
MINISTRY OF CONSUMER AND BUSINESS SERVICES

3.04—Policy and Consumer Protection Services Division

BACKGROUND

The mandate of the Policy and Consumer Protection Services Division (Division) of the Ministry of Consumer and Business Services is to oversee business and other practices in the Ontario marketplace. It does so by establishing fair marketplace and technical standards, educating the public about standards and other relevant issues, monitoring businesses and enforcing their compliance with the various laws and regulations that exist for the protection of consumers, managing relationships with service-delivery partners, and developing strategic policy and legislation. The legislation for which the Division monitors compliance includes, for instance, the *Business Practices Act* and the *Consumer Protection Act, 2002*.

In the 2002/03 fiscal year, the Division had approximately 100 staff and operating expenditures of approximately \$9.7 million. The Division consists of three branches: the Policy Branch, the Marketplace Standards and Services Branch, and the Sector Liaison Branch.

The Policy Branch is responsible for policy development across the Ministry. The Marketplace Standards and Services Branch, which accounts for approximately two-thirds of the Division's expenditures, administers various statutes relating to consumer protection and business licensing. The Marketplace Standards and Services Branch carries out its mandate of ensuring public safety and consumer protection through its registration and licensing activities in a number of industries. Some of the types of businesses that need to be registered or licensed include collection agencies, theatres, and cemeteries. The Branch also processes consumer complaints, inspects businesses for compliance with consumer protection acts, investigates alleged infractions, and undertakes initiatives to educate the marketplace.

Since 1997, the Ministry has also delegated the administration of a number of consumer and public-safety statutes to eight delegated administrative authorities (delegated authorities). The delegated authorities are not-for-profit corporations, led by representatives within each industry, that carry out the day-to-day functions of ensuring public safety and consumer protection by regulating and monitoring business practices in their industry.

Nevertheless, the Ministry retains overall responsibility for the outcomes of the delegated authorities' activities in protecting the consumers and the public.

The delegation of authority from the Ministry to the delegated authorities was facilitated by the *Safety and Consumer Statutes Administration Act, 1996*. The Division's Sector Liaison Branch is responsible for overseeing the following eight delegated authorities:

- the Technical Standards and Safety Authority;
- the Electrical Safety Authority;
- the Ontario Motor Vehicle Industry Council;
- the Ontario New Home Warranty Program;
- the Real Estate Council of Ontario;
- the Travel Industry Council of Ontario;
- the Board of Funeral Services; and
- the Vintner's Quality Alliance of Ontario.

AUDIT OBJECTIVES AND SCOPE

The objectives of our audit were to assess whether the Division had adequate procedures and systems in place to:

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

At the beginning of the audit, we identified audit criteria that would be used to address our audit objectives. These were reviewed and accepted by senior ministry management. Our audit was performed in accordance with the standards for assurance engagements, encompassing value for money and compliance, established by the Canadian Institute of Chartered Accountants, and accordingly included such tests and other procedures as we considered necessary in the circumstances.

The scope of our audit, which was substantially completed in April 2003, covered the Marketplace Standards and Services Branch and the Division's monitoring of four delegated authorities. Our work included reviews and analyses of the Ministry's administrative procedures and guidelines, interviews with staff, and reviews of case files. As current legislation does not provide our Office with the authority to audit the delegated authorities, our work was confined to reviewing administrative agreements and performance information obtained by the Ministry, as well as, in some cases, additional information volunteered by the delegated authorities. We did not rely on the Ministry's Internal Audit

Services Branch to reduce the extent of our work because they had not recently conducted work within the scope of our audit.

OVERALL AUDIT CONCLUSIONS

We concluded the Ministry needed to enhance its procedures and systems to ensure compliance with legislation and ministry policies, to better protect consumers, and to better ensure public safety.

With respect to the Marketplace Standards and Services Branch, we had the following concerns:

- The Ministry did not deploy its inspection resources based either on an assessment of risk to the general public or to consumers of specific services, or on the number of complaints it received. For example, the practices of debt collectors had been the number one source of complaints received by the Ministry in the past five years. While it received approximately 4,000 complaints and inquiries (with almost 800 formal written complaints) about debt collectors in 2001/02, the Ministry conducted fewer than 10 inspections. In contrast, for theatres and video retailers, about which the Ministry received only eight complaints, the Ministry devoted over 95% of its inspection resources to inspecting this industry: almost 1,600 inspections were conducted to check whether video retail stores were operating with a valid licence and were selling adult videos only with proper stickers indicating their ratings.
- Of the 5,000 cemeteries in Ontario, fewer than 2,000 had filed their required annual returns with the Ministry. (When individuals purchase cemetery plots, cemetery owners are required to deposit at least 40% of the purchase price in a trust account to ensure resources are available to properly care for and maintain cemetery grounds—the status of each trust account is to be included in the required annual return.) Our audit showed that even for cemeteries that had filed their 2001 returns, the Ministry had not processed or performed an adequate review of them to ensure proper accounting for the trust funds.
- The Ministry did not ensure that the outcomes of its regulatory activities were captured in its management information system. For example, for the approximately 6,000 inspections performed over the past three years, the results of only 800 were recorded in the system. Such information would help management monitor the effectiveness of ongoing activities and identify recurring problems.

With respect to the Ministry's oversight of the delegated authorities, we concluded that the Ministry did not have adequate assurance that public safety and consumers were properly protected by the industry oversight organizations. Also, the Ministry's governance and accountability arrangements with the delegated authorities were not of sufficient strength to ensure appropriate monitoring of the delegated authorities' performance. Specifically, we noted the following concerns:

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- The Ministry had not ensured that data on the outcome of delegated authorities' activities, as reported by delegated authorities—such as the number of safety-related incidents, the number of serious injuries, and the number of complaints received—were reliable. For example, the Technical Standards and Safety Authority (TSSA) indicated that some safety-related incidents were under-reported because businesses might worry that reporting incidents would result in their operations being inspected by the TSSA.
 - The Ministry's monitoring of inspections, investigations, and other enforcement activities undertaken by delegated authorities in response to violations they identified was inadequate. For example, of the 4,600 natural-gas pipeline incidents reported in 2001, about 170, or 4%, were investigated by the Technical Standards and Safety Authority; the Ministry had not assessed whether this level of investigation was sufficient and appropriate to protect public safety.
 - The Ministry was unable to obtain adequate information to monitor the activities and the outcomes of the activities of the Ontario New Home Warranty Program (ONHWP) because the Ministry had not, as yet, been able to negotiate a formal agreement with the ONHWP that would outline the Ministry's requirements. The information the Ministry had about this delegated authority's activities was mostly compiled from the ONHWP's published annual report. The Ministry therefore had little information with which to assess whether new homeowners were being properly protected, especially given that the ONHWP had stopped reporting complaints information three years before.
 - The boards of directors of the various delegated authorities did not reflect a balanced representation of interests. To maintain balanced representation between industry and public interests, the Minister can appoint 50% of the members on delegated authorities' boards of directors. This provision would ensure that the governing boards of the delegated authorities are reasonably independent and not dominated by members appointed by the industry being regulated. Our review of the composition of the boards of the delegated authorities showed a significant under-representation of public interest. In addition, attendance at board meetings by Ministry staff appointed as government representatives was generally below that of other board members.

