

Chapter 4

Ministry of Labour

Section 4.09

Employment Rights and Responsibilities Program

Follow-up to VFM Section 3.09, 2004 Annual Report

Background

The *Employment Standards Act, 2000* sets out employment rights and standards covering a wide range of areas, including minimum wage, working conditions, hours of work and overtime, pregnancy and parental leave, public holidays, vacation pay, termination notices, and severance pay. The Act is enforced by the Ministry of Labour's Employment Rights and Responsibilities Program (Program).

During the 2005/06 fiscal year, the Ministry investigated over 15,770 complaints from employees (15,000 in 2003/04) and carried out approximately 2,560 proactive inspections of payroll records and workplace practices (150 in 2003/04). For the 2005/06 fiscal year, the Ministry's expenditures for the Program totalled approximately \$21.6 million (\$22.4 million in 2003/04), of which about 75% was spent on salaries and benefits for about 224 staff members (220 in 2003/04), located at the Ministry's head office in Toronto and at regional and district offices throughout the province.

In our 2004 Annual Report, we noted that the Ministry was focusing its efforts almost entirely on investigating complaints from individuals against their former employers. As a result, the Ministry's inspection activities relating to protecting the rights

of currently employed workers were inadequate. Many of our specific concerns mirrored those identified during our last audit of this Program in 1991 and included the following:

- Despite finding violations in 70% of complaints investigated, the Ministry did not generally extend those investigations to determine whether similar violations had occurred with respect to other employees of the same employer. Given that 90% of employees who filed claims did so only after leaving their place of employment, expanding the scope of investigations to cover workers currently employed by the same employer could help ensure that the rights of these workers are being protected.
- Efforts to resolve complaints have left officers little time for proactive inspections of employers. The need for such inspections is evidenced by the fact that, in past proactive inspections, violations were uncovered in 40% to 90% of cases, depending on the business sector being inspected.
- The Ministry seldom initiated prosecutions or issued fines. We found instances where employers were neither fined nor required to pay administrative fees even when their violations involved large amounts owed to

employees. Such a lack of punitive action—whether consisting of a fine or prosecution—could encourage some employers to ignore their legal obligations to employees.

- The Program relied on a mix of paper and computer information systems that were not integrated. Information useful for enforcement was not easily accessible to enforcement officers.
- Significant control weaknesses existed over the Ministry's administration of its \$11-million trust fund for employee claimants. We found examples of money collected as far back as 1995 that had not been sent to claimants, of duplicate payments being made, of numerous accounting errors, and a lack of essential reconciliation and supervisory controls.

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

Current Status of Recommendations

Based on information obtained from the Ministry of Labour, the Ministry has made progress on many of the recommendations we made in our *2004 Annual Report*, with significant progress being made on several, including the expedited development of a new computer system and improved administration of the Program's trust fund. The current status of action taken on each of our recommendations is as follows.

ENFORCEMENT

Extending Investigation Activity and Proactive Inspections

Recommendation

To more effectively enforce the Employment Standards Act, 2000, and better protect the rights of currently employed workers, the Ministry should:

- *expand investigations when individual violations are found and increase the number of proactive inspections in higher risk industries; and*
- *assess the impact—both on enforcement and as a deterrent—to making employers found in violation of the Act responsible for the costs of investigations and inspections.*

Current Status

In the 2004/05 fiscal year, the Ministry established a Dedicated Inspection Team and committed to conduct more proactive inspections (2,000 in 2004/05 and 2,500 in each of the following two years) in high-risk sectors. From the information the Ministry provided, 2,355 and 2,560 proactive inspections were conducted in 2004/05 and 2005/06, respectively. These inspections have resulted in a total issuance of 567 tickets and recovery of over \$2.3 million on behalf of employees since the beginning of the 2004/05 fiscal year. By comparison, 151 proactive inspections were completed and \$102,000 was recovered for employees in the 2003/04 fiscal year. The data for the past two years will now be used as benchmarks upon which to establish future targets and measure program effectiveness.

With respect to expanding investigations when individual violations are found, the Ministry indicated that processes had been developed and implemented so that violations that may also affect other employees of the same organization are referred to the Dedicated Inspection Team for consideration of a workplace inspection. At the time of our follow-up, approximately 800 such referrals had been made since 2004. However, the number of

Figure 1: Notices of Contravention and Prosecutions Under the *Provincial Offences Act* (Act), 2001/02–2005/06

Source of data: Ministry of Labour

	2001/02	2002/03	2003/04	2004/05	2005/06
notices of contravention issued	4	56	291	350	332
tickets issued under Part I of Act	0	0	0	262	305
prosecutions under Part III of Act	4	1	7	25	16

actual expanded investigations completed had not increased significantly since our 2004 audit. According to the Ministry, this was due to the amount of resources needed to address the Ministry's complaint-driven workload. The Ministry indicated that it would endeavour to complete more of these investigations in the 2006/07 and 2007/08 fiscal years.

