Office of the Auditor General of Ontario

Annual Report 2019

Reports on Correctional Services and Court Operations

Volume 3

Office of the Auditor General of Ontario

To the Honourable Speaker
of the Legislative Assembly

In my capacity as the Auditor General, I am pleased to submit to you Volume 3 of the *2019 Annual Report* of the Office of the Auditor General of Ontario to lay before the Assembly in accordance with the provisions of section 12 of the *Auditor General Act*.

Bonnie Lysyk, MBA, FCPA, FCA
Auditor General

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Reflections

Bonnie Lysyk
Auditor General of Ontario

The contents of four of this year's value-for-money audits—Adult Correctional Institutions, Court Operations, Criminal Court System and Family Court Services—are intertwined, so it is fitting they be published together as *Volume 3* of our *2019 Annual Report*. The province spends about $1.5 billion each year on these four areas combined.

Adult correctional institutions are the responsibility of the Ministry of the Solicitor General. While the issues facing these institutions are unique, the institutions are significantly impacted by the work of the Ministry of the Attorney General (Ministry) as it concerns court operations and the judiciary.

In fact, about 80% of the approximately 51,000 individuals admitted into Ontario adult correctional institutions in 2018/19 were accused persons on remand who were awaiting bail or trial. On a daily basis, remanded inmates represent 71% of the 7,400 inmates in custody. The remaining 29% of inmates are those that have been found guilty of a crime with a sentence of less than two years. The proportion of the remand population in institutions in Ontario has increased in the last 15 years, from 60% in 2004/05 to 71% in 2018/19. In 2017/18, the percentage of Ontario's inmates on remand was the second-highest of all jurisdictions in Canada. In essence, justice for these inmates is being delayed—justice delayed is justice denied.

Processing cases efficiently through the courts would significantly reduce the number of inmates on remand and potentially reduce the pressures on adult correctional institutions.

Timely justice is also important for the victims of crimes and their families. When justice is not obtained or obtained late, public confidence in the justice system can erode.

The government and Members of the Legislative Assembly must make difficult decisions on the allocation of taxpayer dollars to programs and services in Ontario. Frequently, government decision-makers direct funding primarily to the more visible programs, such as those providing health, education and social services. Funding correctional institutions and the justice system may have a perceived lower public priority because the average Ontarian may only have limited contact with the courts and the institutions. Yet substantial money is needed and is provided to the courts and adult correctional institutions. So, it is critical that funding decisions be based on timely and good information. The four chapters in this volume provide some of the information needed to help decision-makers fulfill their responsibilities, and highlight the need for improvement in the information collected by and available to the Ministry of the Solicitor General and the Ministry of the Attorney General.

Chapter 1—Adult Correctional Institutions

In 2018/19, the Ministry of the Solicitor General managed 25 adult correctional institutions with an annual budget of $817 million, admitting 51,000 individuals into the institutions as either convicted or remand inmates.

Overseeing and operating adult correctional institutions is complex and challenging. The issues faced include the timeliness of the court system, the services available to inmates both when they are in the correctional institutions and when they return to the community, the working conditions and training of correctional staff, the living conditions in the facilities, and the appropriate handling and treatment of inmates' behavioural and mental health issues. A correctional system focused on reducing both recidivism and reoffending must respond to these issues in an integrated manner.

Our report highlights that adult correctional institutions need to be better equipped to deal with the challenges resulting from the high proportion of inmates on remand and from inmates with both confirmed and possible mental health issues. There also needs to be a focus on creating more positive working conditions for staff that addresses their exposure to violence and the threat of violence from inmates, providing better training on how to handle inmates with mental health conditions, and improving the strained relationship between management and staff.

The Ministry of the Solicitor General fully co-operated with us throughout the audit and provided information on a timely basis.

Chapter 2—Court Operations and Chapter 3—Criminal Court System

Ontario's court system has three courts. Both the Ontario Court of Justice (Ontario Court) and the Superior Court of Justice (Superior Court) deal with criminal law and family law cases. The Superior Court deals with fewer and more serious criminal offences, and is the only court that hears civil cases, including small claims. The third trial court, the Ontario Court of Appeal, was not part of our audit. The Ministry of the Attorney General (Ministry) is responsible for all matters relating to the administration of the courts, such as providing facilities, court staff, information technology and other services such as court reporting. In the 2018/19 fiscal year, the Court Services Division had expenditures of $258 million, and the Criminal Law Division's expenditures totalled $277 million. The province also paid about $145 million in judicial salaries, including benefits, to the Ontario Court in the same year. As of March 2019, there were 74 courthouses in Ontario, with a total of 673 courtrooms where judges hear cases.

Our reports on court operations and the criminal court system provide current insights into the justice system and include recommendations for improvements, many of which are dependent on increased availability and use of technology.

We encountered many difficulties in obtaining information while conducting both these two audits and our audit of family court services (see **Chapter 4**). As a result, we were unable to assess whether administrative courtroom scheduling is being done efficiently and cost effectively, nor could we independently confirm why courtroom utilization is not meeting Ministry targets for optimal usage. We also were not able to independently confirm the reasons for delays in disposition of criminal cases where the files are maintained by Crown attorneys. We were not provided with the necessary access to information to do our work to report to the Legislature on these key areas.

Government decision-makers, legislators and the public are obliged to respect the independence of the Ontario judiciary. However, they still have the right to information that will allow them to understand and assess the performance of our courts system; whether court facilities need to be expanded and why; whether correctional institutions need to be expanded and why; and whether the justice system is being managed as cost effectively and efficiently as possible.

On average, Ontario's courtrooms are used 2.8 hours per day, which is considerably less time than the Ministry's optimal average use of 4.5 hours per day. Twenty-seven of the 32 courthouses where we noted above-average delays in disposing criminal cases also operated fewer hours than the Ministry's optimal average of 4.5 hours per day. We also noted during our audit that, with the exception of a few courthouses that were operating at overcapacity, courtrooms in many other courthouses were underutilized or were empty at various times. As highlighted in our report on Court Operations, we were only provided with commentary as to why this happens, but our access to the information we needed to be able to fully analyze and confirm what we were told was denied by the Offices of the Chief Justices of the Ontario Court and the Superior Court.

The judiciary believes that any decision it makes is outside the purview of the *Auditor General Act*, which states the following: "The Auditor General is entitled to have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or **used by a ministry**, agency of the Crown, Crown controlled corporation or grant recipient, as the case may be, that the Auditor General believes to be necessary to perform his or her duties under this Act" *[emphasis added]*. As well, under the *Auditor General Act*, a disclosure to the Auditor General does not constitute a waiver of solicitor-client privilege, litigation privilege or settlement privilege.

We concur with the judiciary that, notwithstanding these provisions of our Act, its judicial rulings relating to cases before the courts are not to be questioned by our Office. However, with respect to its decisions regarding the administration of the court system, including the scheduling of courtrooms, we believe we do have the right to access any and all information we need for our audit. After all, taxpayers fund the administration of the court system and the building of courthouses. And Ministry employees can readily access the information that we were denied access to. In not permitting us information on courtroom scheduling, our audit was considerably hampered. In previous health-care audits, we have audited the scheduling of operating rooms and nurses, and this enabled us to make recommendations for improvement.

Compounding the denial of access to administrative courtroom-scheduling information were the delays and limitations we encountered in obtaining other information from the Ministry. This is consistent with the delays we encountered in our previous Court Services audits in 2003 and 2008. For example:

- We were refused full access to a sample of 175 criminal and mental health case files that are maintained by Crown attorneys. We asked to review these files to determine the reasons why some of these cases were delayed. Instead, the Ministry of the Attorney General's Criminal Law Division summarized some details from the files and provided those to us. Although reasons for delays were provided, we could not substantiate and confirm the reasons by independently and objectively reviewing the complete files in a timely manner.
- We were also refused access to about 115 of a sample of 240 digital audio recorded notes from court hearings. We asked to review these notes to confirm how long courts were in session. We were able to review only 125 of these notes from our sample.

A main takeaway from the access-to-information issues we experienced was that Ontario's court operations need to be more transparent and accountable to the taxpayers who fund it.

Transparency, accountability and effectiveness are also significantly hindered by the fact that the overall pace of court system modernization in Ontario remains slow. Unlike other jurisdictions, the court system in Ontario is still heavily paper-based, making it inefficient. In 2018/19, almost 2.5 million documents—over 96% of them paper documents—were filed in Ontario's court system,

ranging from the cases' initiating documents to evidence and court orders made by a judge.

In addition to the increase in remand inmates and the statistics showing lower-than-targeted courtroom utilization, we found that the backlog of criminal cases we noted in our previous audits of Court Services in 2003 and 2008 continues to grow. Between 2014/15 and 2018/19, the number of criminal cases waiting to be disposed increased by 27%, to about 114,000 cases. One result of this backlog is the increasing age of the cases pending disposition: cases pending disposition for more than eight months increased by 19%, from about 31,000 cases in 2014/15 to about 37,000 cases in 2018/19.

According to information provided by the Ministry, 191 provincially prosecuted cases have been stayed at the request of the defence since July 2016 because the prosecution or the court system had been responsible for unreasonable delays. In these cases, the guilt or innocence of the accused person is not determined.

As well, the average number of days needed to reach a bail decision has increased over the past five years, which we estimated resulted in about 13,400 additional bed days in adult correctional institutions for remand inmates. We also noted that videoconferencing technology in the criminal-justice sector continues to be underutilized.

The province funds mental health courts, which have been in operation in Ontario since 1997; however, the benefits arising from the use of these courts are unknown. Procedures are not clearly outlined, there is a lack of proper data on their operations, and definitions of mental health courts' objectives and intended outcomes are imprecise. In contrast, Nova Scotia has set key objectives for its mental health court, has evaluated the court's success in reducing recidivism relative to the regular criminal justice system and provides a wide range of information to promote public awareness.

The Office of the Chief Justice of the Ontario Court of Justice refused to confirm whether or not it has performed such a review of mental health courts in Ontario. Therefore, we cannot confirm to the Legislature whether a review has been performed. In 2018/19, 33% of about 51,000 inmates admitted to provincial adult correctional institutions had a mental health alert on their file indicating possible mental health concerns, compared to 7% of inmates admitted in 1998/99.

Chapter 4—Family Court Services

Despite limitations placed on our audit work by the Offices of the Chief Justices of the Ontario Court and the Superior Court and the Ministry, we were able to determine that effective and efficient processes were not in place in the family court system to enable its consistent monitoring of and adherence to the legislated timelines for interim Children's Aid Society care orders, which are designed to promote the best interests, protection and well-being of children.

As of July 2019, there were 5,249 child protection cases pending disposition. Of these, 23% had remained unresolved for more than 18 months, and some for more than three years. Because the Ministry of the Attorney General's information system did not capture accurate and complete information, neither the Ministry nor we were able to determine how many of these cases were subject to the statutory timelines in the *Child, Youth and Family Services Act, 2017*, in order to confirm that the statutory deadlines were being met. These timelines require that when an order of interim Children's Aid Society care is issued by the courts, the length of the interim care should not exceed 18 months for children under the age of six, and 30 months for children between the ages of six and 17.

We identified significant delays in some cases. But because the Offices of the Chief Justices and the Ministry denied us access to the complete child protection case files we needed to complete our work, we could not confirm the reasons for those delays, nor confirm why the statutory timelines were exceeded. Such delays can put children at unnecessary risk.

We believe that under the *Auditor General Act* we are entitled to access complete child protection case files, which are accessible to Ministry employees. In denying our access, the Ministry and the Offices of the Chief Justices cited the following clause in the *Child, Youth and Family Services Act, 2017*: "No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding, or the child's parent or foster parent or a member of the child's family." Although we assured the Ministry and the Offices of the Chief Justices that we would not publish the names of such individuals in our Report, we were still not provided access.

Subsequent to our ongoing audit requests, and after considerable time had passed, the Ministry, with the approval of both Offices of the Chief Justices, provided only a limited portion of the information we had requested, with many parts redacted, making it again difficult to complete our work. The Court Services Division of the Ministry also refused to allow its staff to answer our questions about why some cases were delayed.

The Ontario Court publishes its *Guiding Principles and Best Practices for Family Court*, and we were able to obtain this document. However, the Superior Court would not provide us with a copy of its Best Practices for Child Protection Cases.

In Conclusion

When our Office is refused access to information to conduct our work on behalf of the Members of the Legislature, our responsibility is to inform the Legislature of this fact. Notwithstanding the incompleteness of the information available to us for our audits on court operations, criminal courts and family courts, we were still able to provide a number of recommendations encouraging transparency and accountability in the court system in Ontario. Our recommendations highlight the significant need to quicken the modernization of the justice system, so that the information in its systems is readily available to decision-makers to make timelier decisions and to provide for timelier access to justice for the victims of crimes, those charged with crimes, children who are the subject of child protection cases, and the families of all of these people.

The correctional system also has challenges to address. There needs to be a focus on reducing the high remand inmate population and addressing the rising inmate population with either suspected or confirmed mental health issues. Equally critical is providing correctional officers with extensive training in techniques for working with the 33% of inmates with mental health alerts on their files, and improving working conditions for staff in adult correctional institutions.

Sincerely,

Bonnie Lysyk, MBA, FCPA, FCA
Auditor General of Ontario

Summary

Chapter 1—Adult Correctional Institutions

The purpose of a correctional system is, first, to protect the public from crime, and second, to provide the necessary supports and programming to individuals who continually reoffend so that they can successfully reintegrate into the community and reduce future incarceration and cost to taxpayers.

Our audit examined whether the Ministry of the Solicitor General (Ministry) is managing the 25 adult correctional institutions to provide the supports for inmates to reintegrate into society and reduce reoffending.

On average during 2018/19, over 7,400 adults 18 years and older were in custody every day in the province's adult correctional institutions and the Ministry spent $817 million in that fiscal year to run the institutions. In this report, we use the term "correctional institutions" to encompass jails, detention centres, correctional centres and treatment centres.

In 2018/19, almost 51,000 individuals were admitted in two main streams:

- sentenced to serve less than two years in a provincial correctional institution; and
- accused of a crime but not yet sentenced or convicted. These individuals, who are remanded inmates, are awaiting bail or trial on charges that, if found guilty of, could result in placement in either federal or provincial custody.

On average, remanded inmates, who comprise 71% of the daily inmate population, were in custody for 43 days, while sentenced inmates were in custody for 59 days. Although the number of individuals admitted into correctional institutions has generally decreased in the last 15 years, the proportion of remanded inmates has increased. The high percentage of remanded inmates can in large part be attributed to delays in the criminal court system, which is discussed in **Chapter 3** in this volume.

Our audit also noted that a growing proportion of inmates have possible mental health issues. Without sufficient staff training and appropriate units to place inmates in, these inmates are often sent to segregation as a result of their behaviour.

Our audit specifically found the following:

- In 2018/19, 33% of all inmates admitted across the province had a mental health alert on their file—indicating possible mental health concerns—compared with 7% of inmates in 1998/99. We found that most correctional institutions do not have the appropriate facilities to manage these inmates. We also found that front-line staff have not been provided with the necessary training and information about identifying triggers and techniques to de-escalate situations in order to manage these inmates effectively.
- Historically, to deal with overcrowding—largely caused by delays in the criminal court system—the Ministry has increased the capacity of 16 institutions by an average of 81% more than their original capacity when they were built. In most cases, the Ministry did so

by adding beds in cells designed to have only one. However, in 2018/19, 14 of the 25 correctional institutions were still operating beyond the Ministry's optimal rate of 85% occupancy.

- Although it is known that contraband enters correctional institutions, the Ministry has not analyzed the results of contraband searches to understand points of entry. In the last 10 years, the Ministry estimates that the number of times weapons were found increased by 414% and the number of times drugs and alcohol were found in institutions increased by 136%. Between July 2017 and August 2019, there were 101 overdoses in the 25 correctional institutions. The lack of security screening for staff increases the risk of contraband entering the institutions through compromised staff—those who have been persuaded or coerced by inmates to bring contraband into the institution.
- The Ministry does not analyze the root causes of violent incidents in correctional institutions to prevent future recurrence. From January 2014 to October 2018, there were about 21,000 recorded incidents across the province, including altercations between inmates and inmates threatening or directly assaulting staff. Over half of the more than 1,800 Workplace Safety and Insurance Board (WSIB) claims filed by correctional employees over the last five years in only the eight institutions we visited were due to injuries inflicted by inmates and exposure to violence.
- Insufficient ongoing training in dealing with inmates with mental illness and behavioural issues, and inadequate amenities for employees, were contributing factors to the strained relationship between management and staff, and low staff morale. This low morale is demonstrated in high absenteeism, which averaged 31 days for permanent correctional officers in 2018 and which was 27% higher than in 2014. Overtime payments to correctional officers have also increased by 280%—from $11 million in 2007/08 to $42 million in 2018/19—while the increase in the number of officers over the same time period was just 30%, from 3,400 to 4,400. Overtime costs were paid when employees called in sick and their shifts had to be filled.
- Most inmate information is recorded manually and retained on paper due to deficiencies in existing information systems. Much of the manual recording related to the care and custody of inmates is because the Offender Tracking Information System used in all the institutions does not have the functionality to maintain such information. Examples of the information kept manually include healthcare notes, social workers' notes, inmate complaints and requests, search records, and observation records of inmates on suicide watch and in segregation units. The information that is logged electronically is not regularly analyzed by Ministry or institutional management staff to better understand and make informed decisions about the operations of correctional institutions.

Chapter 2—Court Operations

Ontario's court system has two trial courts—the Ontario Court of Justice (Ontario Court) and the Superior Court of Justice (Superior Court)—as well as a Court of Appeal. Both the Ontario Court and the Superior Court deal with criminal law and family law cases. But the Superior Court deals with fewer (usually the most serious) criminal offences, as well as civil cases, including small claims. The Ontario government appoints and compensates Ontario Court judges, while the federal government appoints and compensates Superior Court judges. Under the *Courts of Justice Act*, the regional senior judges and their delegates, under the direction and supervision of the Chief Justices, are responsible for preparing trial lists, assigning cases and other judicial duties to individual judges, determining workloads for judges and sitting schedules and locations, and assigning courtrooms.

The Court Services Division (Division) of the Ministry of the Attorney General (Ministry) is responsible for all matters relating to the administration of the courts, such as providing facilities, court staff, information technology and other services such as court reporting. For 2018/19, the Division's expenditures were $258 million; this figure has been relatively stable from 2014/15. In addition, the Ontario government paid about $145 million in judicial salaries and benefits to the Ontario Court in the same fiscal year.

As of March 2019, there were 74 courthouses in Ontario, with a total of 673 courtrooms where the judiciary hear cases.

During our audit, we experienced significant scope limitations with respect to access to information such as court scheduling, and delays in receiving other key information, including staffing statistics that took two months to receive. The courts are public assets, supported and financed by the people of Ontario, and the administration of justice is a public good. Therefore, while we respect the independence of the judiciary and the confidentiality due to participants in legal matters, we nevertheless believe that it is within our mandate to review information that would be needed to assess the cost-effectiveness of court operations and the efficient use of resources, given that taxpayer monies support court operations.

Nonetheless, some of our significant findings are as follows:

- Ontario courtrooms were in operation only 2.8 hours on an average business day, well below the Ministry's optimal average of 4.5 hours. We found that the 55 courthouses, out of a total 74, that reported above-average delays in resolving cases also operated fewer hours than the Ministry's optimal average of 4.5 hours per day. Without full access to scheduling information, we were unable to examine and substantiate the efficiency and effectiveness of court scheduling and to confirm reasons for the underutilization of courtrooms.
- In 2018/19, almost 2.5 million documents—over 96% of them paper documents—were filed in Ontario's court system, ranging from cases' initiating documents to evidence and court orders made by a judge. Little progress had been made in replacing the Integrated Court Offences Network (ICON). ICON tracks criminal cases handled by the Ontario Court, which accounted for more than 98% of all criminal cases in the province. Our past audits in this area in 2003 and 2008 repeatedly identified the need for the court system to modernize and become more efficient. The Ministry had made limited progress in its efforts to introduce and use more effective technologies in the court system since our last audit in 2008, more than 10 years ago. In January 2019, the Ministry submitted a project plan to the Treasury Board for replacing the system, which was pending approval as of August 2019. The business case submitted was part of an overall Criminal Justice Digital Design initiative, estimated to cost $56.1 million between 2019/20 and 2023/24.
- The implementation of Criminal E-intake had time delays and cost overruns despite a reduced project scope. Criminal E-Intake is an online system that allows police to submit criminal Information packages, containing documents such as the offence(s) that the accused person is charged with, copies of police officers' notes and witness statements, electronically to the Ontario Court. The Ministry approved the business case for this system in July 2016, at an estimated cost of $1.7 million, and the Ministry expected to complete the project by November 2017. However, the Ministry underestimated the project's timelines and costs. The Ministry's most recent completion date is now November 2019, and the estimated cost has increased to $1.9 million for a reduced scope, covering only one of the two police record management systems.

- In 2018, the Division's employee survey reported that 60% of employees were dissatisfied with their Ministry. Court services' regular staff absenteeism increased by 19% between 2014 and 2018. The number of sick days taken by staff working in the Ministry Court Services Division rose by 19%, from 27,610 days in 2014 to 32,896 days in 2018, even though the number of regular full-time staff who were eligible to take sick days declined by 10% over the same period. The Ministry reported that the total cost of lost time due to absenteeism was $7 million in 2017 and $8.6 million in 2018.

Chapter 3–Criminal Court System

The Criminal Code of Canada is the federal legislation that sets out criminal law and procedure in Canada, supplemented by other federal and provincial statutes. Crown attorneys prosecute accused persons under these laws on behalf of the Criminal Law Division (Division) of the Ontario Ministry of the Attorney General (Ministry).

The Ontario Court of Justice (Ontario Court) and the Superior Court of Justice (Superior Court) received approximately 240,000 criminal cases in 2018/19, an increase of 10% since 2014/15. Over 98% of criminal cases in Ontario are received by the Ontario Court; the remainder, which generally constitute more serious offences such as murder and drug trafficking, are heard by the Superior Court.

The Division operates from its head office in Toronto, six regional offices, four divisional prosecution and support offices and 54 Crown attorney offices across the province. Over the past five years, the Division's operating expenses have increased by 8%, from $256 million to $277 million, mainly because the number of Crown attorneys has increased by 8%.

In July 2016, a ruling by the Supreme Court of Canada in *R. v. Jordan* required that if a case is not disposed within specific timelines (18 months or 30 months), it is presumed that the delay is unreasonable and Crown attorneys have to contest the presumption and prove otherwise or the charge will be stayed.

Our audit found that the backlog of criminal cases we noted in our previous audits of Court Services in 2003 and 2008 continues to grow. Between 2014/15 and 2018/19, the number of criminal cases waiting to be disposed increased by 27% to about 114,000 cases.

One result of this backlog is that accused persons who did not seek or were not granted bail may remain detained in remand for long periods (see Adult Correctional Institutions, **Chapter 1** of this volume).

During our audit, we experienced significant scope limitations in our access to key information related to court scheduling (see Court Operations, **Chapter 2** of this volume). As a result, we were unable to assess whether public resources, such as courtrooms, are scheduled and used optimally to help reduce delays in resolving criminal cases. We were refused full access to 175 sampled case files maintained by Crown attorneys. Instead, the Ministry of the Attorney General's Criminal Law Division (Division) staff summarized some of the details for these case files, including reasons for delays, for our review.

Our significant audit findings include:

- Criminal cases awaiting disposition are taking longer to resolve. The Ontario Court of Justice received about 237,000 cases in 2018/19, a 10% increase over 2014/15. The 8% increase in full-time-equivalent Crown attorneys did not result in a proportionate increase in the total number of cases disposed. Cases disposed increased by only 2%. The result is a 27% increase in cases waiting to be disposed—about 114,000 as of March 2019 compared to about 90,000 in March 2015. Between 2014/15 and 2018/19, the average number of days needed to dispose a criminal case increased by 9% (from 133 to 145 days). For the same period, the average appearances in court before disposition increased by 17% (from 6.5 to 7.6 appearances).

- Reasons for aging cases require formal and regular analysis to be done centrally. The Division has not done formal and regular analysis of aging cases at an aggregate level, that is, at the level of court location, region or the province. This includes, for example, categorizing the reasons why cases are pending disposition or are stayed, and distinguishing whether delays were caused by the defence or by the prosecution or were "institutional"—related to court scheduling, for example.
- The Criminal Law Division and police services lack formally agreed-upon roles and responsibilities for the disclosure of evidence. In 1999, the Criminal Justice Review Committee recommended a directive to be developed that comprehensively sets out the disclosure responsibilities of the police and prosecutors. Twenty years later, the Division and police services still could not agree upon a formal policy that clearly defines the roles and responsibilities for timely disclosure.
- About 85% of bed days are used by inmates who are in remand for more than one month, and some for over a year. Two factors contribute to the size of the remand population: the number of accused entering remand custody and the length of time inmates spend in remand custody. We found the main reasons were: the inmates were dealing with other charges; they remained by their own choice; they were having ongoing plea discussions with the prosecution; or they could not produce a surety (guarantor) to supervise them while out on bail.
- Twenty-nine of Ontario's specialized courts hear cases for accused persons with mental health conditions. Mental health courts have been in operation since 1997 with the aim of dealing with issues of fitness to stand trial and, wherever possible, slowing down the "revolving door" of repeated returns to court by these accused, through diversion programs and other appropriate types of treatment. Our audit found that the benefits of Ontario's mental health courts are unknown. Procedures are not clearly outlined, there is a lack of proper data on their operations, and definitions of mental health courts' objectives and intended outcomes are imprecise.

Chapter 4–Family Court Services

Ontario's family courts—in both the Ontario Court of Justice (Ontario Court) and Superior Court of Justice (Superior Court)—deal most often with issues like divorce, including support, as well as child custody and access. They also hear child protection cases. In 2018/19, there were about 62,970 new family law cases filed in court—7,410, or 12%, of these were child protection cases.

The *Child, Youth and Family Services Act, 2017* (Act) outlines statutory timelines for certain steps in a case, and timelines relating to the time a child is in the care and custody of a Children's Aid Society (society). The courts are required to adhere to these timelines when the society is seeking to place a child in its interim care and custody.

The Court Services Division (Division), under the Ministry of the Attorney General (Ministry), is responsible for the administration of courts in Ontario. The Division's main responsibilities are managing court staff, and supporting judicial needs related to facilities and information technology. The Ministry's court staff work under the direction of the judiciary when supporting the judiciary in matters assigned to the judiciary by law. The Division also oversees family mediation and information services, delivered by 17 service providers in 2018/19, to assist families going through court processes.

Some of our significant findings include the following:

- As of July 2019, there were 5,249 child protection cases pending disposition. Of these, 23% had remained unresolved for more than 18 months—some for more than three years. Because the Ministry did not have accurate and complete information

captured in its information system, neither the Ministry nor we were able to determine how many of these cases were subject to the statutory timelines required by the Act. Even with the restrictions placed by the Ministry and the Offices of the Chief Justices of the Ontario Court and the Superior Court on our access to complete child protection case files, we identified significant delays in some cases. However, because we were refused complete information, we could not substantiate and confirm the reasons for the delays, or why the statutory timelines were exceeded.

- The Ontario Court published its *Guiding Principles and Best Practices for Family Court* to help judges to manage child protection cases. Because we were not provided with key documents on court scheduling (also see Court Operations, **Chapter 2** of this volume), we were unable to determine whether the Ontario Court is following its own guiding principles and best practices.
- The Superior Court also established Best Practices for Child Protection Cases, to address the scheduling, assignment and conduct of each step in a child protection case. Unlike the Ontario Court's best practices guide, the Superior Court's best practices guide is not publicly available. We requested a copy of it, but the representative from the Office of the Chief Justice of the Superior Court refused to provide a copy to us.
- Domestic family law cases, other than child protection cases, represented 88% (or 55,560) of new family law cases received in 2018/19. There are no legislated timelines for domestic family law cases such as divorce, child custody and access child and spousal support, and adoption, except for the first access and custody hearing for a child. There are best practice guidelines, which, in this case, we were provided with. However, because we were not given access to court scheduling information, we were unable to verify the completeness and accuracy of the next available court hearing data provided by both Offices of the Chief Justices.
- The number of family law cases captured in the FRANK system as pending disposition was not accurate. Of 70 domestic family law cases pending disposition for over a year as of March 31, 2019, we found that 56% were recorded incorrectly as pending, even though they were either disposed or had been inactive for over a year. Because of the inaccuracies identified, we could not rely on FRANK to perform accurate trend analyses of the time taken to dispose of cases and the aging of cases pending disposition.
- The Ministry is paying for on-site mediators' availability at courthouses and not necessarily for mediation work performed. Between 2014/15 and 2018/19, the Ministry paid an annual average of approximately $2.8 million for about 34,450 hours per year of what was called on-site mediation, but only about 7,200 hours, or 20%, involved mediation or mediation-related work. The balance of about 27,250 hours, or 80%, was billed for on-site availability only.

Chapter 1

Ministry of the Solicitor General

Adult Correctional Institutions

1.0 Summary

The purpose of a correctional system is to protect the public from crime, but also to provide the supports that will enable an individual who enters the system to gain the skills and knowledge to reintegrate into the community and not reoffend.

Our audit examined whether the Ministry of the Solicitor General (Ministry) is managing the 25 adult correctional institutions, led by superintendents, to provide the supports necessary for inmates to reintegrate into society and reduce reoffending. We noted that over the past five years many reviews have been done with the objective of improving the correctional system, but while problems have been extensively studied they have not been solved.

On average during 2018/19, over 7,400 adults 18 years and older were in custody every day in the province's adult correctional institutions and the Ministry spent $817 million in that fiscal year to run the institutions. In this report, we use the term "correctional institutions" to encompass jails, detention centres, correctional centres and treatment centres.

In 2018/19, almost 51,000 individuals were admitted in two main streams:

- sentenced to serve less than two years in a provincial correctional institution; and
- accused of a crime but not yet sentenced or convicted. These individuals, who are remanded inmates, are awaiting bail or trial on charges that, if found guilty of, could result in placement in either federal or provincial custody.

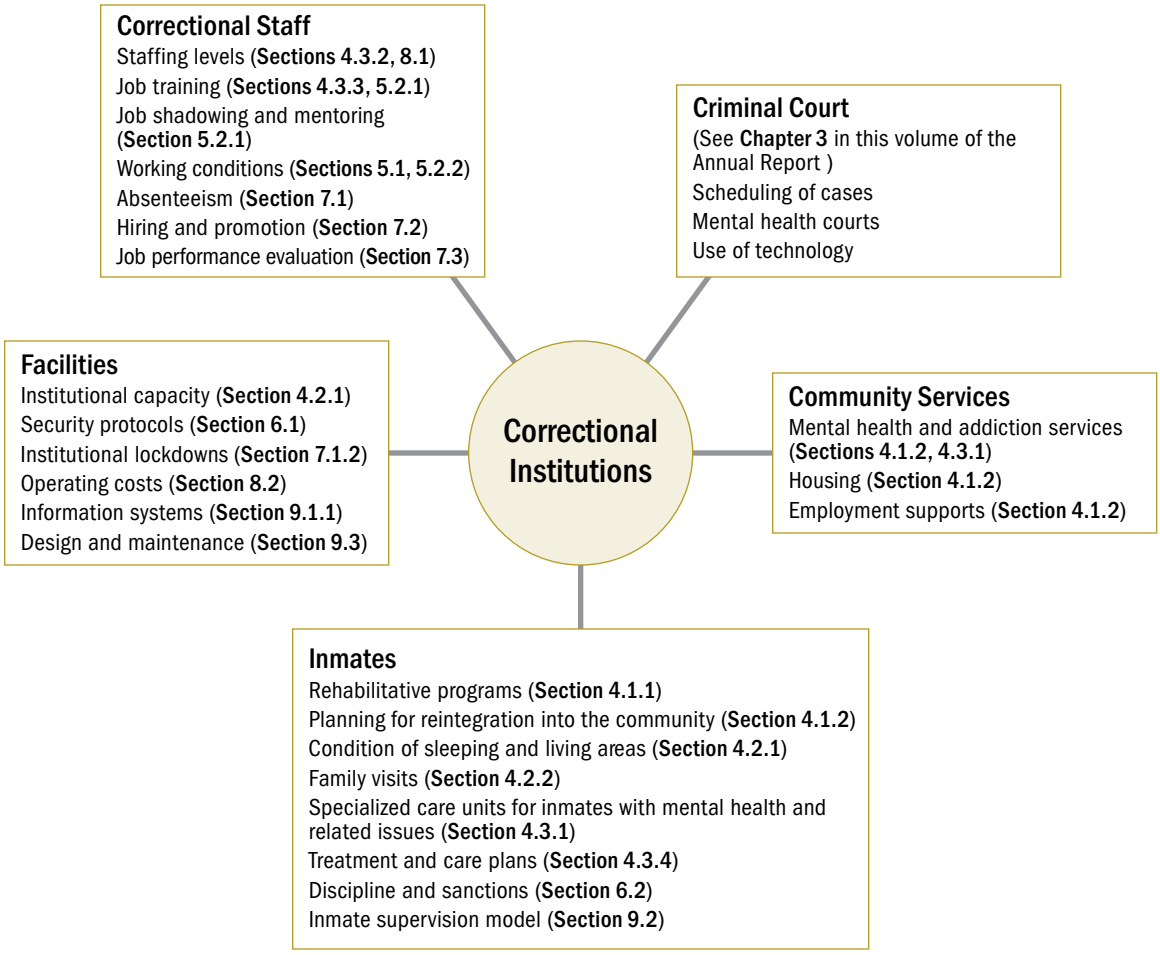
On average, remanded inmates, who comprise 71% of the daily inmate population, were in custody for 43 days, while sentenced inmates were in custody for 59 days. Although the number of individuals admitted into correctional institutions has generally decreased in the last 15 years, the proportion of remanded inmates has increased. In 2018/19, 56% of the institutions in Ontario were still operating beyond the Ministry's optimal rate of 85% occupancy.

Over the last 10 years, the recidivism rate in Ontario decreased from 45% in 2007/08 to 37% in 2017/18. The definition of recidivism varies across Canadian jurisdictions. In Ontario, recidivism is defined as the percentage of inmates who are reconvicted within two years of serving a sentence of six months or more. This definition does not capture the rate of reoffence for remanded inmates. On average, three-quarters of remanded inmates admitted into custody in 2018/19 had 13 previous charges and half had six previous convictions.

A correctional system focused on reducing recidivism and reoffending must integrate many facets (see **Figure 1**), balanced against available funding. These include working conditions and training for staff, appropriate detection and treatment of inmates' behavioural and mental health issues, educational and self-improvement programming for inmates, and living conditions for inmates.

Figure 1: Facets that Impact the Operation of Provincial Correctional Institutions

Prepared by the Office of the Auditor General of Ontario



In regard to working conditions for staff, we found that superintendents did not regularly assess the risk of violence to their front-line staff or analyze the root cause of incidents to reduce recurrence. We also found that correctional officers require more training to be provided so that they can handle inmates with mental health and behavioural issues more effectively and manage work-related stress. Amenities such as break rooms and a cafeteria are not always available to staff. Insufficient training and amenities for staff who are working in stressful conditions affects morale. The low morale is demonstrated in high absenteeism, averaging 31 sick days in 2018, and turnover rates of up to 7% in the eight institutions we visited excluding retirements.

Our audit noted that a growing proportion of inmates have possible mental health issues. Without sufficient staff training and appropriate units to place inmates in, these inmates are often sent to segregation as a result of their behaviour. We found that segregation, which keeps inmates isolated as much as 24 hours a day, was being used to confine inmates with mental health issues due to a lack of specialized care beds.

We also found that little emphasis is placed on delivering programming to remanded inmates, who comprise the majority of the inmate population. Program staff left it up to the inmates to choose which programs to attend, and made little effort to reach out to and encourage inmates to attend programs. This has contributed to low attendance

in programs targeted toward remanded inmates intended to provide information about factors that contribute to criminal behaviour. Our analysis of attendance information found that, for example, only 7% of inmates at Toronto South Detention Centre with history of substance abuse attended the session about Substance Use in 2018/19. Although about 40% of remanded inmates are in custody for only a week, many of them actually have multiple opportunities to participate in programming because they end up in custody multiple times. Effectively targeting and delivering programs for inmates held for different periods of time, whether they are in remand or sentenced and whether they are new to the correctional system or repeat offenders, is important toward reducing recidivism. We also found that staff in institutions that we visited did not have a strategy to help inmates contact agencies that would assist them to reintegrate into their communities.