DETAILED AUDIT OBSERVATIONS

MARKETPLACE STANDARDS AND SERVICES BRANCH

To allow the Ministry to monitor the marketplace and thereby protect the interests of consumers, businesses in certain industries must be registered with the Ministry. For instance, the following parties must obtain a registration or licence from the Ministry before they can engage in the regulated business: collection agencies, bailiffs, credit reporting agencies, theatres, and cemeteries. Registration provides the Ministry with the information it

needs to monitor their activities to ensure the honesty, integrity, and financial responsibility of an industry and to ensure that consumers are protected against unfair or substandard business practices, such as misrepresentation, overcharging for home renovations, pressure sales, and upfront fee scams.

The Marketplace Standards and Services Branch's monitoring of the Ontario marketplace includes: processing and issuing registrations and licences, regulating industry practices, establishing minimum standards, verifying the qualifications and requirements of participants who can operate in a specified sector, and monitoring that all parties are complying with legislation and policies that exist to protect consumers.

On a yearly basis, the Branch carries out its mandate of ensuring public safety and consumer protection by processing about 20,000 registrations and over 30,000 consumer complaints and inquiries and by conducting over 1,600 inspections and almost 300 investigations. As well, the Branch can initiate corrective action when it identifies cases of non-compliance. Such action can include: revoking licences or registrations, laying charges, and pursuing prosecutions and convictions.

Following Up On Consumer Complaints

The *Consumer Protection Bureau Act* gives the Ministry the mandate to "receive and investigate complaints of conduct in contravention of legislation for the protection of consumers." Based on the complaints it receives from consumers, the Ministry carries out inspections to determine whether further ministry action, such as investigation and enforcement, is required. The Ministry can also use inspections to proactively educate businesses and thereby reduce non-compliance with statutes and deter unfair practices. Complaints relating to industry sectors that are regulated by one of the eight delegated authorities are referred to the relevant delegated authority to handle.

Excluding those complaints that are referred to delegated authorities, the Ministry receives around 27,000 telephone complaints and inquiries per year. In most cases, consumers are advised to first try to resolve their complaint directly with the business, and they are informed of steps they can take themselves, such as going to small claims court. In cases where ministry follow-up action is requested by consumers, they have to file a complaint in writing to authorize the Ministry to take further action. The Ministry receives about 5,000 written complaints per year.

While the Ministry cannot force businesses to compensate consumers, based on complaints it has received, the Ministry can initiate inspections of the companies being reported. The numbers of ministry inspections and complaints received for the 2001/02 fiscal year, as well as the numbers of inspections conducted, are outlined in the following table.

**Complaints and Inquiries Received by the Ministry¹
and Ministry Inspections by Industry, 2001/02**

Industry	Telephone Complaints and Inquiries	Written Complaints	Total Complaints and Inquiries	Inspections Conducted	% of Total Inspections
Collection agencies	3,340	768	4,108	9	0.5
Credit reporting agencies	869	1,287	2,156	1	0.1
Motor vehicle repairs	1,722	217	1,939	6	0.4
Loan brokers	442	302	744	0	0
Theatres and video retailers	8	0	8	1,599	95.9
Others ²	20,719	2,994	23,713	51	3.1
Total	27,100	5,568	32,668	1,666	100

1 Excludes complaints and inquiries referred to delegated administrative authorities.

2 Includes businesses like door-to-door sales; home renovations and repairs; and fitness centres, modelling agencies, and organizations offering prepaid services.

Source of data: Ministry of Consumer and Business Services

Our review revealed that the Ministry did not deploy its inspection resources based either on any formal assessment of risk to the public and consumers, or on the number of complaints received for each of the industries it monitors.

For example, as shown in the table, the Ministry devoted over 95% of its inspection activities to theatres and video retailers, even though there were virtually no complaints about this industry. Most of the inspections were conducted to ensure video retailers were operating with a valid licence and were selling adult videos only with stickers to indicate their ratings by the Ontario Film Review Board. With respect to these inspections, we also noted that the ministry inspectors had seldom seized videos or DVDs, as permitted by current legislation, to deter repeated non-compliance. Instead, where instances of non-compliance were noted, more inspections of the same retailers were conducted. The Ministry indicated that, since the 2002/03 fiscal year, it had initiated the issuing of orders to seize about 700 videos.

In contrast, the practices of industries that were at the top of the Ministry's list of complaints and inquiries were seldom inspected. Inspections of collection agencies was one example. In the 2001/02 fiscal year, the Ministry conducted nine inspections in the industry even though it received 3,340 telephone complaints and inquiries and 768 formal written complaints against the industry. Of those written complaints, almost one-third related to three collection agencies, but none of those collection agencies were inspected that year, nor had they been inspected in the previous seven years.

In 2001, the Ministry agreed with recommendations made by an outside consultant to devote at least half of its inspection efforts to responding to complaints and use the remaining half for proactive inspections, allocating inspection resources equally between collection agencies, cemeteries, and theatres. Nevertheless, at the completion of our audit in 2003, most of the inspection resources were still devoted to inspecting video retailers.

In addition, we noted that when unscrupulous practitioners had been identified, the Ministry was not taking timely enforcement action to protect consumers. For example, we noted concerns with two bailiffs cases. Through bailiffs, creditors or commercial landlords can take possession or repossess private properties from a debtor or commercial tenant without having to go to court. In 2003, for the first time in the past five years, the Ministry proposed to revoke two bailiffs' appointments, but only after it had received a number of written complaints about these two bailiffs abusing their authority in taking possession of properties—complaints dating back to October 1999 for one bailiff and to March 2001 for the other. Despite the history of complaints and the fact that both bailiffs had been charged by the police—one in March 2000 and the other in May 2002—the Ministry did not propose to revoke these bailiffs' appointments until the beginning of 2003. Ministry legal counsel had indicated to the Ministry that it does not have to wait for criminal convictions before proposing to revoke the appointment of a bailiff if there is evidence that the licence should be revoked to protect the public.