The recommendation to consider making employers found in violation of the Act responsible for paying the full cost of investigations and inspections was not implemented. The Ministry indicated that the option would be considered as part of any future program review or legislative amendment, as any changes in this matter would require amendment to the *Employment Standards Act, 2000*.

Prosecuting Violators

Recommendation

To ensure that its enforcement efforts are effective in promoting employers' compliance with the Employment Standards Act, 2000, the Ministry should provide better direction to employment standards officers regarding the appropriate use of enforcement measures, including notices of contravention and prosecutions, and better monitor the use of these measures for consistency of application.

Current Status

The Ministry's prosecution policy, which identifies criteria for initiating and guidelines for conducting prosecutions, was updated in July 2004 and communicated to staff.

Enforcement measures include issuing notices of contravention with fines ranging from \$250 to \$1,000; prosecutions under Part III of the *Provincial Offences Act* for serious offences, which can result in large fines and imprisonment; and, since July 1, 2004, issuing tickets to employers for violations under Part I of the *Provincial Offences Act*. The Ministry indicated that issuing tickets with a set fine of \$295 is an efficient means of prosecuting violators for less serious offences.

Figure 1 illustrates the number of notices of contravention and prosecutions for the fiscal years 2001/02 to 2005/06.

In addition, on December 1, 2004, the Ministry updated and communicated to employment standards officers the procedures to follow in issuing formal orders to pay against corporate directors, who can be fined and made liable for amounts owed by a corporation for employment standards violations.

At the time of our follow-up, the Ministry was piloting an initiative to more effectively prosecute employers for failures to comply with orders to pay, and a number of cases had been prepared for court. This initiative is to be rolled out across the province by the end of the 2006/07 fiscal year.

The Ministry had also begun posting on its website information about its targeted enforcement activities, including a list of convicted employers and their violations.

According to the Ministry, all activities of employment standards officers are now being tracked on a regular basis and officers' use of the enforcement measures available is being monitored

for extent and consistency and to determine where additional training may be warranted.

Collecting for Claimants

Recommendation

To effectively collect amounts owed to employees, the Ministry should implement more timely and vigorous enforcement measures. In addition, it should better monitor the success of those enforcement efforts.

Current Status

The Ministry has since our 2004 Annual Report made changes to the timing of its initiation of enforcement activities. When an order to pay has been issued, there is a statutory time limit of 30 days for either party (employer or claimant) to file an appeal with the Ontario Labour Relations Board (Board). Once that period has elapsed without either compliance with the order or filing of an application for review at the Board, the order is considered in default and the Ministry now sends the file to a collection agency within 10 business days instead of the previous 30 days.

As of January 2006, the Ministry had entered into new service contracts with two private sector collection agencies. The service contracts were rewritten to improve monitoring of their performance.

A collection-improvement strategy covering the 2006/07 and 2007/08 fiscal years had also been developed to explore a number of options, including:

- using credit bureaus for consumer searches and notifying credit bureaus of unpaid directors' orders to pay;
- filing writs of enforcement registered with the courts against employers for amounts owing;
- considering legislative changes to raise administrative fees to fund internal costs; and
- developing a chronic violator strategy with other ministries that would require compliance with orders to pay—for example, prior to renewing a liquor licence.

Implementation of the Program's new computer system, as described below, is expected to further improve the Ministry's ability to monitor the timeliness and success of enforcement activities by providing managers with real-time data on all enforcement activities.

INFORMATION SYSTEMS

Recommendation

To ensure that staff and management of the Ministry's Employment Rights and Responsibilities Program have access to accurate, relevant, and timely information for decision-making, the Ministry should:

- *obtain the required approvals for the development of its new computer system from the Management Board of Cabinet; and*
- *expedite the development of the new system to meet the needs of all users.*

Current Status

On June 16, 2005, the Ministry obtained the required approval to develop and implement a new information technology (IT) computer system. At the time of our follow-up, the Ministry informed us that clients would soon be able to file claims and obtain information electronically using the Internet. The system will collect real-time data to track and monitor province-wide compliance and enforcement efforts, produce employer profiles for targeting of enforcement activities, and provide the type of information needed to make more informed decisions on compliance. The system will also automatically assign files across the province to equalize workflow and improve the timeliness of enforcement, while reducing the amount of time required for manual tasks such as reporting.