The high percentage of remanded inmates can in large part be attributed to the criminal court system, which is discussed in **Chapter 3** in this volume. We had concerns about whether the scheduling process within the courts is effective in moving cases through from beginning to a decision in the most timely manner. Processing cases efficiently through the courts could significantly reduce the number of inmates in custody awaiting bail or trial. However, the Ontario Court did not permit our Office to have access to the court scheduling data and we were therefore unable to include it within that audit.

In our audit, we noted that overcrowding, mainly due to the higher population of remanded inmates within some institutions, has put pressures on the correctional system. During our fieldwork, we observed the negative impact overcrowding has had on the quality of inmates' living conditions such as when four inmates are placed in a cell designed for two. In addition, between February and August 2019, 144 inmates from 14 institutions were transferred to institutions outside their home communities. Removing an inmate from the support of family and friends can have a negative effect on the goal of rehabilitation. Specifically, the United Nations *Standard Minimum Rules for the Treatment of Prisoners* (Rules) state that remanded inmates should be detained "close to their homes or their places of social rehabilitation." The Rules, although not legally binding in Canada, set out generally accepted good practices in the management of correctional institutions.

To deal with occupancy pressures, we found that the Ministry has increased the capacity of 16 of the 25 institutions by an average of 81% more than the original capacity when they were built by adding beds in cells. For example, in 2018/19, Ottawa-Carleton Detention Centre had a 518-bed capacity—178% higher than its original 186-bed capacity. In 12 of the 16 institutions, the increased capacities were not due to expansion of the institutions but to placing more inmates in cells together. This is of concern generally, and particularly in the case of remanded inmates. As noted by the Rules, inmates who are presumed innocent should be placed in single cells in order to minimize the difference between life in custody and life at liberty when they have not been convicted of a crime.

Our audit specifically found the following:

- **Correctional institutions are not suited to provide appropriate care to the growing percentage of inmates who have possible mental health issues.** In 2018/19, 33% of all inmates admitted across the province had a mental health alert on their file—indicating possible mental health concerns—compared with 7% of inmates in 1998/99. We found that correctional institutions were not suited to manage inmates with such concerns because most of the institutions do not have the appropriate facilities to hold them. On average, each institution had 59 fewer specialized care beds than inmates with mental health alerts, and six institutions had no specialized care beds at all. In addition, more than half of the institutions did not have access to a psychologist. We also found that

front-line staff have not been provided with the necessary training and information about identifying triggers and techniques to de-escalate situations in order to manage these inmates effectively.

- **Although it is known that contraband enters correctional institutions, the Ministry has not analyzed the results of searches to understand points of entry.** In the last 10 years, the Ministry estimates that the number of times weapons were found increased by 414% (from 56 in 2008 to 288 in 2018), and the number of times drugs and alcohol were found in institutions increased by 136% (from 239 in 2008 to 564 in 2018). For all eight institutions we visited, staff do not analyze how much contraband is found during the searches and where it is found. In addition, the lack of security screening for staff increases the risk of contraband entering the institutions through compromised staff—those who have been persuaded or coerced by inmates to bring contraband into the institution.
- **Staffing levels at some correctional institutions are not proportionate to factors that drive the workload in those positions.** For example, Central East and Central North correctional centres, both of which use the indirect supervision model, held an average of 898 and 697 inmates per day in 2018/19, respectively. Central North's daily inmate population is 22% smaller than Central East's, but it requires 112, or one more correctional officer to be on duty during the day than Central East. Also, the Sudbury Jail held 124 inmates per day in 2018/19 and required 22 correctional officers to be on duty during the day. In comparison, the Kenora Jail, which uses the same indirect supervision model as Sudbury, held 168, or 35% more inmates per day in 2018/19, but required 21 officers, or one fewer, to be on duty during the day than Sudbury. According to the Ministry, the disproportionate staffing levels are due to differences in the physical layout, types of inmates held and the supervision model used in institutions. However, it could not provide us with any analysis to support its explanation for the difference.
- **The Ministry does not analyze reasons for variations in daily cost per inmate to determine where potential savings may be achieved.** In 2018/19, the daily operating cost per inmate in the province was $302, compared with $166 at the time of our last audit of adult institutional services in 2008. We found that the daily cost per inmate in 2018/19 varied widely across the province, from a high of $589 at Fort Frances Jail to a low of $186 at Kenora Jail. Daily cost per inmate in detention centres ranged from $318 to $210, and from $464 to $204 in correctional centres.
- **Absenteeism has resulted in high overtime costs.** The average number of sick days for permanent correctional officers in 2018 was 31 days—27% higher than in 2014. In three of the institutions we visited, the average cost of lost time due to sick days taken from 2015 to 2018 ranged from $570,000 per year to $5.1 million per year. In 2018/19, about $42 million in overtime payments were paid to correctional officers across the province. This is a 280% increase in the overtime payments at the time of our last audit in 2008 of $11 million, despite the number of correctional officers increasing by only 30% from 3,400 to 4,400. Overtime costs were paid when employees called in sick and their shifts had to be filled.
- **Most inmate information is recorded manually and retained on paper due to deficiencies in existing information systems.** Much of the manual recording related to the care and custody of inmates is done because the Offender Tracking Information System used in all the institutions does not have the functionality to maintain such information. Examples of the information kept manually include health-care notes,

social workers' notes, inmate complaints and requests, search records, and observation records of inmates on suicide watch and in segregation units. The information that is logged electronically is not regularly analyzed by Ministry or institutional management staff to better understand and make informed decisions about the operations of correctional institutions.

Overall Conclusion

Our audit concluded that the Ministry does not have fully effective systems and procedures in place to ensure that institutional programs and services are delivered economically, efficiently, and in accordance with legislative and policy requirements.

Specifically, we found that correctional institutions are not equipped to deal with challenges resulting from the greater proportion of remand population and inmates with possible mental health issues. This adversely affects the availability and content of programming and treatment that would otherwise help inmates reintegrate positively into the community and reduce recidivism.

We found that exposure to violence and threats of violence, insufficient available training, and the strained relationship between management and staff have not created positive working conditions.

Our audit also found that the Ministry has not established goals, targets or measures against which it can assess its delivery of institutional services. As a result, it cannot evaluate and publicly report on the effectiveness of Ontario's adult correctional system.

Appendix 1 summarizes the issues we discuss in this report. This report contains 26 recommendations, with 55 action items, to address our audit findings.

OVERALL MINISTRY RESPONSE

The Ministry appreciates the work of the Auditor General and welcomes the recommendations on how to improve Ontario's adult correctional institutions. We agree with the recommendations and are committed to ensuring they are reflected in our actions by developing a sustainable system that empowers front-line staff.

The report recommendations confirm the importance of correctional reform initiatives, which are focused on protecting the safety and well-being of our staff and those within our custody and care, while ensuring a fiscally responsible and effective correctional system.

The Ministry, like other jurisdictions, is working to modernize its correctional system to meet contemporary global expectations, which reflect a shift in societal perspective regarding conditions of confinement (segregation), especially for vulnerable individuals including those with mental health issues. Additionally, this effort is being impacted by court decisions, changes in inmate characteristics, service and health care needs, and importantly the impact on the front-line employees.

In response, changes are being undertaken to modernize service delivery, enhance tools and supports for front-line staff and provide alternatives to custody including:

- building capacity for staff through employee wellness strategies that incorporates peer support, personal wellness and resiliency training, as well as redesigning staff training and development programs with a focus on corrections as a career;
- considering approaches to better identify and assign individual inmates to the appropriate security level;
- improving institutional health care services with a focus on mental health supports;
- exploring electronic data collection and information management;
- construction of new multipurpose correctional institutions; and
- evaluating use of new technologies such as GPS-enabled electronic monitoring.

The Ministry recognizes the importance of strengthening its accountability through

performance measurement to enable evidence-based assessment of its operations and change initiatives. The Ministry continues to invest resources to support a co-ordinated approach to the organization's transformation.

2.0 Background

2.1 Overview of the Correctional System

In Canada, the federal and provincial governments share responsibility for administering correctional services as follows:

- The federal government, through Correctional Service of Canada, is responsible for the custody of convicted offenders serving sentences of two years or longer.
- Provincial governments are responsible for the custody and supervision of individuals accused of a crime who have been remanded into custody by the courts, and convicted offenders sentenced to less than two years.

In Ontario, the Ministry of the Solicitor General (Ministry) is responsible for delivering correctional services for adults 18 years or older. **Appendix 2** illustrates the general pathway of an accused person through Ontario's correctional system from the time of arrest until sentencing or release.

2.1.1 Ontario's Adult Correctional System

The Ministry operates 25 provincial correctional institutions that are classified into four types—correctional centres, detention centres, jails and treatment centres—based on whether the inmates are on remand, sentenced, or are exhibiting mental health and behavioural issues (see **Figure 2**). An individual's place of residence may also determine the type of facility he or she is placed in. For example, remanded inmates may be placed in a correctional centre instead of a jail or detention centre if they reside closer to the correctional centre.

The institutions are also divided by whether they are medium or maximum security facilities. The security level defines the extent of restriction on inmates' movements and how fixtures, such as beds, tables and chairs, are installed. Ontario does not have minimum security facilities. In Canada, Saskatchewan, Manitoba, Newfoundland and Labrador, Nova Scotia and the federal government have minimum security facilities.

Appendix 3 summarizes key information about each institution.

In 2018/19, almost 51,000 individuals were admitted into the 25 correctional institutions in Ontario. On any given day during that period, over 7,400 inmates were in custody across the province.

As shown in **Figure 3**, the number of adults admitted into Ontario institutions and the average daily number of adults in custody have generally decreased since 2004/05. This is consistent with the general trend in other jurisdictions in Canada. According to data from Statistics Canada, there were 65 adults in custody for every 100,000 adults in the

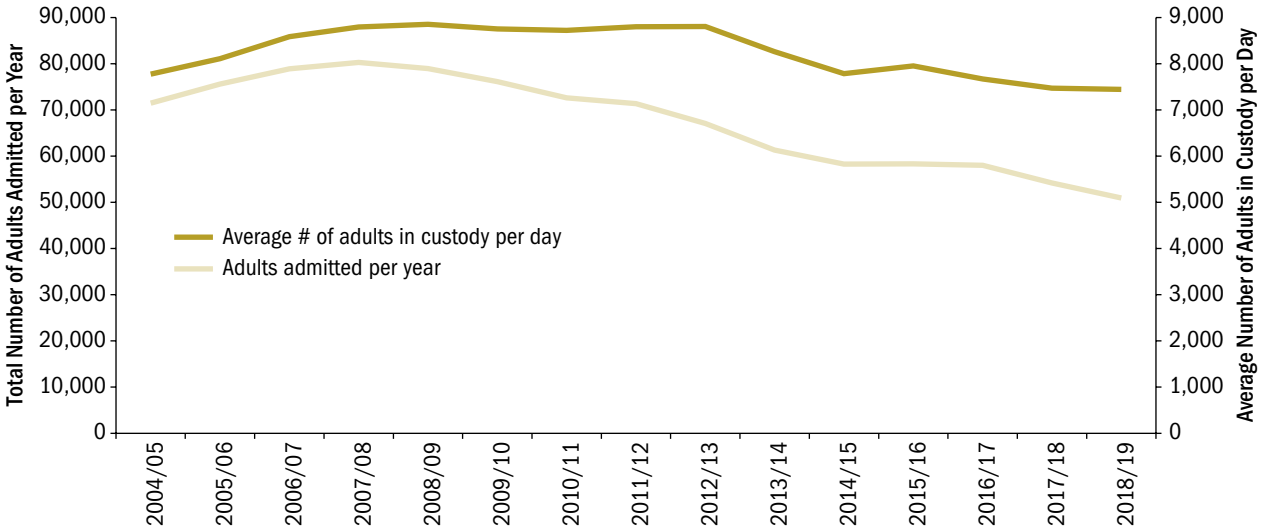
Figure 2: Types of Correctional Institutions in Ontario

Source of data: Ministry of the Solicitor General

	# of Institutions	Individuals Held in Custody	Security	Capacity
Correctional Centres	6	Sentenced offenders	Medium and maximum	124–1,088
Detention Centres	8	Accused persons on remand Offenders serving short sentences (for example, 60 days)	Maximum	226–1,244
Jails	8	Accused persons on remand	Maximum	22–169
Treatment Centres	3	Sentenced offenders with diagnosed mental illness or behavioural issues	Medium and maximum	100–176

Figure 3: Number of Adults Admitted into Custody in Ontario's Correctional Institutions, 2004/05–2018/19

Source of data: Ministry of the Solicitor General



population in Ontario in 2017/18 (the most recent year for which data is available for all Canadian jurisdictions). This incarceration rate is lower than the national rate of 83 adults in provincial custody per 100,000 adults in the population. Including youth and those in federal custody, the national incarceration rate is 108 individuals in custody per 100,000 individuals in the population.

See **Figure 4** for a profile of the 51,000 adults admitted into custody in 2018/19. About 80% of the approximately 51,000 individuals admitted into Ontario institutions in 2018/19 were accused persons on remand who were awaiting bail or trial. On a daily basis, remanded inmates comprise about 71% of the 7,400 inmates in custody. The proportion of remand population in institutions in Ontario has increased by 18% in the last 15 years, from 60% of the daily inmate population in 2004/05 to 71% in 2018/19. Data from Statistics Canada indicate that in 2017/18 (the most recent year for which data is available for all Canadian jurisdictions), Alberta, Ontario and Manitoba had the highest remand rates in Canada (see **Figure 5**).

The length of time each inmate spends in custody depends on the time it takes for courts to set bail or try the case (for remanded inmates) and the sentence imposed by the courts (for sentenced inmates). As shown in **Figure 6**, remanded inmates who were released in 2018/19 were in custody for an average of 43 days, while sentenced inmates who were released during the same period were in custody for an average of 59 days.

2.1.2 International Correctional Systems

Incarceration rates around the world vary considerably. Canada's national incarceration rate of 108 individuals in custody per 100,000 individuals in the population is lower than many other developed countries such as the the United States (655), Russia (402), Australia (172), United Kingdom (140) and China (118). Countries with lower incarceration rates than Canada include France (100), Italy (98), Germany (75), Norway (63), the Netherlands (61), Sweden (59) and Japan (41).

The *Standard Minimum Rules for the Treatment of Prisoners* were adopted by the United Nations in December 2015. Although Canadian representatives were involved in developing the Rules, they are not legally binding in the federal and provincial correctional systems in Canada. Nonetheless, the Rules set out generally accepted good principles and practices in the treatment of inmates and management of correctional institutions (see **Appendix 4**).

Figure 4: Adult Admissions into Provincial Custody, 2018/19

Source of data: Ministry of the Solicitor General

Categories	%	
Legal status	81	Remanded into custody
	15	Sentenced offenders
	4	Other[1]
Most serious offence	37	Violent offences[2]
	26	Property damage or theft
	16	Failure to comply with a bail order or appear in court
	9	Drug-related offences
	12	Other[3]
Gender	87	Male
	13	Female
Ethnicity	55	White
	13	Black
	12	Indigenous
	4	Asian
	10	Unknown
	6	Other
Age	38	25 to 34
	25	35 to 44
	18	18 to 24
	16	45 to 59
	3	60 or older

1. Includes those serving sentences intermittently (typically on weekends), awaiting transfer to federal institutions, and immigration detainees (individuals who are awaiting examination or deportation under the *Immigration and Refugee Protection Act*. The Ministry of the Solicitor General has an agreement with the Canada Border Services Agency, dating back to 1985, that allows the CBSA to transfer immigration detainees from holding centres to provincial correctional institutions. The Ministry charges the CBSA a per diem fee per individual. About 100 immigration detainees were in provincial correctional institutions at the time of our audit).
2. Includes homicide, assault, sexual assault and weapons offences.
3. Includes fraud, non-violent sexual acts, driving infractions, obstruction of justice, and other provincial and federal offences.

2.1.3 Independent Review of Ontario Corrections

In 2017, the Ministry appointed Howard Sapers as Independent Advisor on Corrections Reform to provide advice to the government on the use of segregation and ways to improve the province's adult corrections system. Sapers was the former Correctional Investigator of Canada and Ombudsman for offenders sentenced in federal institutions.

From January 2017 to December 2018, Sapers produced three reports that discussed the use of segregation, the impact of correctional practices on inmates' rights, and violence at institutions. Sapers' appointment as a special advisor was ended in December 2018.

2.2 Operations of Ontario's Correctional Institutions

From 2014/15 to 2018/19, the Ministry spent, on average, $726 million annually ($817 million in 2018/19) to deliver adult institutional services. Operating expenses have increased by an average of 5% per year during this period.

2.2.1 Staffing

The Ministry currently employs almost 7,200 staff to deliver institutional services, about 7,100 of whom are in the 25 correctional institutions across the province. The rest are in the Ministry's corporate and four regional offices (East, Central, West and North), which oversee the operations of the institutions (see **Figure 7**).

Superintendents—supported by one or more deputy superintendents—are responsible for the day-to-day operations of the institutions. Front-line staff—the correctional officers and the sergeants who oversee them—make up more than two-thirds of all correctional staff and are responsible for supervising inmates on a daily basis. Other staff provide health care, programming, administrative and other services.

2.2.2 Services and Programs for Inmates

The *Ministry of Correctional Services Act* (Act) governs the Ministry's operation of correctional institutions and requires the Ministry to provide programs and facilities designed to assist in the rehabilitation of inmates.

Figure 5: Percentage of Inmate Population That Is in Remand in Canadian Jurisdictions, 2017/18

Source of data: Statistics Canada

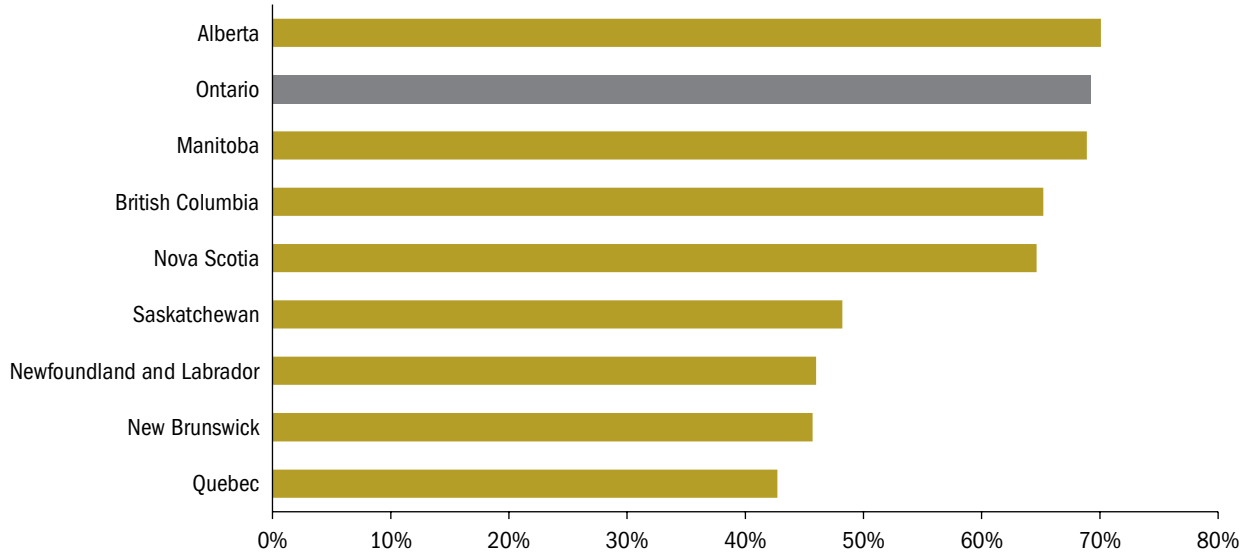


Figure 6: Length of Time in Custody, 2018/19

Source of data: Ministry of the Solicitor General

	Remanded		Sentenced		All Inmates	
	# of Inmates	% of Total	# of Inmates	% of Total	# of Inmates	% of Total
1–7 days	17,211	41	3,590	25	20,801	37
8–14 days	5,523	13	1,786	13	7,309	13
15–31 days	6,431	16	2,657	19	9,088	16
1–3 months	7,659	18	3,279	23	10,938	20
3–6 months	2,905	7	1,567	11	4,472	8
6–12 months	1,273	3	963	7	2,236	4
Over 1 year	638	2	286	2	924	2
Total # of inmates released	**41,640**	**100**	**14,128**	**100**	**55,768**	**100**
Average length of incarceration		**43 days**		**59 days**		
Median length of incarceration		**12 days**		**23 days**		

Appendix 5 illustrates the general path inmates take while in custody. In addition to the rights outlined in the Ontario Human Rights Code, the Act also establishes basic privileges afforded to inmates such as visits from family and friends, sending and receiving mail, and filing complaints about the services they receive in custody. Inmates may also participate in the following programs to help them adjust back into the community:

- **Educational programs** are delivered by teachers, literacy instructors and volunteer tutors who teach basic literacy skills and prepare inmates for the General Education Development or high school equivalency test. In some institutions, inmates may be able to participate in self-study programs to earn secondary or post-secondary school credits.
- **Rehabilitative programs** target factors that are likely to cause criminal behaviour, and

Figure 7: Organizational Chart for Operation of Provincial Correctional Institutions

Prepared by the Office of the Auditor General of Ontario

are related to anger management, substance abuse, domestic violence, criminal thinking and sexual offending (see **Appendix 6**). These programs are primarily targeted toward sentenced offenders.

- **Work programs** provide opportunities for sentenced and low-risk remanded inmates to serve as kitchen, housekeeping or maintenance assistants, or work at Trilcor—the Ministry program that uses inmate labour to, for example, manufacture licence plates. Inmates do not receive compensation for participating in work programs.
- **Other programs** include those that teach life skills, such as budgeting, job searching and parenting, recreational opportunities, such as physical, social and cultural activities, and programs designed for Indigenous offenders.

2.2.3 Control and Supervision of Inmates

Ontario correctional institutions operate under the following types of supervision models:

- **Indirect supervision:** Used by 17 of the 25 correctional institutions, correctional officers monitor inmates' activities from outside the inmates' living units (enclosed spaces that contain sleeping areas for 10 to 40 inmates and a day room where inmates spend their time out of their cells). Correctional officers only enter the units to conduct security patrols, provide meals, or if intervention is necessary; for example, to end a fight between inmates.
- **Formal direct supervision:** Used in Toronto South Detention Centre and South West Detention Centre, officers monitor inmates' activities from within the units and are expected to continuously interact with inmates. This type of direct supervision is based on the model developed and used in the United States, which is governed by the nine principles listed in **Appendix 7**.
- **Informal direct supervision:** Used in six of the 25 correctional institutions, officers monitor inmates' activities from within the units. However, this type of direct supervision is not based on the nine principles followed in the formal model.

Other mechanisms to monitor and manage inmates include routine and targeted searches of inmates, their sleeping areas, living units and other areas of the institutions, as well as a misconduct process intended to impose sanctions when inmates violate institution rules. These mechanisms are in place in all supervision models.

3.0 Audit Objective and Scope

Our audit objective was to assess whether the Ministry of the Solicitor General (Ministry) has effective procedures and systems in place to:

- ensure institutional programs and services are delivered in accordance with relevant legislation, regulations, agreements and policies, such that the training, treatment and services delivered enhance public safety, reduce the risk that convicted offenders will reoffend, and afford inmates opportunities for successful adjustment in the community;
- manage institutions' resources economically and efficiently; and
- measure and publicly report on the effectiveness of the key services and programs delivered.

In planning for our work, we identified the audit criteria (see **Appendix 8**) we would use to address our audit objective. These criteria were established based on a review of applicable legislation, policies and procedures, internal and external studies, and best practices. Senior management reviewed and agreed with the suitability of our objectives and associated criteria.

We conducted our audit from January to September 2019. We obtained written representation

from Ministry management that, effective November 8, 2019, they had provided us with all the information they were aware of that could significantly affect the findings or the conclusion of this report.

Our audit work was conducted initially at the Ministry's corporate office in Toronto, then primarily at eight of the 25 correctional institutions: two jails (Brockville and Thunder Bay); two detention centres (Toronto South and South West); three correctional centres (Central East, Thunder Bay, and Vanier Centre for Women); and one treatment centre (St. Lawrence Valley Correctional and Treatment Centre).

Collectively, the eight institutions we visited accounted for over $311 million (or 38%) of total expenditures and 2,841 (or 38%) of all inmates in custody across the province in 2018/19. See **Appendix 9** for additional details of our audit work.

We also reviewed relevant audit reports by the Ontario Internal Audit Division from January 2014 to January 2019 and considered the findings in those reports in determining the scope of our work.

4.0 Detailed Audit Observations: Changes Needed to Increase Opportunities to Influence Changes in Inmate Attitude

The United Nations' *Standard Minimum Rules for the Treatment of Prisoners* state that the purposes of incarceration—to protect society against crime and reduce reoffending—can be achieved only if the period of incarceration is "used to ensure … the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life." Consistent with this, the Ministry of the Solicitor General's (Ministry's) function according to the *Ministry of Correctional Services Act* (Act) is to create an environment for inmates in which they can achieve changes in attitude by providing training, treatment and services designed to afford them opportunities for successful adjustment in the community.

Every year, an average of 53,000 inmates are released from correctional institutions either because they served their sentence or they were released by the courts. We found that rehabilitative treatment and programming, discharge planning, and the living conditions in the institutions were not sufficient to increase inmates' chances of reintegrating positively into the community.

4.1 Limited Supports Available to Help Remanded Inmates Reintegrate into the Community

Our audit found that correctional institutions do not provide appropriate programming and discharge planning supports for remanded inmates, who comprise the majority (71%) of the inmate population. In six of the eight institutions we visited, there were more remanded than sentenced inmates, ranging from 63% to 84% of the inmate population.

4.1.1 Insufficient Efforts to Deliver Programming to Remanded Inmates

In the last five years, the Ministry spent an average of $34 million per year, 5% of total annual operating expenditures, on treatment and rehabilitative programming. Half of this amount, or $17 million, was spent in the three treatment centres (see **Appendix 10**) that provide intensive treatment and rehabilitative programs for sentenced inmates with mental illness, addiction and other behavioural issues. There are no similar treatment or rehabilitative supports available for remanded inmates.

According to Ministry staff, it is difficult to deliver rehabilitative programming to remanded inmates because they are often in custody only for a short time. Of the over 41,000 remanded inmates who were released in 2018/19, 70% (29,100) spent one month or less in custody and 41% (17,200) were in custody for only one week (see **Figure 6**).

During this time, inmates' time is also taken up by lawyer appointments and court appearances. At the time of our audit, remanded inmates who were in custody had had, on average, nine in-person court appearances and 10 video court appearances.

While it may be challenging to deliver intensive rehabilitation programs to remanded inmates, programming staff still have opportunities to provide valuable information to these inmates through the Ministry's Life Skills programming (see **Appendix 11**). The Life Skills sessions provide general information about various topics related to factors that contribute to criminal behaviour (for example, anger management, substance use and gambling) and improving lifestyles (for example, problem solving, managing stress and changing habits). Because the sessions are standalone and only one hour each to complete, inmates do not need a significant amount of time to participate.

In addition, our analysis of remanded inmates' previous incarceration history found that three-quarters of the remanded inmates admitted into custody in 2018/19 had an average of 13 (median of seven) previous charges. This means that, in many cases, programming staff have multiple opportunities to deliver programming to remanded inmates and obtain more information about the inmates in order to determine the programming that is appropriate for them.

Despite these opportunities, three of the seven institutions we visited that were not treatment centres (Brockville Jail, Central East Correctional and Thunder Bay Jail) did not offer Life Skills programs due to lack of space and trained staff to deliver the sessions.

Where Life Skills programming was delivered in South West Detention Centre, Thunder Bay Correctional Centre, Toronto South Detention Centre and Vanier Centre for Women, we found the following:

- program staff left it up to the inmates to choose which sessions, if any, to attend;
- the sessions were delivered only during the week, when court hearings are scheduled and therefore inmates could have fewer opportunities to attend;
- efforts to reach out to and educate inmates about available programs were limited to program staff showing up at their units and asking whether anyone wanted to attend the sessions; and
- staff did not use available information about the inmates (for example, reasons for current and previous incarcerations, alerts on their files) to identify those who may benefit from particular sessions.

Voluntary program participation, combined with insufficient outreach by program staff, has contributed to low attendance in Life Skills programs. Our analysis of attendance information in the four institutions found that, for example, only 7% of inmates at Toronto South with substance use alerts on their file (indicating prior or current substance abuse) attended the Substance Use session in 2018/19.

We also noted that Life Skills programming was not offered at all institutions despite the 22 institutions holding remanded inmates. For example, 15 institutions did not offer the Anger Management session for men, 15 also did not offer the Substance Use session.

RECOMMENDATION 1

For remanded inmates to have more opportunities to participate in Life Skills programming, we recommend that superintendents in all institutions:

- require programming staff to meet with inmates upon admission to inform them about appropriate programs based on available information about the inmate;
- review and implement measures that will give inmates incentive to participate in programming; and
- review and improve the method of delivering Life Skills programming, including identification of inmates who may benefit from particular sessions, increasing outreach efforts and offering sessions during weekends.

SUPERINTENDENT AND MINISTRY RESPONSE

Superintendents agree with the intent of this recommendation, and in co-ordination with the Ministry, recognize the importance of outreach and creating awareness of Life Skills programming with remanded inmates in order to support rehabilitation and reintegration. Initiatives will include:

- improvement of processes to help better align remanded inmates with greater opportunities to participate in Life Skills programming, where feasible, with consideration to staffing resources and institutional physical layouts, including programming space.
- the assessment of the use of incentives to participate in Life Skills programming, where appropriate; and
- a review of the feasibility of conducting individual needs assessments for remanded inmates and providing Life Skills programming on weekends, with consideration for the current employment contract and collective agreement provisions and associated costs.

Superintendents will review and assess strategies and opportunities through quarterly local Program Coordination Committees.

4.1.2 Remanded Inmates Do Not Receive Information about Community Supports They Can Access upon Release from Custody

Ministry policies do not require institutional staff to prepare a discharge plan for remanded inmates. As a result, we found that discharge planning in the eight institutions we visited is primarily only focused on sentenced inmates. Discharge planning staff place little emphasis on helping remanded inmates plan for their release, again, due to the inmates' short time in custody and uncertainties regarding their release date. In 2018/19, 58% of those released from custody were released at court because, for example, the charge against them was dropped or they were convicted but the decision did not include incarceration.

At the time of our audit, the seven institutions we visited that held remanded inmates employed from one to seven staff who were responsible for helping inmates plan for their release from custody. We found that staff in these institutions did not have consistent processes to identify, inform and reach out to remanded inmates who may need help.

Only admissions staff in Thunder Bay Jail and Thunder Bay Correctional Centre asked inmates upon admission whether they wanted help with discharge planning. Other than this, admissions staff did not collect information about inmates' housing, transportation, social assistance, employment and support systems in order to identify how much assistance they will need in order to prepare for their release. Staff collected this information only if an inmate requested their help. We reviewed a sample of inmate files in Central East Correctional Centre, Thunder Bay Correctional Centre and Toronto South Detention Centre for evidence of staff helping inmates prepare for their release but did not find it in three-quarters of the files.

Five of the institutions we visited had checklists that staff used as a guide when collecting information, but we noted that the type of information being collected varied across institutions. The checklists used in South West and Toronto South detention centres only asked for basic information about the inmate's transportation, housing, medical and social assistance needs. In comparison, the checklists used in Central East and Thunder Bay correctional centres and Vanier Centre for Women asked for additional information about the inmate's social support network, as well as their job search, cultural, spiritual and recreational needs.

As shown in **Appendix 11**, a number of the Life Skills sessions provide general information about how to look for work, keep a job, set up a budget and plan for release. However, less than 1% to 3% of all inmates who were in custody for over a month from 2014/15 to 2018/19 attended those sessions.

RECOMMENDATION 2

For remanded inmates to have increased chances for a positive return to their communities, we recommend that superintendents in all institutions require discharge planning staff to:

- collect information about inmates' housing, transportation, employment and other needs in order to identify and actively assist inmates who need help planning for their release; and
- proactively initiate discharge planning for remanded inmates.

SUPERINTENDENT AND MINISTRY RESPONSE

Superintendents and the Ministry agree with this recommendation and recognize the value of establishing formal reintegration planning processes for remanded inmates to support a successful return to their home communities.

The Ministry, with the support of the Superintendents, will develop a new policy relating to community reintegration and discharge planning, and a Community Reintegration Plan Checklist, that establish guidelines and processes to assist inmates, including those on remand. Superintendents, with the support of the Ministry, will ensure that this new policy will be implemented in their respective institutions.

In addition, Superintendents, through local Program Coordination Committees, will review strategies, where appropriate, to maximize awareness of reintegration resources for remanded inmates and assess opportunities to focus on the existing Life Skills Session entitled "Planning for Discharge."

4.2 Correctional Institutions Face Occupancy Pressures with Overcrowding

Although the number of individuals admitted into correctional institutions has generally decreased in the last 10 years, 56% of the institutions across the province were still operating at over 85% occupancy during 2018/19 (see **Figure 8**).

According to Ministry staff, the optimal occupancy rate is 85% in order for institution staff to have the flexibility to adjust to sudden influxes of inmates, such as when police conduct raids in the community, and separate inmates who are not compatible for security reasons; for example, members of rival gangs and separating remanded from sentenced inmates. However, occupancy pressures arise from individuals repeatedly entering the correctional system.

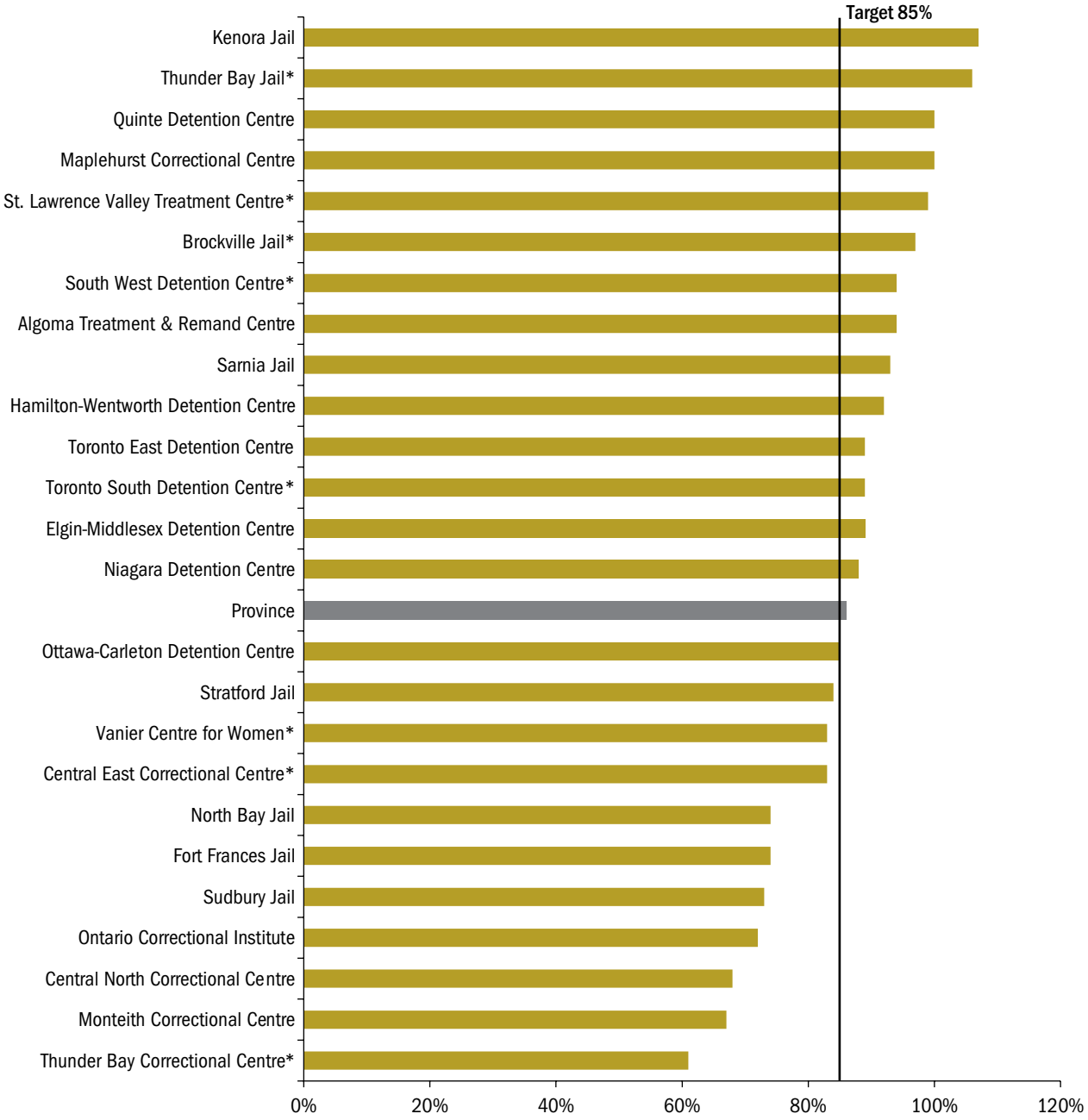
4.2.1 Living Conditions in Overcrowded Institutions Not Conducive to Inmate Rehabilitation

Overcrowding has a direct negative impact on inmates' living conditions, as we observed during our fieldwork. For example, in the Thunder Bay Jail, up to four inmates were held in a 40-square-foot cell designed for two. The third and fourth inmates slept on the floor, one underneath the bottom of the bunk bed. According to the jail's staff, the institution held up to 198 or (139% of its capacity) between April and June 2019. The *Standard Minimum Rules for the Treatment of Prisoners* state that each inmate "shall occupy by night a cell or room by himself or herself," and that "it is not desirable to have two prisoners in a cell or room." The Rules state that this right is especially important for remanded inmates, who comprise 84% of Thunder Bay Jail's inmate population.