Subsequent to our audit, the Ministry informed us that one of the above proposals resulted in the bailiff being successfully convicted and his licence being revoked; the other proposal was being appealed.

In November 2002, the Ministry hired an investigator on contract to review complaints related to collection agencies. Subsequent to our audit, we were informed that this review resulted in the Ministry issuing a number of cautions, charges, and proposals to suspend and revoke 16 licences. While the Ministry was increasing its efforts to step up monitoring in this sector, it is important that such efforts be systematic and sustained and that they be expanded to include all high-risk sectors with large numbers of complaints.

While inspections are used to monitor compliance with fair business practices, educate businesses, and deter non-compliance, investigations are a formal means for the Ministry to determine whether further enforcement action, such as prosecution, needs to be initiated. Most investigations the Ministry conducts result from complaints it receives, but other factors that may prompt an investigation might include information obtained from the police or new cases discovered during the course of an original investigation. We concluded that the investigations the Ministry had conducted were generally performed in a satisfactory manner. As well, where mediations were possible, we noted evidence that appropriate efforts had been made to obtain restitution for consumers.

Recommendation

To adequately protect the public, the Ministry should allocate its inspection resources for monitoring various industries based on a systematic assessment of risk as well as on the number of complaints it receives about these industries.

As well, the Ministry should ensure unscrupulous practitioners are removed from the marketplace on a timely basis to protect consumers and the public from potential losses and abuse.

Ministry Response

The Ministry has developed a risk-based framework for allocating Marketplace Standards inspection resources based on advice from an independent risk-management consultant. The framework has since been implemented and will be followed to ensure that inspection resources are appropriately deployed.

Where there is clear evidence of an offence, the Ministry is committed to taking timely enforcement action.

Monitoring Cemeteries' Trust Accounts

One of the industries the Ministry regulates is cemeteries, which are monitored by the Ministry for compliance with certain financial requirements. There are over 5,000 registered cemeteries in Ontario. To ensure public safety and consumer protection, cemetery owners are required to deposit a percentage (between 40% and 100%) of the sales of plots into trust fund accounts. The income from these accounts is intended to support the cost of caring for and maintaining the cemeteries (headstones, grounds, and buildings).

Given that hundreds of millions of dollars have been paid by consumers and deposited into trust funds, cemetery owners are required to file annual returns, which include trust account statements, within three months after the cemetery's fiscal year-end. The returns must be certified by the owners and the trustees to be complete and accurate. Cemetery owners are also required to file, within six months after the cemetery's fiscal year-end, audited financial statements for care and maintenance trust funds containing more than \$500,000 and for pre-need trust funds (those relating to pre-arranged burial services) of more than \$100,000.

Ministry staff are responsible for reviewing, on a timely basis, the annual returns from cemeteries owners to detect errors, omissions, and instances of non-compliance with filing requirements. The timely monitoring of such returns, especially relating to trust fund accounts, is intended to minimize the risk of payments by consumers not being deposited into trust accounts or an insufficient amount being deposited. The other risk is of a cemetery not having the resources needed for care and maintenance purposes. In such cases, the cemetery may have to be turned over to be operated by the local municipality at the expense of local taxpayers.

Our review of the Ministry's cemetery registration records found that a significant number of the registration records were missing. Ministry staff indicated that many of these records

were inadvertently lost or misfiled in 1992 during the transfer of responsibilities from one section of the Ministry to the current branch.

In addition, we found that a significant number of cemeteries had not filed their annual returns. The Ministry indicated that 2,000 of the 5,000 registered cemeteries were either not conducting any more burials or receiving fewer than 10 burial permits per year. Due to limited resources, since 1995, the Ministry has exempted these owners from filing the required returns. However, the main reason for requiring annual returns is to ensure sufficient funds are available for the care and maintenance of cemeteries. By exempting these owners, the Ministry could not ensure sufficient funds were available, as many of these cemeteries were established prior to the requirement of having trust accounts. These cemeteries in fact pose significantly higher risks than cemeteries with proper trust funds established for care and maintenance.

As well, in our review of the 2001 filings for active cemeteries, we found:

- The Ministry indicated that it had not received the returns due from 400 cemetery owners. We noted that the Ministry had not taken timely action to follow up on the status of these returns. For instance, only seven cemeteries had been inspected from 1998/99 to 2001/02, and mostly as a result of complaints. Our review indicated that three owners of these active cemeteries had not been submitting annual returns to the Ministry for seven to eight years. One of these owners was prosecuted only in December 2001 for failing to maintain a cemetery, which was then turned over to be operated by the local municipality.
- The Ministry could not determine what caused delays in processing the returns that had been filed by 450 owners, other than speculating that the delays might be related to problems with the information received and the lack of ministry staff resources.
- The Ministry did not perform proper reviews of the returns that it had processed. For example, for two-thirds of the returns processed, the cemetery owners and/or trustees did not report a balance for their trust fund accounts. The Ministry did not follow up on the reasons for the missing balances. We requested that the Ministry ask two of the owners to resubmit their trustee statements. These resubmitted statements showed a total of \$300 million being held in trust.

The lack of timely monitoring of the filing of annual returns from cemetery owners increases the risk that payments by consumers might not be properly deposited and accounted for in trust fund accounts as required to maintain and care for cemetery grounds.

Recommendation

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

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

Ministry Response

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

Measuring and Reporting on Effectiveness

In April 1999, the Ministry implemented a new management information system to track complaints, inspections, and investigations. The system has the capability to generate reports that capture the Branch’s activities and the outcomes of those activities. At our request, the Ministry was able to generate the information outlined in the following table.