The detailed requirements for building the system were completed in November 2005. At the time of our follow-up, the Ministry was working with its IT group to complete the development and implementation stages of the project. According to

the Ministry, the filing of electronic claims is now being implemented, with rollout of the first phase expected by January 2007.

QUALITY ASSURANCE

Recommendation

To ensure that the quality of information pertaining to claims made under the Employment Standards Act, 2000, is adequate for enforcement and for management decision-making, the Ministry should:

- *improve its documentation of claims and investigations to ensure the completeness and accuracy of information; and*
- *expand quality assurance procedures to include verifying that information contained in ministry databases is also complete and accurate.*

Current Status

At the time of our follow-up, the Ministry had developed and implemented an annual quality assurance audit for claims investigations and proactive inspections. The audits are based on a questionnaire applied to a random sample of completed employment standards case files. Files are reviewed with respect to the specific investigation and decisions made, as well as whether required procedures were properly followed. Files are also reviewed for post-investigation activities such as the issuance of orders and collection efforts.

If a criterion was complied with less than 80% of the time, it is identified as an area of weakness. All regions provide their audit results to head office for a provincial compilation and summary. According to the Ministry, the results of the first provincial quality assurance audit were reviewed by senior management, and individual results were shared with individual officers. The Ministry indicates that the audits were useful for identifying individual and province-wide training needs.

The Ministry further indicated the results to date showed that significant improvements had been achieved; however, some improvement was

still required in the completeness of the investigation reports.

MEASUREMENT OF AND REPORTING ON PROGRAM EFFECTIVENESS

Recommendation

To help ensure the openness and accountability of the Employment Rights and Responsibilities Program and to assist management in making decisions affecting program direction and resource allocation, the Ministry should develop and implement more comprehensive indicators to measure and report on the Program's effectiveness.

Current Status

The Ministry indicated it had developed and communicated outcome-based performance measures to its staff in the 2004/05 fiscal year. The program measures include conducting 2,500 targeted inspections per year of high-risk employers (for example, restaurants, retail, and business-management services); achieving an 80% compliance rate in targeted sectors by the 2007/08 fiscal year; and achieving an 80% overall customer satisfaction rate by 2007/08.

Measures at the operational level to support the achievement of program objectives were also developed and incorporated into staff performance contracts. These include adherence to the Program's Code of Professionalism and resolving 75% of claims within 40 business days of assignment.

In the 2004/05 fiscal year, 200 random workplace inspections were completed in the restaurant sector to determine an initial benchmark level of compliance with employment standards. The Ministry had met with the Ontario Restaurant, Hotel and Motel Association to share these results and is working in partnership with it to increase compliance in this sector. In 2005/06, 200 random inspections were completed in the retail sector. At the time of our follow-up, the Ministry had contacted the Retail Council of Canada and indicated that it

would be working with the council to increase compliance also in that sector.

The Ministry also noted that, since the Program is in transition, it is difficult to measure customer satisfaction. The Ministry indicated that, once the transformation has been completed, the Program will develop an appropriate performance measure to better reflect its effectiveness in this area.

FINANCIAL CONTROLS

Trust Fund

Recommendation

To ensure employee claimants receive the money they are entitled to under the Employment Standards Act, 2000 on a timely basis and to adequately safeguard assets held in trust, the Ministry should:

- *review all the trust fund accounts for errors and omissions and, where warranted, take necessary corrective action;*
- *improve controls over the administration of the trust fund and monitor the use of these controls on an ongoing basis;*
- *establish improved procedures for locating and paying claimants; and*
- *involve internal audit in ensuring that discrepancies and completion of the required reconciliations are appropriately investigated and resolved.*

Current Status

According to the Ministry, additional staff was hired in August 2004 by the Trust Fund Unit to assist in verifying trust fund accounts, making deposits, and locating and paying missing claimants. Dedicated staff were assigned to locate claimants whose addresses were no longer current, using data from the Internet and the Ministry of Transportation.

In February 2005, a new manager with a professional accounting designation was hired to oversee all functions and processes related to the management and administration of the Trust Fund Unit, including establishment of adequate internal controls.

The verification procedure for transactions sent to the bank used by the fund was enhanced effective November 2005. A draft contract with the bank has been developed and a Service Level Agreement is to be developed in conjunction with the contract.

An internal audit review of Trust Fund Unit activities was undertaken in March 2006. The review concluded that management of the Trust Fund Unit had addressed the recommendations made in our *2004 Annual Report*. For instance, the internal audit report stated that the Ministry had reviewed 290 old balances totalling \$639,000 and had taken follow-up action. As of March 2006, 35% of the balances were distributed to the people who were owed the money. The remaining 65% are in the process of being resolved.