With two-thirds of the institutions being more than 40 years old (see **Appendix 3**), we asked Ministry staff whether the current capacities are the same as the original capacities established when

Figure 8: Occupancy Rates of Ontario Correctional Institutions, 2018/19

Source of data: Ministry of the Solicitor General



* Institutions visited by the Office of the Auditor General of Ontario

the institutions were built. Because of the age of many of the institutions, the Ministry could only provide us with capacities dating back to 1979/80 for the older institutions (see **Figure 9**). We compared this information to current capacities and found that, on average, the current capacities for 16 of the 25 institutions are 81% higher than either the original or the oldest known capacity. In 12 of the 16 institutions, the increased capacities were not due to expansion of the institutions but from adding more beds in cells originally designed for one.

Figure 9: Comparison of 2018/19 Versus Original Capacities for Correctional Institutions in Ontario

Source of data: Ministry of the Solicitor General

	Original Capacity		2018/19 Capacity	Difference from Original		Occupancy Rate Based on Original Capacity[1] (%)
	Year	#		#	%	
Ottawa-Carleton Detention Centre[2]	1979/80	186	518	332	178	238
Maplehurst Correctional Centre[2]	1979/80	400	911	511	128	228
Quinte Detention Centre[2]	1979/80	102	228	126	124	224
Elgin-Middlesex Detention Centre[2]	1979/80	172	448	276	160	221
Brockville Jail	1979/80	24	48	24	100	193
Hamilton-Wentworth Detention Centre	1979/80	260	510	250	96	182
Kenora Jail[2]	1979/80	99	159	60	61	170
Thunder Bay Jail[2]	1979/80	103	142	39	38	144
Niagara Detention Centre[2]	1979/80	139	260	121	87	143
Stratford Jail[2]	2003	30	53	23	77	140
Algoma Treatment and Remand Centre[2]	1990	96	152	56	58	133
Sarnia Jail[2]	1979/80	59	99	40	68	121
Sudbury Jail	1979/80	109	163	54	50	113
North Bay Jail[2]	1979/80	73	110	37	51	101
St. Lawrence Valley Correctional and Treatment Centre	1979/80	100	100	–	–	99
Toronto East Detention Centre[2]	1979/80	340	368	28	8	96
Vanier Centre for Women	2003	218	245	27	12	94
South West Detention Centre	2014	315	315	–	–	84
Fort Frances Jail	1979/80	22	22	–	–	74
Central East Correctional Centre	2003	1,245	1,245	–	–	72
Toronto South Detention Centre	2014	1,650	1,241	(409)	(25)	67
Ontario Correctional Institute	1979/80	198	175	(23)	(12)	64
Central North Correctional Centre	2001	1,245	1,197	(48)	(4)	56
Thunder Bay Correctional Centre	1979/80	140	124	(16)	(11)	54
Monteith Correctional Complex	1979/80	242	222	(20)	(8)	45

1. Occupancy rate is the average daily number of inmates in custody in 2018/19 divided by the original capacity.
2. Indicates correctional institutions that increased their capacity by adding more beds into existing units.

Using the original or oldest known capacity, 68% of the institutions were operating at over 85% capacity during 2018/19, with two or more inmates sharing cells originally built for one. Placing more inmates than what the cells were originally designed to hold results in living conditions that are not conducive to inmates' rehabilitation. The *Standard Minimum Rules for the Treatment of Prisoners* state that inmate accommodations "shall meet all requirements of health, due regard being paid to … minimum floor space, lighting, heating and ventilation."

4.2.2 Inmates Are Transferred to Institutions Away from Their Communities Due to Lack of Space in Their Home Institutions

Overcrowding has also resulted in up to 144 inmates from 14 institutions being transferred to as many as eight different institutions between February and August 2019 because of lack of beds at their "home" institutions.

Detaining inmates in institutions far from their home communities makes it difficult for their families and lawyers, who must travel to the new institution to visit the inmates. According to the *Standard Minimum Rules for the Treatment of Prisoners*, inmates should be detained "close to their homes or their places of social rehabilitation."

Transferring inmates to other institutions also presents challenges and additional costs to transport inmates for court appearances because inmates are typically assigned to the institution closest to the court where their case is being heard. Inmates must be brought back if they are required to appear in court in person. Every month in 2018/19, an average of 368 correctional staff were involved in transferring 1,326 inmates in 185 trips. The Ministry did not track the costs associated with the transfers, but fuel costs for 2018/19 totalled over $300,000.

RECOMMENDATION 3

For inmates to be better equipped to make a successful adjustment in the community upon their release, we recommend that the Ministry of the Solicitor General work with the Ministry of the Attorney General to implement measures to look to ease the overcrowding in correctional institutions.

MINISTRY RESPONSE

The Ministry agrees with this recommendation. In March 2019, the Ministry preliminarily began working with the Ministry of the Attorney General to develop and implement initiatives that will help reduce overcrowding in Ontario's correctional institutions.

As part of this work, the Ministry will:

- assess strategies to reduce the remand population, divert lower-risk offenders away from custody and reduce recidivism, while supporting crime prevention and protecting public safety; and
- explore the use of technology, such as the potential use of GPS-enabled electronic monitoring in Ontario, to support alternatives to custody for lower-risk individuals.

4.3 Correctional Institutions Unsuited to Manage Inmates with Mental Health and Related Issues

Over 2,600 or 35% of all inmates in custody at the time of our audit had a mental health alert on their file. While the alert, which is placed on file by health-care staff, does not indicate a diagnosed mental illness, Ministry staff advised us that it is an indicator of mental health concerns. At the time of our audit, mental health clinicians had verified 87% of these alerts. Another 2,500 inmates had an alert on their file indicating they may require specialized supervision due to behavioural issues or violent tendencies.

4.3.1 Inmates with Mental Health and Related Issues Confined in Segregation Cells Due to Lack of Specialized Care Beds

Inmates with mental illness and those requiring specialized care were often placed in segregation, where they were confined in their cells for 22 to 24 hours a day. For example, from April 2018 to April 2019, almost two-thirds of the 664 inmates across the province who were in segregation for over 60 days had a mental health alert on their file. These inmates were segregated for an average of 146 aggregate days during that period.

Placing inmates with mental illness and those requiring specialized care due to behavioural issues in appropriate units is critical not only to ensure the safety and security of other inmates and staff

but also to ensure that inmates' mental health does not worsen while in custody. The *Standard Minimum Rules for the Treatment of Prisoners* state that solitary confinement (or segregation) should be prohibited for inmates with mental or physical disabilities when such confinement would exacerbate their conditions.

Data from the Ministry's information system indicate that the percentage of the inmate population with potential mental health issues has increased by an average of 6% per year since 1998/99, when only 7% of inmates admitted had a mental health alert. In June 2018, the Expert Advisory Committee on Health Care Transformation in Corrections—established by the ministers of Health and Corrections to provide advice on health-care services in correctional institutions—noted that Ontario's inmate population was two to three times more likely to have a mental illness compared with the general population.

The shortage of psychiatric beds in the community (discussed in our 2016 audit of Specialty Psychiatric Hospital Services), and the potential underutilization of mental health courts to divert inmates from correctional institutions (discussed in **Chapter 3** in this volume), may have contributed to the increase in inmates with potential mental illness.

Despite this, there are only three treatment centres across the province that are specifically designed and operated to house inmates with a diagnosed mental illness or who require specialized care or treatment. The treatment centres can house about 400 inmates, and on average, they have operated at 78% to 102% capacity in the last five years. Also, the treatment centres only house sentenced inmates and have specific admission requirements (see **Appendix 10**).

As shown in **Appendix 12**, our survey of the 17 institutions we did not visit found that only half of the institutions reported that inmates believed or known to have a mental illness are placed in a specialized care unit with increased access to clinicians. In addition, 94% reported that the same inmates were placed in general population units where they could pose risks to other inmates and staff if their condition becomes unstable.

We compared the number of specialized care beds in the 22 remaining institutions to the number of inmates with a mental health alert on their file. On average, each institution had 59 fewer beds than inmates with alerts. Specifically, we noted the following:

- Sixteen institutions each have between two and 300 beds intended for inmates requiring specialized care. In 2018/19, 66 to 2,931 inmates with mental health alerts were admitted to these institutions.
- Six correctional institutions had no beds intended for inmates requiring specialized care. In 2018/19, 214 to 2,091 inmates with mental health alerts were admitted to these institutions.

The shortage of specialized care beds is particularly significant for women. Half of the 7,285 women admitted into custody in 2018/19 had a mental health alert on their file—an increase from 22% 15 years ago. In comparison, less than one-third of all men admitted into custody in 2018/19 had a mental health alert on file. Despite the higher proportion of women with mental health concerns, none of the three treatment centres has beds for women with mental illness. In the 15 institutions that house female inmates, nine did not have any beds intended for women requiring specialized care. In 2018/19, an average of 135 women with mental health alerts were admitted into the nine institutions. The other six institutions, to which an average of 379 women with mental health alerts were admitted in 2018/19, have a total of only 48 specialized care beds for women.

In April 2016, the Ministry announced plans to repurpose a former youth centre facility into a treatment centre for women by 2024. However, at the time of our audit, the Ministry indicated that the plan was on hold.

According to the Ministry, a mental health alert may not necessarily mean that an inmate will require placement in a specialized care bed.

However, our review of the occupancy rate for specialized care units in the 22 correctional institutions found that there was a shortage in specialized care beds in 2018/19. Specifically:

- six of the 13 institutions with specialized care beds for men were operating at at least 100% capacity for an average of 60 days, ranging from four days to five months; and
- all six institutions with specialized care beds for women were operating at at least 100% capacity for an average of 67 days, ranging from 11 days to six-and-a-half months.

RECOMMENDATION 4

To help ensure the best possible outcomes for individuals with mental health and addiction issues who come into conflict with the law, and to help those who come into contact with them, we recommend that the Ministry of the Solicitor General establish a task force with representatives from the Ministry of the Attorney General, the Ministry of Health, the Ontario Public Sector Employees Union, and other stakeholders such as non-profit organizations in the areas of mental health and addiction to review and address the impact that individuals with mental health and addiction issues have on the correctional, criminal court and health-care systems.

MINISTRY RESPONSE

The Ministry agrees with this recommendation, and to support its implementation, began developing a Mental Health and Addictions (MHA) Strategy in July 2019. The Strategy will include a focus on inter-ministerial collaboration and community partnerships to facilitate appropriate care pathways. The dedicated Mental Health and Addictions Unit within the Ministry will work with government and community partners to further develop and implement the MHA strategy.

RECOMMENDATION 5

So that inmates with mental illness and those who require specialized care are placed in living units appropriate to their needs, we recommend that the Ministry of the Solicitor General:

- determine the actual proportion of inmate population in each institution who have mental illness or require specialized care; and
- review the living units in all institutions and create new or repurpose existing units to hold inmates requiring specialized care.

We also recommend that the Ministry of the Solicitor General finalize its plans for the proposed treatment centre for women.

MINISTRY RESPONSE

The Ministry agrees with this recommendation and will continue to review options to ensure appropriate care settings for individuals with mental illness. Specifically, the Ministry will:

- advance the Mental Health and Addictions (MHA) Strategy as referenced in **Recommendation 4** to ensure timely identification, assessment and services for those with mental health needs are appropriately addressed; and
- work with Infrastructure Ontario on the delivery of future infrastructure projects that address the needs of inmates that require specialized care.

With respect to the proposed treatment centre for women, the Ministry is awaiting further direction from the government before it can finalize its plan.

4.3.2 Correctional Institutions Have Insufficient Mental Health Staff to Effectively Manage Inmates with Specialized Needs

Medical staff in the institutions we visited told us that an insufficient number of mental health staff is one of the main challenges they faced in managing inmates with mental illness. Our analysis of information about mental health resources in correctional institutions across the province found the following:

- More than half of the institutions did not have access to a psychologist—a clinician who uses behavioural intervention to treat mental health disorders.
- All 25 institutions had at least one psychiatrist—a trained medical doctor who can prescribe medication to treat mental illness. However, we noted that all psychiatrists were contracted for a specified number of hours per week. Their availabilities ranged from 12 hours per week (where almost 300 inmates with mental health alerts were admitted in 2018/19) to 24 hours per week (where 1,900 inmates with mental health alerts were admitted in 2018/19).
- The ratio of inmates to mental health nurses ranged widely, from 45 inmates per nurse (two nurses where 90 inmates with mental health alerts were admitted in 2018/19) to 935 inmates per nurse (two nurses where 1,870 inmates with mental health alerts were admitted in 2018/19).

We reviewed the timeliness of mental health consultations in a sample of health records of inmates who had been in custody for at least two months in Central East and Thunder Bay correctional centres and Toronto South Detention Centre. We found that inmates were seen by a psychiatrist, on average, within 10 days of being referred. However, we found delays in the initial mental health screening that must first be completed to determine whether the inmate requires a referral to a psychiatrist. In almost one-third of the sample of files we reviewed, the mental health screen was either not completed within four days of admission, as required by Ministry policies, or there was no evidence that it was completed.

RECOMMENDATION 6

So that inmates with mental illness and those who require specialized care are identified and receive appropriate care in a timely manner, we recommend that superintendents in all institutions:

- determine the mental health resources required to assess inmates' mental health status within the required time frame and provide appropriate care; and
- provide the above information to the task force established in **Recommendation 4**.

SUPERINTENDENT AND MINISTRY RESPONSE

Superintendents and the Ministry agree with this recommendation and acknowledge the vulnerability of inmates with mental illness and the need for timely and appropriate care to support their well-being.

Superintendents, with the support of the Ministry, will continue to work with local and Corporate Health Care teams to characterize and secure appropriate treatment resources to provide care within the required time frames for those in custody. Superintendents will actively support the policy oversight and accountability framework established by the Ministry.

Superintendents acknowledge the need for information to be shared with those staff who are part of the circle of care to ensure supervisory and care services are provided in a timely manner. To support implementation of this recommendation, operational staff, such as correctional officers and sergeants, will be identified as members of the multidisciplinary team meetings.

4.3.3 Staff Not Adequately Trained to Manage Inmates with Mental Illness

During the eight-week initial training program, new correctional officers receive only three hours of mental health training. The training covers common mental health disorders, symptoms and appropriate responses. In comparison, Correctional Services of Canada provides 14 hours of initial mental health training to new staff.

While the initial training for Ontario correctional officers appears to provide basic knowledge about mental illnesses, correctional officers stated in an April 2019 Ministry consultation that the initial training needed to address the challenges posed by inmates with mental health and addiction issues.

We also found that, of the seven institutions we visited that were not treatment centres, none provided additional ongoing mental health training to correctional officers who are primarily responsible for the day-to-day supervision of inmates. The results of our survey of the 17 institutions we did not visit were consistent with this finding, with 12 of them reporting that they did not provide additional mental health training to front-line staff.

The following highlights the importance of staff having the necessary training to effectively deal with inmates with mental illness:

- We reviewed internal investigations conducted by dedicated staff in Central East and Thunder Bay correctional centres and Toronto South Detention Centre in response to serious incidents. Our review found that in 57% of the incidents, at least one of the inmates involved had a mental health alert on file. The incidents involved inmates attempting to harm themselves, other inmates or staff.
- Our review of misconduct information in 2018 for all institutions found that 44% of inmates with three or more misconducts for which they were found guilty had mental health alerts on their file. The misconducts involved, for example, inmates threatening and physically assaulting staff and other inmates, as well as refusing to follow staff instructions. Of those inmates, three-quarters were placed in segregation as a sanction for at least one of the misconducts.

The need for additional ongoing training was also highlighted in a 2016 survey by the Centre for Addiction and Mental Health (CAMH). CAMH staff surveyed correctional officers who were assigned to the mental health unit in Toronto South Detention Centre. About 80% of the officers indicated that they interacted at least 10 times per day with inmates who they thought exhibited behaviours that may be attributed to a mental health issue. About 60% of officers indicated that they had not received adequate mental health and addictions training. Respondents stated they wanted to learn more about schizophrenia, personality disorders, mood disorders, substance abuse, violence risk, suicide and interventions. In response to the survey results, CAMH staff provided one-time training to staff in October 2018.

4.3.4 Inmate Care Plans Not Done or Not Accessible to Front-Line Staff, Reducing Ability to Effectively Oversee Inmates

Ministry policies require that Inmate Care Plans be developed for inmates with mental illness and those in specialized care units. The purpose of the Care Plan is to document and recommend unit placement, strategies to manage behavioural issues—for example, to identify triggers and de-escalation techniques—interventions and therapeutic options, and other factors that impact an inmate's care while incarcerated.

In about 60% of the sample of files we reviewed in Central East and Thunder Bay correctional centres and Toronto South Detention Centre, institution staff did not develop Care Plans for inmates with mental illness or those in specialized care units. At the time of our audit, the inmates had been in custody for an average of almost 17 months.

Where a Care Plan was developed, we found that the quality varied across the institutions. Specifically, 90% of the Care Plans we reviewed at Toronto South did not contain additional information beyond stating that the inmate was diagnosed with a mental illness. In contrast, the Care Plans we reviewed at Central East and Thunder Bay correctional centres provided recommendations for managing the inmate's behaviour or identified triggers or de-escalation techniques.

We also found inconsistencies in who had access to the Care Plans. In Central East Correctional Centre, Thunder Bay Jail and Vanier Centre for Women, correctional officers—who supervise inmates on a daily basis—had access to the Care Plans. In contrast, correctional officers in the other four institutions we visited either did not have access to the Care Plans (South West and Toronto South detention centres) or could only access them through their sergeants (Brockville Jail and Thunder Bay Correctional Centre). This is inconsistent with the intended purpose of the Care Plans, which, according to Ministry policies, is to "guide a consistent approach for inter-professional team members on how to support [inmates'] needs."

To achieve optimum outcomes, correctional officers require access to Care Plans to ensure their approach to managing inmates is consistent with and supports the plans. Without having access to the Care Plans, correctional officers may have to rely on other sources of information such as the mental health alerts to identify inmates who may require specialized care and supervision. However, we found that these alerts may not always be present. For example, half of the inmates whose files we reviewed who had documented mental health concerns, such as prescriptions for anti-depressant or anti-psychotic drugs and notations by a psychologist or psychiatrist, did not have mental health alerts in their files. In addition, these alerts do not provide direction or guidance to help the officers effectively manage inmates.

RECOMMENDATION 7

So that front-line staff in correctional institutions are better equipped to effectively supervise inmates with mental health and addiction issues, we recommend that the Ministry of the Solicitor General:

- review and update its initial training on mental health; and
- develop ongoing mental health training, including training that could be delivered by, for example, the Centre for Addiction and Mental Health.

MINISTRY RESPONSE

The Ministry agrees with this recommendation and is taking steps to empower front-line staff to better respond to the challenges of mental health and addictions through training. The Ministry will continue to update its initial and ongoing training for Correctional Officers, including a redesign of its mental health module, in consultation with mental health experts such as the Centre for Addiction and Mental Health. The module will reflect the knowledge and skills needed to better support inmates with mental health and addiction needs. The official launch is scheduled for 2020.

RECOMMENDATION 8

So that front-line correctional staff have the necessary training and information to effectively supervise inmates with mental illness and those who require specialized care, we recommend that superintendents in all institutions:

- deliver ongoing mental health training for all staff who interact with inmates on a daily basis; and
- provide correctional officers access to Inmate Care Plans.

SUPERINTENDENT AND MINISTRY RESPONSE

Superintendents and the Ministry recognize the benefit of staff training, including the provision of mental health training to front-line staff.

As noted in the response to **Recommendation 7**, the Ministry began working with the Centre for Addiction and Mental Health in February 2019 to develop enhanced mental health and addictions training for staff, including de-escalation strategies. The enhanced training will be rolled out as part of ongoing training in 2020.

Additionally, Superintendents and the Ministry acknowledge the importance of meaningful communication and information sharing so that staff can effectively carry out their job functions. As reflected in the response to **Recommendation 6**, operational staff such as correctional officers and sergeants will now form part of the local multidisciplinary teams.

Superintendents, with the support of the Ministry, will utilize the local multidisciplinary teams to support front-line correctional staff working with inmates with mental illness by sharing information and aiding in knowledge/skills development.

5.0 Detailed Audit Observations: Working Conditions in Correctional Institutions Make Attracting, Retaining Staff Difficult

5.1 Ministry Does Not Analyze Root Cause of Violent Incidents, Which Could Help in Preventing Future Incidents

5.1.1 Exposure to Violence Leads to Physical Injuries and Mental Stress to Correctional Officers

From January 2014 to October 2018 (the most recent period for which data is available), institutional staff recorded about 21,000 incidents of violence or threatened violence in Ontario correctional institutions. The incidents included instances where inmates physically assaulted staff and where inmates threatened or attempted to injure staff without actual physical contact. They also included inmate-on-inmate incidents where staff were not directly involved.

Every staff member who is involved in or witnesses an incident must prepare a report describing it. Information in those reports provide insight into what type of violence it was and the extent of violence in each of the institutions. However, none of the staff at the institutions, regional offices or the Ministry's corporate office analyze reported incidents to determine their root cause, which could provide insight into prevention of future incidents. Five of the eight institutions we visited, and another five of the 17 institutions that we did not visit (see **Appendix 12**), do not measure and track assaults against staff.

We reviewed each reported incident from January 2014 to October 2018—the most recent period for which incident information is available—in the eight institutions we visited. In total, there were

Figure 10: Reported Incidents in Eight Institutions Visited, January 2014–October 2018

Source of data: Ministry of the Solicitor General

	Inmate-on-Staff Incidents						Inmate-on-Inmate Incidents		Total Reported Incidents	Average Daily # of Inmates
	Threats or Attempted Assaults		Staff Assaulted		Total					
	#	%	#	%	#	%	#	%		
Brockville Jail	53	28	13	7	66	35	121	65	**187**	46
Central East Correctional Centre	366	16	241	11	607	27	1,669	73	**2,276**	898
South West Detention Centre	136	18	93	12	229	30	547	70	**776**	264
St. Lawrence Valley Correctional and Treatment Centre	27	12	20	8	47	20	188	80	**235**	100
Thunder Bail Correctional Centre	18	11	11	7	29	18	128	82	**157**	75
Thunder Bail Jail	57	13	34	7	91	20	367	80	**458**	148
Toronto South Detention Centre	451	22	654	32	1,105	54	920	46	**2,025**	1,107
Vanier Centre for Women	50	14	71	20	121	34	229	66	**350**	204
Total	**1,158**	**18**	**1,137**	**17**	**2,295**	**35**	**4,169**	**65**	**6,464**	**2,842**

6,464 incidents reported in these eight institutions, comprising 31% of the approximately 21,000 reported incidents across the province, during the period we reviewed. See **Figure 10** for the results of our review. We found that:

- Sixty-five percent of the incidents in the institutions we visited were between inmates. The Ministry does not analyze those incidents, to determine, for example, how many were gang related, racially motivated or involve inmates with mental health alerts on their files.
- Where staff were assaulted, the incidents ranged from inmates threatening or attempting to threaten staff without actual physical contact (18%) to staff being assaulted (17%), for example, by throwing substances, spitting or punching.
- Of the 1,137 incidents where staff were assaulted, 226 (20%) resulted in staff requiring medical attention.

Exposure to violence has resulted in the following:

- From 2014 to 2018, over three-quarters (1,859) of the 2,347 Workplace Safety and Insurance Board (WSIB) claims filed by staff in the eight institutions we visited resulted in an average of 10,757 days lost per year and $19 million in total compensation costs (see **Figure 11**). Under the *Workplace Safety and Insurance Act*, employees who are injured or become ill as a result of their work are entitled to benefits (for example, wage replacement, compensation for permanent injuries and health-care coverage) and services (for example, assistance with return to work). Over half of the claims were due to injuries inflicted by inmates, including through assaults (28%) and exposure to biological/chemical agents or psycho-social situations (26%). The other half were due to other workplace hazards such as slips, trips and falls.
- From 2014 to 2018, the Ministry's Critical Incident Stress Management teams provided

Figure 11: Workplace Safety and Insurance Board (WSIB) Claims in Eight Institutions Visited, 2014–2018
Source of data: Ministry of Government and Consumer Services

	2014	2015	2016	2017	2018	Total
# of claims filed	239	464	406	508	730	**2,347**
# of claims approved	179	358	332	411	579	**1,859**
# of days lost	4,429	11,089	15,989	13,498	8,784	**53,789**
Compensation ($ million)	1,614	4,205	5,437	4,763	3,110	**19,129**

support to correctional staff 693 times. Correctional staff may request support from members of the stress management teams to help them deal with the aftermath of critical incidents—events that have sufficient impact to overcome the usual coping abilities of emergency personnel exposed to them.

5.1.2 Management Does Not Regularly Assess Risk of Violence in Correctional Institutions, Which Could Aid in Prevention

The *Occupational Health and Safety Act* (Act) requires employers to assess the risk of workplace violence that may arise from the nature of the workplace or the type of work, and then to reassess as often as necessary. However, management staff at six of the eight institutions we visited did not reassess the risk of workplace violence as required by the Act. As a result, management may not have an understanding of the nature and extent of violence in their institutions, the risk factors contributing to the violence and whether measures that are in place address such risks effectively.

We requested the most recently completed workplace violence risk assessments for the eight institutions we visited and found that Thunder Bay Jail has not completed one. For the seven who did complete the assessments:

- three were completed in 2010, one in 2012, one in 2014 and two in 2018;
- the assessments looked at the risk of violence in administration areas, but not in inmate living units, which pose the greatest threat of violence; and
- only two assessments involved staff in different areas of the institution.

Our survey of the other correctional institutions across the province found that five have not conducted a violence risk assessment as required by the Act and over one-third of those who had completed the assessments did so over two years ago.

The Ministry of Labour recommends that management reassess the risk of violence at least annually. In addition, the Ontario Public Service Workplace Violence Prevention Program requires that a reassessment be done when there is a change in the workplace that may introduce new risks. The three institutions had undergone significant changes in their operations since they last conducted violence risk assessments. For example:

- Central East Correctional Centre had begun using a supervision model in one unit similar to direct supervision where staff are in the unit with inmates since staff last conducted a violence risk assessment in 2010.
- Thunder Bay Correctional Centre had begun holding remanded males, who are deemed higher risk than sentenced offenders, since staff last conducted a violence risk assessment in 2014.
- Inmates from the former Don Jail, Mimico Correctional Centre, and Toronto West Detention Centre had been transferred to the Toronto South Detention Centre since staff last conducted a violence risk assessment in 2014.

RECOMMENDATION 9

To better address the risks and root causes of violence in correctional institutions, we recommend that superintendents in all institutions:

- regularly analyze root causes of violent incidents reported by institutional staff;
- reassess the risk of workplace violence, as required by the *Occupational Health and Safety Act* and the Ontario Public Service Workplace Prevention Program;
- ensure that the assessment includes all areas of the institutions; and
- take action to minimize risks for both correctional staff and inmates.

SUPERINTENDENT AND MINISTRY RESPONSE

Superintendents and the Ministry agree with this recommendation, and acknowledge the benefit of reviewing and analyzing violent incidents to identify trends and potential risks so that strategies and processes can be implemented to mitigate future occurrences, in addition to the benefit of conducting required workplace risk assessments to minimize risks for staff and inmates.

Superintendents commit to complying with the Workplace Violence Policy and *Occupational Health and Safety Act*. Superintendents will engage their local Joint Occupational Health and Safety Committees (JOHSC) to support required workplace risk assessments. In addition, as part of the annual review, Superintendents will identify potential hazards and risks and, in conjunction with the Ministry, develop strategies to address the concerns as required and share with their local JOHSC. In addition, the Ministry, in conjunction with Superintendents, will:

- analyze and explore approaches to violent incidents that can also be shared with local and provincial JOHSC; and
- analyze the costs and benefits of expanding the scope of workplace risk assessments to include inmate living areas.

5.2 Management and Staff Have Strained Relationship

5.2.1 Insufficient Training and Mentorship May Contribute to Rising Staff Turnover Rates

From 2014 to 2018, turnover rates for correctional officers in the eight institutions we visited ranged from 0% (St. Lawrence Valley) to 7% (Thunder Bay Jail and Toronto South Detention Centre). Toronto South had the largest increase in turnover rate, from 4% in 2014 to 10% in 2018. We found the following factors that have likely contributed to the turnover rates:

- Ineffective job shadowing and mentoring process for new staff: One-quarter of correctional officers across the province have less than two years of experience. About half of sergeants, who supervise correctional officers, have been in their current role for less than two years. Despite this, the job shadowing and mentorship process varied widely and was ineffective. Thunder Bay Correctional Centre did not have a mentorship program, while correctional officers at Thunder Bay Jail and Toronto South Detention Centre informed us that they often shadowed or were mentored by someone who only had a few weeks of experience. In comparison, the mentors at Central East Correctional Centre appeared to be more experienced.
- Insufficient ongoing training: Mandatory ongoing training for correctional officers includes five hours of fire response refresher every year, four hours of suicide awareness every two years, eight hours of first aid every three years, and up to three days of defensive tactics every two years. Our review of a sample of investigations conducted by institutional

staff in response to serious incidents noted that the investigations raised the need for further training in dealing with inmates with mental illness, proper techniques to restrain inmates, conflict de-escalation and report writing. Although ongoing training in defensive tactics deals with inmate restraint and conflict de-escalation, the findings from the incident investigations indicate the need to assess the effectiveness of this training. Also, ongoing training for skills such as report writing and dealing with inmates with mental illness was not offered. According to the *Standard Minimum Rules for the Treatment of Prisoners* (Rules), at minimum, staff should receive training on relevant policies, their rights and duties in exercising their functions, first aid, the use of force and instruments of restraints, managing violent offenders using preventive and defusing techniques, as well as early detection of mental health issues. In addition, the Rules also state the staff who work with certain categories of inmates should receive corresponding training.

- Inadequate amenities for staff: Through our interviews with staff and our own observations during our fieldwork, we noted that amenities for staff were insufficient. For example, local union representatives at Thunder Bay Correctional raised several issues with the cleanliness and functionality of the staff break room, which they stated was negatively impacting staff morale. None of the institutions we visited had on-site cafeterias for staff. In addition, correctional officers at Toronto South often had to leave their lunch bags on tables because there were not enough refrigerators. There were also not enough locker rooms for staff to secure their personal belongings.

The Rules state that prison administration "shall constantly seek to awaken and maintain in the minds of … personnel the conviction that this work is a social service of great importance." One way to do so, in a work environment as challenging as correctional institutions, is by providing staff with the necessary training and amenities to effectively perform their duties.

RECOMMENDATION 10

So that correctional staff are better equipped to perform their responsibilities, we recommend that the Ministry of the Solicitor General update the initial and ongoing training to include, for example, training on the use of force and instruments of restraints, managing violent offenders using preventive and defusing techniques, as well as early detection of mental health issues as recommended in the *Standard Minimum Rules for the Treatment of Prisoners*.

MINISTRY RESPONSE

The Ministry agrees with this recommendation, acknowledging the value of staff training. The Ministry will:

- review both its mandatory ongoing training and its optional professional development modules for correctional officers; and
- monitor delivery of training relating to report writing and defensive tactics for correctional officers.

RECOMMENDATION 11

To help improve working conditions for correctional staff, we recommend that superintendents in all institutions:

- ensure that correctional staff receive the initial and ongoing training as required;
- improve the job shadowing and mentorship programs so that new staff receive the necessary supports; and
- work with local union representatives to take measures to provide proper amenities for staff in all institutions.

SUPERINTENDENT AND MINISTRY RESPONSE

Superintendents and the Ministry agree with the recommendation and the importance and value of staff training, job shadowing/mentorship and working with local union representatives to build and support staff capacity and professional development.

The Ministry will:

- continue to monitor, and require Superintendents to monitor, staff's progress toward completing mandatory ongoing training; and
- assess the mentorship programs, including their impact and associated costs.

Superintendents, in conjunction with the Ministry, will:

- continue to work with their Local Employee Relations Committees and local union representatives to discuss strategies and approaches to assist staff;
- work with the Ministry Employee Relations Committee, where both Superintendents and local union representatives bring issues of concern forward when there are provincial implications or when additional resources are required, to address needs at the local level; and
- evaluate the work being undertaken by the local Employee Wellness Committees and continue to review strategies and Resources required to ensure employee well-being.

5.2.2 Employees Express Their Concerns through Work Refusals and Lengthy Grievances

In the last five years, staff in the 25 institutions across the province filed an average of 1,550 grievances per year. The number of grievances filed has fluctuated each year, from a low of 1,260 in 2016/17 to a high of 1,914 in 2014/15.

We found that about 80% of the almost 4,200 grievances filed by staff in the last five years in the eight institutions we visited related to disciplinary actions, work arrangement policies, scheduling of work/overtime; and human rights issues such as harassment and discrimination. However, we noted bigger concerns in the length of time it took for management and staff to resolve the grievances (see **Figure 12**). Specifically:

- Between 42% and 69% of grievances were still open at the time of our audit, most of which had progressed to the start of the formal grievance process because management and staff could not resolve the matter internally.

Figure 12: Grievances Filed by Unionized Employees at Eight Institutions Visited, 2014/15–2018/19

Source of data: Ministry of Government and Consumer Services

	# of Grievances Filed	Average Grievance Rate per Unionized Employee	Closed		Open	
			% of Claims	Avg. # of Days to Close	% of Claims	Avg. # of Days Open
Brockville	40	0.22	58	335	42	1,400
Central East	1,937	1.77	42	281	58	838
South West	120	0.21	33	428	67	544
St. Lawrence Valley	24	0.24	58	487	42	1,181
Thunder Bay Correctional	88	0.34	41	318	59	717
Thunder Bay Jail	36	0.12	39	229	61	975
Toronto South	1,530	0.71	31	401	69	867
Vanier	419	0.68	41	319	59	661
Total	**4,194**					
Averages		**0.54**	**43**	**350**	**57**	**898**

- Grievances that had been closed took between 229 to 487 days to close. Between 33% and 93% of those cases reached the local mediation/arbitration stage before management and staff reached a settlement.

We also found that, from 2012 to 2016 (the most recent year for which information is available), staff at the 25 correctional institutions took 483 work refusal actions—when correctional officers arrive at the institution but refuse to report for their shift—citing dangerous working conditions. During work refusal actions, sergeants may be required to take over the duties of supervising inmates. When there is insufficient staff to safely supervise inmates, inmates are locked in their cells. Our analysis of work refusal information found that the concerns and refusals related to a range of health and safety areas such as the presence of contraband, equipment, staffing shortage and training.

According to the *Occupational Health and Safety Act*, management and staff should first try to resolve any concerns prior to resorting to taking work refusal action. Management and staff resolved the concern between themselves in only 22% of work refusals. The Ministry of Labour was contacted to intervene in 338 or about 70% of work refusals. In 265 instances, the Ministry of Labour determined that the circumstances that led to the work refusal were not likely to endanger anyone. In 30 instances, the Ministry of Labour issued orders to superintendents of institutions to remedy the identified safety concern.