Marketplace Standards and Services Branch—Activities and Outcomes, 2000–2002

	2000	2001	2002	% Increase/ Decrease Since 2000
Activities				
Inquiries and complaints	35,161	31,395	32,668	-7
Mediations	838	676	872	4
Inspections	2,079	2,419	1,666	-20
Investigations	272	250	246	10
Outcomes				
Charges laid	742	336	533	-28
Convictions	401	274	57	-86
Money returned to consumers	\$1,283,080	\$954,570	\$461,830	-64

Source of data: Ministry of Consumer and Business Services

We noted that although the Ministry’s management information system was capable of generating data on the above activities, the Ministry was not ensuring that the outcomes of such activities were captured in the system. For example, for the approximately 6,000 inspections performed over the past three years (as shown in the above table), we noted that the outcomes of only 800 of these inspections were recorded in the system. Such information would help ministry management monitor the effectiveness of ongoing activities and identify recurring problems. It would also enable the Ministry to report on the effectiveness of its activities and outcomes.

With respect to measuring performance related to inquiries and complaints, in the 2001/02 fiscal year, the Ministry conducted a customer satisfaction survey of the Ministry's handling of inquiries and complaints. The survey was conducted over the telephone with callers who had contacted the Ministry. The results indicated that the majority of callers surveyed (90%) rated the services they received to be good or excellent. However, we had the following concerns:

- The survey was not independent given that it was done, at the end of the call, by the same staff who handled the inquiry or complaint. The risk is that callers who were not satisfied with the service may not answer honestly and staff may not objectively report the callers' responses. The Ministry indicated that in future it intended to engage an independent company to conduct the customer survey.
- Callers were asked at the end of the call whether they were satisfied with the courtesy, helpfulness, and timeliness of the service, but in cases where further action by the Ministry would likely be required, callers were probably not in a position at that point to assess whether the staff were effective in helping them resolve their concerns during the course of the telephone call.

In addition, we noted that there was no survey done on written complaints. Such a survey would be an important and perhaps more objective indicator of the Ministry's effectiveness in dealing with consumer concerns.

Recommendation

To enhance management's ability to properly measure and report on its effectiveness in protecting consumers and public safety, the Ministry should:

- use its management information system to capture and analyze the outcomes of its activities and thereby be in a position to improve and report on its effectiveness; and
- conduct proper consumer satisfaction surveys of both telephone and written complaints.

Ministry Response

The Ministry recognizes the importance of recording data pertaining to the outcomes of various activities, including investigations and inspections. With the successful implementation of the final phase of the new CATS business system in April 2001, the Ministry's ability to capture key data improved significantly. The Ministry will work to further improve its outcomes data capturing and processing as part of the ongoing refinement of the CATS information system.

As noted in the Auditor's Report, staff in the Marketplace Standards and Services Branch conduct regular customer satisfaction surveys at the point of transaction with consumers. To provide a further source of customer

satisfaction data, the Ministry retained an independent consultant to survey a sample of consumers who had dealings with the Ministry. It is expected that these two data sources will provide the Ministry with useful feedback.

DELEGATED ADMINISTRATIVE AUTHORITIES

Traditionally, the government has been responsible for protecting consumers and public safety in the Ontario marketplace by establishing relevant legislation and carrying out regulatory activities. In recent years, however, Ontario has established a number of delegated administrative authorities (delegated authorities) to permit certain industries to undertake regulatory functions.

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

Under this model, the delegated authorities are responsible for all day-to-day administrative activities, including registration and licensing, complaints processing, inspections, investigations, and other enforcement functions. The provincial government is responsible for legislating the regulated industries, and the Ministry remains accountable for the outcomes of improving public safety and consumer protection by:

- setting policy direction, rules, and standards for regulated industries through legislation, administrative agreements with delegated authorities, and other oversight mechanisms;
- ensuring adequate accountability frameworks and governance structures are in place—including those that allow for monitoring and taking corrective action, when necessary—to protect the public interest and promote public safety and consumer protection; and
- providing the public with relevant, accurate, and timely information on the outcomes of the delegated authorities' regulatory activities.

For our review of the delegated authorities model, we selected two of the delegated authorities that are responsible for public safety in Ontario, the Technical Standards and Safety Authority and the Electrical Safety Authority, and two that are responsible for consumer protection, the Ontario Motor Vehicle Industry Council and the Ontario New Home Warranty Program. For the selected delegated authorities, we reviewed their administrative agreements with the Ministry and performance information obtained by the Ministry, as well as, in some cases, additional information provided by the delegated authorities.

A key reason that the delegated authorities were established was that they can be more responsive to the needs of the marketplace because of their interest in the industries they regulate. We noted that there was a workable accountability framework in place to delegate regulatory functions to certain industries. However, based on our review of the information gathered by the Ministry and of the Ministry's monitoring activities, we concluded that the Ministry could not have adequate assurance that public safety and consumers were being properly protected. Our audit indicated that the Ministry did not have proper mechanisms in place to ensure outcomes reported by the delegated authorities were reliable. We also found that the Ministry's monitoring efforts were inadequate.

Our observations for the selected delegated authorities are outlined in the following sections.

Technical Standards and Safety Authority

In 1997, the Technical Standards and Safety Authority (TSSA) was delegated the authority to regulate safety in such sectors as amusement devices; boilers and pressure vessels; elevating devices; natural gas, petroleum, propane fuels, and related equipment; and upholstered and stuffed articles. It administers and enforces public-safety laws in these sectors under Ontario's *Technical Standards and Safety Act*.

The Ministry has established performance indicators to measure and report on the outcomes of the TSSA's activities to enable it to assess the TSSA's effectiveness in promoting public safety. These indicators include: the number of reported incidents; the number of serious injuries and fatalities; and the number of complaints received—all of which are reported on annually by the TSSA in a publicly available report entitled *State of Public Safety Report*.

When reported outcomes are to be used to assess effectiveness and to provide direction in addressing public-safety risks, the reliability of the reported outcomes is essential. Our review of information relating to the period 1998 to 2001 (the latest statistics available at the time of our audit) indicated that the Ministry had not ensured that the safety outcomes reported by the TSSA were reliable. Our specific observations are discussed in the following sections.

Reported Incidents

The safety-related incidents reported by the TSSA since 1998 are outlined in the following table.

TSSA's Safety-related Incidents by Sector, 1998–2001

Sector	1998	1999	2000	2001	% Increase/ Decrease Since 1998
Boilers and pressure vessels	3	7	3	9	200
Amusement devices	80	75	79	51	-36
Elevators, escalators, and moving walks	520	499	537	533	3
Ski lifts	146	113	78	63	-57
Fuels	250	211	483	444	78
Total	999	905	1,180	1,100	10

Source of data: TSSA's 2001 State of Public Safety Report

In the case of safety-related incidents for amusement devices and ski lifts, the statistics were showing a decreasing trend but TSSA management reported that the decrease was due to an increasing trend of operators not reporting all incidents. The TSSA acknowledged that incidents were likely under-reported in other areas as well because businesses might worry that reporting would result in their operations being inspected by the TSSA.

