

Chapter 3

Section 3.05

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

Government User Fees

Background

In the 2008/09 fiscal year, Ontario ministries and agencies collected almost \$2.2 billion in revenues that are classified as Fees, Licences, and Permits—hereafter referred to as user fees—and reported in Other Revenue in the Public Accounts of the province. Revenues from user fees represent about 2% of total annual provincial revenues. Of the rest, about 69% of Ontario’s revenues comes from taxation; 18% from transfers from the federal government; and the remaining 11% from other sources such as sales, rentals, royalties, and fines. The difference between a user fee and a tax is that a user fee is generally charged to recover all or a part of the costs of providing a specific good or service to the individuals and businesses that request it, such as a driver’s licence; 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”—available to all individuals but paid for by the public as a collective entity, such as health care, the court system, and education.

Over 400 types of user fees are charged to individuals and businesses by ministries and agencies, such as for registration and search services and for the issuing of licences. The Ministry of Transportation collects almost half of all user-fee revenues—

for vehicle registration, carrier, and driver licence fees. The Alcohol and Gaming Commission of Ontario collects another 22%—for liquor licences and permits. Figure 1 shows user fees charged in 2008/09 by activity and ministry or agency.

Under the *Financial Administration Act*, all ministries and certain agencies are required to deposit any revenues, including user fees, into the province’s Consolidated Revenue Fund to be used for general government purposes. In other words, these revenues are not earmarked for particular programs or restricted in their use. Exceptions exist for fees that are deposited in the Consolidated Revenue Fund but are designated for special purposes under legislation. For example, the Ministry of Natural Resources collects approximately \$116 million per year relating to provincial parks and fish and wildlife management.

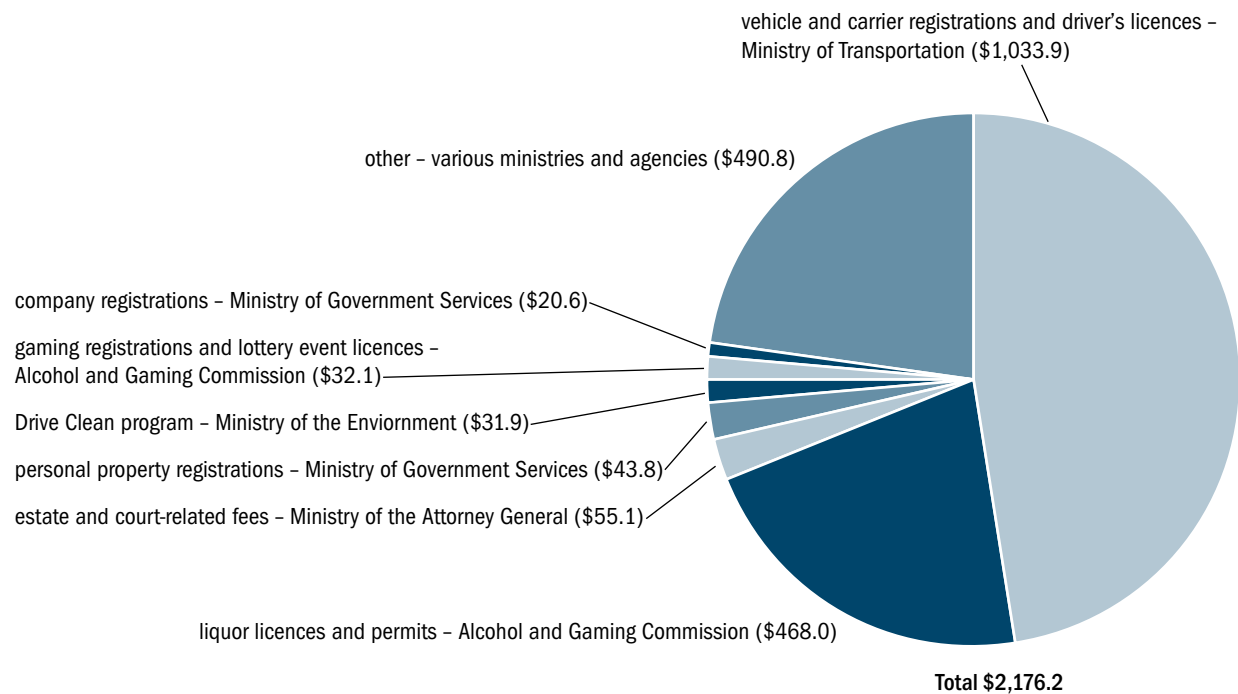
Audit Objective and Scope

Our audit objective was to assess whether selected ministries had adequate systems, policies, and procedures in place for government user fees to ensure that:

- fees were properly justified and were authorized, administered, and reported in

Figure 1: Revenues from User Fees, 2008/09 (\$ million)

Source of data: Public Accounts of Ontario



compliance with government and legislated requirements;

- proper controls existed over fee collection and adequate quality-of-service standards existed for services with fees; and
- fees were periodically assessed and reported on to ensure that they met established requirements.

We selected the ministries of the Environment, Government Services, and Transportation, and the Alcohol and Gaming Commission of Ontario for conducting our fieldwork and testing user fees. In the 2008/09 fiscal year, these three ministries and one agency collected \$1.7 billion in user fees—or 78% of all fee, licence, and permit revenues reported in that year's Public Accounts. We sampled the more significant revenue-generating fees, with revenues totalling about \$1.3 billion, charged by these ministries and this agency for review. In addition, we performed fieldwork at the Ministry of Finance, which provides operational support to the Treasury Board of Cabinet by reviewing all fee submissions from ministries and agencies and is

involved in recommending changes to policies and fee structures and amounts.

