Code of Professional Conduct to encourage staff to maintain high professional standards and ensure a professional work environment. The Code is intended to be a general statement of philosophy, principles, and rules regarding conduct for employees of the Office, who have a duty to conduct themselves in a professional manner and to strive to achieve the highest standards of behaviour, competence, and integrity in their work.

The Code explains why these expectations exist and further describes the Office's responsibilities to the Legislative Assembly, the public, and our auditees. The Code also provides guidance on disclosure requirements and the steps to be taken to avoid conflict-of-interest situations. All employees are required to complete an annual conflict-of-interest declaration.

Office Organization and Personnel

The Office is organized into portfolio teams—a framework that groups together related audit entities and fosters expertise in the various areas of government activity, such as health care, education, social services, and the environment. The portfolios, which are loosely based on the government's organization into ministries, are each headed by a Director, who oversees and is responsible for the audits within the assigned portfolio. Assisting the Directors and rounding out the teams are a number of Audit Managers and various other audit staff (see Figure 1).

The Auditor General, the Deputy Auditor General, the Directors, and the Managers of Human

Figure 1: Office Organization, September 30, 2011

Auditor General	Human Resources	Operations
Jim McCarter	Annemarie Wiebe, Manager Shayna Whiteford	Administration Shanta Persaud Maureen Bissonnette Sohani Myers Christine Wu
Deputy Auditor General	Quality Assurance and Special Projects	Communications and Government Advertising Review Christine Peadar, (Acting) Manager Mariana Green Shirley McGibbon Tiina Randoja
Gary Peall	Paul Amodeo, Manager Kristin Snowden, Manager Shariq Saeed	Information Technology Peter Lee Shams Ali
	Standards and Research	
	Rebecca Yosipovich, Manager	

Audit Portfolios and Staff

Community and Social Services, and Revenue	Crown Agencies (1), Finance	Crown Agencies (2)
Walter Bordne, Director Wendy Cumbo, Manager Nick Stavropoulos, Manager Johan Boer Dimitar Dimitrov Katrina Exaltacion Inna Guelfand Li-Lian Koh	Jenna Lasky Michael Okulicz Shreya Shah Zachary Thomas Tiffany Yau	John McDowell, Director Walter Allan, Manager Tom Chatzidimos Kandy Fletcher Mary Romano Megan Sim
		Laura Bell, Director Teresa Carello, Manager Denise Young, Manager Margaret Chen Constantino De Sousa Roger Munroe Cynthia Tso
Education and Training	Health and Health Promotion	Health and Long-term-care Providers
Gerard Fitzmaurice, Director Emanuel Tsikritsis, Manager Tara Beheshti Tino Bove Zahra Jaffer Rumi Janmohamed Mythili Kandasamy	Michael Katsevman Nina Khant Mark Smith Ellen Tepelenas Dora Ulisse	Rudolph Chiu, Director Kim Cho, Manager Gigi Yip, Manager Bartosz Amerski Izabela Beben Ariane Chan Anita Cheung Helen Chow Marcia DeSouza
	Lisa Li Oscar Rodriguez Pasha Sidhu Alexander Truong Alla Volodina	Susan Klein, Director Vanna Gotsis, Manager Naomi Herberg, Manager Kevin Aro Sally Chang Jennifer Fung Ingrid Goh
		Justin Hansis Veronica Ho Linde Qiu
Justice and Regulatory	Public Accounts, Environment, and Natural Resources	
Vince Mazzone, Director Rick MacNeil, Manager Fraser Rogers, Manager Vivian Sin, Manager Rashmeet Gill Kiran Grewal Tanmay Gupta Thomas Ioannou Alfred Kiang	Margaret Lam Alice Nowak Brian Wanchuk Celia Yeung	Gus Chagani, Director Sandy Chan, Manager Bill Pelow, Manager Allen Fung Mark Hancock Aldora Harrison Zhenya Stekovic
		Georgegiana Tanudjaja Janet Wan Jing Wang

Resources and of Communications and Government Advertising Review make up the Office's Senior Management Committee.

Canadian Council of Legislative Auditors

This year, Nova Scotia hosted the 39th annual meeting of the Canadian Council of Legislative Auditors (CCOLA) in Halifax, from August 28 to 30, 2011. This annual gathering has, for the last 32 years, been held jointly with the annual conference of the Canadian Council of Public Accounts Committees (CCPAC). It brings together legislative auditors and members of the Standing Committees on Public Accounts from the federal government and the provinces and territories, and provides a useful forum for sharing ideas and exchanging information.

International Visitors

As an acknowledged leader in value-for-money auditing, the Office often receives requests to meet with visitors and delegations from abroad to discuss the roles and responsibilities of the Office and to share our value-for-money and other audit experiences with them. During the audit year covered by this report, the Office met with legislators/public servants/auditors from Belize, Benin, Cameroon, China (both national and provincial audit offices), Ghana, Kenya, Pakistan (Punjab province), Saint Lucia, Tanzania, and Vietnam.

Results Produced by the Office This Year

The 2010/11 fiscal year was another successful year for the Office. In total, we completed 13 value-for-money audits and one review, and released a report on our statutory review of the *2011 Pre-Election Report on Ontario's Finances*. This year our value-for-money audits in the broader public sector examined aspects of a number of provincially funded agencies, such as the LCBO, the Ontario Trillium Foundation, Legal Aid Ontario, the Office of the Children's Lawyer, the Ontario Power Authority, the Ontario Energy Board, and the Financial Services Commission of Ontario (auto insurance regulation). Of these, only the LCBO had previously been subject to a value-for-money audit by our Office. In addition, we examined a variety of government activities also of importance to Ontarians, including renewable energy initiatives, student success initiatives (including visits to selected school boards and schools), forest management, alternative funding arrangements for physicians, oversight of private career colleges, and supportive services provided to people with disabilities.