In addition, we found that:

- Except in the case of fuel incidents, over the years, neither the TSSA's annual reports nor its *State of Public Safety* reports indicated how many of the reported incidents were investigated. The reporting of both reported and investigated incidents would demonstrate the extent to which the TSSA had taken action on safety concerns reported. Also, reported incidents did not separate minor incidents from those requiring a direct compliance response.
- With regard to fuel incidents, the 444 cases that were reported by the TSSA for 2001 actually related to the number of cases that were investigated by the TSSA in that year. Our review indicated that, in fact, 6,000 fuel incidents were reported to the TSSA in 2001. Of this total, 4,614 were natural-gas pipeline incidents that resulted mostly from damages to underground pipelines.
- The TSSA reported in 2001 that the 4,614 natural-gas pipeline incidents noted above represented a slight increase over the 4,568 pipeline hits in 2000. However, our review of the 2000 *State of Public Safety Report* showed that the number of natural-gas pipeline incidents reported in that year was actually 3,446. No explanation was provided for why the 2000 number was revised upwards by over 1,000 from 3,446 to 4,568 between 2000 and 2001. The Ministry was not aware of the significant difference until we brought it to its attention.

Serious Injuries

In May 2002, the TSSA revised the serious injuries data it had reported for elevators, escalators, and moving walks, as well as for ski lifts, since 1998, citing classification errors. The statistics for these sectors for 1998 through 2001 are outlined in the following table.

TSSA's Reported Serious Injuries by Selected Sector, 1998–2001 (Revised Data)

Selected Sector	1998	1999	2000	2001	% Increase/ Decrease Since 1998
Elevators, escalators, and moving walks	28	23	29	29	3
Ski lifts	5	2	3	4	-20

Source of data: TSSA's 2001 State of Public Safety Report

We reviewed the original reports from previous years and noted that without the revisions to numbers dating back to 1998, the safety trend would have been different. As outlined in the following table, the originally reported serious injuries numbers for these sectors revealed that instead of a slight increase (3%) in serious injuries for elevators, escalators, and moving walks, the increase would have been 70%; and instead of a decline of 20% in serious injuries relating to ski lifts, the data showed an increase of 300%.

TSSA's Reported Serious Injuries by Selected Sector, 1998–2001 (Pre-revised Data)

Selected Sector	1998	1999	2000	2001	% Increase Since 1998
Elevators, escalators, and moving walks	17	12	17	29	70
Ski lifts	1	2	3	4	300

Source of data: TSSA's 2000 and 2001 State of Public Safety Reports

Since the number of serious injuries was a key indicator used by the Ministry to monitor safety outcomes, the lack of accurate information hindered the Ministry's ability to direct the TSSA to take more timely action to ensure public safety.

Fatalities

In prior years, the TSSA reported data on fatalities separately from data on serious injuries, but in 2001, the TSSA combined fatalities and serious injuries in its *State of Public Safety Report*. For our audit, we requested segregated data.

Our review of those data indicated that in the TSSA's 2001 report, the combined data of fatalities and serious injuries were under-reported in two sectors. Specifically, the following figures were omitted: four fatalities in the boilers and pressure vessels sectors in 2000 and 2001 and five fatalities in the fuels sector in 2000.

Complaints

The Ministry had established reporting requirements relating to the tracking of complaints for all the delegated authorities. In its annual reports since 1998, the TSSA has indicated that it is committed to timely and responsive handling of complaints from the public and its industry clients. Complaint statistics from the TSSA are outlined in the following table.

**TSSA's Reported Complaints,
1998/99–2001/02**

Year	Number of Complaints
1998/99	126
1999/2000	23
2000/01	11
2001/02	995

*Sources of data: TSSA's Annual Reports,
1998/99–2001/02*

Ministry management indicated to us that despite the numbers reported above, the complaints did not, in fact, dramatically increase from 11 in 2000/01 to 995 in 2001/02. Rather, it explained that the TSSA had not been accurately tracking and reporting the number of complaints. The Ministry indicated that it had expressed concerns with the low numbers of complaints reported by TSSA; this resulted in better reporting in 2001/02. While we were unable to assess whether subsequent complaints data were more accurately reported, we were concerned that it had taken four years for the Ministry to act on its concerns.

MONITORING ACTIVITIES AND OUTCOMES

The Ministry is responsible for monitoring the activities and outcomes of the TSSA. The Ministry requires the TSSA to report on its inspection and enforcement activities on a quarterly basis.

The Ministry indicated to us that the TSSA had recently developed a risk-assessment model for the deployment of inspection resources. In addition, the TSSA had adopted a more co-operative approach in working with sectors—one that was focused on education, training programs, and information seminars as means of encouraging compliance—in addition to using an enforcement-oriented approach that used prosecutions or other penalties.

Nevertheless, inspection activities are effective only if appropriate follow-up action is taken when violations are identified. In this respect, we noted that the Ministry had not assessed whether the nature and extent of follow-up action taken by the TSSA was appropriate. Specifically, while the Ministry knew how many inspections had been conducted, the Ministry had not monitored the results of inspections to assess their effectiveness in protecting public safety.

To illustrate by way of an example why it is important for the Ministry to monitor the effectiveness of the results of inspections, we noted that there were more than 4,600 natural-gas pipeline incidents reported to the TSSA in 2001, some of which resulted in fatalities. Our review showed that about 170, or 4%, of the incidents were investigated by the TSSA. However, the Ministry had not monitored and analyzed whether the TSSA's level of investigation and other enforcement measures were sufficient and appropriate, nor what corrective action, if any, would be needed to reduce the number of incidents and the occurrence of fatalities.

At the time of our audit, the Ministry did not have the following information for monitoring and analysis purposes:

- the number of inspections that resulted in inspectors' orders being issued (orders list instances of non-compliance noted during inspections and direct the corrective action that needs to be taken), versus the number of inspections that demonstrated compliance;
- the nature and seriousness of violations;
- the number of outstanding inspectors' orders and the length of time such orders had been outstanding; and
- the number of high-risk establishments and repeat offenders.