Our audit fieldwork at these ministries and this agency assessed the total fees they charged for a related service. For instance, we selected all the fees that the Ministry of the Environment charged relating to hazardous waste, such as various charges for registering a hazardous-waste-producing site and for transporting hazardous waste. We also interviewed ministry and agency staff; examined records, documents, and policies in use; observed and tested operations; and reviewed relevant studies, statistics, and major contracts.

We also researched user fees in other jurisdictions. Because Quebec had recently issued a government-task-force report on public user fees, we visited Quebec's Ministry of Finance and discussed with senior management their recent development of a new user-fee framework to guide policy and operational decisions. At the federal level, we met with management at the Treasury Board of Canada Secretariat, who shared their perspectives on federal legislation, policy, and oversight on user

fees charged by departments. We also met with the Office of the Auditor General of Canada regarding certain similar work it had done recently. We also reviewed Supreme Court of Canada decisions involving user fees from 1998 to the present.

We also engaged on an advisory basis the services of an independent expert in public policy, who has recent significant experience pertaining to government user fees in the province of Quebec.

In recent years, the three ministries' internal auditors have conducted a number of audits relevant to our review of user fees; these audits have included tests and assessments of management's compliance with required policies and procedures. These audits were helpful and of sufficient quality to allow us to reduce the extent of our work in certain areas, such as whether internal controls over the collection of fees were adequate.

Summary

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 was not 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 actions over the past decade to help address this ruling, there are still fee revenues from alcohol, gaming, and registration services of over \$500 million annually that may be at risk because they may not fit the Supreme Court's criteria for valid fees.

The Non-Tax Revenue Directive (Directive) established in 1991 is intended to maximize the Ontario government's non-tax revenues, including user fees, and ensure that ministries regularly review services and rates and keep non-tax revenue rates up to date. However, we found 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 lack transparency and public involvement in key decisions about changes to user-fee rates, nor is 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. The Ministry of Finance's Costing and Pricing Policy, established in 2004, generally requires that the full cost of providing services—along with factors such as government priorities, the user's ability to pay for the service, and other cost/benefit factors—be considered when establishing the user-fee rates. In 2008, as part of the Budget process, the Ministry of Finance took the initiative of requiring that all ministries report on their fee revenues and their estimate of the costs of providing the fee-related services so it could evaluate opportunities for enhanced cost recovery. This one-time review indicated that most fees were not set at levels that would result in full cost recovery. Overall, forecasted revenues did not recover about \$522 million, meaning that less than 75% of the costs identified for these fee-related services was being recovered. In cases where ministries decide 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—ministries are required to document the reasons for setting fees at reduced rates. For the most part, this was not being done. We also noted that, compared to most other provinces, Ontario collects less in terms of percentage of total revenues obtained from user fees and user fees charged on a per capita basis.

In addition, there were generally no recurring processes in place to keep fee rates up to date, as is required under the Directive. We noted many examples of fees that have had no rate increase for 10 to 20 years, despite the fact that the fees were set

at amounts that recovered only from 23% to 45% of the full costs of providing the services. In looking at other provinces, we noted that Nova Scotia adjusts user fees annually according to changes in the Consumer Price Index, and, starting in 2011, Quebec will systematically update its user fees using the same indexation rate it uses for personal income taxes.

Some fee-related services are provided both in person and electronically—via the Internet or at electronic kiosks located at a number of publicly accessible locations, such as shopping malls, throughout the province. Ministry of Finance guidelines require ministries to discount fees for services provided electronically to encourage their increased use by the public. Services delivered electronically can typically be delivered at a lower cost than over-the-counter services. However, we noted that no discounts were offered by the Ministry of Transportation for driver and vehicle registration. On the contrary, services at electronic kiosks incur a so-called “convenience” surcharge of one dollar per transaction for such services.

Effective January 1, 2010, a new directive will apply to all provincial services regardless of whether a fee is charged or not. The directive will set out new common standards and will require that ministries establish program-specific standards for services offered, for monitoring and measuring the quality of service provided, and for communicating to users of services the actual level of service achieved.

We concluded, based on our work and that of the internal audit services of the three ministries we visited, that internal financial controls over the fees collected by the three ministries were generally satisfactory.

Detailed Audit Observations

POLICY AND CONTROL FRAMEWORK OVER USER FEES

Legislative and Administrative Context

The legal foundation for setting and collecting taxes and fees is laid out in various sections of the *Constitution Act, 1867*. An important requirement that a government must have before it can impose a tax is parliamentary approval in the form of enacted legislation. Taxes may be imposed without any specific association to a particular good or service and can be for any amount. Unlike taxes, user fees are specific charges linked to the cost or value of particular goods or services that an individual or organization receives. User fees are typically imposed by a regulation enabled by an act or by Order in Council, which is a notice of an administrative decision issued by the Lieutenant Governor but originating with Cabinet.

In Ontario, the *Treasury Board Act, 1991*, gives legislative authority to the Treasury Board of Cabinet to determine fees or charges by most ministries and certain agencies. In some cases, legislation gives a minister authority to set fees but Treasury Board still retains final approval. The Treasury Board is supported by the Ministry of Finance, which develops administrative policies regarding user fees and provides analysis and support for the annual Results-based Planning and Estimates process. This process requires that ministries and agencies report to the Ministry of Finance on their expenditure and revenue estimates, including any changes to their existing user fees or requests to establish new fees.