RECOMMENDATION 12

So that management and staff have an improved relationship, we recommend that the Ministry of the Solicitor General work with the local and province-wide union representatives to address the root cause of the grievances and work refusals.

MINISTRY RESPONSE

The Ministry acknowledges the benefit of a cohesive work force and agrees with the intent of this recommendation. The Ministry, in conjunction with the joint Ministry Employee Relations Committee and joint Provincial Joint Occupational Health and Safety Committee, will review strategies to enhance labour relations and address any causal underpinnings of grievances and work refusals.

6.0 Detailed Audit Observations: Better, Consistent Monitoring of Inmates Needed to Improve Safety and Security in Correctional Institutions

6.1 Growing Contraband Problem Not Fully Understood or Mitigated

From 2008 to 2018, the Ministry estimates that the number of times weapons were found increased by 414% (from 56 to 288), and the number of times drugs and alcohol were found in institutions increased by 136% (from 239 to 564).

According to staff in the institutions we visited, the presence of fentanyl—an opioid that is at least 100 times more potent than morphine—presents significant risks to the safety of inmates and staff. In fact, 18 of the 117 inmates who died in custody in the last five years died from fentanyl-related overdose, with six of the 18 overdose deaths occurring in 2018. Between July 2017 and August 2019—the only period for which the Ministry has information—there were 101 overdoses in the 25 correctional institutions.

Ministry policies require that inmate sleeping areas, living units and other areas within the institution be searched for contraband at least once a month. Our review of inmate misconduct information in 2018 found that 21% of all misconducts

were the result of inmates being found with contraband. We noted the following:

- Security staff in seven of the eight institutions we visited did not have a strategy to target searches toward higher-risk areas of the institution. In Toronto South Detention Centre, a dedicated team conducted targeted searches based on intelligence gathered through their review of inmate correspondence and inmate interviews. Our survey of the 17 institutions we did not visit found that newly admitted inmates and remanded inmates returning from their court appearance were the top two sources of contraband (see **Appendix 12**).
- Staff in the eight institutions we visited do not analyze how much contraband was found during the searches, the type of contraband found and where it was found. We therefore could not determine the extent of contraband present in the institutions. In our survey of the 17 institutions we did not visit, two-thirds reported that staff do not track the results of searches.
- None of the 25 institutions across Ontario inspect or screen staff for contraband when entering the secure part of the institutions. According to the Ministry, staff have already undergone security clearance and participated in security orientation, so they do not have to undergo additional security screening. From 2012 to 2016, the Ministry had conducted 16 investigations involving staff who were suspected of bringing in contraband. In 2018, six staff in Toronto South Detention Centre went on leave, resigned or were terminated after it was found that they were having inappropriate relationships with inmates and were bringing contraband, such as drugs and cell phones, into the institution. Across Canada, only correctional officers in federal institutions are screened when entering the institution.

RECOMMENDATION 13

To better understand the sources and extent, and reduce the presence, of contraband in correctional institutions, we recommend that superintendents in all institutions:

- electronically track and analyze the results of their searches;
- revise their search procedures so that searches are targeted toward higher-risk areas of the institution; and
- improve security protocols to mitigate the risk of contraband based on the analysis of the search results.

SUPERINTENDENT AND MINISTRY RESPONSE

Superintendents and the Ministry agree with this recommendation. In July 2019, the Ministry began working on a strategy to address the issue of contraband in its institutions. This includes reviewing existing processes and developing new tactics with consultation from institutional staff to improve the detection of contraband and reduce its presence in institutions.

The Ministry, in conjunction with Superintendents, will review current resource allocations and, based on a needs assessment and with consideration of costs, develop strategies and priorities to improve the work that is being done to detect contraband and reduce its presence in institutions.

RECOMMENDATION 14

In order to protect correctional staff from being coerced by inmates into bringing contraband into correctional institutions, we recommend that, similar to the practice at federal institutions, the Ministry of the Solicitor General work with the Ontario Public Sector Employees Union to implement measures to screen staff when entering the institution.

MINISTRY RESPONSE

The Ministry appreciates the importance of the issue identified by the Auditor General.

The Ministry's recruitment process includes a rigorous security clearance process for new hires. Additionally, new correctional services staff must sign and acknowledge the Correctional Services Code of Conduct and Professionalism Policy, which outlines appropriate on-duty and off-duty conduct. Staff who violate this policy, including bringing in contraband, are held accountable.

The existing regulation under the *Ministry of Community Safety and Correctional Services Act* does not give the Ministry authority to search staff unless they are suspected of bringing contraband into the institution. As such, the Ministry will assess the need to amend this regulation.

6.2 Inmate Misconducts Not Dealt with Consistently

We found that inmate misconducts were often not addressed consistently across institutions. A regulation under the *Ministry of Correctional Services Act* specifies what constitutes a misconduct—such as wilfully disobeying an order, threatening to or committing an assault against staff, damaging property and possessing contraband.

According to inmate misconduct data in the Ministry information system, 29% of inmates in custody in three of the institutions we visited had at least one (and up to 76) misconducts during their time in custody. We analyzed all of the over 21,000 misconducts entered into the system in 2018 and found the following:

- Twenty percent of the misconducts were not adjudicated because, for example, the 10-day period to adjudicate had lapsed or were withdrawn. In Central East Correctional Centre, half of the 1,776 misconducts were not adjudicated, compared with between 1% and 30% in the other 24 institutions. The *Standard Minimum Rules for the Treatment of Prisoners* state that allegations of misconduct must be investigated promptly.
- In 89% of the misconducts that were adjudicated, the inmate was found guilty. However, we noted that the sanctions were not consistent across institutions. For example, the use of segregation as a sanction for inmates found guilty of threatening to or assaulting another inmate ranged from 7% at Central East Correctional Centre to 94% at South West Detention Centre.

We also reviewed the inmate records in Central East and Thunder Bay correctional centres and Toronto South Detention Centre for a sample of inmates with multiple misconducts during their incarceration to determine whether the misconduct was addressed appropriately. The inmates in our sample had an average of six misconducts per inmate, four of which they were found to be guilty of. We found the following:

- In three-quarters of the files we reviewed, the actual sanction imposed was not consistent with the ruling of the adjudicator. For example, an adjudicator found an inmate guilty of "gross insult to a correctional officer" and ruled that the inmate be placed in a segregation unit for three days. Instead, the inmate spent 12 days in a segregation unit. Staff did not document the reason for the inconsistency.
- In over half of the files we reviewed, the sanctions were inconsistent with the nature of the misconduct or not progressive. For example, an inmate was not sanctioned for being found with a blade because of his mental health issues, but was later sanctioned to two days in segregation for being found with matches.
- In half of the files we reviewed, the nature of the misconducts increased in severity. For example, one inmate's misconduct progressed from smoking cigarettes, to threatening to kill staff, to throwing feces out of his hatch, to finally assaulting another inmate unprovoked.

RECOMMENDATION 15

So that sanctions imposed for inmate misconducts are fair, consistent and appropriate for the misconduct committed, we recommend that the Ministry of the Solicitor General develop, and communicate to staff in all institutions, clear policies for dealing with inmate misconducts, which include progressive sanctions when inmates continuously misbehave.

MINISTRY RESPONSE

The Ministry agrees with this recommendation. In August 2019, the Ministry began undertaking work to develop a revised inmate discipline and misconduct process that provides clear direction for adjudicating a range of inmate misconducts, including progressive sanctions. Front-line staff have been directly engaged to provide input based on their firsthand experience of how the inmate discipline and misconduct process can be improved. The feedback received from staff will help inform the revised policy.

RECOMMENDATION 16

So that sanctions imposed for inmate misconducts are fair, consistent and appropriate for the misconduct committed, we recommend that superintendents in all institutions regularly review misconduct adjudications to ensure they are consistent with the above policy requirements.

SUPERINTENDENT AND MINISTRY RESPONSE

Superintendents and the Ministry agree with this recommendation. As referenced in **Recommendation 15**, the Ministry will assess and update its current policy and processes for reviewing misconducts and misconduct adjudications. This will include assessing the feasibility of producing an electronic report from the Offender Tracking Information System—the Ministry's electronic system where misconducts are entered—by institution, region and province-wide. Through these reports, Superintendents will monitor the misconduct process by type, numbers and outcomes, as well as trends. In addition, other data automation work related to incident reporting, discussed in the response to **Recommendation 22**, will support the analysis of misconducts.

7.0 Detailed Audit Observations: Staff Effectiveness Hampered by High Absenteeism, Poor Promotion Practices

7.1 Rise in Sick Days Has Led to Lockdowns and Increase in Overtime Costs

7.1.1 Number of Sick Days Rises for Correctional Officers in Last Decade

In 2018, the average number of sick days for permanent correctional officers was 31 days (see **Appendix 13**)—27% higher than in 2014.

In comparison, the average number of sick days in 2018 for correctional staff in other jurisdictions was only 14.6 days in British Columbia, 21.9 days in Alberta, 14 days in Saskatchewan and 15.5 days in federal correctional institutions.

In our 2008 audit, we found that sick days varied significantly between correctional institutions: from 8.7 days to 34.9 days. We found a similar variance in our current audit. As shown in **Appendix 13**, the average sick days taken by correctional officers ranged from 9.1 in one institution to 40.6 in another institution.

We reviewed information in the provincial Workforce Information Network (Network) for permanent staff in Central East and Thunder Bay

Figure 13: Absenteeism in Three Institutions Visited, 2018

Source of data: Ministry of the Solicitor General

	Central East Correctional Centre		Thunder Bay Correctional Centre		Toronto South Detention Centre	
# of Staff	**455**	**235**	**100**	**46**	**750**	**411**
Sick Days	**All Permanent Staff %**	**Permanent Correctional Officers %**	**All Permanent Staff %**	**Permanent Correctional Officers %**	**All Permanent Staff %**	**Permanent Correctional Officers %**
0	6	5	11	11	4	4
1–6	20	8	24	6	11	6
7–10	11	8	14	11	13	13
11–20	19	17	14	20	18	17
20–30	11	14	11	15	14	15
31–65	20	30	15	24	25	27
Over 65	13	18	11	13	15	18
Total	**100**	**100**	**100**	**100**	**100**	**100**

correctional centres and Toronto South Detention Centre and found that between 4% and 11% of all permanent staff did not take any sick days in 2018 (see **Figure 13**). However, we also noted that 26% to 40% of all permanent staff, and 37% to 48% of all permanent correctional officers, took more than 30 sick days in the same period. According to the Network data, the average annual cost of lost time due to sick days taken from 2015 to 2018 ranged from $570,000 (Thunder Bay Correctional) to $5.1 million (Toronto South).

As of January 2017, according to the Collective Bargaining Agreement between the Ministry and the Ontario Public Sector Employees Union (OPSEU), which governs sick-day policies for unionized correctional staff, unionized employees may take six paid sick days plus up to 124 additional sick days at 75% of their regular pay per year. This policy, combined with the opportunity to work paid overtime, may create an incentive for some staff to call in sick for their scheduled shifts in favour of working overtime to accumulate compensated time off or receive pay at a rate of one-and-a-half times their regular rate.

We reviewed attendance data from the Ministry information system over the six-month period preceding our fieldwork for a sample of permanent correctional officers in Central East, Thunder Bay Correctional, and Toronto South to determine how the sick-day policy has impacted absenteeism.

Our review found that about half of the staff whose schedules we reviewed worked less than two-thirds of their scheduled shifts. They worked, on average, 44% of their scheduled shifts. In addition, over one-third of the staff took more than 10 sick days in the six-month period, while also working an average of 50 overtime shifts. We found, for example, that one employee worked only eight of their 88 scheduled shifts, calling in sick 74 times and being absent without leave three times. During this time, the employee worked 43 overtime shifts for which they were not originally scheduled; eight of those instances occurred on the day after the employee had taken a sick day. The employee earned $19,000 in overtime pay in 2018/19, which is one-third of their regular salary.

Institutional staff are responsible for tracking sick days for contract employees, who comprise over one-third of all employees. We noted a concerning trend in the sick-leave information that was manually tracked by staff in Toronto South. As shown in **Figure 14**, more contract employees called in sick per day in 2018 during weekends, holidays and the summer months than the rest of the year. We could not perform a similar analysis for Central East and Thunder Bay Correctional because staff did not track sufficient information for an analysis.

Figure 14: Absenteeism of Contract Employees at Toronto South Detention Centre during Weekends, Summer and Holidays, 2018

Source of data: Ministry of the Solicitor General

	Average # of Employees Who Called in Sick per Day	Average # of Employees Who Called in Sick During Rest of the Year	Rate Above an Average Day
Saturdays and Sundays (weekends)	10.2	6.6	1.5 times
July and August (summer months)	12.5	6.7	1.9 times
November 23–25 (Black Friday weekend*)	24.0	7.6	3.2 times
December 10–31 (Christmas holidays)	20.9	7.6	2.8 times

* Black Friday is the first Friday following the US Thanksgiving.

7.1.2 Sick Days Cause at Least Half of Institutional Lockdowns

Too many staff calling in sick for a particular shift results in staffing shortages that have a direct impact on the security of the institution when there is insufficient personnel to safely supervise inmates. We found the following:

- In the last five years, 56% of the 1,828 instances of institutional lockdowns in Central East, and 71% of the 880 lockdowns in Toronto South were due to staffing shortages. Institutional lockdowns prevent inmates from being seen by health-care staff, attending court hearings and programming, and seeing visitors. In our survey of the 17 institutions we did not visit, respondents reported that absenteeism was the main reason for difficulties in scheduling staff for shifts (see **Appendix 12**).
- In 2018/19, over three-quarters of correctional staff received overtime payments totalling $60 million. Overtime costs were paid when employees called in sick and their shifts had to be filled. On average, the overtime payments amounted to 16% of their regular salaries. About $42 million (or 70%) of this amount was paid to correctional officers. This is a 280% increase in the overtime payments since our last audit in 2008 (of $11 million), despite the number of correctional officers increasing by only 30% from 3,400 to 4,400.

RECOMMENDATION 17

To manage and mitigate the impacts of absenteeism, we recommend that:

- superintendents in all institutions regularly review absenteeism and overtime payments at their respective institutions and take action to reduce the occurrence of lockdowns and the need for overtime payments; and
- the Ministry of the Solicitor General consider redirecting savings realized from reductions in overtime payments to increased training for correctional staff.

SUPERINTENDENT AND MINISTRY RESPONSE

Superintendents and the Ministry agree with this recommendation and are working to address and mitigate the impacts of absenteeism in institutions. This includes:

- developing a province-wide rostering tool to improve scheduling processes across all institutions;
- developing an absenteeism strategy to be introduced in the 2020/21 fiscal year; and
- an analysis of cost savings and opportunities for potential reallocation of funds to support other ministry and Institutional Services priorities.

Superintendents will support the implementation of new strategies and processes developed.

7.2 Recruitment Files Do Not Always Support Promotions

We reviewed the recruitment files for all 16 sergeant and deputy superintendent competitions that were competed in 2018 for three of the institutions we visited to determine whether the selection process was fair and there was sufficient support for the decision. We found the following:

- The job selection criteria required knowledge of corrections but did not require previous experience as a correctional officer (for sergeant positions) or sergeant (for deputy superintendent positions). In one of the sergeant competitions, the applicant who received the highest score had no front-line experience, but still scored three out of three in "experience"—higher than another applicant who was an acting sergeant at the time. In another sergeant competition, two of the five individuals who were hired had no previous corrections experience.
- There was no evidence that the selection panel considered or requested past performance reviews of applicants in the selection process. Staff from the Ministry of Government and Consumer Services, who provide recruitment support to the Ministry of the Solicitor General, told us that the selection panels mainly rely on applicants' references.
- In one-fifth of the recruitment files we reviewed in Central East, Toronto South and Thunder Bay Correctional, there was incomplete or no documentation of the initial screening to select applicants for interviews. Therefore, we could not determine whether the applicants selected for interview met the requirements.

We also had concerns about the fairness of the decisions in over one-third of the competitions we reviewed. For example, in one of the deputy superintendent competitions, one applicant was selected for interview over nine other applicants who scored two to 20 points higher in the screening stage. In another three competitions, correctional officers with less than one year of experience were hired for a sergeant position.

RECOMMENDATION 18

So that the recruitment and promotion process for management staff is fair and transparent and the best-qualified individuals are hired or promoted, we recommend that the Ministry of the Solicitor General work with the Talent Acquisition Branch within the Ministry of Government and Consumer Services to:

- review and revise the recruitment process for management staff to include clear and appropriate requirements for qualifications and minimum scores to be selected for interview; and
- ensure that hiring panels document decisions made and the rationale for such decisions during the recruitment process.

MINISTRY RESPONSE

The Ministry recognizes the importance of fair and transparent recruitment practices and agrees with this recommendation. The Ministry is working closely with the Talent Acquisition Branch on all recruitment activity. In April 2019, the Talent Acquisition Branch created a unit to exclusively support hiring managers with managerial vacancies and develop new methodologies and strategies to modernize recruitment to support a fair and transparent hiring process that ensures the best-qualified candidate(s) are identified.

In October 2019, the Ministry made changes to simplify and enhance inclusive recruitment through:

- simplified recruitment approvals forms;

- asking hiring managers to use the OPS Recruitment Inclusion Lens and its associated Checklist for Managers;
- reminding managers of their obligation to comply with Conflict of Interest rules in recruitment; and
- completing attestations for both competitive and non-competitive recruitments.

The Ministry will analyze the new strategy to ensure goals around fairness, transparency and hiring/promoting the best-qualified candidates are achieved.

7.3 Evaluation of Staff Performance Not Consistently Done

Performance evaluations were not consistently done in the eight institutions we visited. In four institutions, evaluations were only conducted for managers such as sergeants, staff sergeants and deputy superintendents, but not for correctional officers, who comprise the majority of the staff. In the other four institutions, evaluations were also conducted for correctional officers.

Ongoing monitoring of staff's performance helps ensure that staff are meeting expectations and appropriate actions are taken to correct unsatisfactory performance. However, Ministry policies are silent regarding performance evaluations. According to the Ministry, "there is not a current expectation that all correctional officers participate in a performance review process." The Ministry's efforts to implement performance reviews for correctional officers from 2012 to 2014 were unsuccessful. Very few officers completed the reviews partly because the reviews were not tied to any financial compensation or ability to progress in their position.

Our review of the performance assessment forms in Central East and Thunder Bay correctional centres and Toronto South Detention Centre noted that in 43% of cases, the deputy either did not fully complete the assessment or the comments were generally vague. Similar to the deputy assessments, the comments on the correctional officer assessments were also broad. For example, one assessment did not indicate whether the officer met the performance expectations, while another had incomplete feedback from the manager.

RECOMMENDATION 19

So that all employees' job performances are regularly evaluated, we recommend that the Ministry of the Solicitor General:

- require performance assessments of all staff to be completed at least annually;
- improve its performance evaluation framework to include measurable employee goals.

We recommend that superintendents in all institutions ensure that performance assessments are completed for all staff at least annually.

MINISTRY RESPONSE

The Ministry agrees with this recommendation and acknowledges the importance of regular performance evaluation. The Ministry will begin working to attain compliance with the Ontario Public Sector framework on performance evaluations in a phased approach starting with front-line staff. In October 2019, the Ministry initiated a project requiring Performance Development and Learning Plans be developed for all fixed-term correctional officers across the province for the 2020/21 fiscal year. The Plans will include measurable employee goals. This initiative will be evaluated to determine how best to implement this for all correctional officers. Once the initiative is fully implemented for all correctional officers, Superintendents will ensure that performance assessments are completed for all staff at least annually.

8.0 Detailed Audit Observations: Better Monitoring of Spending Needed to Identify Opportunities for Cost Efficiencies

8.1 Staffing Levels at Institutions Not Always Proportionate to Workload

We noted that staffing levels in some institutions did not appear to be proportionate to the main factors that drive the workload in those positions. Because the staffing level varies throughout the day, we requested information about the number of staff required for certain shifts or periods during the day (for example, from 7 a.m. to 3 p.m., 3 p.m. to 11 p.m., and 11 p.m. to 7 a.m.). Our analysis found the following:

- The number of correctional officers was not proportionate to the number of inmates in custody. Central East and Central North correctional centres, both of which use the indirect supervision model, held an average of 898 and 697 inmates per day in 2018/19, respectively. Central North's daily inmate population is 22% smaller than Central East's, but it employs 112, or one more correctional officer than Central East during the day. Also, the Sudbury Jail held 124 inmates per day in 2018/19 and employed 22 correctional officers during the day. In comparison, the Kenora Jail, which uses the same indirect supervision model as Sudbury, held 168, or 35% more inmates per day in 2018/19, but employed 21, or one fewer officer than Sudbury.
- The number of health-care staff was not proportionate to the number of inmates in custody. Sarnia and North Bay jails, which held 72 and 74 inmates per day in 2018/19 respectively, both have lower inmate populations than the Thunder Bay Jail, which held 148 per day. However, Thunder Bay only had one nurse on duty during the day, compared with Sarnia and North Bay jails, which both had two nurses on duty. In addition, Elgin-Middlesex Detention Centre held 379, or 14% fewer inmates per day in 2018/19 than Ottawa-Carleton Detention Centre, but Elgin-Middlesex had 13 nurses on duty during the day compared to eight at Ottawa-Carleton.
- The number of maintenance staff was not proportionate to the age, size of the institution and size of inmate population. Central East Correctional Centre is 100,000 square feet larger and holds 898, or 28%, more inmates than Central North Correctional Centre. The two institutions are also both 17 years old. Despite these factors, Central East has fewer maintenance staff on duty during the day: 12 compared with 19 at Central North. Maintenance staff at Central East advised us that they have been raising concerns to senior management about being short-staffed since 2017. Another example is that the inmate population at Monteith Correctional Centre was 110, or 34% of the inmate population at Toronto East Detention Centre. Monteith is also 29,000 square-feet smaller than Toronto East. Both institutions had six maintenance staff on duty during the day.

Ministry staff told us that various factors, such as the institution's physical layout, inmate population and the supervision model used, determine the number of staff required to run the institution. However, it could not provide us with analysis to show how these qualitative factors are quantified to arrive at actual staffing levels.

RECOMMENDATION 20

To better allocate staffing resources based on the needs of each correctional institution, we recommend that the Ministry of the Solicitor General:

- improve its staff allocation process to consider factors that impact workload; and

- adjust the staffing levels in each institution to reflect the revised allocation.

MINISTRY RESPONSE

The Ministry agrees with this recommendation and acknowledges the value of assessing and allocating staff resources based on needs of correctional institutions. In July 2018, the Ministry began conducting research around staffing needs at institutions and is developing a staffing tool to better inform staffing allocations. The Ministry will review staffing allocation resources, including conducting a costing analysis to inform staffing deployment strategies or securing of new resources in an evidence-based manner.

8.2 Variations in Daily Cost per Inmate Not Analyzed, Potential Savings Unknown

In 2018/19, the daily operating cost per inmate in the province was $302 (see **Appendix 3**), compared with $166 at the time of our last audit of adult institutional services in 2008. Taking inflation into account, the daily cost per inmate in 2018/19 was $260 in 2008 dollars, which represents a 57% increase from 2008. Salaries and benefits for the 7,100 employees comprise 78% of the daily cost per inmate—the same proportion as in 2008.

We found that the daily cost per inmate varied widely across the province, from a high of $589 at Fort Frances Jail to a low of $186 at Kenora Jail. Detention centres ranged from $318 to $210, and correctional centres from $464 to $204. Among the three treatment centres, Ontario Correctional Institute and Algoma Treatment & Remand Centre were almost identical at $379 and $375 respectively. However, St. Lawrence Valley Correctional and Treatment Centre was significantly higher at $545. The Ministry does not analyze the differences, which would assist in determining best practices and potential cost savings.

RECOMMENDATION 21

To effectively manage operating costs, we recommend that the Ministry of the Solicitor General regularly analyze the reasons for the variations in daily cost per inmate and take the necessary corrective action where cost inefficiencies are identified.

MINISTRY RESPONSE

The Ministry agrees with this recommendation.

The Ministry analyzes variances to budget for institutions as part of monthly forecasting and has implemented processes to have consistent reporting and analysis on these variances across all institutions. The Ministry has not historically focused on calculating variations between institutions, as these are impacted by numerous factors such as physical layout of institution, staffing model, physical location impacts and number and type of inmates, as well as capacity. The Ministry acknowledges that there are opportunities to leverage the cost comparators across like institutions and will commence this analysis as part of its regular reporting.

9.0 Detailed Audit Observations: Lack of Information Hampers Decision-Making

9.1 Management Lacks Information to Evaluate Effectiveness of Institutional Programs and Services

Our audit found that management staff in the institutions and the Ministry do not have the information necessary for them to have an understanding of institutions' operations and make evidence-based decisions. This is despite the fact that almost all

inmate and staff movements within the institutions are recorded on a regular basis—as frequently as every 10 minutes—often in multiple paper-based reports and by numerous individuals.

9.1.1 Most Information Recorded Manually, Retained on Paper Due to Deficiencies in Existing Information Systems

Much of the information related to the custody and supervision of inmates—for example, health-care and social workers' notes, inmate complaints and requests, search records, and activity logs of inmates on suicide watch and in segregation units—is recorded on paper. This is because the Offender Tracking Information System (OTIS), the current information system used in all institutions, does not have the functionality to maintain the information.

First installed in 2001, OTIS contains only the following information about inmates:

- demographic information such as address, age, sex, race and religion;
- legal information such as previous and current offences and court dates; and
- basic incarceration data such as supervision alerts, unit placements, program attendance and misconducts.

Ministry staff informed us that health-care and social work information cannot be entered into OTIS because non-clinical staff (such as correctional officers) would then have access to the sensitive information. Nonetheless, there are no other information systems for health-care and social work staff to record such information electronically.

Manually recording information is not only onerous, but also presents a risk to the Ministry when such records are lost or transferred elsewhere for archiving. For example, in over one-third of the medical files we reviewed, there were gaps in health-care documentation of, for example, medical notes or diagnosis from consultations with external clinicians. The gaps in documentation ranged from three months to multiple years. As a result, we could not determine—and institutional staff could not confirm—whether inmates received the necessary health care during those periods. Ministry staff highlighted the risk of paper-based files in a 2019 draft business case for electronic medical records citing delays in treatment, duplication of efforts, inability to locate information, and incomplete or inaccurate records for legal proceedings. At the time of our audit, the Ministry was developing a business case to implement such a system. Since January 2014, 15 Coroners' inquests have recommended that the Ministry implement electronic medical records.

RECOMMENDATION 22

So that relevant information is collected and recorded electronically, we recommend that the Ministry of the Solicitor General:

- assess whether its existing information technology systems meet the operational needs of correctional institutions; and
- analyze the costs and benefits of various options, and seek the necessary approvals, to address gaps identified in the above assessment.

MINISTRY RESPONSE

The Ministry agrees with this recommendation and recognizes the need for digital, centrally accessible, analytics-capable platforms and systems. This is a key component of corrections reform and is being addressed through several initiatives, including the:

- continued implementation of the Data Collection, Analytics and Management Reform (DCAMR) system, which aggregates information in four key areas including: segregation, lockdowns, capacity and utilization, and human rights accommodations;
- future implementation of systems that will be used to manage information about movement of inmates and incidents in institutions; and

- acquisition of an Electronic Medical Records system that will digitize medical records.

The Ministry will continue with these digitization efforts that will enable performance monitoring, analysis and reporting.

9.1.2 Ministry Does Not Analyze Relevant Information to Identify Systemic Issues

Management staff in the institutions and the Ministry do not analyze information about institutional programs and services to identify systemic issues and areas where improvements are needed. This is because when staff do log information electronically, the logs do not contain all relevant information for meaningful analysis. For example, security staff in two of the institutions we visited recorded instances when any part of the institution was locked down and made a brief notation of the reason. However, there was no information about the duration of the lockdowns or the programs and services that were affected by such lockdowns.

As shown in **Appendix 14**, many of the issues we discuss in this audit were also raised by various internal and external review bodies between 2013 and 2018. In addition, at least half a dozen units across the Ministry log or manage much of the information that institutional staff collect through the various reports. Examples include the Statistical Analysis Unit, whose staff have the ability to produce various types of reports from OTIS, and the Information Management Unit, whose staff manage all information related to incidents, such as inmate-on-inmate and inmate-on-staff assaults.

These branches, and the results of internal and external reviews, can provide summary and detailed information that Ministry and institutional staff can review and analyze to ascertain trends and obtain a better understanding of institutions' operations. However, neither Ministry nor institutional management staff regularly request information from these branches to monitor institutions' operations and identify emerging trends and risks.

9.1.3 Ministry Has Not Established Goals for Its Operation of Correctional Institutions

Other than its target to reduce the reoffence rate for sentenced offenders, the Ministry has not established any other goals, targets or measures against which it can assess the operations of correctional institutions.

Every year, the Ministry tracks the recidivism rate, calculated as the percentage of inmates who are re-convicted within two years of serving a sentence of six months or more. The recidivism rate was 37% for both men and women who were released in 2015/16 (the most recent year for which recidivism is calculated). The rate has declined from 56% for men and 50% for women who were released in 2001/02. However, the recidivism rate only tracks outcomes for sentenced inmates, and only those who served sentences of six months or longer.

Our review of information we received from other jurisdictions found that most jurisdictions also only report demographic statistics that do not necessarily provide information about performance. Exceptions to this include British Columbia, which measures the recidivism rate for those who participated in programming (to assess the effectiveness of programming) and the number of positive body scan results versus the number of contraband found in institutions (to assess the effectiveness of the body scans in detecting contraband). In addition, the federal Correctional Service of Canada measures and publicly reports on 28 performance indicators including incident rates, misconduct rates, programming participation and completion rates, median days in segregation and percentage of inmates who receive follow-up checks on their mental health assessments. The Correctional Service of Canada has established targets for each indicator against which annual performance is measured.

RECOMMENDATION 23

So that superintendents in all institutions and the Ministry of the Solicitor General (Ministry) have the necessary information to evaluate the effectiveness of institutional programs and services, we recommend that the Ministry:

- establish goals for its operation of correctional institutions;
- develop measurable indicators both at the institutional and provincial levels, against which it can assess performance against such goals;
- regularly measure and publicly report on its performance against the indicators, targets and goals; and
- take action to improve performance when targets are not met.

MINISTRY RESPONSE

The Ministry agrees with this recommendation and concurs that increased use of available (and future) reports at both the Ministry and institutional level is essential for improving operations. The Ministry will:

- continue its efforts to digitizing information as discussed in **Recommendation 22**;
- establish goals and key performance indicators for the 2020/21 Multi-Year Planning cycle;
- track progress against these goals and indicators at the institutional and provincial levels, and take appropriate action when necessary; and
- publicly report on its performance against these indicators.

9.2 Ministry Plans to Use Direct Supervision Model in New Institutions without Evaluating if Model Is Effective in Controlling Inmate Behaviour

Both opened in 2014, the Ministry's two newest institutions—the Toronto South and South West detention centres—use the direct supervision model to supervise inmates. The Ministry intends to use this model in the new institution it plans to build by 2023 to replace the two Thunder Bay institutions. However, the Ministry has not evaluated the implementation of the model to determine whether it is achieving benefits such as less violence, and to identify areas where improvements are needed.

Our review of security footage in Toronto South and South West detention centres found that the direct supervision model has been implemented differently in the two institutions. We viewed one hour of security footage for each of the 30 direct supervision units in Toronto South and South West to determine whether unit rules were being enforced. We selected various days, including weekdays, weekends and holidays, and times in the morning, afternoon and evenings when inmates would be out of their cells and free to move around the units. We found the following:

- In three-quarters of the footage we reviewed at Toronto South, inmates were not following more than one unit rule. For example, in one unit, we observed seven rules being broken, including multiple inmates entering a cell not belonging to them, inmates covering the glass windows of the cells and inmates wearing head wraps. We did not see evidence of the officers enforcing such rules. As shown in **Appendix 7**, effective control and effective supervision are based on inmates complying with rules and officers managing inmate behaviour. These infractions are also of concern because they have direct impacts on officer and inmate safety. For example, an inmate

in Toronto South was seriously assaulted by another inmate who entered his cell. In comparison, we did not find any instances where multiple unit rules were not being followed at South West.

- According to policies at both institutions, officers must conduct security patrols of the units at least twice per hour and no longer than 30 minutes apart. In 40% of the sample of footage we reviewed at Toronto South, the officers conducted security patrols of the unit either only once (30%) or not at all (10%) in the one-hour period we reviewed. In cases where officers patrolled the unit, they conducted only quick visual inspection of cells from outside the cell. The patrols, on average, lasted about two minutes. In comparison, officers conducted security patrols in accordance with policies in all the footage we reviewed at South West.

We also noted that, contrary to one of the primary principles of direct supervision, officers did not move around the living unit to interact with the inmates in two-thirds of the sample of footage we reviewed in both institutions.

According to the US National Institute of Corrections, effective supervision relies on extensive personal interaction between staff and inmates. In recognition of this, policies specific to the direct-supervision units at both facilities require that officers continuously move around the unit while interacting with inmates. We found, instead, that the officers primarily stayed at the officers' station and interacted with each other. In those cases, all interactions were initiated by inmates when they approached the officers' station.

RECOMMENDATION 24

So that the current and future implementations of the direct supervision model achieve the intended benefits of the model, we recommend that the Ministry of the Solicitor General:

- review the implementation of the direct supervision model in Toronto South Detention Centre and South West Detention Centre to identify areas where improvements are needed to align with the principles of the model;
- incorporate lessons learned from this review in future implementations;
- develop measurable indicators (for example, decrease in violent incidents) and targets against which it can assess the effectiveness of the direct supervision model; and
- regularly assess its performance against the above targets, and take action to improve performance when targets are not met.

MINISTRY RESPONSE

The Ministry agrees with this recommendation and the value of reviewing the direct supervision model at South West and Toronto South detention centres so that strategies can be considered for current facilities and future site implementations.

The Ministry will analyze the direct supervision model at South West and Toronto South detention centres to identify any gaps and develop an approach to optimize the model at current and future sites.

The Ministry will explore options for developing evidence-based measurable indicators for the direct supervision model, and track progress against such indicators.

9.3 Design and Maintenance of Institutions under Alternative Financing Procurement Arrangements Not Sufficiently Monitored

The Toronto South and South West detention centres were designed, built and are maintained under an Alternative Financing Procurement (AFP) arrangement. Under this arrangement, the Ministry

contracted with a group of private-sector companies to design, build, finance and maintain the facilities. The Ministry plans to use the same AFP arrangement for the new institution that will replace the two Thunder Bay facilities, as well as the replacement for the Ottawa-Carleton Detention Centre. The following sections highlight the issues we noted with the AFP arrangement at Toronto South.

9.3.1 Design Flaws May Have Contributed to $11 Million in Variations

The Ministry has paid a total of $25 million for over 200 projects outside the scope of the AFP design/build contract since the design was finalized in February 2011. We identified a number of these projects, costing approximately $11 million (or 44% of the total payments), which could reasonably be attributed to design flaws. That is, the changes could have reasonably been expected to be incorporated in the initial design. For example, the Ministry paid for the following:

- $7.9 million to install barriers in the upper level of each direct-supervision unit to prevent falls; and
- $3.1 million to apply security glazing to the glass windows in the inmate living units. According to Toronto South staff, this was done in order to prevent inmates in opposite units from communicating with each other.

We noted that upon substantial completion of the facility, a third-party firm confirmed that the facility was constructed in compliance with the design specifications. Therefore, the above changes were not the result of construction defects.

RECOMMENDATION 25

To avoid additional costs from design changes to correctional institutions constructed using the Alternative Financing Procurement method, we recommend that the Ministry of the Solicitor General work with Infrastructure Ontario to ensure that relevant staff from all aspects of the correctional institution's operations and their local union representatives be consulted during the design and construction phase to identify and correct design flaws earlier in the process.

MINISTRY RESPONSE

The Ministry agrees with the intent of this recommendation and will work with Infrastructure Ontario to engage relevant staff during the design and construction phase to identify and correct any design flaws earlier in the process. The Ministry has conducted several lessons-learned sessions by engaging these groups to understand and learn from their experiences.

9.3.2 Maintenance Provider's Performance Not Monitored

According to the AFP agreement, Infrastructure Ontario (the agency responsible for overseeing AFP arrangements across the government), the Ministry's corporate office and Toronto South Detention Centre management are all involved in overseeing maintenance work. We found, however, that oversight by Ministry and Toronto South staff of the maintenance activities has been inadequate to ensure that routine maintenance work is carried out and that the private contractor responds to service requests in a timely manner.