As mentioned in the earlier "Attest Audits" section, we are responsible for auditing the province's consolidated financial statements (further discussed in Chapter 2), as well as the statements of more than 40 Crown agencies. We again met all of our key financial-statement audit deadlines while continuing our investment in training to successfully implement significant revisions to accounting and assurance standards and methodology for conducting our financial-statement audits.

We successfully met our review responsibilities under the *Government Advertising Act, 2004*, as further discussed in Chapter 5.

The results produced by the Office this year would clearly not have been possible without the hard work and dedication of our staff, as well as the assistance of our contract staff and expert advisers.

As has been the case in recent years, with a number of senior staff retiring or on leave, contract staff were important to us again this year, and they filled in admirably.

Financial Accountability

The following discussion and our financial statements outline the Office's financial results for the 2010/11 fiscal year.

Figure 2 provides a comparison of our approved budget and expenditures over the last five years. Figure 3 presents the major components of our spending and shows that more than 74% (73% in 2009/10) related to salary and benefit costs for our staff, while professional and other services and rent constituted most of the remainder. These proportions have been relatively stable in recent years.

Overall, our expenses increased 2.1% (2.2% in 2009/10) and were again significantly under budget. Over the five-year period presented in Figure 2, we have returned unspent appropriations totalling \$7.6 million. The main reason for this is that we have historically faced challenges in hiring and retaining qualified professional staff in the competitive Toronto job market—our public-service salary ranges have simply not kept pace with com-

penetration increases for such professionals in the private sector. A more detailed discussion of the changes in our expenses and some of the challenges we are facing follows.

SALARIES AND BENEFITS

Our salary costs rose 4.2% this year, while benefit costs were largely unchanged from the previous year.

Given the legislated freeze on salary ranges, this increase related largely to promotional increases earned by trainees who obtained their professional accounting designations during the year and by those staff who demonstrated the ability to take on additional responsibilities. Many of our trainees earned their professional accounting designation during the year and remained with us. To be competitive, we must pay our newly qualified staff considerably more than they were paid as trainees, and salaries for qualified accountants rise fairly quickly in the first five years following qualification.

With the economic uncertainty and the continuing need for cost containment, we remained cautious about staffing up when staff departed, delaying the replacement of retiring senior staff and hiring experienced but more junior staff as opportunities arose. As a result, our average staffing over the course of this year was about the same

Figure 2: Five-year Comparison of Spending (Accrual Basis) (\$ 000)

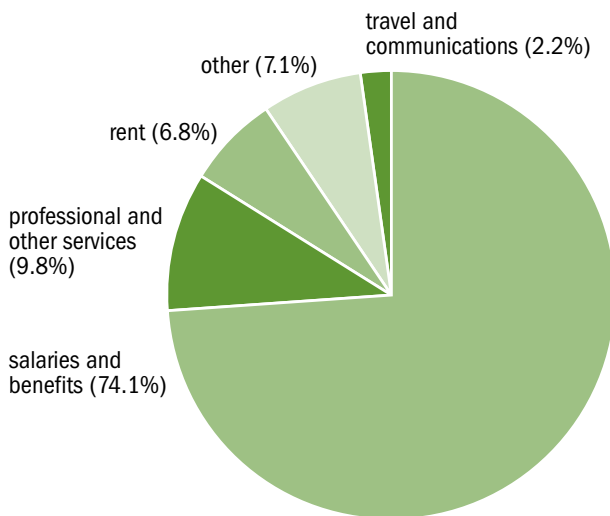
Prepared by the Office of the Auditor General of Ontario

	2006/07	2007/08	2008/09	2009/10	2010/11
Approved budget	13,992	15,308	16,245	16,224	16,224
Actual expenses					
salaries and benefits	8,760	9,999	10,279	10,862	11,233
professional and other services	1,264	1,525	1,776	1,489	1,491
rent	985	1,048	1,051	1,069	1,036
travel and communications	363	397	332	360	337
other	930	1,033	1,096	1,073	1,071
Total	12,302	14,002	14,534	14,853	15,168
Returned to province*	1,730	1,608	1,561	1,498	1,223

* These amounts are typically slightly different than the excess of appropriation over expenses as a result of non-cash expenses (such as amortization of capital assets and employee future benefit accruals).

Figure 3: Spending by Major Expenditure Category, 2010/11

Prepared by the Office of the Auditor General of Ontario

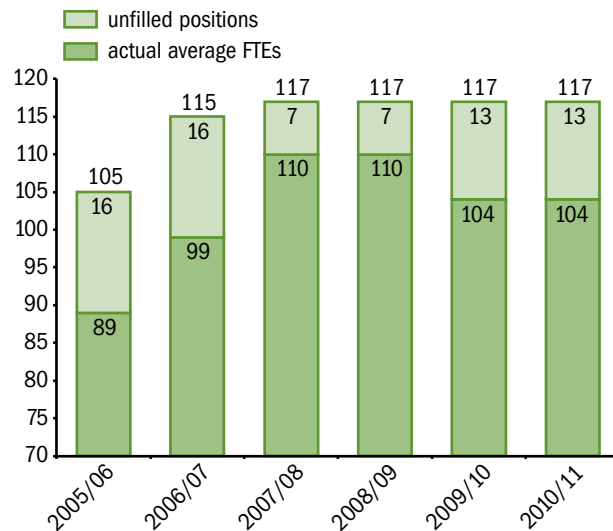


as last year, at 104. After reaching as high as 110 late last year and the early part of this year, staff departures have resumed as the market for professional accountants has remained robust despite economic uncertainties. The growing complexity of our audits demands that we use highly qualified, experienced staff as much as possible. However, our hiring continues to be primarily at more junior levels, given that our salaries and benefits are competitive at these levels. We quickly fall behind private- and broader-public-sector salary scales for more experienced professional accountants. This is one reason that, as Figure 4 shows, we still have a number of unfilled positions. The challenge of maintaining and enhancing our capacity to perform these audits will only increase as more of our most experienced staff retire over the next few years.