In 1991, the Management Board Secretariat issued the Non-Tax Revenue Directive (Directive), which applies to user fees collected by all ministries and certain agencies. The Directive’s stated purpose is to:

- maximize the Ontario government's non-tax revenue;
- ensure that ministries keep non-tax-revenue rates up to date;
- ensure that ministries review all services regularly and consider whether to establish new revenue rates or discontinue existing ones; and
- enhance customer service.

The Directive requires that those who benefit from a service should pay for the cost of providing that service when it is reasonable and practical to do so. A ministry is not required to establish a fee if it has determined that collecting revenues is impractical or uneconomical, where charges would severely undermine program objectives, where no specific user group can be identified, or where the users cannot afford to pay. When charges are deemed appropriate, the amount of the fee is to reflect program costs, program objectives, and government-wide priorities. Ministries are required to establish and record the criteria and calculations used to determine the amount of each fee or charge.

User Fees versus Taxes

A Supreme Court of Canada decision of more than a decade ago distinguished between fees and taxes and ruled that certain fees were invalid because they were actually an unauthorized tax. Specifically, in 1998, the Supreme Court of Canada decided that certain probate fees charged by the province of Ontario to the estate of Donald Eurig were in fact a tax on the estate assets and not a fee. In its decision, the Supreme Court laid out criteria to distinguish a fee from a tax. These included that, for a fee to be constitutionally valid, there must be a reasonable relationship between the cost of the service provided and the amount charged. It ruled that the probate fees in question had no relationship to the cost of the service provided, nor were they valid taxes because they did not originate in an act approved by the Legislature. The Supreme Court suspended the decision for six months to

enable the province to address the issue, which it did by implementing the *Estate Administration Tax Act, 1998*, replacing the probate fee with an estate tax. The Act legislated taxes retroactively to 1950 at rates that would produce the same revenue as the probate fees had generated.

Since that time, although the Ontario government has taken some steps to address this, the actions taken have not been sufficient to make certain that all the fees it charges are legally fees and not, in fact, taxes. As a result, in our opinion, significant provincial revenues may still be at risk of being declared an invalid tax and at risk of being potentially repayable.

In response to the Eurig decision and to improve decision-making overall in the government, in 2004, the Ministry of Finance did develop a Costing and Pricing Policy, along with guidelines for its implementation. The policy, which applies to all ministries and certain agencies, requires that the costing and pricing of services be in accordance with all relevant legislation. For costing, the policy requires that costs be determined and records maintained for all services, and it specifies the manner in which the costs are to be arrived at. For pricing, the policy requires that the full cost of delivering the service be considered, along with other considerations, including, government priorities, clients' ability to pay, access to service, and whether a specific user group could be identified that derives a benefit from the service that the general population does not. The policy also requires that, where goods or services of the government are comparable to those of other jurisdictions or in competition with those of the private sector, decision-makers must receive benchmarking comparisons. As part of their annual Results-based Plans, ministries are to provide the Ministry of Finance with an explanation if a revenue source greater than \$1 million changes by 20% or more. They must also include costing information in any submission to Management Board of Cabinet for approval of any new or proposed service.

We were informed that the government made some changes to existing fees to be compliant with

the Eurig decision. In 2006, the government eliminated the gallonage fee on alcohol sales to licensed establishments, which collected approximately \$46 million annually based on volume of purchases, with no direct link to any actual costs. In fall 2006, the government amended the *Highway Traffic Act* to make it clear that the fee revenues collected to administer the driver's licence and motor vehicle program, which amounted to \$760 million in 2006, could be used to fund highway infrastructure and maintenance costs.

In January 2007, the Supreme Court of Canada found certain New Brunswick alcohol-related fees unconstitutional, which resulted in the repayment of six years' worth of fees, totalling about \$1 million, to the owner of an establishment. We were advised that this prompted the Ontario government to take a further look at its non-tax revenues. In summer 2007, the Treasury Board directed ministries to review all their fees. As a result of this review, it recommended that the ministries should come forward with options to address any issues identified through this review as part of the Results-based Planning process.

As part of the 2008 Budget process, the Treasury Board directed the Ministry of Finance to undertake a review of all non-tax revenue sources to evaluate opportunities for enhanced cost recovery. Each ministry was required to report back to the Ministry of Finance by June 15, 2008, with information on opportunities to increase cost recovery for existing fees—in compliance with the Eurig decision and the Costing and Pricing Policy—and to identify opportunities for new fees that would be Eurig-compliant. Documentation we received from the Ministry of Finance confirmed that all ministries reported on their revenues. We were told that certain alcohol-related fees collected by the Alcohol and Gaming Commission of Ontario (Commission) were part of a separate review and were excluded from the 2008 review of non-tax revenue sources.

Alcohol- and Gaming-related User Fees

When planning our audit in October 2008, we noted that certain large alcohol and gaming fees collected by the Commission seemed to be significantly out of proportion to the related cost of their administration and therefore could be at risk of being non-compliant with the Supreme Court's Eurig decision. In total, we identified over \$470 million in fees the Commission charges annually that may be at risk of being declared non-Eurig compliant. This amounts to 21% of all provincial revenues collected from fees, licences, and permits. We reviewed fee revenues reported by other provinces and did not note similar large fee revenues that were alcohol- and gaming-related.