The only information provided to us to demonstrate the Ministry's monitoring efforts was the number of prosecutions and convictions. We noted that for the five fiscal years ended 2001/02, the TSSA reported an average of 23 prosecutions and eight convictions per year for the seven sectors that it regulated. Not having monitored and analyzed the effectiveness of follow-up actions taken by the TSSA on violations identified during its inspections, the Ministry did not have adequate information to assess whether the extent of prosecutions and convictions was appropriate and sufficient to deter future violations.

As indicated in the Audit Objectives and Scope section of this report, our audit was not to assess the effectiveness of the various delegated authorities but to assess the adequacy of the procedures and systems the Ministry has in place to monitor these authorities and thereby ensure public safety and consumer protection. In that regard, the following recommendation applies to the Ministry's monitoring efforts for all of the delegated authorities.

Recommendation

To better protect public safety the Ministry should improve its monitoring of delegated administrative authorities (delegated authorities) by:

- **ensuring the reliability of the outcomes that are reported by the delegated authorities; and**

- monitoring the activities of the delegated authorities to ensure that inspections, investigations, enforcement measures, and other appropriate actions are taken on a timely basis and are sufficient to ensure the achievement of established safety outcomes.

Ministry Response

The Ministry recognizes the importance of reliable safety data and supports the delegated authorities in their efforts to improve the quality of this information.

However, revisions to historic data have never hindered the ability of the government or the Technical Standards and Safety Authority (TSSA) to take timely and appropriate action to ensure public safety. Any individual safety incident that reveals a gap in safety standards or design requirements is acted on without delay.

For example, with the passage of the Technical Standards and Safety Act and related regulations in 2000, Ontarians have benefited from a more modern and responsive legal framework that enables timely updates to safety standards and better regulatory tools to respond effectively to emerging safety issues. The Ministry and TSSA have implemented a number of other important enhancements to safety standards in recent years. Some examples of effective responses include:

- ***one fatality on a bungee ride that resulted in approvals no longer being granted for non-stationary bungee devices in the Province of Ontario;***
- ***the decision to introduce certification requirements for amusement device and ski lift mechanics in response to recent incidents; and***
- ***a recent TSSA Director's Order outlining clear safety requirements for tube tow device operators in response to two safety incidents last winter.***

The Ministry will continue to work with the safety authorities to ensure continuous improvement in the quality of their data and their approach to risk management.

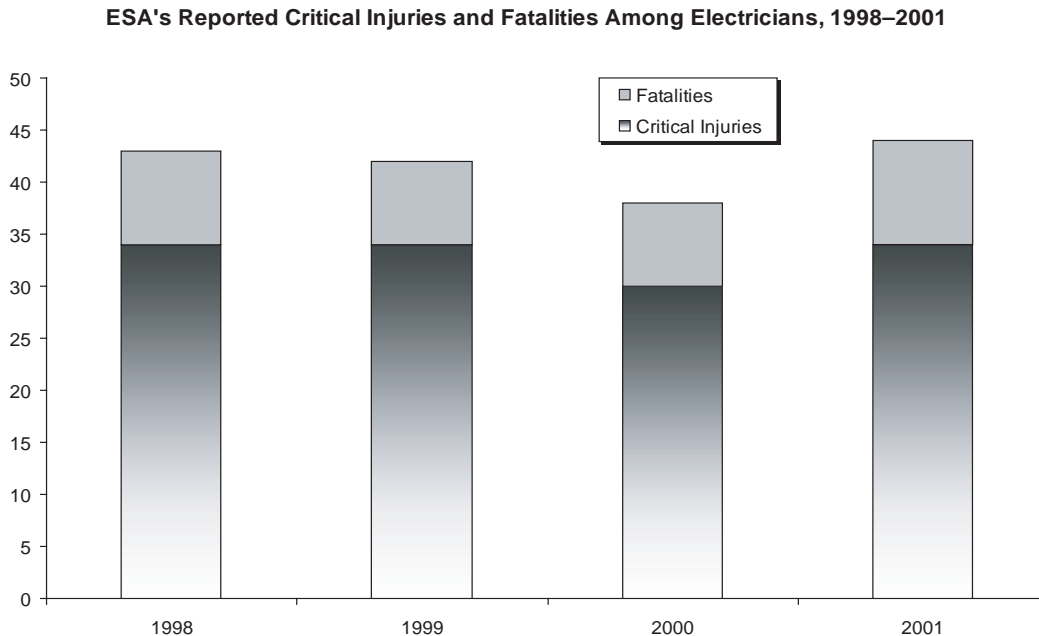
As well, the Ministry remains committed to requiring quarterly performance tracking reports from the safety authorities to ensure they can demonstrate appropriate and timely enforcement responses to safety incidents.

Electrical Safety Authority

In April 1999, under the *Electricity Act, 1998*, the Electrical Safety Authority (ESA) (formerly the Ontario Hydro Electrical Inspection division) was delegated the authority to oversee electrical safety. In fulfilling this responsibility, the ESA's activities include inspection, investigation, enforcement, and other electrical safety services in Ontario. The ESA's primary responsibility is interpreting and enforcing the *Ontario Electrical Safety Code*.

The ESA reports to the Ministry the key outcomes of its activities as a measure of its effectiveness in protecting public safety and consumers. Key indicators include: the number of reported incidents (for instance, power-line contact); the number of critical injuries (defined as loss of consciousness, injury to major limbs, or large amount of blood lost); the number of fatalities; and the number of complaints received.

Both the Ministry and the ESA were concerned about the high number of electricians killed and the number of critical injuries on the job. Critical injuries and fatalities reported on from 1998 through 2001 are illustrated in the following graph.



Source of data: Ministry of Consumer and Business Services

The Ministry and the ESA also expressed the following concerns:

- While electricians must attend college and apprenticeship programs to receive their certificates of qualification, no requirement exists for them to update their training in electrical safety requirements and their knowledge of the *Electrical Safety Code*.
- Licensing requirements for electrical contractors varied from municipality to municipality.

Based on the above concerns, the ESA proposed that it be delegated the authority to become the registrar for the certification and licensing of electricians and to enforce requirements for the certificates of qualification.

Recommendation

To help reduce electrical incidents involving serious injuries and the deaths of electricians, the Ministry and the Electrical Safety Authority should work with

other stakeholders to develop consistent safety standards for the training and initial and ongoing licensing of electricians working in Ontario.

Ministry Response

The Ministry and the Electrical Safety Authority (ESA) recognize that having properly trained and accredited electricians is an important component of electrical safety in Ontario. While the ESA has previously been responsible for electrical permits and inspection, the Ministry and the ESA have been actively working with industry groups, consumers, and the Ministry of Training, Colleges and Universities to strengthen the oversight and professional development and standards requirements for electricians.