Under the Act, our salary levels must be comparable to the salary ranges of similar positions in the government. These ranges remain uncompetitive with the salaries that both the not-for-profit and the private sectors offer. According to the most recent survey by the Canadian Institute of Chartered Accountants published in 2011, average salaries for CAs in government (\$120,600) were 13% lower than those in the not-for-profit sector (\$136,400)

Figure 4: Staffing, 2005/06–2010/11

Prepared by the Office of the Auditor General of Ontario



and, most importantly, 24% lower than those working for professional service CA firms in Ontario (\$150,000), which are our primary competitors for professional accountants. The salaries of our highest-paid staff in the 2010 calendar year are disclosed in Note 7 to our financial statements.

PROFESSIONAL AND OTHER SERVICES

These services represent our next most significant area of expenditure, at close to 10% of total expenditures. Such costs were virtually the same as the previous year after several years of significant increases. These services include both contract professionals and contract CA firms.

We continue to have to rely on contract professionals to meet our legislated responsibilities, given more complex work and tighter deadlines for finalizing the financial-statement audits of Crown agencies and the province. We also believe that using more contract staff to fill temporary needs is a prudent approach to staffing, particularly during uncertain economic times, in that it provides more flexibility and less disruption if significant in-year cuts to our budget are requested. Also, even during the economic downturn it has remained difficult for us to reach our approved full complement given

our uncompetitive salary levels, particularly for professionals with several years of post-qualifying experience. Furthermore, after two years of budget freezes we can no longer afford to staff up to our approved complement of 117 staff (even if we could attract them at the salaries we are able to offer), and employing contract staff has proven a cost-effective way of helping to address this.

We continue to incur higher contract costs for the CA firms we work with because of the higher salaries they pay their staff and the additional hours required to implement ongoing changes to accounting and assurance standards. However, these cost increases were partly offset this year by savings in provincial sales taxes with the introduction of the refundable harmonized sales tax effective July 1, 2010.

RENT

Our costs for accommodation were slightly lower than last year, owing primarily to a decline in building operating costs, particularly utilities. Accommodation costs declined as a percentage of total spending and are expected to decline slightly in the future as the result of the Office's successful negotiation of a rent reduction as part of the lease renewal terms commencing in fall 2011.

TRAVEL AND COMMUNICATIONS

Our travel and communications costs declined more than 6% from last year. This year the value-for-money audits we selected generally required less travel relative to the extensive broader-public-sector work completed last year, particularly in hospitals.

This year only three of the audits required extensive travel: Forest Management Program, Supportive Services for People with Disabilities, and Student Success Initiatives. The introduction of the refundable harmonized sales tax also contributed to the decline. In general, though, since the expansion of our value-for-money-audit mandate to the broader public sector, we have been incurring significantly more travel costs.

OTHER

Other costs include asset amortization, supplies and equipment maintenance, training, and statutory expenses. Such costs were virtually the same as last year, although the individual components fluctuated. Increases included \$38,000 associated with additional expert advisory services required to administer the *Government Advertising Act, 2004*, \$16,000 relating to higher equipment amortization owing to prior investments in computer and leasehold improvements, and \$12,000 for the transfer payment to help cover additional training costs being shared by all Canadian legislative audit offices on a collaborative basis. These increases were more than offset by reductions in expenditures on training (\$24,000), owing mostly to the timing of course offerings relative to last year; statutory services (\$22,000), owing to less special-audit activity; the Auditor General's salary (\$15,000), owing to salary restraint legislation; and supplies and equipment (\$8,000). Again, the introduction of the refundable harmonized sales tax also contributed to the slight overall decline in other costs.



Office of the Auditor General of Ontario
Bureau du vérificateur général de l'Ontario

MANAGEMENT'S RESPONSIBILITY FOR FINANCIAL STATEMENTS

The accompanying financial statements of the Office of the Auditor General for the year ended March 31, 2011 are the responsibility of management of the Office. Management has prepared the financial statements to comply with the *Auditor General Act* and with Canadian generally accepted accounting principles.

Management maintains a system of internal controls that provides reasonable assurance that transactions are appropriately authorized, assets are adequately safeguarded, appropriations are not exceeded, and the financial information contained in these financial statements is reliable and accurate.

The financial statements have been audited by the firm of Adams & Miles LLP, Chartered Accountants. Their report to the Board of Internal Economy, stating the scope of their examination and opinion on the financial statements, appears on the following page.

Jim McCarter, FCA
Auditor General

Gary R. Peall, CA
Deputy Auditor General

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INDEPENDENT AUDITORS' REPORT

To the Board of Internal Economy of
Legislative Assembly of Ontario

We have audited the accompanying financial statements of the Office of the Auditor General of Ontario, which comprise the statement of financial position as at March 31, 2011 and the statements of operations and accumulated deficit and cash flows for the year then ended, and a summary of significant accounting policies and other explanatory information.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with Canadian generally accepted accounting principles, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on our judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, we consider internal control relevant to the preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Office of the Auditor General of Ontario's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements present fairly, in all material respects, the financial position of the Office of the Auditor General of Ontario as at March 31, 2011, and the results of its operations and its cash flows for the year then ended.

Adams & Miles LLP

Chartered Accountants
Licensed Public Accountants

Toronto, Canada
August 23, 2011

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An independent firm associated
with AGN International Ltd.