The Ministry pays the private contractor an average of $31.7 million in annual service payments to cover costs related to the principal repayment, interest, capital rehabilitation, facility maintenance and management fees to Infrastructure Ontario.

The maintenance contract lists 78 indicators against which the private contractor's performance is to be measured. The contract also stipulates that deductions may be made from the monthly payments based on these performance indicators. The Ontario Internal Audit Division (Audit Division) noted in its 2019 review of the Toronto South maintenance contract that "many of the indicators are not actual performance measures but rather

Figure 15: Select Performance Indicators in Toronto South Detention Centre Maintenance Agreement

Source of data: Ministry of the Solicitor General

Periodic Reporting
Every six months, the private-sector partner will provide the Ministry of the Solicitor General Representative or designate with a report detailing where non-adherence has been identified.
The private-sector partner shall prepare a Performance Monitoring Report and deliver it to the Ministry of the Solicitor General within five business days after the end of each month.
The private-sector partner shall provide the Five Year Maintenance Plan and detailed Scheduled Maintenance Plan as required.
Provision of Maintenance Services
A minimum of 85% of Scheduled Maintenance is completed within the planned month and any deferred Scheduled Maintenance is completed within the following month and associated records are provided to the Ministry of the Solicitor General.
All urgent requests for corrective maintenance are responded to within 15 minutes and rectified within two hours.
All critical requests for corrective maintenance are responded to within 30 minutes and rectified within four hours.
All routine requests for corrective maintenance are responded to within two hours and rectified within 24 hours to four days.
The private-sector partner shall provide life-cycle replacement services for all types of applicable equipment in accordance with the Lifecycle Replacement Plan.

generalized requirements." As a result, assessing the private contractor's performance against many of the indicators may be challenging or not possible.

We asked Infrastructure Ontario staff whether the private contractor was meeting a sample of the measurable performance indicators (see **Figure 15**). The staff could not provide us with the information, so it is unclear to us whether Infrastructure Ontario or Ministry staff are monitoring the private contractor's performance against these indicators.

9.3.3 Little Incentive for Maintenance Provider to Meet Service Obligations

We noted that there was little incentive for the on-site maintenance provider to adhere to the service requirements in the AFP contract. In 2018, monthly reports submitted by the private contractor stated that there were a total of 57 service failures (that is, the time it took the private contractor to respond to and rectify service requests exceeded the required time frame) throughout the year. These service failures resulted in deductions of only $16,500, or less than 1% of the $24 million annual service fees. We reviewed the maintenance agreement and noted the following:

- The agreement allows the maintenance provider additional time "equivalent to the original response or rectification time" to respond and/or rectify the issue in cases of temporary repair requests. There are no deductions to the monthly payments if the maintenance provider remedies the failure before the extension expired.
- The deduction amounts were minimal considering that delays in completing repairs have significant impacts on security and operations of the institution. For example, it took the maintenance provider 15 days to repair the glass window in one cell. All inmates in the unit were locked down the entire time, which means they had limited access to programs and services. Another example occurred on two separate occasions in June 2018 when the on-site service provider took four days each to repair the security cameras. Total deductions for both service failures amounted to about $6,000 (or less than 1% of the monthly service payment of $2 million).
- The total deductions that can be made from the monthly service payments due to minor and medium service failures are limited to

0.5% of the monthly service payments, or about $10,000 per month.

- The private contractor's failure to monitor or accurately report a service failure is considered a minor failure with only a $10 deduction per failure.

RECOMMENDATION 26

To ensure that correctional institutions constructed using the Alternative Financing Procurement method are maintained, where applicable, in accordance with the maintenance agreement, we recommend that the Ministry of the Solicitor General work with Infrastructure Ontario to:

- include clear and measurable performance indicators in the maintenance agreement;
- regularly monitor the private contractor's performance against such indicators; and
- include clear and progressive penalties and deductions if the private contractor partner continually fails to meet service requirements.

MINISTRY RESPONSE

The Ministry agrees with this recommendation and will work with Infrastructure Ontario to establish clear performance measures and indicators, structure regular monitoring of the contractor's performance and review the penalty schedule for service failures.

Appendix 1: Significant Issues in the Eight Institutions Visited

Prepared by the Office of the Auditor General of Ontario

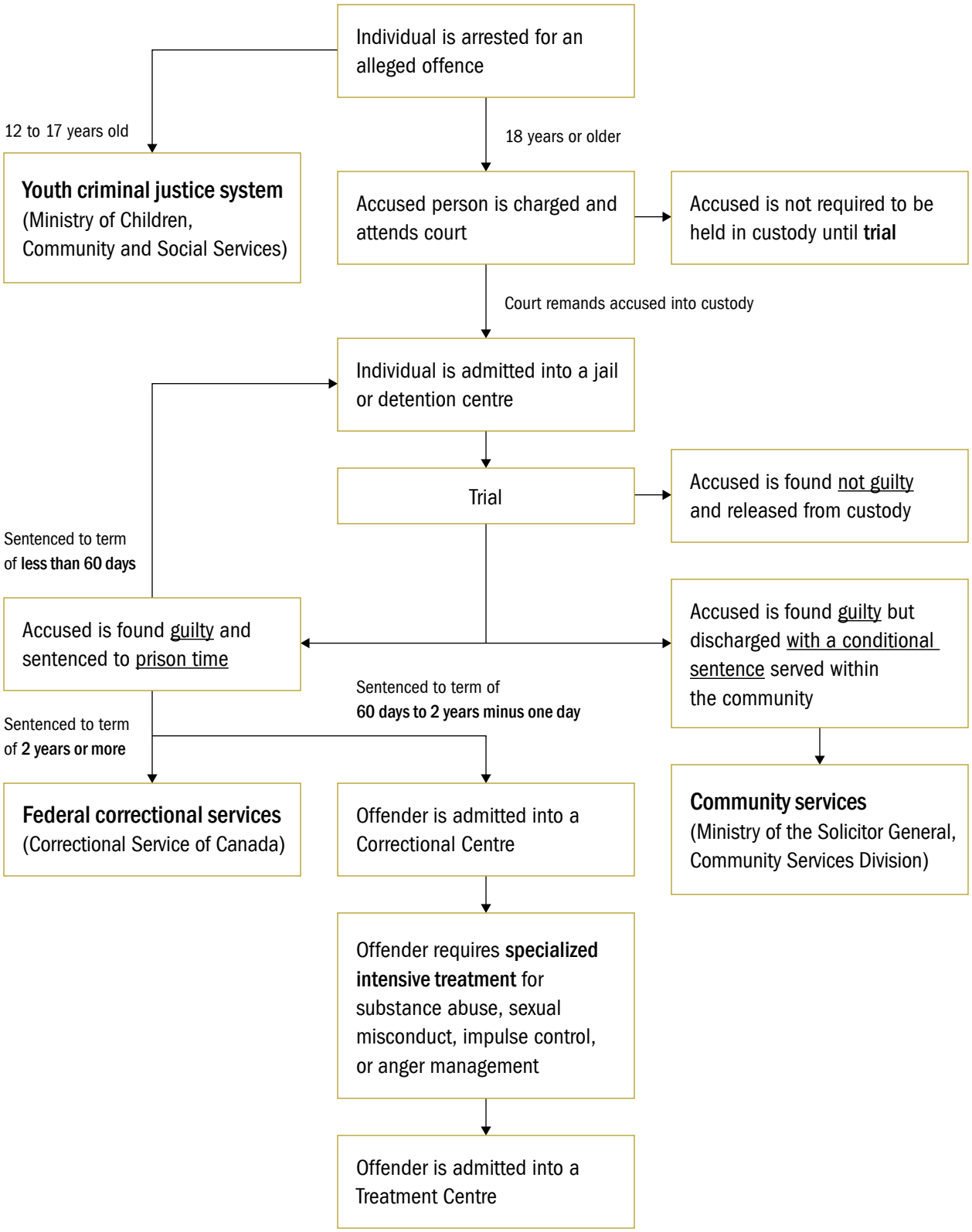
Issue	Brockville Jail[1]	Central East Correctional Centre[2]	South West Detention Centre[1]	St. Lawrence Valley Treatment Centre[1]	Thunder Bay Correctional Centre[2]	Thunder Bay Jail[1]	Toronto South Detention Centre[2]	Vanier Centre for Women[1]
Absenteeism has resulted in high overtime costs		✓	✓				✓	✓
Evaluation of staff performance not completed		✓	✓				✓	✓
Frontline staff do not have necessary training and information to effectively manage inmates with specialized needs	✓	✓	✓	n/a[4]	✓	✓	✓	✓
Inmate misconducts not dealt with consistently[3]		✓			✓		✓	
Inmates on remand do not always receive necessary information about community supports	✓	✓	✓	n/a[4]	✓	✓	✓	✓
Inmates with mental health and related issues may be placed in segregation units	✓	✓	✓			✓	✓	✓
Insufficient efforts to deliver programming to remanded inmates	✓	✓	✓	n/a[4]	✓	✓	✓	✓
Lack of security screening for staff and their properties	✓	✓	✓	✓	✓	✓	✓	✓
Management does not regularly assess risk of violence	✓	✓	✓	✓	✓	✓	✓	✓
More inmates with possible mental health issues are incarcerated than in 2000	✓	✓	✓	n/a[4]	✓	✓	✓	✓

Issue	Brockville Jail[1]	Central East Correctional Centre[2]	South West Detention Centre[1]	St. Lawrence Valley Treatment Centre[1]	Thunder Bay Correctional Centre[2]	Thunder Bay Jail[1]	Toronto South Detention Centre[2]	Vanier Centre for Women[1]
More remanded than sentenced inmates in custody	✓	✓	✓	n/a[4]		✓	✓	✓
Most information is recorded manually and retained on paper	✓	✓	✓	✓	✓	✓	✓	✓
Limited information on sources and extent of contraband	✓	✓	✓	✓	✓	✓	✓	✓
Overcrowded correctional institutions, operating at over 85% occupancy rate	✓		✓	✓		✓	✓	
Recruitment files do not always support promotions[3]		✓			✓		✓	
Staff do not analyze relevant information to identify systemic issues	✓	✓	✓	✓	✓	✓	✓	✓
Staff do not receive appropriate training and mentorship	✓	✓	✓	✓	✓	✓	✓	
Staffing levels at institutions not always proportionate to factors that drive workload	✓	✓	✓	✓	✓	✓	✓	✓
Violent incidents have increased since 2014	✓	✓	✓	✓	✓	✓	✓	✓

1. Audit work in these institutions included tours of the facilities, interviews with staff in various areas of operations, interviews with inmates, and analysis of available financial, staffing, incident and other operational information.
2. Audit work in these institutions included reviews of a sample of inmate files and health records, employee files (including those related to recruitment, accommodation arrangements, and disciplinary actions) and incident investigations in addition to work done in footnote 1.
3. These issues are based on a detailed review of a sample of the files described in footnote 2.
4. These issues are not applicable to St. Lawrence Valley Correctional and Treatment Centre, because only sentenced inmates with major mental illnesses are admitted to it and its front-line staff are nurses instead of correctional officers.

Appendix 2: General Pathway of an Accused Person through the Correctional System

Prepared by the Office of the Auditor General of Ontario



Appendix 3: Key Information about Correctional Institutions in Ontario

Source of data: Ministry of the Solicitor General

	Male/ Female/ Both	Age of Facility[1]	Average Daily # of Open Beds[2,3]	Average Daily # of Inmates in Custody[2,4]	Average Daily Occupancy Rate[2,5] (%)	# of Correctional Officers[1]	Daily Cost per Inmate[2] ($)
Jails (8)							
Fort Frances	Both	110	22	16	74	16	589
Brockville	Male	176	48	46	97	54	548
North Bay	Both	89	100	74	74	57	318
Sudbury	Both	90	169	124	73	90	315
Sarnia	Both	57	77	72	93	54	308
Stratford	Male	117	50	42	84	30	264
Thunder Bay	Male	90	140	148	106	60	220
Kenora	Both	89	157	168	107	60	186
Detention Centres (8)							
South West	Both	5	282	264	94	208	318
Elgin-Middlesex	Both	41	426	379	89	270	287
Toronto East	Male	41	369	327	89	206	281
Toronto South	Male	6	1,244	1,107	89	817	277
Ottawa-Carleton	Both	46	519	443	85	281	267
Niagara	Male	45	226	198	88	117	253
Quinte	Both	48	229	228	100	131	230
Hamilton-Wentworth	Both	40	511	473	92	235	210
Correctional Centres (6)							
Thunder Bay[6]	Both	53	124	75	61	72	464
Vanier Centre for Women[7]	Female	17	246	204	83	217	424
Monteith[8]	Both	58	164	110	67	80	397
Central North[8]	Both	17	1,020	697	68	319	226
Maplehurst[7]	Male	42	914	913	100	440	213
Central East[8]	Both	17	1,088	898	83	378	204

	Male/ Female/ Both	Age of Facility[1]	Average Daily # of Open Beds[2,3]	Average Daily # of Inmates in Custody[2,4]	Average Daily Occupancy Rate[2,5] (%)	# of Correctional Officers[1]	Daily Cost per Inmate[2] ($)
Treatment Centres (3)							
St. Lawrence Valley Treatment Centre[8]	Male	15	100	99	99	31	545
Ontario Correctional Institute[6]	Male	45	176	126	72	101	379
Algoma Treatment & Remand Centre[7]	Both	28	135	128	94	104	375
Province			**8,705[9]**	**7,445[9]**	**86**	**4,428**	**302**

1. Figures are as of May 31, 2019.
2. Figures are for the 2018/19 fiscal year.
3. Calculated as the sum of open beds per day throughout the year divided by 365.
4. Calculated as the sum of days stayed for all inmates throughout the year divided by 365.
5. Calculated as the number in note 4 divided by the number in note 3.
6. Medium security facilities.
7. Combination of medium and maximum security facilities.
8. Maximum security facilities.
9. Includes those serving sentences intermittently (typically on weekends).

Appendix 4: Select Rules from the *United Nations Standard Minimum Rules for the Treatment of Inmates* (the Nelson Mandela Rules), December 2015

Source of data: *United Nations Standard Minimum Rules for the Treatment of Inmates*

There are 122 rules, which are based on international standards pertaining to the treatment of inmates developed since 1955. The rules set out what is generally accepted as being good principles and practices in the treatment of inmates and prison management. Based on basic principles of human rights, they differentiate the rights of remanded inmates, sentenced inmates and inmates with mental illness.

Rules That Apply to All Categories of Inmates
Basic Principles
• The safety and security of inmates, staff, service providers and visitors shall be ensured at all times. • No inmate shall be subjected to torture and other cruel, inhumane or degrading treatment or punishments. • Prison administrators shall take into account the individual needs of inmates, in particular the most vulnerable categories. Measures to protect and promote the rights of inmates with special needs are required. • The purposes of imprisonment are primarily to protect society against crime and to reduce recidivism, which can be achieved only if the period of imprisonment is used to ensure the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life. To this end, education, vocational training and work, as well as other forms of assistance that are appropriate and available, should be offered.
File Management
• There shall be a standardized inmate file management system to maintain information related to, for example, reasons for incarceration, court hearings, family members and emergency contacts, requests, complaints, behaviour and disciplinary sanctions for each inmate. • Information in the file management system shall be used to generate reliable data about trends relating to and characteristics of the prison population, including occupancy rates, in order to create a basis for evidence-based decision-making.
Separation of Categories
• The different categories of inmates shall be kept in separate institutions or parts of institutions, taking account of their sex, age, criminal record, legal reason for their detention and treatment needs.
Accommodation
• Where sleeping accommodation is in individual cells or rooms, each inmate shall occupy a cell or room by himself or herself. It is not desirable to have two inmates in a cell or room. • Where dormitories are used, they shall be occupied by inmates carefully selected as being suitable to associate with each other in those conditions. • Sleeping areas shall meet all requirements of health, due regard being paid to climatic conditions, minimum floor space, lighting, heating and ventilation. • In all places where inmates are required to live or work, the windows shall be large enough to enable the inmates to read or work by natural light and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation. • All parts of a prison regularly used by inmates shall be properly maintained and kept scrupulously clean at all times.
Exercise and Sport
• Inmates who are not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

Health-Care Services

- Inmates should enjoy the same standards of health care that are available in the community.
- Every prison shall have in place an interdisciplinary health-care team tasked with evaluating, promoting and improving the physical and mental health of inmates, paying particular attention to inmates with special health-care needs or with health issues that hamper their rehabilitation. The team shall have sufficient expertise in psychology and psychiatry.
- The health-care team shall prepare and maintain accurate, up-to-date and confidential individual medical files on all inmates.
- A physician or other qualified health-care professionals, whether or not they are required to report to the physician, shall see, talk with and examine every inmate as soon as possible following his or her admission and thereafter as necessary. Particular attention shall be paid to identifying health-care needs and treatment, and signs of psychological or other stress including risk of suicide or withdrawal symptoms from drug or alcohol use.
- The physician or public health body shall regularly inspect and advise the prison director on the quantity and quality of food services, cleanliness of the institution and inmates, and the sanitation, temperature, lighting and ventilation of the prison.

Restrictions, Discipline and Sanctions

- Prison administrators are encouraged to use, to the extent possible, conflict prevention, mediation or any other alternative dispute resolution mechanism to prevent disciplinary offences or resolve conflicts.
- For inmates who are, or have been, separated, prison administrators shall take the necessary measures to alleviate the potential detrimental effects of their confinement on them and on their community following their release from prison.
- Prison administrators shall ensure proportionality between a disciplinary sanction and the offence for which it is established.
- Before imposing disciplinary sanctions, prison administrators shall consider whether and how an inmate's mental illness or developmental disability may have contributed to his or her conduct and the commission of the offence or act underlying the disciplinary charge. Prison administrators shall not sanction any conduct of an inmate that is considered to be the direct result of his or her mental illness or intellectual disability.
- General living conditions addressed in these rules, including those related to light, ventilation, temperature, sanitation, nutrition, drinking water, access to open air and physical exercise, personal hygiene, health care and adequate personal space, shall apply to all inmates without exception.
- In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhumane or degrading treatment and punishment. Indefinite or prolonged solitary confinement shall be prohibited.
- Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible. The imposition of solitary confinement should be prohibited in the case of inmates with mental or physical disabilities when their conditions would be exacerbated by such measures.

Searches of Inmates and Cells

- Searches shall be conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched, as well as the principles of proportionality, legality and necessity.
- For the purpose of accountability, prison administrators shall keep appropriate records of searches, in particular strip and body cavity searches and searches of cells, as well as the reasons for the searches, the identities of those who conducted them and any results for the searches.

Information to and Complaints by Inmates

- Upon admission, every inmate shall be promptly provided with information about applicable prison rules and his or her rights and obligations.
- Every inmate shall have the opportunity to make requests or complaints to prison staff, the prison director, or the central prison administrator. Safeguards shall be in place to ensure that inmates can make requests or complaints safely and in a confidential manner.
- Every request shall be promptly dealt with and replied to without delay.

Contact with the Outside World

- Inmates shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals through written correspondence and visits.
- Inmates shall be allocated, to the extent possible, to prisons close to their homes or their places of social rehabilitation.

Institutional Personnel

- Prison administrators shall provide for the careful selection of every grade of the personnel. Personnel shall be appointed on a full-time basis. Salaries shall be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favourable in view of the exacting nature of the work.
- All prison staff shall possess an adequate standard of education and shall be given the ability and means to carry out their duties in a professional manner.
- Before entering on duty, all prison staff shall be provided with training tailored to their general and specific duties. Prison administrators shall ensure the continuous provision of training courses. Training shall include, at a minimum, those related to:
  - relevant legislation and policies;
  - rights and duties of prison staff;
  - security and safety, including the use of force and restraints, and management of violent offenders, with due consideration of preventive and defusing techniques; and
  - first aid and the psychosocial needs of inmates, including early detection of mental health issues.
- Prison staff who are in charge of working with certain categories of inmates, or who are assigned other specialized functions, shall receive training that has a corresponding focus.
- Prison staff shall include a sufficient number of specialists such as psychiatrists, psychologists, social workers, teachers and trade instructors, whose services are secured on a permanent basis.
- The prison director should be adequately qualified for his or her task by character, administrative ability, suitable training and experience.
- Prison staff shall not use force except in self-defence or in cases of attempted escape, or active or passive resistance to an order based on law or regulations.
- Prison staff shall be given special physical training to enable them to restrain aggressive inmates.

Internal and External Inspections

- Inspections shall be conducted by the central prison administrator and independent bodies with the objective of ensuring that prisons are managed in accordance with existing laws, regulations, policies and procedures.
- Every inspection shall be followed by a written report. Prison administrators shall indicate, within a reasonable time, whether they will implement the recommendations resulting from the inspection.

Rules Applicable to Special Categories of Inmates

Sentenced Inmates

- It is desirable that the number of inmates in closed prisons should not be so large that the individualization of treatment is hindered. On the other hand, it is undesirable to maintain prisons that are so small that proper facilities cannot be provided.

Inmates with Mental Disabilities and/or Health Conditions

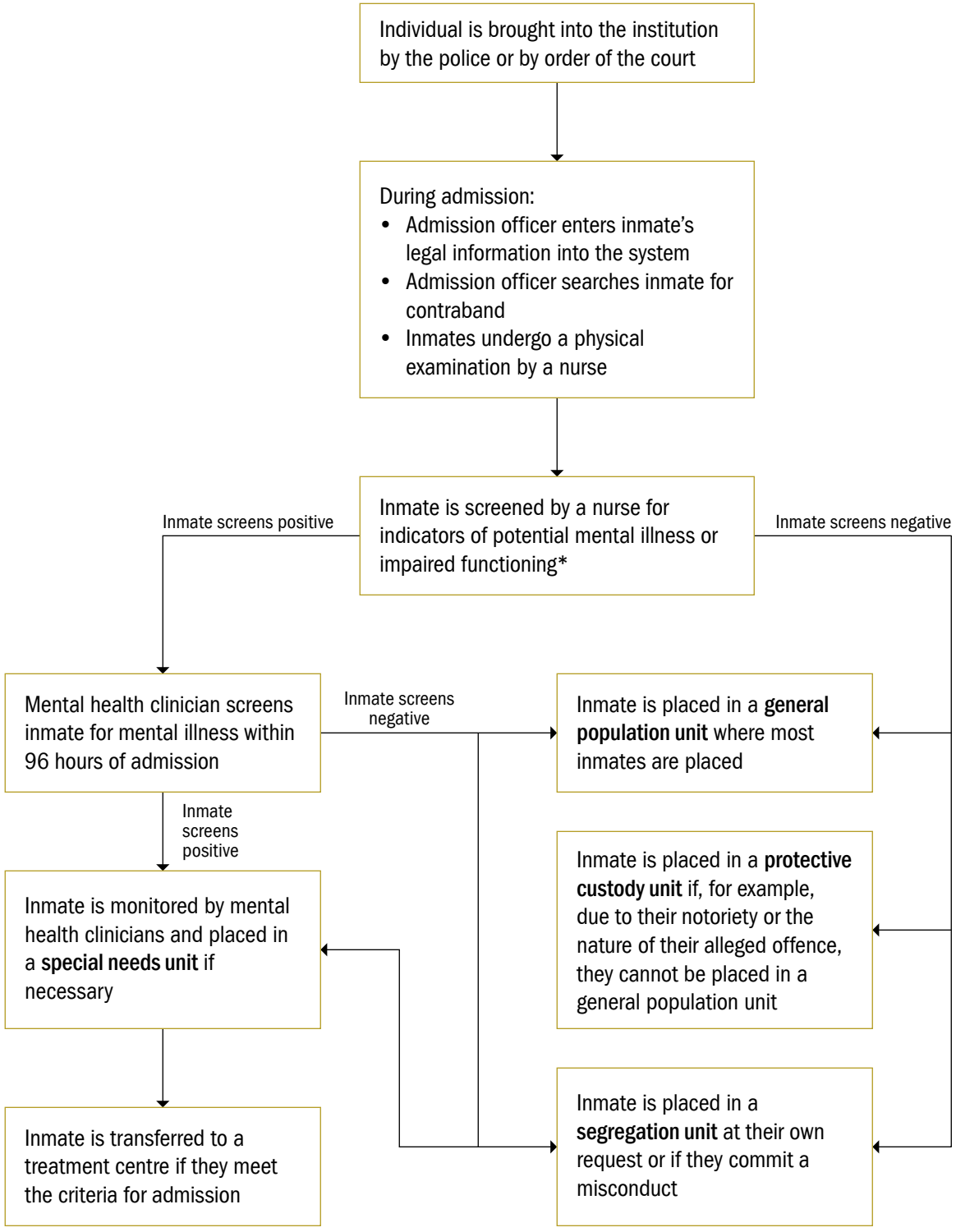
- Persons who are diagnosed with severe mental disabilities and/or health conditions, for whom staying in prison would mean an exacerbation of their condition, shall not be detained in prisons, and arrangements shall be made to transfer them to mental health facilities as soon as possible.
- If necessary, other inmates with mental disabilities and/or health conditions can be observed and treated in specialized facilities under the supervision of qualified health-care professionals.

Inmates under Arrest or Awaiting Trial (Remanded Inmates)

- Remanded inmates are presumed to be innocent and shall be treated as such.
- Remanded inmates shall be kept separate from convicted inmates and shall sleep singly in separate rooms
- Remanded inmates shall always be offered the opportunity to work, but shall not be required to work. If he or she chooses to work, he or she shall be paid for it.

Appendix 5: General Pathway for Inmates While in Custody

Prepared by the Office of the Auditor General of Ontario



* Impaired functioning includes, for example, confused speech, unusual and bizarre behaviour, confusion regarding person, place or time and inability to relate emotionally during screening.

Appendix 6: Rehabilitative Programs That Target Factors Likely to Contribute to Criminal Behaviour

Source of data: Ministry of the Solicitor General

	Introductory[1]	Intensive[2]	Treatment[3]
Anger Management	• **Length of program:** Five 1.5-hour sessions • **Content:** While exploring the cycle of anger and the impact on others, inmates are taught communication skills, how to cope with anger, and the role of substance use in expression of anger, and to develop problem-solving and assertiveness skills with a focus on relapse prevention.	• **Length of program:** 20 to 40 1.5-hour sessions • **Target inmates:** In an open and supportive group, inmates discuss their anger as they explore problem solving, substance abuse, and negative relationships and thinking as they complete a personal relapse prevention plan.	Available at the Algoma Treatment & Remand Centre and St. Lawrence Valley Correctional and Treatment Centre
Anti-Criminal Thinking	• **Length of program:** Five 1.5-hour sessions • **Content:** Examines the offence cycle to better understand behaviour. With a focus on goal-setting and problem-solving skills, inmates learn the role of perception in creating thoughts and effective coping skills.	Not available	Available at Ontario Correctional Institute and St. Lawrence Valley Correctional and Treatment Centre
Domestic Violence	• **Length of program:** Six 1.5-hour sessions • **Content:** Inmates are taught tools to learn alternatives to abusive behaviour, focusing on healthy and unhealthy relationships. Effective coping strategies are discussed as well as identification of risk factors, the role of anger and substance use.	• **Length of program:** 2- to 2.5-hour sessions bi-weekly or monthly • **Content:** Builds on the gains made in the introductory program and other domestic violence programming.	Available at the Algoma Treatment & Remand Centre and St. Lawrence Valley Correctional and Treatment Centre
Sexual Offending	• **Length of program:** 10 to 20 sessions of 1 to 1.5 hours each • **Content:** Provides an understanding of the sexual offending process using a case study and videos to explore how a sexual offence occurs, alternative behaviours and effective coping strategies.	• **Length of program:** 8 to 16 sessions of 2 to 2.5 hours each • **Content:** Building on the introductory program, inmates discuss healthy lifestyle choices, self-management and effective coping as they personalize the offence cycle.	Available at the Ontario Correctional Institute and St. Lawrence Valley Correctional and Treatment Centre
Substance Abuse	• **Length of program:** Five 1.5-hour sessions • **Content:** Explores substance use patterns and triggers as well as the thinking that supports substance use. Problem-solving skills, coping strategies and assertiveness skills are taught as inmates develop personal relapse prevention plans.	• **Length of program:** 20 to 40 sessions of 2 hours each • **Content:** In an open and supportive group, inmates examine their substance use to develop a relapse prevention plan. Discussions explore other areas including problem solving, anger management and negative relationships.	Available at the Algoma Treatment and Remand Centre, Ontario Correctional Institute and St. Lawrence Valley Correctional and Treatment Centre

1. Introductory-level programming is designed to educate and motivate. May be delivered in jails, detention centres and correctional centres.
2. Intensive-level programming provides more self-reflection. May be delivered in jails, detention centres and correctional centres.
3. Treatment-level programs are those offered only at one or more of the three treatment centres: Algoma Treatment & Remand Centre, Ontario Correctional Institute and St. Lawrence Valley Correctional and Treatment Centre.

Appendix 7: Nine Principles of the Direct Supervision Model

Source of data: Ministry of the Solicitor General

1. Effective Control

- The unit officer firmly establishes their authority over the inmate units.
- Inmates who do not comply will be placed in segregation or indirect units.
- The inmate population is divided into manageable groups.
- Inmates are treated as individuals and with respect, and are expected to act accordingly.
- The facility remains rated maximum security with a secure perimeter.

2. Effective Supervision

- The unit officer manages inmate behaviour based on generally accepted behaviour management techniques.
- The unit officer maintains a leadership role with sufficient authority commensurate with their responsibilities.

3. Competent Staff

- Recruit competent staff who are able to relate effectively to people, can learn the required skills and have leadership potential.
- Each officer requires training in the history, philosophy and principles of direct supervision as well as effective supervision, leadership and interpersonal communications.
- Management must also demonstrate effective leadership.

4. Safety of Staff and Inmates

- Direct supervision facilities have less inmate-on-inmate violence, fewer assaults on staff, fires and disturbances than non-direct institutions.

5. Manageable and Cost-Effective Operations

- Less vandalism and graffiti result in lower maintenance costs.
- The reduction in vandal-proof furnishings and fixtures is a major contributor to lower construction costs.

6. Effective Communication

- Communication between staff and inmates should occur frequently.
- Communication among staff members is also necessary, and all staff should be thoroughly trained in interpersonal communication skills.

7. Classification and Orientation

- Inmates are informed on admission of what is expected of them.
- An objective classification system on admission is imperative to place the inmate on the correct unit as direct supervision may not be appropriate for all inmates.

8. Justice and Fairness

- Management and staff actions must not only be fair, firm and consistent, but they must also be perceived by inmates as being just and fair.

9. Ownership of Operations

- Support from senior management and front-line supervisors must be committed to the concept and demonstrate this.
- Staff involvement in planning the direct supervision process, supported by orientation and training, will contribute to the success of the direct supervision facility.

Appendix 8: Audit Criteria

Prepared by the Office of the Auditor General of Ontario

1.	Services and relevant programs are delivered consistently across similar facilities, in line with legislative requirements and best practices such that inmates receive appropriate services and programs in accordance with their needs and to assist them in successful adjustment in the community.
2.	The Ministry of the Solicitor General (Ministry) collects timely, accurate and complete information about inmates, staff and institutional programs and services to appropriately inform the design and delivery of programs and services. Management information systems are effective in maintaining this information for decision-making.
3.	There are sufficient institution staff with appropriate training and resources to safely and effectively supervise the detention and release of inmates.
4.	Processes are in place to ensure that facilities and resources, including financial and human, are acquired and managed economically and efficiently to meet the Ministry's mandate.
5.	Effective oversight processes are in place to ensure that institutional services are delivered in compliance with legislative and policy requirements, to identify systemic issues and facilitate corrective action.
6.	Meaningful performance measures and targets are established, monitored and compared against actual results and publicly reported on, and corrective actions are taken on a timely basis when issues are identified, to ensure that intended outcomes are achieved.

Appendix 9: Additional Work Done to Perform the Audit

Prepared by the Office of the Auditor General of Ontario

During our audit, in addition to activities described in **Section 3.0**, we did the following:

- Performed detailed work in three institutions (Toronto South Detention Centre, Central East Correctional Centre and Thunder Bay Correctional Centre), including:
  - tour of the facilities;
  - interviews with staff and inmates;
  - analysis of financial, staffing, incident and other operational information; and
  - reviews of a sample of inmate files and health records, employee files (including those related to recruitment, accommodation arrangements, and disciplinary actions) and incident investigations.
- Visited five other institutions (Brockville Jail, South West Detention Centre, St. Lawrence Valley Treatment and Correctional Centre, Thunder Bay District Jail and Vanier Centre for Women), where we toured the facilities, interviewed frontline staff in various areas of operations, interviewed inmates, and analyzed financial, staffing, incident and other operational information.
- Surveyed the 17 correctional institutions we did not visit and received responses from all of them about various aspects of their operations (see **Appendix 12** for results).
- Met with and/or obtained information from staff in the corporate and regional offices to obtain an understanding of their roles and responsibilities.
- Visited the Corrections Services Recruitment and Training Centre in Hamilton to observe the administration of behavioural, cognitive and personality tests for correctional officer applicants as well as the delivery of initial training.
- Reviewed relevant reports from external parties, such as the Ombudsman of Ontario, Human Rights Tribunal of Ontario and Office of the Chief Coroner of Ontario.
- Analyzed information from other ministries, such as the Ministry of Government and Consumer Services, and Infrastructure Ontario.
- Obtained information from ministries in other jurisdictions in Canada.
- Interviewed external stakeholders such as the Canadian Association of Elizabeth Fry Societies, John Howard Society, the Centre for Addiction and Mental Health, and the Royal Ottawa Health Group.
- Reviewed the *Standard Minimum Rules for the Treatment of Prisoners*, also known as the Nelson Mandela Rules, for best practices in managing correctional institutions.

Appendix 10: Description of Admission Requirements and Treatment Programs at the Three Treatment Centres in Ontario

Source of data: Ministry of the Solicitor General

	Types of Inmates	Admission Requirements	Treatment Programs
Algoma Treatment & Remand Centre	Sentenced male and female inmates	• Minimum sentence of nine months for men and five months for women • Current and/or violent offences • Evidence of spousal abuse • Evidence of substance abuse problems • Be assessed as high risk for recidivism • Be classified as medium security risk • Consent to postpone any attempts at parole until treatment is completed	Domestic Violence Program (20-week group program for men) Life without Violence (20-week group program for men) New Directions (Continuous group program for women)
Ontario Correctional Institute	Sentenced male inmates	• Sexual offenders • Be assessed as at least medium risk for recidivism for non-sex offenders • At least nine months remaining in current sentence • No appeal of current conviction(s) at time of application • No serious misconduct at the time of application • Significantly impaired intellectual functioning • Specialized treatment needed to stabilize **acute** mental illness or other conditions. If have **severe** psychiatric/ mental health issues, must be stabilized at time of application • Not currently on suicide watch • Willing to participate in "group treatment" programming	Core Programs – 12 sessions (intervention program) Pro-Social Thinking – 12 sessions (history of repeated criminal offending) Emotion Regulation – 12 sessions (unhealthy coping strategies) Freedom from Substance Abuse – 12 sessions Individual Therapy and Consultations Sexual Offender Relapse Prevention – 10 sessions Stop Offending Sexually (number of sessions unknown) Trauma and Substance Abuse – 12 sessions
St. Lawrence Valley Correctional and Treatment Centre	Sentenced male inmates	• Suspected of having a major mental illness, and require assessment and treatment • History of psychiatric issues, and suicide ideation/attempts • Meet criteria for diagnosis under Diagnostic and Statistical Manual of Mental Disorders and require assessment and treatment • Current or past offences are sexual in nature where there is a co-existing major mental illness diagnosed or suspected	Controlling Anger and Learning to Manage It (CALM) – 24 sessions Dialectical Behaviour Therapy for Post-Traumatic Stress Disorder – 26 sessions Reasoning and Rehabilitation – 14 sessions Self-Regulation for Sexual Offending – up to 32 sessions Substance Abuse Program: A Stages of Change Therapy Manual – 24 sessions The Stop Domestic Violence Program (STOP) – 7-8 sesisons

Appendix 11: Life Skills Programs Targeted toward Remanded Inmates

Source of data: Ministry of the Solicitor General

Session	Target Group	Description
Anger Management	Men and Women	What is anger, how someone becomes angry and what someone can do to better manage anger.
Being an Effective Father	Men	Qualities of an effective parent and the factors affecting effectiveness of parenting.
Changing Habits	Men and Women	How to identify habits and determine if they are helpful or harmful, plus how to make changes.
Coping with the Impact of Trauma	Women	Provide an understanding of the impact of trauma and gain some self-management skills in order to increase their sense of control.
Effective Communication	Women	Helps women pay attention to how they communicate so they can get their needs met, improve their relationships and get the most out of their lives.
Goal Setting	Men and Women	Focus is on how to set realistic, attainable goals.
Healthy Body Image	Women	Importance of having a healthy body image.
Human Trafficking	Women	Raise consciousness, provide information and point participants in the direction of help and assistance from community partners and agencies.
It's a Gamble	Men and Women	Issues related to gambling, including "luck" and intervention options.
Leaving the Sex Trade	Women	Raise consciousness, provide information and point participants in the direction of help and assistance from community partners and agencies.
Looking for Work	Men and Women	Job search components including application fact sheet, cover letters, résumés and what employers expect.
Maintaining Employment	Men and Women	Skills and issues required to maintain employment.
Managing Stress	Men	Effects of stress and tools to manage stress more effectively.
Parenting	Women	Provides effective parenting techniques.
Planning for Discharge	Men and Women	What constitutes a good discharge plan.
Problem Solving	Men and Women	Provides participants with skills in how to approach a problem effectively to ensure that they are able to objectively evaluate all options, identify related feelings and thinking errors to arrive at the most pro-social solution.
Recognizing Abusive and Healthy Relationships	Men and Women	What constitutes abuse in a relationship, different types of abuse, the impact of abuse on partners and children, healthy versus unhealthy relationships.
Self-Care	Women	Explores the difference between taking care of someone and self-care, why self-care is important and some self-care skills.
Setting Up a Budget	Men and Women	Components of an effective budget and tips on how to manage finances.
Substance Use	Men and Women	Differences between use and abuse and how to assess if someone has a problem.
Supportive Relationships	Men and Women	Benefits of supportive relationships (family, friends, professional relationships). Differentiation is made between those relationships that while they meet needs are not always healthy, and those relationships that are truly supportive.
Thoughts to Action	Men and Women	Impact of the thinking process on how people make choices.
Understanding Feelings	Men and Women	What feelings are, how people can affect feelings by their thoughts and beliefs, and the importance of identifying and managing feelings.
Understanding Self-Harm	Women	Awareness of triggers that provoke a self-harm situation, the four stages of self-harm, forms of intervention that correspond with each stage and coping strategies.
Use of Leisure Time	Men	Productive use of leisure or recreational time.