In its March 2009 Budget announcement, the government said it was planning to introduce legislation to replace fees with taxes for various alcohol-related and other services, levies, and charges. However, it did not identify the specific fees.

Other User Fees at Risk

Our field visits to the Ministry of the Environment and Ministry of Transportation did not identify any large fees that we felt were at significant risk of being declared non-Eurig compliant. However, we noted that revenues collected by the Ministry of Government Services for certain registration services significantly exceeded the cost to provide the services by approximately \$60 million, which is six times more than the costs to deliver them. At the time of our audit, the Ministry of Government Services had not established an action plan to address this issue.

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.

MINISTRY RESPONSE

The Ministry of Finance acknowledges the Office of the Auditor General's recommendation and will continue to review processes and take steps to protect the validity of these revenues.

The 2009 Budget noted that the government plans to introduce legislation to replace various alcohol and other fees, levies, and charges with taxes to enhance their operational structure and legislative clarity. The government proposes to introduce this legislation at the earliest opportunity. The Ministry will continue to monitor non-tax revenue fees, including through the annual Results-based Planning and in-year reporting processes. As part of the 2010/11 Results-based Planning and future years reporting processes, ministries must report annually on non-tax revenue collected in the previous fiscal year, expected revenues for the current fiscal year, and revenue projections reflecting the multi-year planning period. Any new in-year submissions/proposals on non-tax revenue must be compliant with applicable case law.

Policy Framework and Processes

A best practice with respect to user fees is for governments to set, preferably through legislation, an overarching policy framework that provides transparency and clarity, and promotes consistency. Such a framework would lay out criteria for imposing new fees and modifying existing ones; establish how costs, prices, financial targets, and service standards are to be determined; and clarify expectations for financial performance, service standards, and reporting. When government policy requirements are expressed in an act of the Legislature—in other words, as a law—this sends a clear message, not only to ministries and agencies but also to the public, on where a government stands with respect to charging fees for goods and services provided.

In Ontario, there is no overarching legislation regarding user fees. As previously stated, the administration of fees is governed by the Non-Tax Revenue Directive, established in 1991, the Costing and Pricing Policy, established in 2004, and the annual Results-based Planning process. However, we found that the existing processes could not be relied upon to maximize and keep non-tax revenues up to date, and it was too soon to tell if the changes to the Results-based Planning process would remedy this. Beginning in the 2008/09 fiscal year, the Results-based Planning process was updated to require that ministries identify revenues that were not in compliance with the Eurig decision and to require that any decisions on user fees consider the full cost of services instead of being based on the previously used direct-program-only costs (this is more fully described in the Enforcement and Compliance Costs section). We noted that user-fee policies and processes were often largely driven by the pressures and timelines associated with the provincial Budget or by reaction to Supreme Court decisions.

The Results-based Planning process requires that ministries report to the Ministry of Finance any changes to fee rates, new fees, and cases where the revenues generated by a fee-related service exceed \$1 million and will change year-over-year by 20% or more. The responsibility for regular reviews and consideration of whether to establish new revenue rates or discontinue existing ones belongs to individual ministries. Thus, under Results-based Planning, there is no reason for fees with stable revenues to be reviewed; therefore, the appropriateness of their rates might not be reconsidered for a very long time.

Even if the Non-Tax Revenue Directive was achieving its goals, it might not produce the desired results overall because more than half of all user-fee revenues come from fees that appear to be exempt from the Directive. According to the Directive, non-tax revenue fees established and revised by the Ministry of Finance and announced in the Budget do not have to comply with the Directive. Of the \$2.2 billion in user fees collected in 2007/08, we

identified about \$1.3 billion of that revenue from two ministries we visited for which the Directive technically does not apply. These fees, considered to be under Ministry of Finance control, include approximately \$848 million of driver's licence and vehicle registration fees and \$455 million of brewers' fees. In our discussions at the Ministry of Transportation and the Commission where these fees are collected, senior management told us that decisions over changes to these fees were typically made by the Ministry of Finance and often only came to the ministries' and Commission's knowledge when Budget announcements were made public due to the confidentiality of the Budget process.

In addition, we identified several other concerns with the existing policies and procedures over user fees, including:

- There is little or no public involvement in decisions relating to existing user fees. With respect to new fees, ministries must consult stakeholders, but there are no required mechanisms for public input.
- The processes used to review and modify user fees periodically are not transparent to the public; the public is typically made aware of changes to user fees only when they are announced in the provincial Budget.
- Cost recovery targets for specific user fees have generally not been established by the Treasury Board, the Ministry of Finance, or at the ministry level, to guide future decisions, such as the extent to which clients benefiting from a fee-related service should be required to cover its costs, and whether fee rates should be regularly updated for inflation and cost fluctuations.
- There is no periodic or annual public reporting on fees, other than aggregate amounts included in the Public Accounts. For the Public Accounts, ministries must report on their significant fee, licence, and permit revenue, but they do not have to relate that information to the costs incurred. More comprehensive reporting on fees collected, their

use, and the costs of their associated services would help to demonstrate transparency in this area.