Office of the Auditor General of Ontario

Statement of Financial Position

As at March 31, 2011

	2011 \$	2010 \$
Assets		
Current		
Cash	500,170	370,802
Harmonized sales taxes recoverable	128,927	—
Due from Consolidated Revenue Fund	49,194	754,098
	<u>678,291</u>	<u>1,124,900</u>
Capital assets (Note 4)	<u>501,904</u>	<u>540,543</u>
Total assets	<u>1,180,195</u>	<u>1,665,443</u>
Liabilities		
Accounts payable and accrued liabilities	1,535,291	1,920,900
Accrued employee benefits obligation [Note 5(B)]	1,988,000	1,922,000
	<u>3,523,291</u>	<u>3,842,900</u>
Net accumulated deficit		
Investment in capital assets (Note 4)	501,904	540,543
Accumulated deficit related to employee future benefits [Note 2(B)]	(2,845,000)	(2,718,000)
	<u>(2,343,096)</u>	<u>(2,177,457)</u>
Total liabilities and net accumulated deficit	<u>1,180,195</u>	<u>1,665,443</u>

Commitments (Note 6)

See accompanying notes to financial statements.

Approved by the Office of the Auditor General of Ontario:



Jim McCarter, FCA
Auditor General



Gary Peall, CA
Deputy Auditor General

Office of the Auditor General of Ontario

Statement of Operations and Accumulated Deficit For the Year Ended March 31, 2011

	2011 Budget (Unaudited) \$	2011 Actual \$	2010 Actual \$
Expenses			
Salaries and wages	9,755,400	9,245,160	8,870,759
Employee benefits (Note 5)	2,041,200	1,987,895	1,990,880
Office rent	1,062,400	1,035,522	1,068,789
Professional and other services	1,729,500	1,490,944	1,489,375
Amortization of capital assets	—	339,316	323,386
Travel and communication	418,800	337,301	359,934
Training and development	386,600	130,700	154,525
Supplies and equipment	377,500	136,574	143,734
Transfer payment: CCAF-FCVI Inc.	50,000	61,775	50,000
Statutory expenses: <i>Auditor General Act</i>	222,700	229,147	243,831
<i>Government Advertising Act</i>	30,000	65,060	27,224
<i>Statutory services</i>	150,000	108,434	130,754
Total expenses (Note 8)	16,224,100	15,167,828	14,853,191
Revenue			
Consolidated Revenue Fund – Voted appropriation [Note 2(B)]	16,224,100	16,224,100	16,224,100
Excess of appropriation over expenses		1,056,272	1,370,909
Less: returned to the Province [Note 2(B)]		1,221,911	1,498,426
Net operations deficiency		(165,639)	(127,517)
Accumulated deficit, beginning of year		(2,177,457)	(2,049,940)
Accumulated deficit, end of year		(2,343,096)	(2,177,457)

See accompanying notes to financial statements.

Office of the Auditor General of Ontario

Statement of Cash Flows For the Year Ended March 31, 2011

	2011 \$	2010 \$
NET INFLOW (OUTFLOW) OF CASH RELATED TO THE FOLLOWING ACTIVITIES		
Cash flows from operating activities		
Net operations deficiency	(165,639)	(127,517)
Amortization of capital assets	339,316	323,386
Accrued employee benefits obligation	66,000	(75,000)
	<u>239,677</u>	<u>120,869</u>
Changes in non-cash working capital		
Decrease (increase) in due from Consolidated Revenue Fund	704,904	(90,949)
Increase in Harmonized sales taxes recoverable	(128,927)	—
Increase (decrease) in accounts payable and accrued liabilities	(385,609)	330,445
	<u>190,368</u>	<u>239,496</u>
Investing activities		
Purchase of capital assets	(300,677)	(282,869)
Net increase in cash position	129,368	77,496
Cash position, beginning of year	<u>370,802</u>	<u>293,306</u>
Cash position, end of year	<u>500,170</u>	<u>370,802</u>

See accompanying notes to financial statements.

Office of the Auditor General of Ontario

Notes to Financial Statements

For the Year Ended March 31, 2011

1. Nature of Operations

In accordance with the provisions of the *Auditor General Act* and various other statutes and authorities, the Auditor General conducts independent audits of government programs, of institutions in the broader public sector that receive government grants, and of the fairness of the financial statements of the Province and numerous agencies of the Crown. In doing so, the Office of the Auditor General promotes accountability and value-for-money in government operations and in broader public sector organizations.

Additionally, under the *Government Advertising Act, 2004*, the Auditor General is required to review specified types of advertising, printed matter or reviewable messages proposed by government offices to determine whether they meet the standards required by the Act.

Under both Acts, the Auditor General reports directly to the Legislative Assembly.

As required by the *Fiscal Transparency and Accountability Act, 2004*, the Auditor General has recently reviewed and reported on the 2011 Pre-Election Report prepared by the Ministry of Finance.

2. Significant Accounting Policies

The financial statements have been prepared in accordance with Canadian generally accepted accounting principles. The significant accounting policies are as follows:

(A) ACCRUAL BASIS

These financial statements are accounted for on an accrual basis whereby expenses are recognized in the fiscal year that the events giving rise to the expense occur and resources are consumed.

(B) VOTED APPROPRIATIONS

The Office is funded through annual voted appropriations from the Province of Ontario. Unspent appropriations are returned to the Province's Consolidated Revenue Fund each year. As the voted appropriation is prepared on a modified cash basis, an excess or deficiency of revenue over expenses arises from the application of accrual accounting, including the capitalization and amortization of capital assets and the recognition of employee benefit costs earned to date but that will be funded from future appropriations.

(C) CAPITAL ASSETS

Capital assets are recorded at historical cost less accumulated amortization. Amortization of capital assets is recorded on the straight-line method over the estimated useful lives of the assets as follows:

Computer hardware	3 years
Computer software	3 years
Furniture and fixtures	5 years
Leasehold improvements	The remaining term of the lease

Office of the Auditor General of Ontario

Notes to Financial Statements For the Year Ended March 31, 2011

2. Significant Accounting Policies (Continued)

(D) FINANCIAL INSTRUMENTS

The Office's financial instruments consist of cash, due from Consolidated Revenue Fund, accounts payable and accrued liabilities, and accrued employee benefits obligation. Under Canadian generally accepted accounting principles, financial instruments are classified into one of five categories – available-for-sale, held-for-trading, held-to-maturity, loans and receivables, or other financial liabilities. The Office classifies its financial assets and liabilities as follows:

- Cash is classified as held for trading and is recorded at fair value.
- Due from Consolidated Revenue Fund is classified as loans and receivables and is valued at cost which approximates fair value given its short term nature.
- Accounts payable and accrued liabilities are classified as other financial liabilities and are recorded at cost which approximate fair value given their short term maturities.
- The accrued employee benefits obligation is classified as another financial liability and is recorded at cost based on the entitlements earned by employees up to March 31, 2011. A fair value estimate based on actuarial assumptions about when these benefits will actually be paid has not been made as it is not expected that there would be a significant difference from the recorded amount.