Appendix 12: Survey Results from 17 Correctional Institutions Not Visited

Prepared by the Office of the Auditor General of Ontario

To identify best practices, we surveyed the 17 correctional institutions in Ontario we did not visit and received responses from all of them. The survey included questions about care of inmates, inmate programming, workplace safety, training, staffing, security, and general questions to management. Below is a summary of the survey results.

Care of Inmates

Inmates for whom institutional staff develop an Inmate Care Plan	(%)
All inmates with diagnosed mental health concerns	29
All inmates who spend over a certain amount of time in conditions of confinement that constitute segregation	24
All inmates with identified mental health concerns who spend over a certain amount of time in conditions of confinement that constitute segregation	29
Other: unstable inmates or inmates in a crisis situation	24
Other: inmates with complex needs	18

Staff who have access to Inmate Care Plans	(%)
Health-care team	100
Social workers	100
Correctional staff (managers and above only)	71
Correctional staff (all)	88
Other: Chaplain	12

Type(s) of units where inmates who are believed or known to have a mental illness are placed	(%)
General population unit	94
Protective custody	94
Single-celled specialized care unit with a dayroom	76
Single-celled specialized care unit without a dayroom	76
Medical unit with increased access to clinicians	53
Other: Integrated dorm setting	12

Type(s) of units where inmates who need to be separated from the general population or kept in protective custody based on serious behavioural concerns (for example, aggression, violence, highly disruptive, intimidation, etc.) are placed	(%)
General population unit	24
Protective custody	24
Single-celled specialized care unit with a dayroom	59
Single-celled specialized care unit without a dayroom	82
Medical unit with increased access to clinicians	29
Other: Behavioural care unit	18

Challenges in delivering health-care services in the institution	Rank
Difficulty filling positions with staff	1
Insufficient number of positions of staff	2
Insufficient space to perform medical examinations and/or procedures	3
Lack of access to inmates due to operational issues	4
Lack of electronic medical records	5
Difficulty managing employee sick days	6
Difficult patient population	7
Lack of external resources for inmates with mental illness	8
Lack of/outdated medical equipment	9

Workplace Safety

	Yes (%)	No (%)	Did Not Answer (%)
Do institutional staff measure and track assaults against staff?	71	29	0
Do institutional staff conduct any analysis following a serious assault against staff (e.g., where an assault happened, conditions that led to the assault, etc.)?	76	18	6
Are there units in the institution that have higher instances of assaults (inmate-on-inmate or inmate-on-staff) or incidents involving staff using force on inmates?	65	35	0
Have institutional staff conducted a Workplace Violence Risk Assessment as described in the *Occupational Health and Safety Act*?	71	29	0
Has a Workplace Violence Risk Assessment been completed since 2018?	24	76	0

Challenges in scheduling staff for shifts	Rank
Staff shortages due to long-term injury or other absences	1
It is difficult to find staff to fill absences	2
Employee accommodations	3
The institution is understaffed (not at complement)	4
The IT system HPRO does not meet our requirements or is too difficult to use	5

Security

	Yes (%)	No (%)	Did Not Answer (%)
Are the results of searches tracked electronically, including details about contraband found, location, inmate involved, etc.?	29	65	6

Type of contraband found most frequently in searches	Rank
Cannabis	1
Narcotics	2
Weapons	3
Opioids	4
Other	5

Top sources of contraband	Rank
Newly admitted inmates	1
Remanded inmates returning from court	2
Intermittent sentenced inmates	3
Inmate visitors	4
Inmate mail	5

Security measures, in addition to those required by policies, that would be helpful in reducing contraband	Yes (%)	No (%)
Increased staff training for security equipment	71	29
Increased use of a canine unit	88	12
Increased use of video court	82	18
Increased searches of inmates	82	18
Increased searches of visitors and/or volunteers	76	24
Increased screening of staff	82	18

Other

	Yes (%)	No (%)
Does management (that is, superintendent and deputies) request information or reports from the Ministry (either corporate or regional office) in order to assist it with its operations?	41	59
Are the current information systems (e.g., OTIS, HPRO, etc.) in place sufficient to run your institution?	41	59

Challenges in implementing new policies	Rank
Facility restrictions such as space or capacity	1
Lack of clarity in the new policy	2
Lack of direction from the Ministry/Region	3
Staff co-operation	4
Other: lack of staffing resources to implement changes	5

Top challenges faced by correctional institutions	Rank
Staffing shortages and staff sick leave	1
Aging infrastructure or infrastructure upgrade requirements	2
Lack of program space	3
New Ministry policy changes	4
Staff accommodations	5
Segregation requirements	6
Ability to provide or complete mandatory training for staff	7

Appendix 13: Sick Days of Permanent Correctional Officers and Staff in Correctional Institutions by Number of Days, 2014–2018

Source of data: Ministry of the Solicitor General

	2014	2015	2016	2017	2018	Average Annual % Change
Correctional Officers						
Minimum	11.9	9.7	9.3	16.0	9.1	2
Maximum	30.2	38.5	37.0	34.9	40.6	9
Median	23.0	25.9	25.6	26.2	25.9	3
Overall	24.4	28.0	27.0	28.3	31.0	6
All Staff*						
Minimum	8.7	5.8	8.0	13.8	9.6	12
Maximum	26.6	33.9	29.7	29.9	34.6	8
Median	20.0	22.2	21.6	20.7	22.8	4
Overall	21.3	24.2	22.9	23.5	25.8	5

* All staff include management, staff sergeants, sergeants, correctional officers, health-care staff, programming staff, administrative staff and service staff.

Appendix 14: Summary of Issues Identified by Select Internal and External Review Bodies, 2013–2018

Prepared by the Office of the Auditor General of Ontario based on data from various sources

	Community Advisory Boards[1]	Chief Coroner of Ontario[2]	Human Rights Tribunal of Ontario[3]	Independent Review of Ontario Corrections[4]	Ministry-Employee Relations Committee[5]	Ontario Ombudsman[6]	Ontario Internal Audit Division[7]
General Inmate Care							
Overcrowding in correctional institutions[8]	2014			2017	2013	2013	
Inadequate inmate programming, lack of programs available, lack of targeting programming[8]	2014			2017			2016
Inadequate discharge planning				2017			
Care of Inmates with Mental Health Issues							
Inmates with mental health issues are not identified or cared for adequately[8]	2014	2016	2013	2017		2016	2017
Inmates with mental health issues are being housed in segregation[8]	2014	2018	2013	2017		2013	2017
Lack of mental health training for staff	2014	2015	2013	2017	2016	2013	
Inmate Care Plans are not available or adequate				2017		2017	2017
Inadequate health-care tools, such as lack of e-record	2016	2014	2013	2017			2014
Workplace Safety and Human Resources							
Institutions are understaffed both in correctional officers and health-care staff[8]	2014	2016		2018	2013	2013	2017
Increase in violence against staff[8]				2018	2013		
Strained relationship between management and staff including backlog of grievances[8]	2015			2018		2013	2017
Backlog of local investigations of incidents				2018		2013	2015
Misconducts not dealt with properly—either not adjudicated or not adjudicated fairly		2018		2018		2013	2015
High amount of contraband and no tracking of searches and contraband	2014	2018		2018			2017
Staff absenteeism causing operational difficulties; for example, higher costs and more lockdowns[8]	2014			2018			2017

	Community Advisory Boards[1]	Chief Coroner of Ontario[2]	Human Rights Tribunal of Ontario[3]	Independent Review of Ontario Corrections[4]	Ministry-Employee Relations Committee[5]	Ontario Ombudsman[6]	Ontario Internal Audit Division[7]
Staff do not regularly undergo performance reviews	2014			2018			2017
Oversight							
Need to collect more electronic data and analyze data for decision-making[8]	2015		2013	2017	2017	2013	2014
Lack of oversight from staff in regional and corporate offices to ensure compliance with policies and procedures	2015	2016		2017		2013	2015

1. Under the *Ministry of Community Safety and Correctional Services Act*, the Minister may establish a board and appoint members to it to monitor a correctional institution. There are currently 10 Community Advisory Boards, which are made up of independent local volunteers who have access to correctional institutions, meet monthly with superintendents and publicly publish annual reports that include recommendations to address issues identified.
2. The Chief Coroner of Ontario investigates all deaths in correctional facilities and holds inquests when deaths are due to anything other than natural causes.
3. The Human Rights Tribunal of Ontario hears applications from individuals who have experienced discrimination or harassment.
4. The Independent Review of Ontario Corrections was completed by Howard Sapers, who produced three reports on the use of segregation, and ways to improve the province's adult corrections system and violence in the workplace (see **Section 2.1.3**).
5. The Ministry-Employee Relations Committee is a quarterly forum where union and Ministry representatives meet to discuss and identify ways to resolve workplace issues.
6. The Ontario Ombudsman is an independent officer of the legislature who investigates complaints from the public about Ontario public-sector bodies.
7. The Ontario Internal Audit Division is a division within the Ontario Public Service that provides independent operational audits, risk assessments and compliance reviews of government bodies.
8. These issues were also identified in our Office's 2008 audit of Adult Institutional Services (see our *2008 Annual Report*).

Chapter 2

Ministry of the Attorney General

Court Operations

1.0 Summary

Ontario's court system has two trial courts—the Ontario Court of Justice (Ontario Court) and the Superior Court of Justice (Superior Court)—as well as a Court of Appeal. Both the Ontario Court and the Superior Court deal with criminal law and family law cases. But the Superior Court deals with fewer (usually only the most serious) criminal offences, as well as civil cases, including small claims. The Ontario government appoints and compensates Ontario Court judges, while the federal government appoints and compensates Superior Court judges. Under the *Courts of Justice Act*, the regional senior judges and their delegates, under the direction and supervision of the Chief Justices, are responsible for preparing trial lists, assigning cases and other judicial duties to individual judges, determining workloads for judges, determining sitting schedules and locations, and assigning courtrooms.

The Court Services Division (Division) of the Ministry of the Attorney General (Ministry) is responsible for all matters relating to the administration of the courts, such as providing facilities, court staff, information technology and other services such as court reporting. As of March 31, 2019, the Division had 2,775 full-time-equivalent staff (of which 94% are court support staff) costing $258 million for that fiscal year; these figures have been relatively stable from 2014/15.

In 2018/19, the Ontario government paid about $145 million to the Ontario Court in salaries and benefits for the complement of 642 Ontario Court judges and justices of the peace. In 2018/19, the complement of 252 full-time Superior Court judges were paid by the federal government. Each Chief Justice of the Court follows his or her own memorandum of understanding with the Attorney General of Ontario that sets out areas of financial, operational and administrative responsibility and accountability between the two parties.

As of March 2019, there were 74 courthouses in Ontario, with a total of 673 courtrooms where judges hear cases.

Overall, our audit found that, with the exception of a few courthouses that were experiencing overcapacity, courtrooms in many other courthouses were underutilized and were available when needed to hear cases originating from the same courthouse. The overall pace of court system modernization remains slow, and the system is still heavily paper-based, making it inefficient and therefore keeping it from realizing potential cost savings. As well, the Ministry could do more in managing the increasing number of sick days taken by Division staff, overseeing the travel claims submitted by court interpreters, and proactively engaging justice system partners, such as the judiciary and Toronto Police Service, prior to making major infrastructure decisions.

During our audit, we experienced a significant scope limitation with respect to access to information

such as court scheduling, and delays in receiving other key information, such as staffing statistics that took two months to receive (see **Section 3.0** for details). The courts are public assets, supported and financed by the people of Ontario, and the administration of justice is a public good. Therefore, while we respect the independence of the judiciary and the confidentiality due to participants in legal matters, we nevertheless believe that it is within our mandate to review information that would be needed to assess the effectiveness of court operations and the efficient use of resources, given that taxpayer monies support court operations.

Nonetheless, some of our significant findings relating to use of courtrooms were as follows:

- **Ontario courtrooms were in operation only 2.8 hours on an average business day, well below the Ministry's optimal average of 4.5 hours.** We found that the 55 courthouses, out of a total 74, that reported above-average delays in resolving cases also operated fewer hours than the Ministry's optimal average of 4.5 hours per day. In our Criminal Court System audit (**Chapter 3** of this volume of our Annual Report), we noted that the difficulties in obtaining court dates contributed to systemic delays in resolving criminal cases in Ontario. Also, in our Family Court Services audit (**Chapter 4** of this volume), we found delays in resolving child protection cases that exceeded the statutory timelines.

  Courtroom operating hours are those hours during which courtrooms themselves are in use. They do not measure the working hours of judicial officials or Ministry court staff. Outside the courtroom, judges do work that includes time spent in hearing certain pretrials, case conferences and settlement conferences; deciding motions and applications in writing; reviewing case materials before the scheduled hearing date; researching legal issues; writing decisions; travelling between courthouses and courts in remote areas; and attending training and conferences. Ministry court staff also provide counter services and do other administrative office work, such as filing court documents and entering data.
- **Some Ontario courtrooms were sitting empty during our visits to a sample of courthouses.** We observed some courtrooms were not being used at any point during the day during our visits in April and May to seven courthouses located throughout all regions of the province. We could not determine whether any of these courtrooms were previously scheduled for hearings, as the Offices of the Chief Justices of the Ontario Court and the Superior Court limited our access to court scheduling information kept by trial co-ordinators (see **Section 3.0**). We performed our own sample review of 252 court days during which courtrooms were reported as "not used." Based on other information provided to us, we verified that no cases were heard on 218, or 86%, of the 252 court days. The courtrooms were used on 24, or 10%, of the days, but Ministry court staff did not enter the actual court time in the Ministry's time-reporting system. Ministry court staff indicated that the courtrooms were in use for the remaining 10 court days, or 4%, but could not provide any supporting documents for us to verify. We also noted that all seven courthouses had an increasing number of pending cases combined for all practice areas, with the increase ranging from 20% to 34% between 2014/15 and 2018/19.

  Both the representatives from the Offices of the Chief Justices and staff from the Ministry's Court Service Division informed us that courtrooms sometimes sit unused because, for example, settlement discussions among the parties or mediation attempts may require a recess or delay; the judge may be meeting the parties and counsel to facilitate a settlement; or lawyers may have requested a recess to meet with a witness or client. However,

if those discussions fail to fully resolve the issues, the courtroom must be immediately available for the hearing to begin.

- **Breaks and interruptions during court sessions could be reviewed to identify efficiency opportunities.** We reviewed courtroom sittings on about 240 days randomly selected between April 2018 and April 2019. The Ministry's time reports for those days reported average courtroom operating hours of 4.3 hours per day. However, the hours reported in the digital audio recordings showed an actual average of only 2.6 hours. Our further analysis found that the significant discrepancy of 1.7 hours was due to breaks and other interruptions that were not digitally recorded. Our review of the notes made by the Ministry's court staff from the digital audio recordings found that while some of the breaks were necessary (such as time taken by duty counsel to speak to the accused), others—such as time spent on reviewing new documents, waiting for the accused or counsel to arrive, or arranging for an interpreter—could be reduced to maximize the use of available court time. However, because court reporters are not required to document activities outside of courtrooms, the reasons for all breaks and interruptions during the court sessions could not be fully explained.

Some of our significant findings relating to court system modernization were as follows:

- **Little progress had been made in replacing the Integrated Court Offences Network (ICON).** ICON tracks criminal cases handled by the Ontario Court, which accounted for more than 98% of all criminal cases in the province. Our past audits in this area repeatedly identified the need for the court system to modernize to become more efficient. The Ministry, while taking cautious and incremental steps toward modernization, had made limited progress in its efforts to introduce and use more effective technologies in the court system since our last audit in 2008, more than 10 years ago. In January 2019, the Ministry submitted a project plan to the Treasury Board for replacing the system, which was pending approval as of August 2019. The business case submitted was part of an overall Criminal Justice Digital Design initiative, estimated to cost $56.1 million between 2019/20 and 2023/24.
- **The implementation of Criminal E-intake had time delays and cost overruns with a reduced project scope.** Criminal E-Intake is an online system that allows police to submit criminal Information packages, containing documents such as the offence(s) that the accused person is charged with, copies of police officers' notes and witness statements, electronically to the Ontario Court. The Ministry approved the business case for this system in July 2016, at an estimated cost of $1.7 million, and the Ministry expected to complete the project by November 2017. The original business case included the integration of the two current record management systems used by police systems with the court's ICON system. However, the Ministry underestimated the project's timelines and costs. The Ministry's most recent completion date is November 2019; the estimated cost has increased to $1.9 million, 11% more than originally budgeted. The increased costs are to cover only one of the two police record management systems. The integration plan and costs of the other police system have now been included as part of the Criminal Justice Digital Design initiative mentioned above.
- **FRANK needs significant updates to better support judges and court staff in tracking case file information.** The FRANK system tracks family cases heard in both the Ontario Court and the Superior Court, as well as criminal, civil and small claims cases received by the Superior Court. We found that FRANK is not a robust information system capable

of facilitating accurate entry of data and generating user-friendly reports. Courthouse staff and judges cannot rely on FRANK alone to ascertain the specifics of a case. As a result, they continue to heavily rely on the physical case files.

Among other findings:

- **Key justice partners faulted the Ministry's consultation process for the planning of a new courthouse in 2014.** At the time of our audit, the Ministry was building a new courthouse in the downtown core of Toronto to consolidate criminal matters from the six existing Ontario Court criminal courthouses around the city. The project's contract value was $956 million, and it is estimated to be completed by 2022. Although a representative from the Office of the Chief Justice of the Ontario Court stated that the consultation process was "transparent, collaborative, and responsive," representatives from both the Office of the Chief Justice of the Superior Court and the Toronto Police Service (Toronto Police) reported their disappointment with the Ministry's level of consultation and communication on such a major infrastructure decision.
  - In its May 2014 spring budget, the province first announced the New Toronto Courthouse project. A day before the budget was released, a senior Ministry official communicated the decision to the Office of the Chief Justice of the Superior Court for the first time—a plan that was significantly different than the plan in 2009.
  - The Toronto Police's report (2017) recommended actions it can take to mitigate the anticipated security risks associated with consolidating all criminal matters in the downtown core. The report states that the Ministry made a "unilateral decision" and the Toronto Police "was not consulted by the Ministry in its decision on court [consolidation]."
- **Court services' regular staff absenteeism increased by 19% between 2014 and 2018.** The number of sick days taken by staff working in the Ministry Court Services Division (Division) rose by 19%, from 27,610 days in 2014 to 32,896 days in 2018, even though the number of regular full-time staff who were eligible to take sick days declined by 10% over the same period. The average number of sick days per employee in this Division rose from 10 in 2014 to 14.5 in 2018; this compares to the Ministry average of 9.5 days in 2014 and 11.35 days in 2018 and the Ontario Public Service average of 11 days in 2018. The Ministry reported that the total cost of lost time due to absenteeism was $7 million in 2017 and $8.6 million in 2018.
- **Justification for interpreters' travel and travel expenses was not consistently documented.** Our review of a sample of 60 invoices claimed between March 2018 and February 2019 by court interpreters on the Ministry's central registry found that over one-third of the claims were uneconomical, and in some instances, a large portion of the expenses could have been saved. For example, Cornwall courthouse staff booked the services of a French-language interpreter from the Windsor area, 800 kilometres away, for one day, resulting in a total payment of approximately $1,550. Courthouse staff did not document why they could not book the services of a local interpreter, which we estimated would have saved the Ministry about $1,350, or 87%.
- **Performance targets are not set to aim for timely disposition of cases.** Because responsibility for the courts is shared between the Division and the judiciary, it is up to both parties to participate in establishing effective performance reporting. Our audit found that the Ontario Court does publish numerous case statistics such as cases received, disposed and pending disposition; however,

targets are lacking to measure against actual performance. In comparison, British Columbia's provincial court publicly reports its actual performance against pre-established targets such as the number of criminal cases concluded as a percentage of the number of cases received and the percentage of cases concluded within 180 days.

Many of the issues we found during this audit were similar to the concerns we identified in our last audit of Court Services in 2008. **Appendix 1** summarizes the current status of our 2008 select audit concerns.

This report contains 15 recommendations, with 27 action items, to address our audit findings this year.

Overall Conclusion

Overall, we concluded that the Ministry's resources, such as courtrooms, were not being used efficiently and in a cost-effective way to support the timely disposition of cases. The limitation placed on the scope of our audit left us unable to further examine and verify the possible reasons that contributed to courtrooms being left empty or underutilized.

We found that the Ministry's pace in modernizing the court system remained slow, and the system is still heavily paper-based, making it inefficient and therefore keeping it from realizing potential cost savings.

The Ministry could do more to manage the increasing number of sick days taken by Division staff and oversee the travel claims submitted by court interpreters.

We also found that performance targets to assess the efficiency and effectiveness of court operations, especially those relating to the timely disposition of cases, were lacking.

OVERALL MINISTRY RESPONSE

The Ministry of the Attorney General appreciates the comprehensive audit on Court Operations conducted by the Auditor General and welcomes the recommendations on how to improve its services to Ontarians seeking access to justice.

Important court operations modernization initiatives are underway or are in the planning stages to support the efficient use of resources in administering Ontario's courts. Many of the recommendations in this report support the objectives of the Ministry's current transformation strategy that focuses on modernizing the justice system, including increasing online services for the public and streamlining court processes.

As the Ministry moves forward, the recommendations in this audit will help inform its next steps and assist in identifying areas for improvement. The Ministry undertakes to work closely with the judiciary, as well as other key justice partners, including Justice Technology Services and Infrastructure Ontario, to ensure a broader sector approach to addressing the audit's recommendations and to better serving the people of Ontario.

2.0 Background

2.1 The Court System in Ontario

In Ontario, the court system comprises three courts: the Ontario Court of Justice (Ontario Court), the Superior Court of Justice (Superior Court) and the Court of Appeal for Ontario (Court of Appeal). **Appendix 2** gives an overview of these courts and lists the matters heard in each. **Figure 1** specifies the numbers and types of cases received and disposed between 2014/15 and 2018/19 by the Ontario Court and Superior Court, which represent 99% of all cases received by courts in Ontario. **Figure 2** shows the breakdown of cases received among different practice areas by each court.

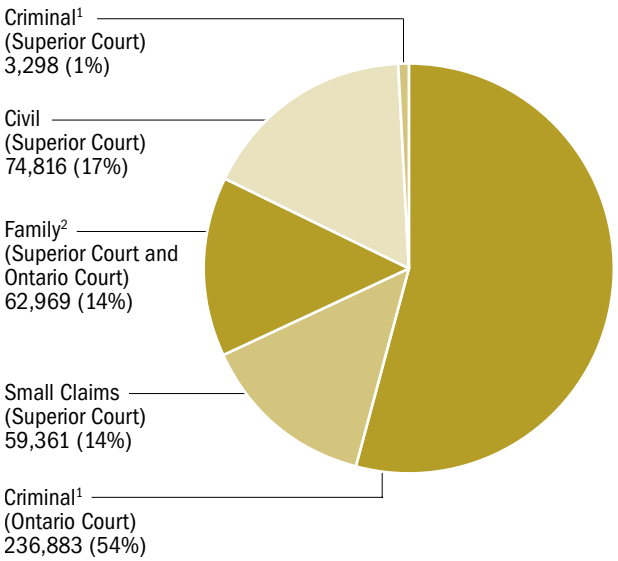
Figure 1: Number of Cases Received and Disposed by the Ontario Court of Justice and Superior Court of Justice, 2014/15–2018/19

Source of data: Ministry of the Attorney General

		2014/15	2015/16	2016/17	2017/18	2018/19	5-Year Change (%)
Ontario Court of Justice							
Criminal	# received	215,679	217,356	220,755	227,164	236,883	10
	# disposed	208,884	204,375	212,525	210,152	213,174	2
Family	# received	20,973	20,000	19,249	17,990	16,849	(20)
	# disposed	22,079	19,507	19,133	17,555	16,597	(25)
Superior Court of Justice							
Criminal	# received	3,608	3,169	3,289	3,316	3,298	(9)
	# disposed	3,623	2,990	3,091	3,190	2,930	(19)
Family	# received	50,807	49,510	49,552	47,437	46,120	(9)
	# disposed	44,616	44,417	43,218	41,826	50,591	13
Civil	# received	75,719	75,844	74,028	73,501	74,816	(1)
	# disposed	43,796	34,350	35,960	36,904	37,601	(14)
Small claims	# received	65,164	62,503	59,674	60,030	59,361	(9)
	# disposed	45,117	36,765	31,957	51,442	45,645	1
Total	**# received**	**431,950**	**428,382**	**426,547**	**429,438**	**437,327**	**1**
	# disposed	**368,115**	**342,404**	**345,884**	**361,069**	**366,538**	**0**

Figure 2: Cases Received, Ontario Court of Justice (Ontario Court) and Superior Court of Justice (Superior Court), 2018/19

Source of data: Ministry of the Attorney General



1. See **Chapter 3** of this volume (Criminal Court System) of our Annual Report for further discussion relating to criminal cases.
2. See **Chapter 4** of this volume (Family Court Services) of our Annual Report for further discussion relating to family law cases.

2.2 Court Governance and Administrative Structure

The judiciary is a separate and independent branch of the government. While members of the judiciary work with the Ministry of the Attorney General (Ministry) to administer the justice system, they have distinct responsibilities as set out in the *Courts of Justice Act* (Act).

Appendix 3 shows the reporting and accountability structure that links the Ministry and the Ontario Court. An Executive Legal Officer who reports through the Assistant Deputy Attorney General, Court Services Division, subject to the authority of the Chief Justice, is paid by the Ministry and acts as a liaison between the judiciary and the Ministry.

2.2.1 Judicial Responsibility

Under the Act, the regional senior judges and their delegates, under the direction and supervision of the Chief Justices, are responsible for preparing trial lists, assigning cases and other judicial duties to individual judges, determining workloads for judges, determining sitting schedules and locations, and assigning courtrooms.

The Chief Justices of the Ontario Court and Superior Court have each signed a publicly available memorandum of understanding with the Attorney General of Ontario that sets out areas of financial, operational and administrative responsibility and accountability between the Ministry and the courts. In particular, the Attorney General and the Chief Justices agree to have timely communication regarding significant matters that affect the mandate of each, such as staffing and facilities issues, as well as policy and legislative changes. Further, the Ontario Court's memorandum emphasizes that the judiciary has ownership of court-derived statistical information and documents, such as case files, courtroom operating hours and caseloads, and that the judiciary must approve any access to such information by a third party. These policies are also applied to the Superior Court's records and data. **Appendices 4** and **5** contain excerpts of the memoranda of understanding between the Attorney General of Ontario and the Chief Justices of the Ontario Court and the Superior Court.

2.2.2 Ministry Responsibility

Under the Act, the Attorney General is responsible for all matters relating to the administration of the courts other than (1) matters assigned to the judiciary by law, (2) matters related to the education, conduct and discipline of the judiciary, or (3) matters assigned to the judiciary by a memorandum of understanding with the Attorney General.

The Ministry, mainly through the following divisions, provides various supports for court operations:

- Court Services Division provides court staff and services such as secretarial support, court reporting and interpretation. However, under the Act, court staff work at the direction of the judiciary when supporting the judiciary in matters assigned to the judiciary by law, such as court appearance scheduling, and when inside the courtroom while court is in session, such as when acting as court clerks or reporters.
- Corporate Services Management Division has the lead responsibility for capital planning and oversight of the Ministry's real estate portfolio through its Facilities Management Branch.
- Modernization Division leads the Ministry's efforts in adopting and implementing new technologies and processes to modernize the court system. The Ministry consolidated previously existing program areas to form the Modernization Division in early 2016.

Appendix 6 shows the organizational chart of the three divisions and the relevant branches and offices under each division.

2.2.3 Ministry Funding and Expenditures on Court Services

As of March 31, 2019, the Ministry's Court Services Division had 2,775 full-time-equivalent staff (of which 94% are court support staff) costing $257.9 million for that fiscal year; these figures have been relatively stable since 2014/15. **Figure 3** shows the breakdown of expenditures and staffing numbers.

The Court Services Division has seven regional offices administrating local court operations, including finance and budgeting, human resources, facility and information technology.

For the Ontario Court, the Ontario Government appoints and pays the salaries and benefits of all judges and justices of the peace. In 2018/19, the Ministry paid about $145 million to the Office of the Chief Justice of Ontario Court in salaries and

Figure 3: Court Services Division Expenditures and Staffing, 2014/15–2018/19

Source of data: Ministry of the Attorney General

Expenditure Categories	2014/15	2015/16	2016/17	2017/18	2018/19	5-Year Change (%)
Courthouse operations[1] ($ million)	199.3	198.8	191.9	192.5	200.0	0.4
Head office[2] ($ million)	49.8	47.4	46.8	50.1	50.5	1.4
Regional office[3] ($ million)	5.9	6.0	6.2	6.8	7.4	25.4
Total	**255.0**	**252.2**	**244.9**	**249.4**	**257.9**	**1.1**
# of staff (full-time equivalent) as of March 31, 2019	2,826	2,785	2,702	2,741	2,775	(1.8)

1. Including costs to support courthouse activities such as in-court hearings, servicing the public at the front counters, and back-office processing of documents. Also includes expenditures on certain judicial support services such as salaries and benefits of trial co-ordinators for the Ontario Court of Justice and judicial secretaries for the Ontario Court of Justice and Superior Court of Justice. The Ministry does not have a readily available breakdown of these expenditures.
2. Including costs such as salaries and benefits of staff working at head office, including the Office of the Assistant Deputy Attorney General, which oversees the Court Services Division, and information technology costs.
3. The Ministry of the Attorney General divides the province into seven administrative regions. These costs are incurred in the regions to support administration of courthouses belonging to the same region.

benefits for the complement of 642 Ontario Court judges and justices of the peace. (The Office of the Chief Justice reports the complement of judges and justices of the peace to account for the fluctuation of personnel throughout the year.) This was a 9% increase over the approximately $133 million paid in 2014/15 for the complement of 629 judges and justices of the peace. The Provincial Judges Remuneration Commission (Commission) is responsible for inquiring into salaries, pensions, and benefits for Ontario provincial judges and making recommendations. The Commission reports to the Chair of Management Board of Cabinet. See **Appendix 7** for details of the Commission.

For the Superior Court, it is the federal government that appoints and pays for the judges. The complement of full-time judges was 252 in 2018/19.

The provincial government also pays for the following judicial officials. Between 2014/15 and 2018/19 it paid:

- an average of about $4 million per year in salaries and benefits for 16 case management masters who hear certain matters in civil cases; and
- an average of about $7 million each year on a per diem basis for 350–370 deputy judges who hear small claims matters.

Case management masters are appointed by the province. The deputy judges are appointed by the regional senior judges of the Superior Court with the approval of the Attorney General.

In 2018/19, the Ministry paid about $33 million for judicial support services for both the Ontario Court and the Superior Court, such as costs relating to providing administrative staff, maintaining judges' libraries and providing information technology for judges. This was an increase of 17% over the $28 million paid in 2014/15.

Figure 4 shows the breakdown of expenditures and number of judges paid by the province.

2.3 Case File Information Systems

The Ministry uses two major systems to track case information:

- The Integrated Court Offences Network (ICON) tracks criminal cases handled by the Ontario Court, which accounts for more than 98% of all criminal cases in the province. Court services staff, under the Ministry's Court Services Division, are responsible

Figure 4: Number of Judges and Provincial Expenditures on Judicial Salaries, Benefits and Support Services, 2014/15–2018/19

Source of data: Ministry of the Attorney General

Categories	2014/15	2015/16	2016/17	2017/18	2018/19	5-Year Change (%)
Ontario Court of Justice (Ontario Court)						
Judges: salaries and benefits ($ million)	88.0	90.1	91.2	95.4	98.7	12
Complement of provincially paid judges[1]	284	284	284	297	297	5
Justices of the peace: salaries and benefits ($ million)	45.2	44.2	43.7	44.7	46.6	3
Complement of provincially paid justices of the peace	345	345	345	345	345	0
Total salaries and benefits: provincially paid judges and justices of the peace ($ million)	**133.2**	**134.3**	**134.9**	**140.1**	**145.3**	**9**
Total complement of provincially paid judges and justices of the peace	**629**	**629**	**629**	**642**	**642**	**2**
Superior Court of Justice (Superior Court)[2]						
Case management masters[3]: salaries and benefits ($ million)	3.3	3.2	6.5	4.6	4.0	21
Complement of provincially paid case management masters[3]	16	16	16	16	16	0
Deputy judges[4]: salaries and benefits ($ million)	6.0	5.9	6.2	9.1	7.0	17
Complement of provincially paid deputy judges[5]	350–370 per year					
Total salaries and benefits: provincially paid case management masters and deputy judges ($ million)	**9.3**	**9.1**	**12.7**	**13.7**	**11.0**	**18**
Total complement of provincially paid case management masters and deputy judges	**366–386 per year**					
Complement of federally appointed and paid full-time judges[6]	242	242	242	245	252	4
Judicial support services ($ million)[7]	**28.4**	**27.9**	**28.3**	**30.8**	**33.2**	**17**

1. The number of judges was increased by 13 in 2017/18 to address the July 2016 decision by the Supreme Court of Canada in *R. v. Jordan* that established stricter timelines for resolving criminal cases. See **Chapter 3** of this volume, Criminal Court System, which discusses the Jordan decision.
2. Effective September 14, 2017, the province pays for one full-time Superior Court judge who oversees the administrative function of the small claims court. The amount paid in 2017/18 was about $161,000, and $320,000 in 2018/19, which are not included in this Figure.
3. Case management masters have limited judicial authority, primarily to hear and determine certain matters in civil cases, including motions, pretrials and case conferences. The $6.5 million paid in 2016/17 included a retroactive salary and benefits increase of $2.5 million.
4. Deputy judges are senior lawyers appointed by regional senior judges, with the approval of the Attorney General, to preside over proceedings in small claims courts. The $9.1 million paid in 2017/18 included a retroactive salary increase of $3.7 million.
5. The number of deputy judges fluctuated between 350 and 370 individual appointees who worked a varying number of days per year. Deputy judges work and are paid on a per diem basis.
6. In addition to the number of full-time judges appointed, the Superior Court also has a varying number of part-time judges. Between 2014/15 and 2018/19, the number of part-time judges varied between approximately 80 and 100.
7. Includes costs relating to providing administrative staff, maintaining judges' libraries and providing information technology for judges. Excludes expenditures on certain judicial support services such as salaries and benefits of trial co-ordinators for the Ontario Court and judicial secretaries for the Ontario Court and Superior Court, which are included under courthouse operations expenditures in **Figure 3**. The Ministry does not have a readily available breakdown of these expenditures.

for inputting key data, such as the name of the accused person, date of birth, date of charge(s) laid, type of offence(s), date of court appearance(s) and type of case disposition, into ICON. The Ministry has used ICON since 1989; it performed the last system upgrade in 2013 with subsequent business line enhancements and changes due to legislative amendments.