In contrast to Ontario, several Canadian jurisdictions have recently enacted or announced their intention to enact legislation providing clarity, transparency, and consistency over how user fees are managed and over public consultation and reporting on services provided, costs incurred, and revenues raised. Specifically, we noted the following:

- The federal government enacted the *User Fees Act* in 2004 to strengthen accountability, oversight, and transparency in the management of user fees. The legislation defines a user fee, incorporating the notion that a direct benefit or advantage is conferred to the person paying the fee. It sets out requirements for departmental implementation of new or amended user fees. Before implementing a proposed user fee or changing an existing fee, the government service provider must explain to clients the reasons for the fee and the cost and revenue elements involved. All clients must be given a reasonable opportunity to provide input and, if necessary, an independent advisory panel can be established to address the issues raised. In addition, the legislation requires that service standards be established and actual performance relating to amended or new fees be reported to Parliament annually. Reporting on fees must include the full costs incurred, revenue received, date of the last fee increase, and information on stakeholder consultations. The legislation also requires an explanation when a fee amount proposed is higher than that found in another jurisdiction with which comparisons of fees are made. In addition, to complement federal legislation, the Treasury Board of Cabinet Secretariat provides policies and guidance on the processes for proposing user fees, setting fees and service standards, and reporting on new, amended, and existing fees. This information is available for public review on its website.

- Nova Scotia enacted in 2007 the *Fees Act*, which stipulates that no fee increase is authorized unless the minister responsible notifies the Legislature and provides such details as the purpose of the fee, total revenue expected, and whether the fee rate is intended to recover full or partial costs. In recent years, the province has increased fees on a government-wide basis on April 1 at a rate tied to the Consumer Price Index. Fee increases have been reported in a public document.
- New Brunswick enacted new user-fee legislation in 2008 to establish a transparent process governing fees charged by government departments and to address stakeholder concerns that had been expressed about sudden fee increases. In January 2009, the province published its first annual report on its fees, which included for each fee the legislative authority, current amount, effective date and amount of any increases, expected annual revenue, and any changes in expected revenue. The report also explains what any new fees or changes in fee amounts are intended to accomplish.
- In its 2009/10 Budget, the Quebec government announced its commitment to implement overarching user-fee legislation. The stated purpose of the legislation is to enhance the funding of services to maintain quality and ensure transparency and accountability in the fee-setting process. By 2012, the government will systematically evaluate the costs of services for which existing or potential user fees apply, determine self-financing targets for each fee-based service, index increases in fees annually at the same rate as any increase to the personal taxation system, and report annually to the public for accountability.

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.

MINISTRY RESPONSE

The Ministry of Finance supports ongoing efforts across government towards accountability, openness, and transparency in decision-making. As part of these efforts, the Ministry will review practices in other jurisdictions by 2010/11 and will consider their applicability in view of Ontario's current public policies and considerations, such as government priorities, economic and social factors, tax-base, and other cost/benefit factors. Any new policies must be approved by the Treasury Board/Management Board of Cabinet. We will continue to review each fee on its own merit.

FEE PRICING AND COSTS

Cost Recovery for Services

Our audit indicated that, for the most part, at the three ministries we visited, most fees were not set at levels that would result in full cost recovery for the related services provided and there was no documentation available at the ministries, as required by the Directive, to indicate the rationale for charging less than full cost. Because the costing of the fee-related services being provided was not being calculated consistently and periodically, it was not possible to determine with accuracy the extent that overall fees recover their costs at these

three ministries. However, as an indication and one estimate for all ministries, the 2008 Budget review of costs and revenues, conducted to evaluate opportunities for enhanced cost recovery, showed about \$522 million less revenues than fee-related costs. Overall, total forecasted recoveries in all ministries were less than 75% of the costs being incurred to deliver the fee-related services.

As previously mentioned, both the Non-Tax Revenue Directive and the Costing and Pricing Policy require that consideration be given to setting fees to recover the full cost of the fee-related service so that those who benefit from a service would pay the cost of providing it where it was reasonable and practical to do so. If a ministry decides not to charge the full cost for services—if, for instance, it would be uneconomical to do so, or if users cannot afford to pay—it must document its rationale.

Many fees have been in place for many years, and we found that there was generally no documentation relating to the setting of fees at rates that would cover the costs of the related service. In other words, the ministries were not periodically formally reviewing fees to ensure that they fully recovered the associated costs or, if they had decided not to attain full cost recovery, they were not documenting the reasons for their decision. It should be noted that the 2008 Budget process's one-time review of all non-tax revenue sources to evaluate opportunities for enhanced cost recovery helped to address this concern, in that all ministries were required to provide an assessment of what changes were needed to fee rates to achieve 100% cost recovery and what the impact would be on stakeholders.

We found that several recently established fees, on the other hand, were better supported in that key decisions—such as the basis for establishing the fee rate, the costs associated with the fee, and whether the fee is Eurig-compliant—were well documented. These new fees, however, represent less than 0.1% of total user fee revenues.