Ontario Motor Vehicle Industry Council

The Ontario Motor Vehicle Industry Council (OMVIC) received delegated responsibility for the administration of the *Motor Vehicle Dealers Act* in January 1997. OMVIC is responsible for registering and monitoring motor vehicle dealers and salespersons, and undertaking enforcement action with a focus on on-site visits and inspections, investigations, and prosecutions of those violating the Act. They also handle complaints and mediation, which provides alternatives to litigation for consumers and dealers. In addition, they promote professional standards and public awareness, which involves developing programs intended to enhance the industry’s professionalism and consumer knowledge.

Key indicators of the OMVIC’s activities and outcomes include: dollars returned to consumers, the number of convictions resulting from investigations, the number of inquiries handled, and the number of inspections conducted. The OMVIC was the only delegated authority that provided the Ministry with up-to-date quarterly statistics on its activities and outcomes. Our review of the outcomes reported over the past five years indicated the OMVIC had consistently improved its effectiveness in having money returned to consumers over complaints relating to motor vehicle dealers.

OMVIC’s Reported Activities and Outcomes, 1998–2002

	1998	1999	2000	2001	2002	% Increase Since 1998
Activities						
Inquiries and complaints	47,933	53,816	57,440	63,515	57,935	21
Mediations	800	870	2,477	1,837	1,450	81
Inspections	3,955	3,132	4,249	7,533	5,430	37
Outcomes						
Charges laid	457	869	1,457	1,774	2,162	373
Convictions	223	298	617	510	553	148
Money returned to consumers (\$)	604,200	683,747	1,058,735	1,384,190	1,218,971	102

Sources of data: OMVIC, Ministry of Consumer and Business Services

As shown in the above table, the money returned to consumers as a result of mediations and other enforcement activities in 2002 was \$1.2 million, an increase of 100% from about \$600,000 in 1998. Our review of the above statistics indicated that the significant improvement in OMVIC's outcomes, such as the number of convictions and the amount of money returned to consumers, corresponded with the increase in its regulatory activities, such as the handling of complaints, the initiation of mediations and inspections, and the laying of charges.

While the OMVIC is responsible for regulating motor vehicle dealers, the Ministry continues to be responsible for complaints related to motor vehicle repairs and related inspections and investigations. We noted that although motor vehicle repair was in the top three of complaints received by the Ministry over the past three years, the number of inspections the Ministry conducted was minimal—as shown in the following table.

**Ministry Data on Complaints and Inspections
for Motor Vehicle Repairs, 2000–2002**

	2000	2001	2002	% Increase/ Decrease Since 2000
Telephone complaints	2,145	1,822	1,722	-20
Written complaints	185	231	217	17
Total	2,330	2,053	1,939	-17
Ministry inspections	6	8	6	0

Source of data: Ministry of Consumer and Business Services

Our review indicated that, because most dealers also conduct repairs on their premises, there was overlap in the functions of the Ministry and the OMVIC in terms of handling complaints and conducting inspections related to the industry.

Recommendation

To protect consumer interests with respect to the regulation of the motor vehicle industry in a more cost-effective manner, the Ministry should work with the Ontario Motor Vehicle Industry Council on ways to improve the effectiveness of consumer protection with respect to motor vehicle repairs.

Ministry Response

The Ministry has initiated discussions with the Ontario Motor Vehicle Industry Council to explore co-operative relationships to improve regulatory effectiveness in the motor vehicle repair sector.

Ontario New Home Warranty Program

The Ontario New Home Warranty Program (ONHWP) was established in 1977 to administer the *Ontario New Home Warranties Plan Act*. The ONHWP was established to make new home warranty coverage mandatory. As a result, builders in Ontario are required to register as members of the ONHWP and pay enrolment fees for new home sales to cover potential warranty claims from new homebuyers in Ontario. Homebuyers can communicate complaints and submit them to the ONHWP if they are dissatisfied with the services provided by the builder. The ONHWP processes the complaint to determine if it is eligible for coverage. If it is, the ONHWP can compel the builders to make repairs or can pay out a suitable compensation to the homebuyer and may recover the refund from the builder.

At the time of our audit, the Ministry had not been successful in negotiating an administrative agreement with the ONHWP to define their respective roles and responsibilities in protecting homebuyers in Ontario. We noted that because it did not have a formal agreement in place, the Ministry could not effectively provide any direction to the ONHWP, or obtain adequate information about its operations in protecting homebuyers. For instance, the Ministry could only provide us with the ONHWP's annual reports because it had limited success in obtaining additional information from the ONHWP.

We compiled and reviewed information on performance outcomes that was available in public, ONHWP annual reports and other sources. We noted that there were no data on complaints to the ONHWP beyond 2000 because the ONHWP had stopped publishing complaints in its annual report. The following table outlines our compiled statistics.

ONHWP's Outcome Statistics, 1998–2000

Outcomes	1998	1999	2000	% Increase/ Decrease Since 1998
Complaints against builders	21,200	22,900	28,153	33
New home sales	49,393	57,607	62,904	27
Homebuyers' claims approved	1,100	972	763	-31
Money paid out for claims (\$ 000)	8,754	5,203	7,391	-16

Sources of data: ONHWP and the Ministry of Consumer and Business Services

We noted that while new home sales in Ontario had steadily increased since 1998 and complaints had increased slightly in proportion, the number of claims approved had declined significantly and the amount paid out to consumers had declined as well. No information was available to explain the cause of the decline in claims approved. There were several possible causes for the decline: for instance, the ONHWP might be able to more effectively mediate complaints against builders, or it might be favouring builders in rejecting consumers' claims.

Our review of complaints received by the Ministry specifically about the ONHWP showed that the complaints mostly related to the following:

- that the ONHWP's services were biased in favour of builders over consumers; and
- that the ONHWP's decisions were biased against smaller builders because representatives of big builders dominated its board.

The Ministry indicated that it had expressed concerns regarding the above complaints and had met on numerous occasions with the ONHWP to discuss the complaints as well as a governance and accountability mechanism.

Recommendation

The Ministry should take action to ensure that better accountability mechanisms are in place to protect consumers buying new homes in Ontario.

Ministry Response

The Ontario New Home Warranty Program and the Minister of Consumer and Business Services have signed a letter of accountability establishing formal reporting requirements and outlining the roles and responsibilities of each party.