- The FRANK system tracks family law cases heard in both the Ontario Court and the Superior Court, as well as criminal, civil and small claims cases received by the Superior Court. For cases other than criminal law, it tracks information such as the names of litigants, type of case, date and location where the litigants filed an application, date and type of document submissions, and date of court event(s). FRANK was fully implemented in 2009, and its last system upgrade was done in 2014 with subsequent business line enhancements and changes due to legislative amendments.

2.4 Use of Technology

The Ministry is in the process of implementing the following information technology initiatives.

2.4.1 Criminal Justice Digital Design

This initiative proposes a number of components, such as online portals, that establish linkages across different systems to enable efficient and secure data sharing across justice sector partners including police services, defence counsel, correctional institutions and the judiciary, and to eliminate inefficient, paper-based processes. The initiative includes a number of components, including:

- a criminal case management system;
- an online system to allow the police to electronically submit an application to charge an accused person with a criminal offence, along with supporting process documents, for review and consideration by a justice of the peace;
- a cloud-based system to manage, store and share multimedia evidentiary files; and
- an online system to enable the use of electronic documents for all court and tribunal hearings.

In January 2019, the Ministry submitted the Criminal Justice Digital Design business case to the Treasury Board at an estimated cost of $56.1 million expected to be incurred between 2019/20 and 2023/24. The business case was pending approval as of August 2019.

2.4.2 Videoconferencing Technology

The Ministries of the Attorney General and Solicitor General have utilized videoconferencing in criminal courts for over 20 years, and support its use primarily to allow an accused person to attend their court appearance by video from a correctional institution or police station.

Videoconferencing is conducted using the Justice Video Network, comprising a dedicated, secure network of video units in courthouses, correctional institution and police locations across the province. As of March 2019, there were approximately 140 videoconferencing units located in 48 of the 70 courthouses that hear criminal matters, out of the 74 total courthouses in the province. In addition, 120 videoconferencing units were located in 21 of 25 correctional institutions in Ontario. About 78% of existing videoconferencing units are used for court appearances by accused persons while in custody (such as for bail hearings and remand court appearances). The remaining 22% are used for other matters, including Legal Aid consultations and applications, inmate consultations with defence lawyers and remote interpretation services both inside and outside of courtrooms.

2.4.3 Electronic Scheduling Program

The Ministry's Modernization and Court Services Divisions and the Office of the Chief Justice for the Ontario Court of Justice have developed an application to enable electronic scheduling of select criminal, youth and family court events or appearances, such as trials. The objective of this initiative was to standardize and modernize trial co-ordinators' planning and managing of court calendars, scheduling of court events and co-ordinating utilization of court and judicial resources for the Ontario Court. The business case for this system was approved internally within the Ministry in October 2015 at an estimated cost of $970,000 expected to be incurred between 2014/15 and 2016/17.

2.5 Scheduling and Reporting on Courtroom Utilization

As of March 2019, there were 74 courthouses, 54 satellite and 29 fly-in courts across seven regions in Ontario.

- Courthouses, also called "base courthouses" by the Ministry, are permanent locations that provide for court appearances, consisting of 673 courtrooms in total, with document filing and administrative functions. They are typically located in larger population centres.
- Satellite courts may be located in permanent sites or temporary accommodations such as a local town hall or school; they provide for court appearances, with some locations offering document filing and administrative functions.
- Fly-in courts are similar to satellite courts but are located in remote communities accessible by flight only.

Judges use these courtrooms to hear all types of cases—criminal, family, civil and small claims. As discussed in **Section 2.2.1**, courtroom scheduling is an exclusive judicial responsibility under the direction and supervision of the Chief Justices. On a typical court day, judges are assigned to one courtroom where they hear all cases scheduled to them for the day. Although courtrooms are assigned by regional senior judges or their delegates to either the Ontario or Superior Court, Ministry staff indicated to us that courtrooms are often shared when the need arises. Thus, the courtrooms are sometimes interchangeable between either court and across criminal, family, civil and small claims courts. In 2018/19, the total number of courtroom operating hours was 532,570, a 4% increase over the 514,364 hours in 2014/15, as shown in **Figure 5**. Of the total courtroom operating hours, 67% were used to hear criminal law matters in 2018/19, followed by family law (19%), civil (9%) and small claims (5%) matters.

Figure 5: Number of Courtroom Operating Hours by Practice Area, Ontario Court of Justice and Superior Court of Justice, 2014/15–2018/19

Source of data: Ministry of the Attorney General

Practice Area	2014/15	2015/16	2016/17	2017/18	2018/19	5-Year Change (%)
Criminal	329,070	334,912	347,118	350,657	356,643	8
% of total	64	65	65	67	67	
Family	96,628	98,732	99,468	98,058	101,269	5
% of total	19	19	19	18	19	
Civil	50,194	46,447	48,217	45,747	46,041	(8)
% of total	10	9	9	9	9	
Small claims	38,472	37,105	36,057	31,867	28,617	(26)
% of total	7	7	7	6	5	
Total	**514,364**	**517,196**	**530,860**	**526,329**	**532,570**	**4**

Although courthouses are open during normal public service working hours, eight hours a day from Monday to Friday, we noted that courts are typically scheduled to run from between 9:00 a.m. and 10:00 a.m. to between 4:00 p.m. and 4:30 p.m. The Ministry expects optimal use of the courtrooms to be an average 4.5 hours daily, excluding lunch, for 249 business days each year. Exceptions are bail courts for criminal matters, which sometimes run later at the discretion of the judiciary; 10 of these sit on the weekend. Outside the courtroom, judges do work that includes time spent in hearing certain pretrials, case conferences and settlement conferences; deciding motions and applications in writing; reviewing case materials before the scheduled hearing date; researching legal issues related to pending cases; writing decisions; travelling between courthouses and courts in remote areas; and attending training and conferences. Ministry court staff also provide counter services and do other administrative office work, such as filing court documents and entering data.

To report the time spent at each session in court, Ministry court staff manually record the courts' start, end and lunch times each day, and enter the times into the ISCUS system (ICON Scheduling Courtroom Utilization Screen).

To record court hearings for subsequent audio requests and transcription purposes, Ministry court reporters use a digital recording device. A full digital recording report contains the start, end and lunch times, and also other time taken for breaks as well as notes made by court reporters to document, as much as possible, the court's activities for transcription, if needed.

2.6 Capital Planning and Facility Management

2.6.1 Ministry's Role and Responsibilities

The Ministry's Corporate Services Management Division has the lead responsibility for capital planning and strategic oversight of the Ministry's real estate portfolio through its Facilities Management Branch (facilities branch).

The Court Services Division works in partnership with the Corporate Services Management Division, as well as other divisions within the Ministry, to identify capital planning priorities. In addition, the Court Services Division relies on the Corporate Services Management Division to engage Infrastructure Ontario and their service providers in the management of courthouse facilities across the province. The facilities branch also works with the Ministry of Government and Consumer Services and their agent, Infrastructure Ontario, on the implementation of capital improvements to courthouses.

At the local courthouse level, a court security committee, usually chaired by the local police services as part of their responsibilities under the *Police Services Act* for courthouse security, meets regularly to discuss and provide guidance on safety and security. The committee is composed of members of the judiciary, Crown attorneys, defence counsel and representatives from various Ministry divisions.

The Ministry has the second-largest real estate portfolio of all Ontario ministries, with over 7.5 million square feet of space, including the 74 courthouses across the province. It also has the second-highest lease costs, over $150 million in 2018/19. See **Appendix 8** for the breakdown of courtrooms by courthouse and region.

2.6.2 Capital Planning and Approval Process

The Ministry uses the P3 model (formerly Alternative Financing and Procurement) to address large infrastructure needs. For P3 capital projects approved by Treasury Board over $100 million or involving significant risk and complexity, the Ministry works with Infrastructure Ontario, from design to implementation.

For P3 projects, the Ministry establishes the scope and purpose of the project, while Infrastructure Ontario manages site acquisition and procurement, design and construction, financing

and maintenance. Between 2009 and 2014, five new P3 courthouses (Durham, Waterloo/Kitchener, Quinte/Belleville, Elgin County/St. Thomas and Thunder Bay) have been built through this process, at a contract price of about $1.5 billion. At the time of our audit, two courthouses (New Toronto Courthouse approved in 2014 and Halton Regional Consolidated Courthouse approved in May 2017) were in the construction and planning stages, respectively. As of August 2019, three other locations have received planning approval, but the Ministry has not yet requested construction approval.

2.7 Court Interpretation Services

The Canadian Charter of Rights and Freedoms states: "A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter." Therefore, the Ministry provides people who are unable to speak the language being used in a court proceeding with court interpreters, to ensure their access to justice. In 2018/19, the Ministry spent a total of $6.4 million on about 44,840 court appearances, including interpretation fees and travel expenses. This is a 4% increase over the $6.1 million spent in 2014/15. Over these five years, fees have increased slowly and steadily from $4.9 million to $5.1 million, or by 4%, and although travel expenses claimed have fluctuated mildly, they too have increased by 4%, from slightly more than $1.2 million to slightly below $1.3 million.

To help ensure high-quality interpretation, the Ministry has developed an accreditation process to recruit freelance court interpreters. The process tests, screens and trains applicants before adding them to a central registry. Once these interpreters receive accreditation by the Ministry, they are pre-accredited to provide interpretation services in all courts in Ontario. Staff at courthouses across Ontario are required to use the registry first to locate and schedule Ministry-accredited interpreters as needed.

As of June 2019, the Ministry's registry listed 676 accredited freelance court interpreters. The Ministry is responsible for continuously updating the registry of interpreters to ensure it is accurate and reliable.

Court interpreters often work in courts outside the communities where they live. When they do so, they are required to follow the Ministry's policies in claiming travel expenses.

3.0 Audit Objective and Scope

The objective of our audit was to assess whether the Ministry of the Attorney General (Ministry) had effective systems and procedures in place to:

- utilize Ministry resources for courts efficiently and in a cost-effective way;
- support the resolution of criminal and family law matters on a timely basis, with consistent delivery of court services across the province, in accordance with applicable legislation and best practices; and
- measure and publicly report periodically on the results and effective delivery of court services in contributing to a timely, fair and accessible justice system.

In planning for our work, we identified the audit criteria (see **Appendix 9**) we would use to address our audit objective. These criteria were established based on a review of applicable legislation, policies and procedures, internal and external studies, and best practices. Senior management reviewed and agreed with the suitability of our objectives and associated criteria.

We conducted our audit between December 2018 and August 2019. We obtained written representation from the Ministry's management that, effective November 14, 2019, it had provided us with all the information it was aware of that could significantly affect the findings or the conclusion of this report, except for the effect of the matters described in the scope limitation section.

Our audit work was conducted primarily at the Ministry's head office in Toronto as well as at 14 selected courthouses across the province: Barrie, Newmarket, Milton, Brampton, Ottawa, Cornwall, Sudbury, Sault Ste. Marie, Thunder Bay, Fort Frances, College Park, 311 Jarvis, Windsor and Kitchener. We also visited four other courthouses—Old City Hall, 393 University, 47 Sheppard and Cobourg—to conduct audit work in select areas that were required during our audit. We based our selection of the 18 courthouses on factors including cases received and pending, trends in age and disposition of cases, geographical location, size of courthouse and other observations we made throughout our audit that prompted further examination. We conducted interviews with key personnel at all seven regional offices and observed court hearings at some of these locations. The operations of Court of Appeal for Ontario were not part of our audit.

In conducting our audit, we reviewed relevant documents, analyzed information, interviewed appropriate Ministry staff, and reviewed relevant research from Ontario and other Canadian provinces, as well as jurisdictions in other countries. The majority of our file review covered the last five years, with some trend analysis going back as far as 10 years.

We conducted the following additional work:

- interviewed senior management at the Office of the Chief Justice of the Ontario Court of Justice, the Office of the Chief Justice of the Superior Court of Justice, and the Court of Appeal for Ontario, presided over by the Chief Justice of Ontario;
- considered the relevant issues reported in our 2008 Annual Report audit of Court Services and incorporated a follow-up of these issues into our audit work; and
- reviewed the work conducted by the Ministry's internal audit and considered the results of these audits in determining the scope of this value-for-money audit.

Scope Limitation

Although Ministry staff were co-operative in meeting with us during our court visits, we experienced significant scope limitation in our access to key information and documents that would be required to complete the necessary audit work in accordance with our agreed-upon audit objectives and audit criteria (see **Appendix 9**), mainly related to court scheduling, child-protection case files and case files maintained by Crown attorneys. We discuss our restricted access to case files maintained by Crown attorneys in Criminal Court System, **Chapter 3** of this volume in this Annual Report and child-protection case files in Family Court Services, **Chapter 4** of this volume in this Annual Report.

The *Courts of Justice Act* states, in part, "The administration of the courts shall be carried on so as to … promote the efficient use of public resources." However, without complete access to the information and documents requested, we are unable to assess whether public resources, such as courtrooms, are used efficiently and cost-effectively to help reduce delays in some criminal and child protection cases. Our Office had no intent to question the judgment or opinions of criminal and family court judges in the specific cases that come before them.

The following legislation and key document provide the authority of our Office to conduct audits:

- Section 10 of the *Auditor General Act* states, in part, "The Auditor General is entitled to have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by a ministry, agency of the Crown, Crown controlled corporation or grant recipient, as the case may be, that the Auditor General believes to be necessary to perform his or her duties under this Act."
- The memorandum of understanding signed between the Attorney General of Ontario and

the Chief Justice of the Ontario Court in 2016 states in **Section 3.4**:

> *Provincial Auditor*
> *The financial and administrative affairs of the Ontario Court of Justice, including the Office of the Chief Justice, may be audited by the Provincial Auditor as part of any audit conducted with respect to the Ministry.*

We believe that the memorandum of understanding between the Ontario Court of Justice (a recipient of taxpayer monies from the Consolidated Revenue Fund) and the Attorney General appears to acknowledge that "Court Information" as defined therein is not information protected by judicial independence and therefore should be provided to us.

The Chief Justice of the Ontario Court, at the September 2018 Opening of the Courts ceremony, also spoke of making the justice system more open and transparent, specifically: "We [the Ontario Court] have continued to make strides in measuring the Court's progress and, in turn, we are proud that we are increasing access to court information and statistics on the internet for public consumption. Assembling and publishing this information is essential to making the justice system more open, transparent and accountable to all Ontarians."

At the 2019 Opening of the Courts ceremony, the Chief Justice of the Ontario Court again spoke words that we believe go directly to our point: "As Chief Justice, I am responsible for supervising and directing the sittings of the Court and the assignment of judicial duties. This administrative autonomy means I am accountable to the public for the scheduling and management of all cases that come to our Court."

The Ministry told us that the Offices of the Chief Justices would not release to us the information we asked for on courtroom scheduling, which is often managed and maintained by trial co-ordinators paid by the Ministry but who work under the direction of the judicial officials. A representative of the Office of the Chief Justice of the Ontario Court stated that:

> *Judicial administration of the Ontario Court of Justice (the "OCJ") is constitutionally and legislatively independent of the government, and as such, the OCJ is not subject to the* Auditor General Act.

Appendix 10 provides a summary of the written response by the Office of the Chief Justice of the Ontario Court.

A representative of the Office of the Chief Justice of the Superior Court stated that the Office

> *reiterates the constitutional and legislative independence of the court and its exclusive jurisdiction over all matters related to judicial administration, including case scheduling. Moreover, as the OCJ [Ontario Court of Justice] already noted, the courts are not subject to the Auditor General Act nor its operations the subject of this audit.*

Instead of giving us complete access to documents and files, the Offices of the Chief Justices provided us with a general response to how the courtrooms were scheduled and why some of them appeared to be underutilized, as discussed in **Section 4.1** in this report.

Appendix 11 lists some of the court information pertinent to our audit of Court Operations that is publicly available as well as court information that is not publicly available. For the latter, we further list the specific information to which we received access alongside the information to which we were denied access during our audit. For each area where we were not given access, we explain why we needed the information for our audit purposes and the impact on our audit that resulted from not getting this information. **Appendix 12** shows an overview of the court scheduling process based on our discussion with Ministry staff and judicial officials.

Delays in Access to Information

In addition, we experienced delays in obtaining key documents from the Ministry. Following our initial requests in March and May, the Ministry took from six weeks to over two months to provide us with several key documents. For example, in March, we requested staffing-related information such as staffing statistics, staff classifications, turnover and sick time, but did not receive this information until two month later. In May and June we requested a sample of digital recording annotations (notes typed by Ministry court staff during court hearings) at selected courthouses. After almost two months waiting for the information, we were informed that because the Ministry did not have the approval of the Offices of the Chief Justices to release the complete annotations, the Ministry would provide only the time stamps without the notes made by Ministry court staff (also a limitation on the scope of our audit).

Delays in obtaining these documents or part of these documents limited our ability to conduct our audit in an efficient manner. We are concerned that these delays are part of a recurring pattern at the Ministry of the Attorney General, given that we encountered similar delays in our Office's previous audits in 2003 and 2008.

4.0 Detailed Audit Observations

4.1 Existing Courtrooms Have the Capacity to Hear and Dispose More Cases

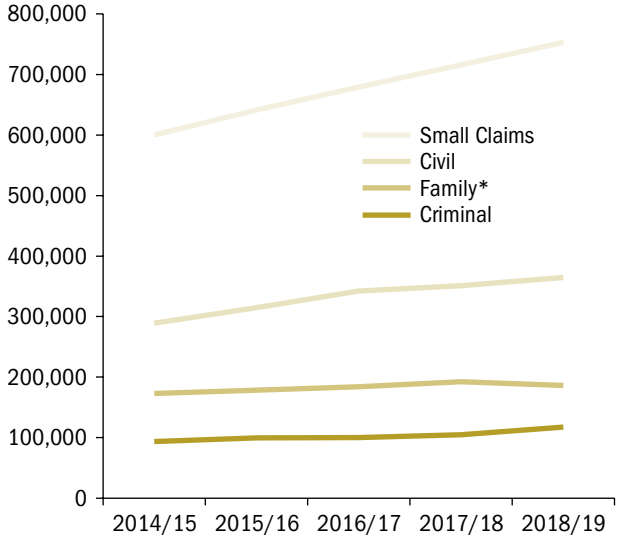
4.1.1 Ontario Courtrooms Were Run Only 2.8 Hours on an Average Business Day, Well Below the Ministry's Optimal Average of 4.5 Hours

As of March 31, 2019, there were 673 courtrooms in Ontario's 74 courthouses available for hearing all types of cases: criminal, family, civil and small claims. As discussed in **Section 2.5**, the Ministry expects a typical courtroom to be used optimally to hear cases an average of 4.5 hours each business day. Our audit found that, in Ontario, the actual use of courtrooms by individual courthouses averaged only 2.8 hours per business day in 2018/19. We were unable to do a trend analysis on this to determine if the average was rising or falling because we were told that the Ministry did not track the number of courtrooms prior to 2018/19.

We also noted, as shown in **Figure 6**, that the number of cases pending disposition has increased over the period from 2014/15 to 2018/19. Courts tend to devote available resources to clearing the backlogs of criminal and child protection cases in order to meet the legislative timelines for these cases, and therefore a relatively higher number of civil and small claims cases are pending disposition. In 2018/19, it took an average of 904 days to dispose a civil case, 37% longer than the average 659 days taken in 2014/15. As of March 2019, there were 7,045 civil cases pending trial with an average

Figure 6: Number of Cases Pending Disposition, by Practice Area, 2014/15–2018/19

Source of data: Ministry of the Attorney General



* Refer to our audit of Family Court Services, in **Chapter 4** of this volume of our Annual Report, regarding the inaccuracy of this data.

wait time of 467 days. Small claims cases also took longer to be disposed, from 193 days in 2014/15 to 435 days in 2018/19. As of March 2019, there were 6,903 small claim cases pending trial with an average wait time of 161 days.

Our audits of the Criminal Court System and Family Court Services also found delays in disposition of cases. In **Chapter 3** of this volume (Criminal Court System), we noted that the difficulty in obtaining court dates contributed to the systemic delays we found in disposing criminal cases in Ontario. In **Chapter 4** of this volume (Family Court Services), we found that delays in disposing child protection cases exceeded statutory timelines.

Appendix 8 lists the average number courtroom operating hours in 2018/19 by courthouses and their locations. Of the 74 courthouses, 68 (or 92%) reported less than the expected 4.5 hours use per day. We compared these 68 courthouses' caseload statistics and trends for all practice areas, as a single courtroom may be used for all practice areas. We found that 55 of them are above the provincial average in one or both of the following indicators of delay (see **Appendix 13**):

- total number of cases pending disposition at the end of the fiscal year 2018/19 as a percentage of total pending cases at the beginning of the year plus the number of cases received during the same year (provincial average 65%); and/or
- percentage increase of cases pending disposition from 2014/15 to 2018/19 (provincial average 23%).

Among these 55 courthouses, we noted, for example:

- The Thunder Bay courthouse (North West region) operated its 15 courtrooms an average of 2.2 hours per business day in 2018/19, while it has seen 32% growth in pending cases for all practice areas combined over the last five years, from 8,950 to 11,782. In particular, this courthouse has experienced delays in disposing criminal cases as it took on average 165 days to dispose these cases, which was higher than the provincial average of 145 days in 2018/19. The 165 days was also 47 days, or 40%, longer than the 118 days reported in 2013/14. We also noted that the Thunder Bay courthouse moved into a newly built building as of February 2014 with the required space and technology to meet the expected demand for the next 30 years. The Ministry's decision in 2005 to build this new courthouse was primarily based on the physical condition of the older courthouses—such as inadequate security, poor air quality and inadequate ventilation systems—and not on the need for more courtrooms. However, the total number of pending cases has only increased since then, as courtrooms have been in use only 2.3 hours, about half of the expected 4.5 hours average per business day, since 2013/14.
- The Kitchener court location (West region) operated its 30 courtrooms an average of 2.4 hours per business day in 2018/19, while it has seen 34% growth in pending cases over the last five years, from 24,835 to 33,304. In particular, the number of civil cases pending disposition increased by 39% over the same period. The Kitchener courthouse added 10 additional courtrooms to anticipate the forecast population growth and meet the expected demand until 2043. The Ministry's decision in 2005 to build this new courthouse was also based on the poor physical conditions and lack of key security features of the older courthouses. The court moved into its new building in January 2013, and has since operated its courtrooms an average of only 2.2 hours daily.
- The Hamilton courthouse (Central West region) operated its 29 courtrooms an average of 2.4 hours per business day in 2018/19 (2.3 hours in 2014/15), while it has seen 23% growth in pending cases over the last five years, from 54,434 to 67,031. In particular,

the number of criminal cases pending disposition increased by 29% over the same period.

As mentioned in **Section 2.5**, courtroom operating hours are those hours during which courtrooms themselves are in use. They do not measure the working hours of judicial officials or Ministry court staff. Both the representatives from the Offices of the Chief Justices and staff from the Ministry's Court Service Division informed us that courtrooms sometimes sit unused because, for example, settlement discussions among the parties or mediation attempts may require a recess or delay; the judge may be meeting the parties and counsel to facilitate a settlement; or lawyers may have requested a recess to meet with a witness or client. However, if those discussions fail to fully resolve the issues, the courtroom must be immediately available for the hearing to begin.

Representatives from the Offices of the Chief Justices of the Ontario Court and the Superior Court have indicated that in order to maximize courtroom utilization, trial co-ordinators who work under the direction of the judiciary often overbook cases in their court schedules. However, as discussed in **Section 3.0**, without being given full access to the scheduling of cases and courtrooms, we were unable to verify the extent of overbooking and the extent to which each possible reason contributed to the lower-than-optimal utilization of courtrooms.

Out of 74 courthouses, only six—Newmarket, Barrie, Milton, Ottawa, 1000 Finch and College Park—reported an average of more than the expected 4.5 hours per business day. In addition, we noted that Brampton courthouses regularly transfer hearings to nearby courthouses due to courtroom capacity issues. For these courthouses, we found that the Ministry has had capital plans in place to address a shortage of courtrooms. **Appendix 14** summarizes the details of the Ministry's capital plan for some of these courthouses. **Section 4.4** further discusses capital-related issues.

RECOMMENDATION 1

To help maximize the efficient and effective usage of available courtrooms and improve the overall court system paid for by taxpayers, we recommend that the Office of the Chief Justice of the Ontario Court of Justice and the Office of the Chief Justice of the Superior Court of Justice:

- conduct their own reviews of court scheduling;
- share the results with the Ministry of the Attorney General (Ministry), which has responsibility for the operating and capital expenditure of the court system; and
- report the results to the public and the Ministry.

RESPONSE FROM THE OFFICES OF THE CHIEF JUSTICES OF THE ONTARIO COURT OF JUSTICE AND SUPEROR COURT OF JUSTICE

Both the Office of the Chief Justice of the Ontario Court of Justice and the Office of the Chief Justice of the Superior Court of Justice will continue to have collaborative discussions with the Ministry of the Attorney General and with justice stakeholders on how to maximize courtroom use in a way that provides timely access to justice while respecting each Court's judicial independence.

Courtroom utilization data, however, does not reflect daily judicial working hours, nor actual demand for a courtroom. A very significant amount of judicial work is done outside courtroom operating hours, including, but not limited to:

- hearing certain pre-trials, case conferences and settlement conferences;
- deciding motions and applications in writing that can be done outside of a courtroom; without the parties appearing before the judicial official;

- reviewing all case material before the scheduled hearing date (e.g. motions/applications and supporting materials, pre-sentence and pre-disposition reports, transcripts, etc.);
- researching legal issues related to pending cases;
- writing decisions; and
- travelling between courthouses and to and from satellite courts, including courts in fly-in and remote locations that involve very significant travel time.

Courtroom utilization data also does not reflect actual courtroom demand. For example, judicial officers are frequently engaged in settlement discussions with parties and their counsel on the day of scheduled hearings. These discussions occur in judicial chambers or meeting rooms and are outside of courtrooms. If these efforts do not result in resolution, courtrooms must be immediately available for a hearing of those cases. In addition, the Courts were advised that despite the provincial average of courtroom utilization, there are several courthouses in Ontario that do not have the enough courtrooms or the right type of courtrooms. For example, over the past 10 years, there have not been a sufficient number of jury courtrooms in Brampton, and criminal jury trials have had to be traversed to other nearby court locations because of the lack of space in Brampton. Other busy court locations that lack sufficient courtrooms include Newmarket, Milton, Barrie and Ottawa.

Courtroom utilization data is also not an effective tool to determine whether empty courtrooms can be scheduled for other cases:

- Case volume in some locations may be low and, as a result, judicial officials are not scheduled to sit in these courthouses every day.
- There would be massive cost and inconvenience to parties, the public, police, and witnesses to move cases from busy courtrooms into empty courtrooms in another town or city. Further, there is a public interest in cases being heard in the community they arise.
- There are courthouses with insufficient judicial officials to sit in every courtroom, sometimes due to unfilled vacancies.
- Some courtrooms must be available for unscheduled matters such as bail hearings and emergency family motions. Judicial officials who sit in those courts are assigned other judicial duties outside the courtroom that allow them to return to the courtroom when required.
- Parties often decide to not proceed on the scheduled court date. While both Courts have instituted robust case management to attempt to reduce last-minute hearing cancellations, the decision to proceed with a case generally rests with the parties. When the decision is made on, or very close to, the scheduled court date, another case cannot always be found to schedule into that cancelled time. Parties, counsel, witnesses, and interpreters, for example, may not be able to proceed on short notice, and as noted earlier, moving cases from one courthouse to another is not always possible. Again, however, judicial officials have many other duties besides sitting in court, and they continue working outside the courtroom even if their in-court work does not proceed as scheduled.

4.1.2 Some Ontario Courtrooms Were Sitting Empty

We observed some courtrooms were not being used at any point during the day during our visits in April and May to courthouses located in all seven regions of the province. To further examine the utilization of courtrooms in the seven regions, in May we requested that the Ministry generate time reports from its "ISCUS" system (ICON Scheduling Courtroom Utilization Screen) for one week in April, for one courthouse from each of the seven regions. The data covered a total of about 220 courtrooms and showed that of the approximately

1,100 available weekdays, courtrooms were sitting empty for 252 days, or 23% of the time.

We could not determine whether any of these courtrooms had been scheduled for hearings, because the Offices of the Chief Justices limited our access to the scheduling information kept by trial co-ordinators (see **Section 3.0**). We then requested other documents, including court dockets and other information from individual courthouses, to help us determine the reasons for the courtrooms being empty as reported in ISCUS. It took the courthouses up to two months to provide us with the documents requested for our analysis, the last coming only in September. The documents allowed us to verify with a reasonable degree of accuracy the situation with these 252 days where courtrooms were reported as "not used":

- For 218 (or 86%) of the 252 days, we verified that courtrooms were not used. No dockets were available and no cases were heard.
- For 24 (or 10%) of the 252 days, we verified that courtrooms were used but Ministry court staff did not enter the court time in the ISCUS time reporting system.
- For the remaining 10 days (or 4%), Ministry court staff indicated that the courtrooms were in use but could not provide any supporting documents for us to verify.

We also noted that all seven courthouses had an increasing number of pending cases combined for all practice areas, ranging from 20% to 34% more of such cases between 2014/15 and 2018/19.

To determine the extent to which courtrooms were not in use, we examined the Ministry's ISCUS time reports for the whole province (over 670 courtrooms in 74 courthouses) for the same week in April. We found that out of the 3,820 weekdays reviewed, there were about 1,100 days when a courtroom was left empty for the entire day (or 29% of the time).

RECOMMENDATION 2

To help maximize the efficient usage of available courtrooms, we recommend that the Ministry of the Attorney General work with the judiciary to:

- regularly review courtroom use, by courthouse, across the province and determine the reasons behind courtrooms being left unused; and
- create a plan to address the specific reasons why some courthouses appear not to be optimizing the use of their courtrooms.

MINISTRY RESPONSE

The Ministry agrees to work with the Offices of the Chief Justices to the extent possible regarding these recommendations, while continuing to respect the independence of the judiciary.

The judiciary already regularly review their court scheduling processes and assess court utilization.

The Ministry cannot unilaterally review courtroom use and determine the reasons for any apparently unused courtrooms: the Chief Justices have exclusive responsibility for judicial scheduling, which is in turn an inseparable component of courtroom use.

4.1.3 Breaks and Interruptions during Court Sessions Could Be Further Analyzed to Identify Efficiency Opportunities

The Ministry's time reports (ISCUS) record the time periods in which courtrooms are used during a day, excluding lunch breaks. Breaks, other than lunch, and interruptions that occur during court sessions, however, are not required to be recorded in the time reports. To examine courtroom utilization throughout court sittings, we randomly selected a sample of about 240 court days, between April 2018 and April 2019, among courthouses across all regions, and compared the time reports tracked in ISCUS with the time stamps recorded in the digital

recording devices used for audio recordings of court hearings.

Based on our sample review, we found that the ISCUS time reports showed average courtroom operating hours of 4.3 hours per day, which was 1.7 hours higher than the time reported in the digital recordings. The digital recordings do not include breaks and other interruptions when capturing the time that courts are active in hearing court cases, and they showed courtrooms operating an average of just 2.6 hours per day.

In order to analyze the 1.7 hours' difference, we requested full notes of digital audio recordings of all the approximately 240 court days we selected for our sample. We considered that reviewing both the time reports and full notes of digital audio recordings would give a better picture, because court reporters are required to make notes while audio-recording each and every court hearing. (However, the Ministry provided only 125 of the approximately 240 that we requested. It responded that because these notes may contain confidential information, such as child protection matters and mental health assessments, the judiciary did not permit Ministry staff to provide us with the full notes, and that the initial 125 full notes were given to us inadvertently.)

Based on the information provided to us, we noted that while some of the breaks were necessary, such as the time duty counsel needed to speak to the accused, others—such as time spent reviewing new documents, waiting for the accused or counsel to arrive, or arranging for an interpreter—could potentially be shortened to maximize the use of available court time.

However, because court reporters are not required to document reasons for breaks in their notes, the reasons for all breaks and interruptions during court sessions could not be fully explained.

4.1.4 Reporting of Court Times Was Inconsistent and Contained Errors

According to Ministry policy, Ministry court staff are required to record the start and end time of a court session when the presiding official enters and leaves the courtroom. Typically, the morning session begins when the presiding official enters the courtroom and ends at the start of lunch break, and the afternoon session begins at the end of lunch break and ends when the presiding official leaves the courtroom. Our sample review, however, showed that court staff entered the time into the Ministry's time report (ISCUS) inconsistently, resulting in misstatements of the times reported. Although Ministry staff conducted periodic checks of the time data entered into ISCUS, they did not identify the inconsistencies and errors we identified in our sample review.

In our sample review of ISCUS time reports, we found that in 68 the 74 courthouses, Ministry court staff rounded off the start and end times, often to the nearest quarter; in only six courthouses staff adhered to Ministry policy and entered the start and end times as indicated in the audio recording of the presiding official's arrival and departure.

Further, as part of our review of the 125 full notes of digital audio recordings mentioned in **Section 4.1.3**, we also found that 58 (or 46%) of them incorrectly reported their start and end time in ISCUS, with differences ranging from 15 minutes to as long as 1.5 hours per court day that we examined.

Inconsistent and incorrect time reporting in ISCUS also affects the Court Service Division in making funding allocation decisions for the following year, because courtroom operating hours reported in the previous year is one of the two major factors considered in the funding allocation model.

RECOMMENDATION 3

To enhance the quality of data available on courtroom operating hours in order to help inform decision-making in areas such as resource allocation, we recommend that the

Ministry of the Attorney General provide training to its court staff to enable them to follow the Ministry's time-reporting policy consistently across the province.

MINISTRY RESPONSE

The Ministry agrees to revise existing mandatory employee training materials to ensure a consistent approach to court time reporting. It also agrees to review the recommendation with the Offices of the Chief Justices.

4.2 Overall Pace of Court System Modernization Remains Slow

Our past audits of the court system have repeatedly identified the need for modernization to improve system efficiencies. The Ministry, while taking cautious and incremental steps toward modernization, has made limited progress in its efforts to introduce and use more and more effective technologies in the court system since our last audit in 2008.

Examples of modernization initiatives we found the Ministry has completed since 2008 are:

- full implementation of digital recording devices in 2013 to improve the quality of court recordings;
- implementation in 2016 of electronic warrant applications that police can submit after regular court hours (evenings and weekends); justices of the peace approve warrants by digitally signing and returning them via encrypted email; and
- electronically connecting the federal divorce proceedings database and Ontario's FRANK case file tracking system. This allows FRANK to electronically request database searches of existing divorce proceedings anywhere in Canada and obtain the clearance certificate that verifies the absence of any other ongoing divorce proceedings involving either party; only when Ministry court staff obtain the clearance certificate can they process the divorce application in Ontario. This replaced the previous paper and mail process.

In conducting this audit, we found that further action is required to continue to modernize the court system. The Ministry acknowledged that it had been subject to "ongoing, consistent criticism from [justice] sector stakeholders regarding the pace of modernization." The former Chief Justice of the Superior Court of Justice expressed her concerns to us that the courts were still heavily paper-driven and need to have more robust and reliable information systems to support the court operations.

4.2.1 Replacement of Integrated Court Offences Network (ICON) Has Made Little Progress

The Ministry tried but was unable to replace the Integrated Court Offences Network (ICON) in 2010; the system has been in use for 30 years. Since then, the Ministry has made little progress in this regard.

There are a number of clear disadvantages in using a legacy system, including:

- difficulties in finding people familiar with a decades-old programming language who can make changes to the system;
- incompatibilities with other systems in the sector (such as systems used by police and correctional institutions);
- lack of adaptability to the changing needs of users and inability to generate management reports for data analysis, such as categorizing appearances in court by type; and
- possibility that making changes to this outdated system could cause data loss or cause it to crash.