It is management's opinion that the Office is not exposed to any interest rate, currency, liquidity or credit risk arising from its financial instruments due to their nature.

(E) USE OF ESTIMATES

The preparation of financial statements in accordance with Canadian generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements, and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from management's best estimates as additional information becomes available in the future.

3. Accounting Policy Transition

In 2009, the Public Sector Accounting Board approved an amendment to "Introduction to Public Sector Accounting Standards". The amendment allowed organizations classified as an Other Government Organization to adopt either the Public Sector Accounting Handbook or International Financial Reporting Standards ("IFRS") for publicly accountable entities as the primary source of Canadian generally accepted accounting principles beginning on or after January 1, 2011. Taking into consideration the nature of the Office and its users,

Office of the Auditor General of Ontario

Notes to Financial Statements

For the Year Ended March 31, 2011

3. Accounting Policy Transition (Continued)

management has determined that Public Sector Accounting Standards are a more suitable accounting standard to follow. The Office is planning to adopt Public Sector Accounting Standards for fiscal year 2011/12. The impact on the financial statements is not expected to be significant.

4. Capital Assets

	2011			2010
	Cost	Accumulated Amortization	Net Book Value	Net Book Value
	\$	\$	\$	\$
Computer hardware	597,133	397,966	199,167	248,605
Computer software	340,833	147,169	193,664	90,469
Furniture and fixtures	378,491	294,185	84,306	127,167
Leasehold improvements	235,868	211,101	24,767	74,302
	<u>1,552,325</u>	<u>1,050,421</u>	<u>501,904</u>	<u>540,543</u>

Investment in capital assets represents the accumulated cost of capital assets less accumulated amortization and disposals.

5. Obligation for Future Employee Benefits

Although the Office's employees are not members of the Ontario Public Service, under provisions in the *Auditor General Act*, the Office's employees are entitled to the same benefits as Ontario Public Service employees. The future liability for benefits earned by the Office's employees is included in the estimated liability for all provincial employees that have earned these benefits and is recognized in the Province's consolidated financial statements. These benefits are accounted for as follows:

(A) PENSION BENEFITS

The Office's employees participate in the Public Service Pension Fund (PSPF) which is a defined benefit pension plan for employees of the Province and many provincial agencies. The Province of Ontario, which is the sole sponsor of the PSPF, determines the Office's annual payments to the fund. As the sponsor is responsible for ensuring that the pension funds are financially viable, any surpluses or unfunded liabilities arising from statutory actuarial funding valuations are not assets or obligations of the Office. The Office's required annual payments of \$732,873 (2010 - \$711,251), are included in employee benefits expense in the Statement of Operations and Accumulated Deficit.

Office of the Auditor General of Ontario

Notes to Financial Statements For the Year Ended March 31, 2011

5. Obligation for Future Employee Benefits (Continued)

(B) ACCRUED EMPLOYEE BENEFITS OBLIGATION

Although the costs of any legislated severance and unused vacation entitlements earned by employees are recognized by the Province when earned by eligible employees, these costs are also recognized in these financial statements. These costs for the year amounted to \$231,000 (2010 – \$229,000) and are included in employee benefits in the Statement of Operations and Accumulated Deficit. The total liability for these costs is reflected in the accrued employee benefits obligation, less any amounts payable within one year, which are included in accounts payable and accrued liabilities, as follows:

	2011 \$	2010 \$
Total liability for severance and vacation	2,845,000	2,718,000
Less: Due within one year and included in accounts payable and accrued liabilities	857,000	796,000
Accrued employee benefits obligation	1,988,000	1,922,000

(C) OTHER NON-PENSION POST-EMPLOYMENT BENEFITS

The cost of other non-pension post-retirement benefits is determined and funded on an ongoing basis by the Ontario Ministry of Government Services and accordingly is not included in these financial statements.

6. Commitments

The Office has an operating lease to rent premises which expires on October 31, 2021. The minimum rental commitment for the remaining term of the lease is as follows:

	\$
2011-12	507,800
2012-13	483,000
2013-14	488,400
2014-15	495,900
2015-16	501,300
2016-17 and beyond	2,920,800

Office of the Auditor General of Ontario

Notes to Financial Statements

For the Year Ended March 31, 2011

7. Public Sector Salary Disclosure Act, 1996

Section 3(5) of this Act requires disclosure of the salary and benefits paid to all Ontario public-sector employees earning an annual salary in excess of \$100,000. This disclosure for the 2010 calendar year is as follows:

Name	Position	Salary and	Taxable
		Benefits Paid	Benefits
		\$	\$
McCarter, Jim	Auditor General	254,174	4,306
Peall, Gary	Deputy Auditor General	172,985	282
Amodeo, Paul	Director	140,858	222
Bell, Laura	Director	122,582	194
Bordne, Walter	Director	131,000	222
Chagani, Gus	Director	122,582	194
Cheung, Andrew	Director	140,858	222
Chiu, Rudolph	Director	140,858	222
Fitzmaurice, Gerard	Director	144,145	222
Klein, Susan	Director	140,858	222
Mazzone, Vince	Director	140,858	222
McDowell, John	Director	144,145	222
Allan, Walter	Audit Manager	113,962	179
Brennan, Michael	Audit Manager	101,733	149
Carello, Teresa	Audit Manager	107,673	173
Chan, Sandy	Audit Manager	113,962	179
Cumbo, Wendy	Audit Manager	116,621	179
Gotsis, Vanna	Audit Manager	113,962	179
Herberg, Naomi	Audit Manager	113,962	179
MacNeil, Richard	Audit Manager	113,962	179
Pelow, William	Audit Manager	116,621	179
Rogers, Fraser	Audit Manager	105,986	179
Sin, Vivian	Audit Manager	108,473	174
Stavropoulos, Nick	Audit Manager	110,218	203
Tersigni, Anthony	Audit Manager	113,962	179
Tsikritsis, Emanuel	Audit Manager	104,618	173
Young, Denise	Audit Manager	116,621	179
Boer, Johannes	Audit Supervisor	104,157	169
Bove, Tino	Audit Supervisor	100,187	166
Davy, Howard	Audit Supervisor	104,157	169
Hancock, Mark	Audit Supervisor	104,157	169
Tepelenas, Ellen	Audit Supervisor	104,017	167
Wanchuk, Brian	Audit Supervisor	100,651	169
Yeung, Celia	Audit Supervisor	106,778	169
Wiebe, Annemarie	Manager, Human Resources	113,962	179

Office of the Auditor General of Ontario

Notes to Financial Statements

For the Year Ended March 31, 2011

8. Reconciliation to Public Accounts Volume 1 Basis of Presentation

The Office's Statement of Expenses presented in Volume 1 of the Public Accounts of Ontario was prepared on a basis consistent with the accounting policies followed for the Province's financial statements, under which purchases of computers and software are expensed in the year of acquisition rather than being capitalized and amortized over their useful lives. Volume 1 also excludes the accrued employee future benefit costs recognized in these financial statements as well as in the Province's summary financial statements. A reconciliation of total expenses reported in Volume 1 to the total expenses reported in these financial statements is as follows:

	2011	2010
	\$	\$
Total expenses per Public Accounts Volume 1	15,002,189	14,725,674
purchase of capital assets	(300,677)	(282,869)
amortization of capital assets	339,316	323,386
change in accrued future employee benefit costs	127,000	87,000
	<u>165,639</u>	<u>127,517</u>
Total expenses per audited financial statements	<u>15,167,828</u>	<u>14,853,191</u>

9. Management of Capital

The Office's capital consists of cash on hand. In managing cash on hand the Office maintains sufficient funds to meet estimated cash requirements each month and requisitions the necessary amount from the Ministry of Finance on a monthly basis. The Office's bank account is pooled with other government accounts for cash management purposes in order to reduce the province's borrowing requirements and to earn interest at rates negotiated by the Ministry of Finance. Accordingly, the Office's capital is not at risk.

Exhibit 1

Agencies of the Crown

1. Agencies whose accounts are audited by the Auditor General

Agricorp
Algonquin Forestry Authority
Cancer Care Ontario
Centennial Centre of Science and Technology
Chief Electoral Officer, *Election Finances Act*
Election Fees and Expenses, *Election Act*
Financial Services Commission of Ontario
Grain Financial Protection Board, Funds for
Producers of Grain Corn, Soybeans, Wheat, and
Canola
Investor Education Fund, Ontario Securities
Commission
Legal Aid Ontario
Liquor Control Board of Ontario
Livestock Financial Protection Board, Fund for
Livestock Producers
Northern Ontario Heritage Fund Corporation
Office of the Assembly
Office of the Children's Lawyer
Office of the Environmental Commissioner
Office of the Information and Privacy
Commissioner
Office of the Ombudsman

Ontario Clean Water Agency (December 31)¹
Ontario Development Corporation
Ontario Educational Communications Authority
Ontario Electricity Financial Corporation
Ontario Energy Board
Ontario Financing Authority
Ontario Food Terminal Board
Ontario Heritage Trust
Ontario Immigrant Investor Corporation
Ontario Media Development Corporation
Ontario Mortgage and Housing Corporation
Ontario Northland Transportation Commission
Ontario Place Corporation (December 31)¹
Ontario Racing Commission
Ontario Realty Corporation²
Ontario Securities Commission
Pension Benefits Guarantee Fund, Financial
Services Commission of Ontario
Province of Ontario Council for the Arts
Provincial Advocate for Children and Youth
Provincial Judges Pension Fund, Provincial Judges
Pension Board
Public Guardian and Trustee for the Province of
Ontario

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1. Dates in parentheses indicate fiscal periods ending on a date other than March 31.
 2. Effective June 6, 2011, Ontario Realty Corporation, Stadium Corporation of Ontario Limited, and Ontario Infrastructure Projects Corporation merged and are now known as Ontario Infrastructure and Land Corporation.

2. Agencies whose accounts are audited by another auditor under the direction of the Auditor General

Motor Vehicle Accident Claims Fund
Niagara Parks Commission (October 31)¹
Ontario Mental Health Foundation
St. Lawrence Parks Commission
Workplace Safety and Insurance Board
(December 31)¹

1. Dates in parentheses indicate fiscal periods ending on a date other than March 31.

Note:

The following changes were made during the 2010/11 fiscal year:

Deletion:

North Pickering Development Corporation
Toronto Area Transit Operating Authority

Exhibit 2

Crown-controlled Corporations

Corporations whose accounts are audited by an auditor other than the Auditor General, with full access by the Auditor General to audit reports, working papers, and other related documents