Governance and Accountability of Delegated Authorities

Delegated authorities were established to be more responsive to the needs of their industries and other stakeholders in the marketplace and more responsive in deploying resources for regulatory activities. To counter potential criticism of this self-regulatory model—specifically, criticism of under-regulation, under-representation of consumers, and biased decisions favouring the industries' members—the Ministry put in place a number of formal and informal tools to ensure that delegated authorities remain accountable and fair and provide for sufficient consumer representation. These tools include:

- administrative agreements signed between the Ministry and each delegated authority, which outline the roles and responsibilities of each party;
- the Ministry's right to recommend or appoint government, public, and consumer representatives to the boards of directors of the various delegated authorities; and
- the establishment of a ministry unit to monitor delegated authorities—specifically, their effectiveness outcomes and compliance with legislative requirements, including timely submission of annual reports, business plans, and other operational reports required by the Ministry.

We made several observations relating to these governance and accountability tools, which are outlined in the following sections.

ADMINISTRATIVE AGREEMENTS

The Ministry sets expectations and terms of delegation with the delegated authorities through administrative agreements. The agreements are an important tool in governing delegated authorities and making them accountable. The requirements outlined in these agreements include: the composition of the board of directors, annual performance reporting expectations, and oversight fees. We noted that the Ministry had not negotiated an administrative agreement with two of the eight delegated authorities.

MINISTER’S APPOINTEES

The *Safety and Consumer Statutes Administration Act, 1996* enables the Minister to appoint up to 50% of the members of delegated authorities’ boards of directors. The presence of Minister’s appointees on a delegated authority’s board helps maintain a balance between representation by government, consumers, the public, and the industry. At the time of our audit, appointments to the boards of the delegated authorities we reviewed were as outlined in the following table.

Composition of Selected Delegated Authorities’ Board of Directors, Spring 2003

	TSSA	ESA	OMVIC	ONHWP	Total
Total board members	17	12	12	17	58
Number of Minister’s appointees	3	3	3	0*	9
Percentage of Minister’s appointees on the board	18	25	25	0*	16

* Because no administrative agreement was in place for the ONHWP, no provision existed for Minister’s appointees on its board of directors.

Sources of data: TSSA, ESA, OMVIC, ONHWP, and the Ministry of Consumer and Business Services

Given that the Minister can appoint 50% of board members, we noted the significant under-representation of members who were independent of the industries being regulated in the composition of boards. Although board members might not belong to the industries being regulated, if they are appointed by the regulated industries, they are not fully independent. Also, we noted that attendance by ministry staff appointed by the Minister was generally below that of other board members.

MONITORING OF AUTHORITIES’ PERFORMANCE

Prior to the delegation of authority to the various delegated authorities, the costs of regulating the related industries were recovered by the Ministry through revenues that were generated through registrations, inspections, and certification activities. Since delegation, these revenues are collected by the delegated authorities. Revenues are to be used to cover the costs of the regulatory activities undertaken by delegated authorities as well as the

oversight function the Ministry has for the delegated authorities. To ensure the Ministry has sufficient resources to fulfill this oversight role, administrative agreements between the delegated authorities and the Ministry provide for the Ministry to recover some of the revenues collected by delegated authorities to cover its costs.

When the delegation of authority began with the establishment of the first four delegated authorities in 1997, the Ministry's original plan was to collect from delegated authorities \$2 million in oversight fees per year to cover the costs of monitoring the performance of these delegated authorities. However, of the \$2 million actually collected by the government, only \$380,000 was allocated to the Ministry to provide four staff for this monitoring. Since 1999, four more delegated authorities have been added without additional funding. According to the Ministry, current staff levels were not sufficient to deal with the significant increase in workload. Our review indicated that this lack of resources could have contributed to the inadequate monitoring efforts already noted in this report.

With respect to reporting requirements, the *Safety and Consumer Statutes Administration Act, 1996* requires that delegated authorities submit annual reports showing their activities and financial affairs within four months of their fiscal year-end. This provision is intended to allow the Ministry to review and table the reports in the Legislature on a timely basis. Our review indicated that none of the delegated authorities complied with this reporting requirement and that the Ministry took from 12 to 20 months after the delegated authorities' fiscal year-end to table their annual reports in the Legislature.

Recommendation

To better protect consumers and the public, the Ministry should strengthen its governance and accountability arrangements with delegated administrative authorities (delegated authorities) by:

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

Ministry Response

With respect to establishing administrating agreements, five delegated authorities under the governing Safety and Consumer Statutes Administration Act, 1996 framework have administrative agreements in place. The Ministry has also undertaken a review of these administrative agreements and has

modernized their provisions to reflect recent improvements in governance and accountability best practices.

In addition, the Ontario New Home Warranty Program and the Minister of Consumer and Business Services have signed a letter of accountability.

Furthermore, as a result of the recently passed Funeral, Burial and Cremation Services Act, 2002, the Ministry has a legislative basis to work with the government and stakeholders to create a new cemetery and funeral service administrative authority. The Ministry will review governance and accountability provisions in the context of implementing the new Act.

With respect to representation on boards of directors, the Ministry is committed to ensuring a fair balance of representation on the boards of its delegated authorities. The board of each delegated authority contains a substantial proportion of members who are independent from the regulated industries. The Technical Standards and Safety Authority (TSSA), for example, has adjusted its board balance to include nine non-industry directors and eight industry directors from distinctly different sectors that TSSA regulates.

The Minister of Consumer and Business Services retains the authority to adjust the current board balance by appointing up to 50% of the board. The Ministry will continue to review the composition of the delegated authority boards over time to ensure that an appropriate proportion of non-industry, independent directors is maintained.

Furthermore, the Ministry will develop a skills profile reflecting the ideal competencies sought for non-industry members, in order to optimize non-industry member effectiveness on these boards of directors.

With respect to ensuring sufficient resources for performance monitoring, the Ministry will review its capacity to fulfill oversight functions and will make necessary staffing adjustments where warranted.

Finally, with respect to ensuring timely compliance with performance requirements, the Ministry will develop a tracking process for the tabling of delegated authorities' annual reports in order to better monitor the movement of reports through the process within the Ministry and to take timely corrective action when necessary and within the Ministry's authority.

The Ministry will also improve its tracking of delegated authorities' performance statistics to ensure timely quarterly reporting to the Ministry on relevant performance measures.