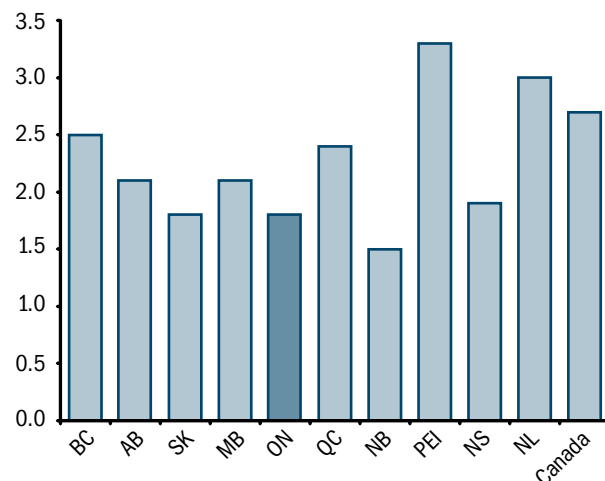
At the Ministry of the Environment, we noted that cost-recovery targets were set for certain programs. When “Drive Clean”—a mandatory vehicle-emis-

sions inspection and maintenance program—was established in 1999, the Ministry set a target of 100% recovery of the cost of the program. In 2007/08, this amounted to \$31 million, which we noted the program was generally achieving. The Hazardous Waste Cost Recovery Fee program was introduced on January 1, 2002, to recover fully the costs of managing hazardous waste in the province and to encourage generators to reduce the amount produced. The Ministry committed to reviewing the program within three to five years, but it had not yet completed this at the time of our audit. We compared the costs of this program identified for us by the Ministry against revenues received and found that only about \$6 million of the estimated \$19 million in costs—about 31%—was recovered in 2007/08. The \$13-million shortfall was being covered by the province's general revenues. We had previously raised this issue in our 2007 audit of this program.

As part of our audit, we compared Ontario's fee revenues with those of the federal government and the other provinces. Figure 2 shows that, compared to Canada and the other provinces, Ontario ranks as second-lowest (tied with Saskatchewan) in the percentage of its total revenues that come from

Figure 2: User Fees as Percentage of Total Revenue—Ontario vs. Other Jurisdictions, 2007/08

Source of data: Public Accounts of Canada and all provinces

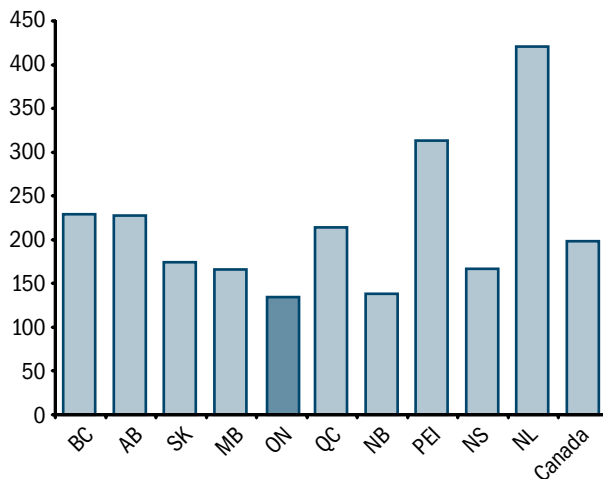


Note: Because of variations in how fees are classified by various jurisdictions, certain fees were omitted that were not applicable to Ontario. Also, we deducted Ontario's alcohol- and gaming-related fees because other provinces did not report these types of revenues in a similar manner.

user fees. Figure 3 illustrates that Ontario residents pay the least amount per capita in user fees for government services. These statistics may indicate that the Directive may not be achieving its intended objective of maximizing non-tax revenues by having users who benefit from fee-related services pay the full cost of the services where it is reasonable and practical to do so.

Figure 3: User Fees Per Capita—Ontario vs. Other Jurisdictions, 2007/08

Source of data: Statistics Canada and other provinces' Public Accounts



Note: Because of variations in how fees are classified by various jurisdictions, certain fees were omitted that were not applicable to Ontario. Also, we deducted Ontario's alcohol- and gaming-related fees because other provinces did not report these types of revenues in a similar manner.

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.

MINISTRY RESPONSE

The decision on the appropriate level of costs that should be recovered is based on government policy, under the purview of the Treasury Board. This is done on a case by case basis and with due consideration of other factors, including socio-economic and public policy administration, to balance the overall benefits to the public interest. Current policies allow setting fees at various levels, including below full cost-recovery. This is consistent with public policy choices to support provision of certain public goods, or to send price signals that impact consumer choice (for example, as an incentive or a deterrent). The Ministry will give due consideration to the need for setting target cost-recovery ratios for any fees that are set below full cost-recovery and will remind ministries of the requirements to retain documents relating to the setting of fees to ensure that they are readily available for future reviews.

Updating Fee Amounts

The Directive requires that ministries keep non-tax revenue rates up to date, review all services regularly, and consider whether to establish new revenue rates. We noted that, except for a few cases, the three ministries did not have any regular processes in place to update fees, such as processes to update fees for changes in costs or inflation. As previously mentioned, at the request of the Ministry of Finance, ministries conducted a comprehensive analysis of fee revenues and associated costs as part of the 2008 Budget process in an effort to identify opportunities to enhance revenues. However, we were informed that this was the first time such an assessment was conducted and that no process is in place for a regular yearly assessment of all user fee revenues in relationship to service costs.

A regular process for updating fee rates would meet the requirement of the Directive and help to

ensure that rates are maintained at levels closely matching intended recovery rates of actual costs. This would also help avoid the need to impose large rate changes to address cost increases that had occurred over a number of years. Similarly, for costs that have decreased—because of, for example, advancements in technology—the savings could also be passed along to the users of the fee-related services.

We identified a large number of fees for which no rate increases or inflationary adjustments had been made for long periods of time, even though

the fee revenues did not cover the associated costs. Figure 4 provides a sample of fees we identified during our visits to the three ministries and the Commission that have not been adjusted for many years—in some cases, two decades—and were recovering less than half of their related costs.