Agricultural Research Institute of Ontario	HealthForceOntario Marketing and Recruitment Agency
Board of Funeral Services	Higher Education Quality Council of Ontario
Brock University Foundation	Human Rights Legal Support Centre
Central Community Care Access Centre	Hydro One Inc. (December 31) ¹
Central East Community Care Access Centre	Independent Electricity System Operator (December 31) ¹
Central East Local Health Integration Network	McMaster University Foundation
Central Local Health Integration Network	McMichael Canadian Art Collection
Central West Community Care Access Centre	Metrolinx
Central West Local Health Integration Network	Metropolitan Toronto Convention Centre Corporation
Champlain Community Care Access Centre	Mississauga Halton Community Care Access Centre
Champlain Local Health Integration Network	Mississauga Halton Local Health Integration Network
Deposit Insurance Corporation of Ontario (December 31) ¹	Municipal Property Assessment Corporation
Echo: Improving Women's Health in Ontario	North East Community Care Access Centre
Education Quality and Accountability Office	North East Local Health Integration Network
eHealth Ontario	North Simcoe Muskoka Community Care Access Centre
Erie St. Clair Community Care Access Centre	North Simcoe Muskoka Local Health Integration Network
Erie St. Clair Local Health Integration Network	North West Community Care Access Centre
Foundation at Queen's University at Kingston	North West Local Health Integration Network
Hamilton Niagara Haldimand Brant Community Care Access Centre	Ontario Agency for Health Protection and Promotion
Hamilton Niagara Haldimand Brant Local Health Integration Network	Ontario Capital Growth Corporation
	Ontario French-language Educational Communications Authority

1. Dates in parentheses indicate fiscal periods ending on a date other than March 31.

Ontario Health Quality Council	South West Community Care Access Centre
Ontario Infrastructure Projects Corporation ²	South West Local Health Integration Network
Ontario Lottery and Gaming Corporation	Stadium Corporation of Ontario Limited ²
Ontario Mortgage Corporation	Toronto Central Community Care Access Centre
Ontario Pension Board (December 31) ¹	Toronto Central Local Health Integration Network
Ontario Power Authority (December 31) ¹	Toronto Islands Residential Community Trust
Ontario Power Generation Inc. (December 31) ¹	Corporation
Ontario Tourism Marketing Partnership Corporation	Toronto Waterfront Revitalization Corporation
Ontario Trillium Foundation	Trent University Foundation
Ottawa Convention Centre Corporation	Trillium Gift of Life Network
Owen Sound Transportation Company Limited	University of Ottawa Foundation
Royal Ontario Museum	Walkerton Clean Water Centre
Science North	Waterfront Regeneration Trust Agency
South East Community Care Access Centre	Waterloo Wellington Community Care Access Centre
South East Local Health Integration Network	Waterloo Wellington Local Health Integration Network

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1. Dates in parentheses indicate fiscal periods ending on a date other than March 31.
 2. Effective June 6, 2011, Ontario Realty Corporation, Stadium Corporation of Ontario Limited, and Ontario Infrastructure Projects Corporation merged and are now known as Ontario Infrastructure and Land Corporation.

Note:

The following changes were made during the 2010/11 fiscal year:

Deletions:

Art Gallery of Ontario Crown Foundation
 Canadian Opera Company Crown Foundation
 Canadian Stage Company Crown Foundation
 National Ballet of Canada Crown Foundation
 Northern Ontario Grow Bonds Corporation
 Ontario Foundation for the Arts
 Royal Botanical Gardens Crown Foundation
 Royal Ontario Museum Crown Foundation
 Shaw Festival Crown Foundation
 Stratford Festival Crown Foundation
 Toronto Symphony Orchestra Crown Foundation

Exhibit 3

Treasury Board Orders

Under subsection 12(2)(e) of the *Auditor General Act*, the Auditor General is required to annually report all orders of the Treasury Board made to authorize payments in excess of appropriations, stating the date of each order, the amount authorized, and the amount expended. These are outlined

in the following table. Although ministries may track expenditures related to these orders in more detail by creating accounts at the sub-vote and item level, this schedule summarizes such expenditures at the vote and item level.

Ministry	Date of Order	Authorized (\$)	Expended (\$)
Aboriginal Affairs	Jun. 17, 2010	2,800,000	2,800,000
	Jun. 17, 2010	500,000	—
	Aug. 23, 2010	3,640,000	1,467,200
	Oct. 21, 2010	5,195,100	5,089,000
	Oct. 21, 2010	523,000	—
	Feb. 17, 2011	1,060,000	—
	Feb. 17, 2011	5,090,000	—
	Apr. 14, 2011	290,000	—
		19,098,100	9,356,200
Agriculture, Food and Rural Affairs	Jul. 28, 2010	9,000,000	—
	Mar. 22, 2011	28,000,000	13,073,844
		37,000,000	13,073,844
Attorney General	Dec. 2, 2010	450,000	—
	Feb. 17, 2011	2,528,700	2,528,700
	Mar. 29, 2011	4,832,300	1,164,099
	Mar. 29, 2011	200,500	409
		8,011,500	3,693,208
Cabinet Office	Jun. 17, 2010	770,000	—
	Aug. 5, 2010	200,000	—
	Aug. 12, 2010	800,000	—
		1,770,000	—
Children and Youth Services	Nov. 15, 2010	397,000	—
	Feb. 17, 2011	30,300,000	30,300,000
	Mar. 3, 2011	4,500,000	3,577,800
	Mar. 3, 2011	10,600,000	10,600,000
	Mar. 18, 2011	31,304,000	16,927,921
	Apr. 14, 2011	2,269,800	—
		79,370,800	61,405,721