We noted that Nova Scotia adjusts user fees annually to account for changes in the Consumer Price Index, and, by 2012, Quebec plans to systematically update its user fee charges at the same rate that it indexes personal income taxes.

Figure 4: Examples of Fee-related Services without Recent Fee Rate Adjustments

Source of data: Ministries of Finance, the Environment, and Transportation, and the Alcohol and Gaming Commission of Ontario

Ministry or Agency	Service	Last Update	Annual Cost (\$ million)	Annual Revenue (\$ million)	Rate of Recovery (%)
Alcohol and Gaming Commission of Ontario	gaming registration-casino employee	1999	4.0	1.8	45
	gaming registration-casino suppliers	1992	8.3	2.4	29
	liquor licence renewals-2 & 3 year	1997	13.2	3.8	29
Environment	certificate of approval	1998	17.9	7.0	39
Government Services	name change-foreign-based corporation	1998	0.3	0.1	33
	name change-individual	1990	2.4	1.1	46
Transportation	commercial international registration plan-Ontario carriers	1988	157.7	47.9	30
	commercial international registration plan-non-Ontario carriers	1988	96.7	22.3	23

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.

MINISTRY RESPONSE

The Ministry of Finance currently has processes in place to identify the cost of service delivery as part of its annual planning and in-year

processes. Periodic reviews of fees have been undertaken to determine which fees may require adjustment. The Ministry will work with ministries to consider appropriate business cases, as part of the annual Results-based Planning and in-year processes, for fee adjustments where the costs of service delivery have changed. All such recommendations must be approved by the Treasury Board/Management Board of Cabinet. Because an increase in costs is only one of the factors considered in setting a fee, it will not automatically result in an increase to the fee. Government priorities, socio-economic factors, the user's ability to pay, and other cost/benefit factors are also considered when establishing user fee rates.

Fees for Electronic Service Delivery

The annual Results-based Planning Technical Guide issued by the Ministry of Finance states that increased use of electronic service channels should be encouraged and that, where services are offered both electronically and over the counter, fees for electronic service are required to be discounted. It is typically less expensive to deliver services electronically than over the counter. We noted that the Ministry of Government Services discounts certain services, such as business registrations, if they are delivered online.

The Ministry of Transportation offers both in-person counter service and, using ServiceOntario of the Ministry of Government Services, electronic Internet-based service for vehicle validation tag renewals, driver and vehicle records, and personalized and graphic plates. However, it does not offer a discount on the electronic services. Moreover, it provides these same services at ServiceOntario's electronic kiosks located at a number of publicly accessible sites, such as shopping malls, throughout the province—but charges an extra fee. A “convenience” surcharge of one dollar is added by ServiceOntario to the cost of each transaction at the electronic kiosks. Convenience surcharge revenues totalled about \$842,000 in 2008/09. We asked the Ministry how it justifies this surcharge and why its Internet-based service is not discounted, but it was not able to provide any information comparing its kiosk and Internet costs with those of its over-the-counter service.

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.

MINISTRY RESPONSE

The Ministry of Transportation and the Ministry of Government Services acknowledge the Auditor General's recommendation. The Channel Pricing Strategy requires ministries to ensure that services offered both electronically and over-the-counter be cost effective. However, some services, such as kiosks, are considered a premium service, for which a fee is charged to acknowledge the cost of this service. ServiceOntario and the Ministry of Transportation work in partnership to offer in-person counter services, kiosks, and electronic Internet-based services to the public. Both the ownership and the management of channel service delivery, including contract management, were transferred from the Ministry of Transportation to ServiceOntario in 2007. The Ministry of Transportation is working closely with ServiceOntario as they progress with their business strategy for moving consumers to the electronic channel. This will include the review of the convenience fee in the context of contractual obligations with private-sector providers, existing regulations and legislation, Ministry of Finance policies, and costing across all channels. ServiceOntario will also consider the full impact of all government costs, including information technology systems and contact centre support, to ensure appropriate rates for electronic services as part of the 2010/11 Results-based Planning process.

Enforcement and Compliance Costs

The Costing and Pricing Policy's guidelines are used by ministries to determine the full cost of their fee-related services to ensure that fee-related decisions are based on accurate, complete, and consistent costing information. Costs that are to be allocated include direct program costs, direct program support costs, ministry corporate costs, indirect costs incurred by other ministries, and, where

appropriate, risk costs (for example, ministry settlement payments for common lawsuits). Although ministry financial systems typically record direct program costs accurately, ministry staff usually need to identify and make specific decisions about the appropriate allocation of other costs to the fee-related service.

The guidelines give no instruction on how ministries should allocate enforcement and compliance costs to fee-related services for costing purposes. For many programs, enforcement and compliance costs are a significant and integral part of the service being delivered. For instance, when a driver's licence is issued under the *Highway Traffic Act*, allowing individuals to drive vehicles on a highway, the fees associated with this service should also cover the costs of ensuring that drivers comply with the *Highway Traffic Act*, which would include the costs of the OPP enforcing this Act.

We found that enforcement and compliance costs were not consistently applied to the fee-related services. For example, in its assessment of its non-tax revenues prepared as part of the 2008 Budget process, the Ministry of the Environment included for the Drive Clean program almost \$1 million of investigation, enforcement, and compliance costs from its Investigation and Enforcement Branch and Sector Compliance Branch. However, the Ministry did not include any compliance or enforcement costs in its costing assessment related to the fee that waste generators pay to obtain Certificates of Approval. The Ministry's assessment provided to the Ministry of Finance indicated that its costs were almost \$18 million; the total would have been about \$5 million more if enforcement costs had been included.

Similarly, the Ministry of Transportation allocated \$27.5 million in compliance and enforcement costs it directly incurred to arrive at its full costs for commercial carrier fee-related services. These compliance and enforcement expenditures included the cost of the Ministry's Transportation Enforcement Officers who carry out inspections of commercial

motor vehicles at its truck inspection stations, by patrolling, and at carriers' facilities. However, the Ministry did not include as part of its reported \$760 million costs for the driver and vehicle licensing and registration programs any costs from the Ontario Provincial Police, which spends approximately \$189 million a year patrolling and enforcing laws on Ontario highways. Although the OPP operate under a different ministry—the Ministry of Community Safety and Correctional Services—the Costing and Pricing guidelines specifically allow for indirect costs incurred by other ministries to be included when determining the full costs of fee-related services.

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.

MINISTRY RESPONSE

The Ministry of Finance agrees to review the Costing and Pricing Policy and guidelines by 2011/12 with respect to considering enforcement and compliance costs, where applicable, when determining the full cost of fee-related services to ensure more consistent application of the policy. The Ministry of Transportation and the Ministry of the Environment will continue to work closely with the Ministry of Finance to ensure that any changes to the policy and guidelines, or clarification of costs relating to compliance and enforcement, will be considered and allocated appropriately when determining the full cost of fee-related services.

REVENUE COLLECTION

On the basis of our testing of a sample of fees, we concluded that internal financial controls over revenue collection established by the three ministries were generally satisfactory. We reviewed internal audit reporting, where available, and found that, where deficiencies were noted, timely corrective action was taken. In addition, we informed the ministries of several less significant audit observations and made recommendations for improving internal controls over fee collection and accounting.

The Ministry of the Environment's Drive Clean program is administered by a private company that is responsible for collecting revenue from authorized emission-testing facilities and forwarding these revenues to the Consolidated Revenue Fund. Drive Clean program revenues were about \$32 million in 2008/09. We noted that the last time the Ministry hired independent auditors to assess financial controls over Drive Clean revenues collected by the private company was in 2002, at which time controls were determined to be adequate. The Ministry informed us that it has undertaken no further assessments in the subsequent seven years because no significant changes have occurred to the program's operating and financial procedures.

In addition, the Ministry did not carry out any assessments to ensure that the revenues were reasonable, for example by predicting the revenue using the Ministry of Transportation vehicle registration database. Given the significant amount of government Drive Clean revenue being collected by a private company, it would be prudent for the Ministry to periodically obtain independent assurance, such as from an audit, that the appropriate amounts are being remitted and that internal controls established by the private company are adequate. The most cost-effective solution might be for the Ministry's senior management audit committee to request that an audit be included in the 2010 work plan of the Ministry's internal audit services.

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.

MINISTRY RESPONSE

The Ministry of the Environment appreciates the Auditor General's recommendation and will include in its 2009/10 Audit Plan an internal audit of the revenues collected and remitted by the private-sector operators of the Drive Clean Program. In addition, the Ministry will set up a regular cycle of audits conducted by parties external to the program, such as the Ministry's Internal Audit Branch, or an external contractor, to strengthen oversight of revenue collection and remittance. This plan will augment the current financial oversight the Ministry administers on a daily and monthly basis to ensure that appropriate financial controls are in place on the revenue collection and remittance of Drive Clean fees.

SERVICE STANDARDS AND REPORTING

A new service directive intended to provide an updated, customer-focused framework is to apply to all ministries of the Ontario government effective January 1, 2010. The directive will set out new common standards and will require that ministries establish program-specific standards for services offered, for monitoring and measuring the quality of service provided, and for communicating to customers the actual level of service achieved. The directive applies to all provincial services, regardless of whether a fee is charged or not. We noted that the federal user-fee legislation for new or

amended fees and Treasury Board of Cabinet Secretariat policies for existing fees impose additional requirements for federal departments, agencies, boards, and commissions that can impose fees for their services. For instance, standards are required that are comparable to those established by other countries with which a comparison is relevant and against which the performance can be measured. In addition, explanations must be provided to clients on how the user fee is determined and on its related costs and revenues. In this way, clients can clearly see the cost of the services they pay for in relation to what they receive.

In Ontario, a ministry may choose to offer a service guarantee, providing compensation to a client if the promise or pledge of service is not met. We noted, for example, guarantees for certain registration services for births, deaths, and marriages from the Ministry of Government Services. Federally, user-fee legislation mandates that, regardless of whether a specific service guarantee is offered, if in a particular fiscal year, the performance of a service for which a user fee is charged fails to meet the established service standards by more than 10%, in the following year, the user fee is to be reduced for all its clients, by a percentage equivalent to the unachieved performance, to a maximum of 50%.

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.

MINISTRY RESPONSE

As the lead ministry in the development of the new Ontario Public Service Directive that comes into effect in January 2010, the Ministry of Government Services is now supporting ministries in the implementation of the Directive's requirements. These include establishing program-specific service standards in consultation with clients, communicating the standards to clients, and subsequently measuring and reporting back on the achievement of those standards. As part of the service improvement program, the Ministry of Government Services, on behalf of the Ontario Public Service, also works with interjurisdictional organizations to conduct benchmarking studies on service quality, which enables the Ontario Public Service to compare its service quality to that in other jurisdictions.