Ministry	Date of Order	Authorized (\$)	Expended (\$)
Citizenship and Immigration	Mar. 31, 2011	820,300	724,020
Community and Social Services	Mar. 24, 2011	800,000	—
Community Safety and Correctional Services	Jul. 7, 2010	2,600,000	—
	Mar. 29, 2011	20,258,600	17,810,856
	Apr. 14, 2011	65,443,600	63,503,597
		88,302,200	81,314,453
Economic Development and Trade	Sep. 16, 2010	31,800,000	—
	Nov. 29, 2010	1,975,000	—
	Dec. 2, 2010	700,000	—
		34,475,000	—
Education	Apr. 15, 2010	850,000	850,000
	Sep. 16, 2010	20,861,200	13,983,065
	Nov. 18, 2010	835,812,700	834,772,700
	Mar. 29, 2011	4,249,400	—
	Mar. 30, 2011	1,193,600	—
	Apr. 11, 2011	5,279,000	2,073,673
	Apr. 14, 2011	37,409,600	—
		905,655,500	851,679,438
Energy and Infrastructure*	Sep. 16, 2010	39,245,000	—
	Oct. 21, 2010	25,300,000	25,300,000
	Jan. 24, 2011	300,000,000	299,826,592
	Jan. 27, 2011	85,100,000	85,100,000
	Feb. 17, 2011	5,000,000	—
	Mar. 29, 2011	13,983,000	—
	Apr. 11, 2011	2,840,900	2,840,900
	Apr. 14, 2011	2,000,200	—
	Apr. 14, 2011	26,820,000	24,420,000
	May 19, 2011	108,270,000	106,828,837
		608,559,100	544,316,329
Environment	Feb. 17, 2011	21,915,900	21,876,941
Finance	Aug. 23, 2010	470,200	—
	Aug. 23, 2010	12,000,000	—
	Sep. 13, 2010	234,500	—
	Sep. 16, 2010	15,000,000	—
	Feb. 17, 2011	18,627,200	12,039,672
	Mar. 29, 2011	30,031,700	—
	Mar. 29, 2011	62,431,600	—
	Mar. 29, 2011	450,000,000	447,000,000
	Apr. 11, 2011	1,452,100	—
		590,247,300	459,039,672

* Now two separate ministries—Ministry of Energy and Ministry of Infrastructure

Ministry	Date of Order	Authorized (\$)	Expended (\$)
Government Services	Jun. 17, 2010	2,405,000	—
	Jun. 17, 2010	2,383,000	—
	Nov. 18, 2010	5,000,000	—
	Dec. 2, 2010	4,506,600	4,506,600
	Dec. 2, 2010	2,221,200	2,221,200
	Dec. 16, 2010	152,223,000	130,631,561
	Jan. 27, 2011	495,000	493,552
	Feb. 17, 2011	3,773,400	3,709,675
	Feb. 28, 2011	10,822,300	7,658,554
	Apr. 8, 2011	900,000	—
	Apr. 11, 2011	208,700	—
	Jun. 16, 2011	6,518,800	6,387,886
		191,457,000	155,609,028
Health and Long-Term Care	Aug. 23, 2010	4,964,800	—
	Oct. 15, 2010	3,442,300	3,373,858
	Dec. 2, 2010	1,602,200	1,602,200
	Dec. 2, 2010	5,860,000	4,308,317
	Jan. 27, 2011	8,925,900	6,666,402
	Feb. 17, 2011	1,324,348,000	1,301,047,904
	Apr. 14, 2011	37,567,900	30,016,652
		1,386,711,100	1,347,015,333
Health Promotion and Sport	Sep. 16, 2010	6,836,800	—
	Mar. 23, 2011	1,150,000	378,221
	Apr. 14, 2011	175,000	—
		8,161,800	378,221
Labour	Feb. 3, 2011	1,155,700	625,285
Municipal Affairs and Housing	Jun. 17, 2010	1,000,000	1,000,000
	Sep. 16, 2010	199,300	199,300
	Jan. 27, 2011	25,000,000	21,120,000
	Feb. 17, 2011	6,683,900	5,272,185
	Mar. 3, 2011	20,000,000	19,466,763
	May 19, 2011	1,122,000	—
		54,005,200	47,058,248
Natural Resources	Jul. 7, 2010	57,100,000	34,999,328
	Sep. 16, 2010	22,942,000	11,958,642
	Dec. 2, 2010	3,500,000	3,500,000
	Dec. 2, 2010	1,000,000	1,000,000
	Apr. 14, 2011	9,117,600	7,897,497
		93,659,600	59,355,467
Northern Development, Mines and Forestry	Sep. 16, 2010	18,586,000	—
	Oct. 21, 2010	8,800,000	8,628,783
	Dec. 2, 2010	1,500,000	1,500,000
	Jan. 27, 2011	1,991,700	1,991,700

Ministry	Date of Order	Authorized (\$)	Expended (\$)
Northern Development, Mines and Forestry (continued)	Mar. 16, 2011	5,735,000	1,338,430
	Apr. 11, 2011	1,070,700	—
	Apr. 14, 2011	11,606,000	10,813,629
		49,289,400	24,272,542
Office of Francophone Affairs	Nov. 18, 2010	465,000	—
Revenue	Jun. 17, 2010	20,000,000	6,366,477
	Jun. 17, 2010	2,645,900	2,480,000
	Aug. 23, 2010	40,869,800	2,930,115
	Sep. 16, 2010	1,200,000	—
	Jan. 24, 2011	3,315,600	—
	Feb. 17, 2011	5,100,000	—
	Apr. 11, 2011	1,490,900	—
		74,622,200	11,776,592
Tourism and Culture	Jun. 17, 2010	3,950,000	3,950,000
	Aug. 23, 2010	1,000,000	1,000,000
	Sep. 16, 2010	29,017,400	25,185,953
	Sep. 16, 2010	10,000,000	2,226,629
	Nov. 18, 2010	2,000,000	2,000,000
	Apr. 4, 2011	4,926,200	4,664,642
	Apr. 11, 2011	65,700	—
	Apr. 15, 2011	10,400,000	—
		61,359,300	39,027,224
Training, Colleges and Universities	Sep. 16, 2010	7,760,000	—
	Feb. 10, 2011	3,497,000	404,247
		11,257,000	404,247
Transportation	Sep. 16, 2010	124,450,000	9,547,517
	Oct. 26, 2010	5,000,000	4,994,540
	Mar. 30, 2011	1,600,000	169,930
	Apr. 11, 2011	758,000	—
		131,808,000	14,711,987
Total Treasury Board Orders		4,459,977,000	3,746,714,000