At the time of our 2008 audit on Court Services, the Ministry was exploring the development of a single case management system to integrate both ICON and FRANK. The targeted completion date for this common platform was 2009/10. In November 2009, Treasury Board approved almost $10 million in funding for the Court Information Management System (CIMS) project scheduled

for completion in March 2012. Subsequently, our 2016 audit report on Information and Information Technology General Controls reported that CIMS had not proceeded as planned, resulting in a net loss to the Ministry of about $4.5 million. The Province's Internal Audit Division and a third-party consultant conducted separate reviews of the project. They attributed the failure to lack of proper governance and oversight, project management and reporting processes.

In January 2019, the Ministry submitted another project plan to the Treasury Board for replacing the system, which was pending approval as of August 2019. The business case submitted was part of an overall Criminal Justice Digital Design initiative, estimated to cost $56.1 million between 2019/20 and 2023/24. We noted the details of the Criminal Justice Digital Design initiative in **Section 2.4.1**.

RECOMMENDATION 4

To support the court system with more robust case file-tracking systems, we recommend that the Ministry of the Attorney General closely monitor the Criminal Justice Digital Design initiative, if it is approved, to ensure that it meets agreed-upon timelines, comes in within budgeted costs, and that any issues regarding implementation are addressed on a timely basis.

MINISTRY RESPONSE

The Ministry of the Attorney General and the Ministry of the Solicitor General agree with this recommendation to ensure that they have robust project management practices, including rigorous project tracking and reporting, in place for all initiatives, supported by consistent financial accountability, governance and risk-mitigation frameworks. The replacement of the Criminal Court Case Tracking system will adhere to these practices and processes.

4.2.2 Lack of Sector-Wide Strategy Results in Underutilization of Videoconferencing Technology for Criminal Matters

As mentioned in **Section 2.4.2**, the Ministries of the Attorney General and Solicitor General have utilized videoconferencing for criminal court appearances for over 20 years. However, since 2008 when we last performed our audit on Court Services, we have found that videoconferencing in the criminal justice sector continues to be underutilized.

Over the last 10 years, the Ministry has formalized a strategy for expanding the use of videoconferencing technology in the criminal justice sector. This strategy includes:

- adopting a "video first" approach so that the court system prioritizes videoconferencing as the first option for most in-custody court appearances and targets a 90% utilization rate in routine court appearances, such as bail hearings and first appearance hearings, by 2020/21; and
- installing more videoconferencing units in court locations and correctional institutions across the province to support increased video use.

The total costs of the strategy are estimated to be $45.3 million over six years (2019/20–2024/25) for the Ministry of the Attorney General and $41.5 million over five years (2019/20–2023/24) primarily for the Ministry of the Solicitor General. The ministries submitted a joint business case for this strategy to the Treasury Board in January 2019, which was pending approval as of August 2019.

In 2018/19, videoconferencing was used in 52% of all in-custody court appearances. The Ministry's 90% "video first" target to be achieved by 2020/21 appears to be very ambitious, as it has not yet received approval to install additional videoconferencing units. Setting interim targets may help the Ministry manage its work schedule over the duration of this six-year project.

We noted some of the reasons that help explain why Ontario's courts have been so slow in adopting videoconferencing technology. These include:

- Its use remains optional. Alberta courts require video technology for several types of pretrial appearances unless the accused has a justifiable reason for not using it. In Ontario, use of video is not a judicial requirement, and accused persons have the choice to appear in court in person. Some use the court appearance to consult in person with their defence lawyer, and some simply want to be out of the institution where they are being held, for a time.
- Geographic limits exist on its reliable use. In certain areas, such as in northern Ontario, the Internet is only intermittently available due to IT issues such as low bandwidth. This limits the use of video technology in courts in those locations.
- Its availability in places of detention is still limited. For example, one correctional institution has 10 videoconferencing units, each available seven hours a day, Monday to Friday. However, this institution conferences with 34 court locations, meaning that each court location was designated an average of 30 minutes per day. Another correctional institution had only one videoconferencing unit to be shared with all court locations across the province. Therefore, if one court location goes over the time given to it by that correctional institution, then all other courts have to wait to connect to that institution and delays result. Staff at the courts we visited confirmed the limitations they faced in optimally using video technology in their court locations.

RECOMMENDATION 5

To help increase the utilization of videoconferencing technology for criminal court matters, we recommend that the Ministry of the Attorney General (Ministry) work with the Ministry of the Solicitor General to establish interim targets and monitor progression toward the 90% utilization rate the Ministry has targeted to achieve by 2020/21.

MINISTRY RESPONSE

The Ministry of the Attorney General (Ministry) agrees to work with the Ministry of the Solicitor General to establish interim targets and monitor progression toward achieving the targets.

Following the audit, the Criminal Justice Sector Video Strategy received approval from Treasury Board with the targeted timeline revised to 2022/23. The approval also included a suite of Key Performance Indicators, such as incremental targets for project management, financial accountability and efficiency indicators.

4.2.3 No Timeline Was Put in Place for Offering Additional Videoconferencing Options to Justice System Users

In summer 2016, the Superior Court and the Court of Appeal approached the Ministry to locate a third-party service provider to supply moderated video appearance technology for designated matters in their courts. The judiciary recognized the convenience for lawyers and cost savings for clients that could result from letting lawyers videoconference from their own offices. The service provider identified was a private company that provides videoconferencing services for all levels of courts and tribunals across the United States. Users (primarily lawyers) schedule their court appearances with the service provider and pay a fee ($65 per use for a typical court appearance) directly to the service provider. This would eliminate some set-up and ongoing support costs for the Ministry.

The Ministry had no formal record of exploring this type of technology before it was approached by the judiciary. It entered into an agreement with the service provider in February 2017. A pilot

began at the Superior Court Toronto location (civil cases only) and the Court of Appeal in March and May 2017, respectively. The initiative was expanded to include Superior Court in the North West region in August 2018 for all practice areas. Between April 1, 2017, and March 31, 2019, 895 court appearances were made through the service provider's platform, for an estimated $400,000 (or about 65%) potential savings to litigants represented by a lawyer, primarily resulting from the lawyers' reduced travel and time spent in court. This result points to the potential savings for litigants by further expanding the use of this service, particularly in northern and rural areas.

The Ministry completed an evaluation of the pilot in February 2018, which concluded that:

- the service provider "has demonstrated its ability to integrate well within [Ontario's] Courts (and within the court offices) through this pilot";
- there were no "unusual or burdensome steps that were required to integrate [the service provider's platform] into Ontario's courtrooms as part of the pilot"; and
- the service provider "has provided a reliable and financially-viable alternative for litigants."

However, despite the positive results of the pilot and the minimal cost to the Ministry, the Ministry postponed further expansion of the service because it has not given this pilot the same level of priority as other projects, such as videoconferencing for criminal matters and online filing for civil and family courts. At the time of our audit, the Ministry has also not set a plan or timeline to expand the service further despite knowing that it will bring additional benefits to justice system participants.

RECOMMENDATION 6

To improve access to the courts for justice system participants in a cost-effective manner by making video appearances in court more readily available, we recommend that the Ministry of the Attorney General establish a plan and timeline to re-evaluate the use of its videoconferencing service and then, if it confirms the service as cost-effective, further expand the use of the service, given its proven and confirmed success.

MINISTRY RESPONSE

The Ministry agrees to establish a plan and timeline to re-evaluate the use of its videoconferencing service. If the Ministry confirms that the service is cost-effective, it will further expand the use of the service, following the completion of the current work to expand videoconferencing for adult in-custody pretrial court appearances. Additional uses for video will be prioritized alongside the Ministry's other modernization and technology priorities.

4.2.4 FRANK Needs Significant Updates to Better Support Judges and Court Staff in Tracking Case File Information

FRANK is a newer system than ICON, but we found that it has weaknesses that impede the courts' ability to operate efficiently. Court staff operate in a high-volume data entry environment as they process documents and enter court appearance details as cases progress through the family court system. Data entry is shared between various staff—counter staff, court clerks, office staff and trial co-ordinators. Based on our review of the FRANK system with courthouse staff from seven different court locations, as well as the feedback we obtained from the Offices of the Chief Justices of both the Ontario Court and the Superior Court, we found that, overall, FRANK is not a robust information system capable of promoting accurate entry of data and generating user-friendly reports. Courthouse staff and judges cannot rely on FRANK alone to ascertain the specifics of a case. As a result, they continue to heavily rely on the physical case files. Some of the key weaknesses we noted were as follows:

- Case tracking—the system does not capture essential information to track the progress of cases:
  - FRANK cannot generate reports that flag domestic family law cases that have been unresolved by select age ranges. It also does not track progress made in resolving each of the issues, such as child custody, child support and division of property within a case. Instead, Ministry court staff and judges have to retrieve physical case files to determine whether any given case was resolved or still outstanding at a point in time.
  - FRANK does not capture key information needed to monitor whether child protection cases are meeting statutory timelines. We discuss this issue further in **Chapter 4** of this volume (Family Court Services).
- Data entry—selections and validations require updates to ensure accuracy of data:
  - Types of court orders: Ministry court staff select from a drop-down menu with 114 codes to match the type of court order issued; however, not all codes listed are commonly used. In contrast, some common orders, such as orders to allow possession of a minor's passport, have no codes and as a result are incorrectly coded as other types of orders.
- System navigation—the interface layout is not user-friendly and efficient:
  - Case retrieval: Lacks a recent-activity tab to easily retrieve case files that were recently worked on. There is no easy cross-referencing between related files, extension files and consolidated files (for civil matters), so staff often have to find these files by performing a search in FRANK using litigants' names.

Further, the judiciary expressed their concerns regarding FRANK's limitations in assisting trial co-ordinators in scheduling cases accurately and efficiently.

RECOMMENDATION 7

To improve the reliability and usability of the FRANK system to better support the efficiency of the court system, we recommend that the Ministry of the Attorney General address its shortcomings identified in areas such as case tracking, data entry and system navigation.

MINISTRY RESPONSE

The Ministry is committed to improving FRANK by expanding its ability to collect data, enhancing its usability and improving automation; it will also continue to work with court staff, management and the judiciary to review the shortcomings identified in the report and implement changes to the system.

The Ministry continuously explores ways in which enhancements can be made to FRANK to support the judiciary and court staff with their day-to-day work. FRANK is currently supported by a change request process that allows the Ministry to prioritize and make changes to the system without disrupting the critical daily operations of the court.

4.3 Ontario Court System Remains Heavily Paper-Based

In 2018/19, almost 2.5 million documents—over 96% of them paper documents—were filed in Ontario's court system, ranging from cases' initiating documents to evidence and court orders made by a judge. Overall, the number of documents filed increased by about 3% over 2014/15. Specifically, the number of documents filed for criminal and family cases has grown by 12% and 10%, respectively, in the last five years, while documents filed for civil and small claims cases have decreased.

In most cases when litigants or lawyers need to add documents to the continuing record of a case, they must attend the courthouse in person and file the documents at the counter. This involves travel

time, time spent waiting at the court counter for service, and time that Ministry court staff must take to locate the file. In rural or northern areas, individuals may have to travel over an hour to file a paper document.

At the time of our audit, it was common practice for police to transport criminal Information packages, containing documents with, for example, the offence that the accused person is charged with, copies of police officers' notes and witness statements, to courts and attend courts in person whenever a new charge was added to the case against an accused. Court staff then entered the information into ICON. Judicial approval of the information was also paper-based and shared manually with others, including defence counsel and Crown attorney. Paper documents accumulate in case file over the life of a case. During our courthouse visits, we observed the significant amount of space occupied by paper files in storage rooms and back offices. Once a case is disposed, court staff box the case files and transfer them to the provincial government's central records retention centre. They sit at the centre until they are destroyed according to the retention schedules. As might be expected, the Ministry has accumulated a significant amount of paper case files over the years. Between 2014/15 and 2018/19, the Ministry's Court Services Division paid about $2 million per year to the retention centre for keeping its records, primarily court case files. This is a low estimate, as the Ministry was unable to provide the additional costs incurred for sending and retrieving case files to and from the retention centre; these costs are recorded under a general freight account and not tracked separately.

4.3.1 Criminal Courts—Paper Reduction Initiatives Under Way but Ministry's Planning and Oversight Is Lacking

With respect to criminal courts, we reviewed three major technology-based initiatives—Criminal E-Intake, Electronic Scheduling Program and Criminal Electronic Order Production—that were in place or in the process of being implemented to replace the legacy paper-based processes. However, we found that the Ministry was not properly planning and overseeing the implementation of these initiatives, resulting in significant delays and cost overruns. The full benefits of these initiatives were not yet realized at the time of our audit.

Implementation of Criminal E-Intake and Electronic Scheduling Program Had Significant Delays and Cost Overruns

Criminal E-Intake is an online system to let police submit criminal Information packages electronically to the Ontario Court. Reducing ICON data entry by Ministry court staff could free up staff time so they can spend more time on clients at the counter and on other work. The Ministry approved the business case for this system in July 2016 for an estimated cost of $1.7 million, and the Ministry expected to complete the project by November 2017.

All police systems now use one of two record management systems delivered by two separate vendors. The original business case for Criminal E-Intake included the integration of these systems with the court's ICON system. Because the Ministry did not properly plan and oversee the project, it underestimated the timelines and costs of this project. In particular:

- The Ministry has repeatedly revised the project's completion date. At the time of our audit, the Ministry had already extended the completion date by two years to November 2019 and updated the estimated costs to $1.9 million (or 11% over the original budget). It also reduced the scope by having only one of the two record management systems being integrated with the ICON system.
- The primary reason for the delays and cost overruns was that the Ministry did not require the vendor to deliver the project in accordance with the initial timelines and budgets. Instead of signing a new contract

for this project based on specific deliverables, the Ministry tried to implement the project through an existing maintenance and support agreement.

- Additional business requirements not in the original business case were identified by stakeholders (police services and the judiciary).

Integration of the second police record management system was estimated to cost $480,000 according to the Criminal Justice Digital Design business case. It was subsequently included as part of the $56-million business case submitted in January 2019 (discussed in **Section 4.2.1**). However, the Ministry did not formally consult with key stakeholders, including the second vendor and the police services using the system, prior to submitting this business case. The business case did not have key information; for example, there were no clear milestones and timelines for integration, and no identification of key risks resulting from the lack of staff expertise needed for managing the project.

Our audit also found that the implementation of the Electronic Scheduling Program (Program) was significantly delayed as well as over budget. The business case for this Program, which seeks to modernize and standardize judicial scheduling of court matters, was approved by the Ministry in October 2015 at an estimated cost of $970,000 expected to be incurred between 2014/15 and 2016/17. The business case also indicated that there was no standardized approach or automated tool for judicial scheduling across Ontario, with scheduling varying widely based on local practices. The implementation was expected to be completed in July 2016.

However, as of August 2019, the Ministry updated the completion date to March 2020 with a revised estimated cost of about $1.6 million, or 65% over its original estimated cost and a reduced scope. The current roll-out of the program is only for scheduling criminal court events including trials, although the original business case included both criminal and family court events. The primary reasons for the delay and cost overrun included the following:

- Significant technical changes were made to the system after the initial security assessment was downgraded from high-risk to medium-risk. This change in the security assessment followed the roll-out in pilot locations and further consultations with key justice partners.
- Other technical changes, such as an enhancement of screen readers, were made to the system to comply with requirements of the *Accessibility for Ontarians with Disabilities Act, 2005*, thereby improving the accessibility, usability and readability for users of the system.
- Changes were made to system functionality, including providing printing functionality to users of schedules and access rights to judicial secretaries, as these functionalities were not included in the original business requirements.

RECOMMENDATION 8

To minimize the risk of delays and cost overruns in completing its modernization initiatives for criminal courts, we recommend that the Ministry of the Attorney General:

- consult with key stakeholders on business requirements, risks, timelines and costs in preparing its information technology business cases; and
- require information technology vendors to deliver projects within agreed-upon timelines and key requirements.

MINISTRY RESPONSE

The Ministry agrees with this recommendation. Modernization in the justice sector can be complex, requiring the Ministry to understand and balance the needs of multiple courts, the people of Ontario and a wide range of stakeholders, including legal professionals and advocacy

groups. Addressing these sometimes-conflicting needs while ensuring investments are maximized can be challenging.

Nevertheless, the Ministry's Modernization Division has successfully completed the Search Warrant Tracking System on time and on budget. The Modernization team will consult with our judicial partners and all relevant stakeholders, including Justice Technology Services, the legal community and affected groups, will carry out public consultation where appropriate, and will continue to improve the Ministry's approach to business requirements, risk identification and mitigation, financial forecasting and documentation.

Benefits of Using Criminal Electronic Order Production Not Yet Fully Realized

Criminal Electronic Order Production is an initiative supporting the electronic in-court production of the three most common criminal court orders: judicial interim release orders ("bail papers"), adult probation and conditional sentence orders, and youth probation orders. The initiative started in the fall of 2012 and expanded in 2016 to include a Youth Sentence Order and other supplementary forms, with a cost totalling $126,000, or 5% above its total budget of $119,000.

The Ministry expected the initiative to save a million sheets of paper a year as per the business case submitted to the Treasury Board. However, the amount of paper saved was uncertain because:

- the system was not designed to allow electronic sign-off; although court staff create orders on a computer using an electronic form, they still have to print the forms for judges to sign; and
- the Ministry did not require court locations to make the best use of the e-orders by sending them to other justice partners (such as police, probation and victim services) electronically, rather than using hard copies, and does not monitor use of the e-orders.

RECOMMENDATION 9

To enhance the effectiveness and efficiency of court processes by reducing the extensive use of paper in criminal courts, we recommend that the Ministry of the Attorney General:

- work with the judiciary to explore options such as adding an electronic signature functionality to judicial e-orders; and
- require court locations to make the best use of the e-orders, for example, by sending e-orders to other justice partners electronically, rather than using hard copies, and monitor use of the e-orders.

MINISTRY RESPONSE

The Ministry agrees with the recommendation and is in the process of developing options with respect to e-signatures on criminal justice documents (including orders) as part of the Criminal Justice Digital Design (CJDD) initiative. Similarly, the electronic (rather than hard copy) sharing of judicial orders is also being considered in the CJDD initiative.

4.3.2 Family Court—About 30% of Electronic Divorce Applications Contained Errors and Could Not Be Processed as Filed

The Ministry first began to offer electronic document filing in family court in 2018. That April, it piloted an online divorce filing system where parties could file the required documents electronically without having to come to a courthouse. For the pilot, only joint divorce applications (where both parties agree on all the issues) could be filed online. In November 2018, this system for electronically filing joint applications became available province-wide. By February 2019, the Ministry added the capability to file simple divorce applications (where one party files to end the marriage without requesting the court's decision on other matters such as child custody or support). As of March 31, 2019,

the Ministry had spent about $1.5 million to design and implement the system. Between April 2018 and March 2019, 760 joint and simple divorces were filed online.

While the implementation of the system is a step in the right direction for improving access to justice for parties involved in family court, we noted the following:

- The Ministry had not assessed the error rate of the electronically filed divorce applications to help it make system improvements.
- About 30% of the electronically filed divorce applications contained errors that could have been prevented or more easily resolved with further enhancements to the existing system.
- The electronic filing system has not reduced the need for paper files because Ministry court staff still print out the applications for the judges to review.

The electronic filing system saves Ministry court staff time needed for performing manual data entry, as the parties' information (such as names, birthdates and addresses) and the documents filed are automatically uploaded into FRANK. However, during our visits to family court locations, court staff raised concerns regarding the accuracy of the applications filled out online that left staff unable to process them as filed. Staff have to contact the parties by email, mail or phone to sort out the inaccuracies, leading to delays in processing the applications. Neither the Modernization Division nor the Court Services Division kept track or summarized a list of issues encountered by court staff as they processed these electronically filed divorce applications.

To determine the accuracy of the electronically filed divorce applications, we sampled about 580 of divorce applications (or 76%) filed electronically between April 2018 and March 2019, taken from six different court locations that had more than 25 electronically filed divorce applications as of March 2019. We identified that about 30% of the applications filed contained errors that took court staff on average about 50 days to correct. Staff from two court locations could not process over 50% of the electronically filed divorce applications as filed. **Figure 7** summarizes the types of errors with electronically filed divorced applications we identified.

As noted above, the use of the electronic filing system has not reduced the amount of paper files in family court. In order for the Ministry to make progress toward a paperless environment, it must ensure that internal processes are in place at the court locations to minimize the need for printing paper files when documents have been filed electronically.

At the time of our audit, Ministry court staff were still printing copies of divorce applications received to create a paper file for the judge to review. While the applications can be available to the judges through FRANK, the Ministry has not worked with the judiciary to set up a process to promote electronic viewing of the files. Therefore, even though documents are filed electronically, paper files are still created.

RECOMMENDATION 10

To improve the effectiveness of the electronic divorce filing system and reduce the use of paper files, we recommend that the Ministry of the Attorney General:

- track and analyze challenges experienced by its court staff when processing applications submitted through the system;
- improve the system to minimize errors and promote ease of correction of errors; and
- work with the judiciary to modernize the internal court processes to enable judges to view electronically filed divorce applications, where appropriate, in electronic format.

MINISTRY RESPONSE

The Ministry agrees to explore options to track and analyze challenges experienced by court staff when processing documents submitted electronically through the system.

Figure 7: Summary of Errors in Electronically Filed Divorce Applications

Prepared by the Office of the Auditor General of Ontario

Details	Impact	Potential Mitigation
Insufficient or incomplete documentation: 190 occurrences (77%)		
Examples: missing marriage certificate, forms not signed, draft divorce order not properly prepared, Affidavit for Divorce not commissioned.	Ministry of the Attorney General (Ministry) lets court locations decide how to follow up. About 80% of the applicants were notified through email but generally needed to make corrections in person at the courthouse. This negates one of the most significant benefits of the system, which is to allow applicants to file court documents at their convenience (without having to take time off work, etc.).	Allow electronic correction and resubmission: British Columbia's online filing platform allows court staff to send a system-generated rejection email to the applicants if the file could not be processed; applicants can submit missing documents or resubmit documents as needed by referencing the prior file application number. Court staff can then further process applications upon receiving missing or corrected documents electronically.
Names did not match: 34 occurrences (14%)		
Name(s) on the application did not match name(s) on the marriage certificate (e.g., missing middle name).	FRANK automatically sends a request to the federal Central Divorce Proceedings Registry to obtain necessary clearance using the names recorded in FRANK. Once court staff review the application and notice the error, they must resend a request for clearance to the registry using the appropriate names.	Clarify and highlight instructions: The system does have an explanatory note next to the names fields instructing applicants to provide their names as they appear on the marriage certificate. But the number of errors suggests the note has not been effective and should be clarified and its importance highlighted.
Applicants did not include marriage certificate: 9 occurrences (4%)		
Applicants mistook the Record of Solemnization (a document that couples receive at the end of the wedding ceremony from the officiant) for the official marriage certificate.	The court cannot grant a divorce without having on file a copy of the government-issued marriage certificate or marriage registration certificate unless the divorce application explains why one cannot be obtained.	Clarify and explain requirements: British Columbia provides a tool to help parties prepare their applications. It explains clearly that the "marriage certificate you received at the church—or any other place you were married—isn't acceptable in court. You need the certificate that was issued to you by the government."
Application filed in wrong jurisdiction: 9 occurrences (4%)		
The *Family Law Rules* state that a divorce application can be started only in the jurisdiction (municipality) where one of the spouses lives, or if there is a child involved, where the child lives.	The court cannot process an application filed in the wrong jurisdiction. Applicants need to file a motion with the court to have the file transferred to the appropriate jurisdiction. However, this motion can only be filed in person at the courthouse.	Include a warning message and a reminder of the requirements of the *Family Law Rules:* We tested the system by entering home addresses of parties outside of the municipality of the court location that we selected to file the divorce application and found that the system did not generate a message warning that the application was potentially filed in the wrong jurisdiction.

Note: Sample consists of about 580 (or 76%) of the divorce applications filed electronically between April 2018 and March 2019, taken from six different court locations that had more than 25 electronically filed divorce applications as of March 2019. One application may contain multiple errors.

With each iteration of the system, the Ministry makes improvements to minimize errors, relying on "lessons learned," feedback from users as well as feedback from court staff.

Additionally, the Ministry in partnership with Community Legal Education Ontario currently offers Guided Pathways to Family Court Forms to help Ontarians complete their court forms easily and accurately. The pathways and electronic filing system are complementary modernization initiatives. The Ministry will take steps to encourage the use of both online services to minimize errors in court forms completed and filed electronically.

Discussions continue with the judiciary on various modernization initiatives, including electronic access to court documents.

4.4 Key Justice Partners Faulted the Ministry's Consultation Process in Planning New Courthouses

At the time of our audit, the Ministry was building a new courthouse for Toronto to consolidate criminal matters from six existing Ontario Court criminal courthouses located throughout the city (1911 Eglinton, Old City Hall, College Park, 1000 Finch, 2201 Finch and part of 311 Jarvis). The project's contract value was $956 million and it was estimated to be completed by 2022. Although representatives from the Office of the Chief Justice of the Ontario Court stated that the consultation process was "transparent, collaborative, and responsive," we found that the Office of the Chief Justice of the Superior Court and the Toronto Police Service (Toronto Police) both reported their disappointment with the Ministry's level of consultation and communication on such a major infrastructure decision.

We have summarized the timelines and events about the project in **Appendix 15**.

In its May 2014 spring budget, the government first announced the New Toronto Courthouse project. A day before the budget was released, a senior Ministry official communicated the decision to the Office of the Chief Justice of the Superior Court for the first time. In a subsequent letter we reviewed, the then-Chief Justice of the Superior Court wrote to the Ministry's senior management that her Office "was not consulted once on this major capital project." We noted the 2008 memorandum of understanding signed between the Attorney General and the Chief Justice of the Superior Court stipulates that the "Attorney General and the Chief Justice [of the Superior Court of Justice] agree to develop a consultation process for identifying, prioritizing and implementing facilities initiatives that reflects a collaborative process between the Attorney General and Chief Justice."

This lack of up-front consultation from the start led to at least 15 subsequent letters and meetings over the next year between senior management at the Office of the Chief Justice of the Superior Court and the Ministry to discuss the appropriateness of the decision and the plan for including some of the Superior Court's workload in the new courthouse.

The Ministry also did not consult with the Toronto Police regarding its plans. In June 2017, the Toronto Police prepared a report recommending actions it could take to mitigate the anticipated security risks associated with consolidating all criminal court matters in the downtown core. The report states that the Ministry made a "unilateral decision" and the Toronto Police "was not consulted by the Ministry in its decision on court [consolidation]." This means not only that the Toronto Police's operational concerns were not heard but also that the Toronto Police had not prepared a threat assessment to inform this decision. Among the concerns the police identified were:

- a consolidated courthouse could bring rival gang members and other violent criminals to a single court location, increasing the security risk for the public and requiring an increased police presence in and around the courthouse to meet that risk;

- the planned courthouse is steps away from the existing Superior Court criminal courthouse and several other "high-profile and security-sensitive locations," such as the United States Consulate, Toronto City Hall and the Eaton Centre; and
- potential court delays could be caused by the congested neighbourhood, periodic demonstrations occurring in the downtown core, and the need for victims, witnesses, the accused and police officers to commute to the downtown core as opposed to the current courthouses located around the city.

The Ministry of the Attorney General was not aware of the Toronto Police report until March 2018, when the Office of the Chief Justice of the Superior Court shared it with the Ministry after a Superior Court judge had learned of it informally during a homicide pretrial. While responsibility for public and court security lies with the Ministry of the Solicitor General and ultimately with the local police, the Ministry of the Attorney General had made a decision without fully consulting the Toronto Police that will potentially compound the challenges the police face in ensuring public safety in the surrounding area.

The Ministry indicated that since the New Toronto Courthouse project was announced, the Ministry and Infrastructure Ontario have worked with the Toronto Police on the planning for the new courthouse. In particular, the Toronto Police has been instrumental in informing the security requirements or features of the building, given its responsibility for court security.

The Office of the Chief Justice of the Superior Court also, at the time, expressed disagreement with the locations of four of the five new courthouses built between 2009 and 2014 at a contract price of about $1.5 billion, as noted in **Section 2.6.2**. These are the Waterloo Region/Kitchener, Quinte/Belleville, Elgin County/St. Thomas and Thunder Bay courthouses. Representatives from the Office of the Chief Justice of the Superior Court, a justice partner, informed us that it had also not been consulted before the decision was made to construct courthouses at these locations. From their Office's point of view, the more pressing needs at the time were Milton (Halton), Newmarket and Barrie regions.

4.4.1 Capital Decision Did Not Address the Most Pressing Needs at the Time for Halton, Barrie and Newmarket

We noted that as part of its 2005/06 Infrastructure Plan, the Ministry submitted a list of 13 court locations to be considered for consolidation and/or replacement. The Ministry prioritized these 13 court locations based on factors such as health and safety of the current courthouses, their caseload and the regions' population growth. We noted, however, that while the Treasury Board selected seven court locations from the list of 13, it did not select the top seven that the Ministry had ranked as its highest priority. For example:

- The Ministry ranked a courthouse in Halton Region as a higher priority than a Kingston courthouse, in part because Halton had greater capacity need due to its rapidly growing population. However, in 2005 the Province approved a consolidation project in Kingston that was ranked as a lower priority by the Ministry. After three years, in 2008/09, the province granted Stage 1 planning approval for a new courthouse in Halton Region, which will replace the Burlington and Milton courthouses. It approved the construction in 2017/18, with an expected completion date of 2023.
- The Ministry ranked the Barrie courthouse as a higher priority than the Thunder Bay courthouse, because Barrie had a limited number of courtrooms. However, the Province approved a new courthouse in Thunder Bay instead.
- During our audit, the Ministry was unable to provide an explanation as to why Newmarket was not included in its 2005 capital submission to the Treasury Board.

Appendix 14 summarizes the details of the Ministry's capital plan for some of the courthouses.

RECOMMENDATION 11

To receive all possible useful feedback and advice from its key justice system partners on infrastructure decisions, we recommend that the Ministry of the Attorney General proactively engage justice system partners such as the judiciary and police services, as appropriate, prior to making and recommending major infrastructure decisions to the government, and communicate the final decisions to the justice system partners on a more timely basis.

MINISTRY RESPONSE

The Ministry agrees with this recommendation. It now has a Judicial Facilities Working Group (members include representatives from all three Courts, as well as senior Ministry staff from the Court Services Division and Facilities Management Branch) to collaboratively identify, prioritize and plan for judicial facilities' needs.

After large-scale renovations and new courthouses are approved, police are then engaged in the planning process and continue to be engaged thereafter.

4.5 Court Services Regular Staff Absenteeism Increased by 19% between 2014 and 2018, while Number of Staff Declined by 10%

The number of sick days taken by regular full-time staff working in the Ministry Court Services Division (Division) rose by 19% from 27,610 in 2014 to 32,896 in 2018, even though the number of regular full-time staff who were eligible to take sick days declined by 10% over the same period. The average number of sick days per employee in this Division rose from 10 in 2014 to 14.5 in 2018; this compares to the Ministry average of 9.5 days in 2014 and 11.35 days in 2018, and the Ontario Public Service average of 11 days in 2018.

Figure 8 shows the breakdown of sick days taken by regular full-time staff between 2015 and 2018. In particular:

- The number of employees who took 50 to 99 sick days per year rose by 17% from 89 employees to 104 employees.
- The number of employees who took 25 to 49 sick days per year rose by 45% from 114 employees to 165 employees.

The government implemented the Employee Attendance Support Program in January 2018, replacing the Attendance Support and Management Program implemented in 2015. Under the current program, the Public Service Commission for the Ontario Public Service sets an enterprise-wide attendance threshold that, if exceeded, triggers the Employee Attendance Support Program. In that situation, courthouse managers are required to advise employees when they have exceeded the threshold (nine sick days) and to take appropriate action, possibly including termination if it is found that sick leave was being abused. This was also the case with the 2015 program; the previous threshold was seven days.

The Division did not maintain a central system to monitor staff with high absenteeism rates, leaving this responsibility instead to the local courthouse manager. The courthouse managers we visited indicated they have implemented their own local systems to monitor staff absenteeism.

As the courts must continue to operate when cases are scheduled to be heard, replacement staff must be called to fill in for employees who are sick. The Ministry reported that the total cost of lost time due to absenteeism was $7 million in 2017 and $8.6 million in 2018. The Ministry does not track overtime payments attributed to absenteeism; however, total overtime payments made to Division employees in 2018/19 amounted to $3.6 million.

Absenteeism can have a significant impact on the courts' ability to provide justice without undue delays or administrative errors, and can signal

Figure 8: Sick Days Taken by Regular Full-Time Court Services Division Staff, 2015–2018
Source of data: Ministry of the Attorney General

# of Sick Days	# of Regular Full Time Employees				4-Year Change (%)
	2015	2016	2017	2018	
>100	32	24	23	29	(9)
50–99	89	78	93	104	17
25–49	114	127	125	165	45
9–24	316	272	346	389	23
<8	2,090	1,841	1,701	1,581	(24)
Total	**2,663**	**2,372**	**2,316**	**2,303**	**(14)**

employee commitment problems. The Division's internal documents indicated that, in 2018/19, increased absenteeism was responsible for longer counter wait times at certain of the courts that provide family, civil and small claims services. Division employees participated in the 2014, 2017 and 2018 Ontario Public Service Employee Experience Survey. The Division employees, in 2018, reporting dissatisfaction with their job averaged 37%, compared to 33% across the Ontario Public Service; 60% were dissatisfied with their Ministry compared to the Ontario Public Service average of 48%.

RECOMMENDATION 12

To minimize lost time and costs due to staff absenteeism, we recommend that the Ministry of the Attorney General provide more training and support to courthouse managers in proactively working with employees who experience higher-than-average absenteeism from work.

MINISTRY RESPONSE

The Ministry agrees and will explore options with central agency human resources partners for improved attendance management tools supported by training for managers to address attendance issues.

4.6 Ministry Oversight of Court Interpreters Needs Improvement

4.6.1 Interpreters Not Pre-accredited by the Ministry Providing Interpretation Services in Court

Although there were 676 pre-accredited interpreters on the Ministry's registry, we found that the Ministry paid about 140 interpreters and 37 third-party agencies (the number of interpreters supplied by these agencies was not readily available) a total of approximately $898,290 in 2018/19 to provide courtroom interpretation services even though they were not on the Ministry's registry. **Section 2.7** discusses the five-year trend in the Ministry's payments for interpretation services.

The Ministry's policy allows courthouse staff to book the services of interpreters outside of the central registry only in situations of extreme urgency. Before booking an off-registry interpreter, the policy requires that courthouse staff document all efforts they took to reach a Ministry-accredited interpreter, and to note the reasons why each Ministry-accredited interpreter who was contacted was not booked. However, the Ministry did not have a process in place to collect and review this information because it is kept locally at each courthouse. Therefore, the Ministry could not identify languages and regions in need of additional Ministry-accredited interpreters.

Our review of the documentation maintained by local courthouses also found that in 70% of cases, the documentation was insufficient. For example:

- It was not always clear whether Ministry-accredited interpreters were contacted before an off-registry interpreter was booked.
- In cases when Ministry-accredited interpreters were contacted before an off-registry interpreter was booked, the reasons why they were not available were not documented.
- It was not always clear whether courthouse staff informed the judicial officials and involved parties before booking off-registry interpreters.

RECOMMENDATION 13

To help ensure the use of Ministry-accredited court interpreters performing proper interpretation for people who need the services in court, we recommend that the Ministry of the Attorney General (Ministry):

- require courthouse staff to use Ministry-accredited interpreters and properly document each time the services of an interpreter is booked outside of the Ministry central registry (including specifying who on the registry was contacted and the reasons why they were not available);
- establish a centralized process to collect information from the courthouses and identify the languages and regions that need additional accredited interpreters; and
- accredit additional interpreters where more are needed.

MINISTRY RESPONSE

The Ministry agrees with the recommendation and will develop a plan to monitor compliance with the requirements for courthouse staff to use accredited interpreters and appropriately document each time an interpreter is booked from outside the Ministry central registry.

The Ministry will also develop a strategy that includes targeted recruitment for those languages that require more interpreters in each region.

The Ministry books interpreters from outside the local area or outside the Ministry registry only in situations where this is required to fulfill its legislated obligations.

4.6.2 Justification for Interpreters' Travel and Travel Expenses Not Consistently Documented

Our review of a sample of 60 invoices claimed by court interpreters on the Ministry's central registry between March 2018 and February 2019 found that over one-third of the travel claims were uneconomical, and in some instances, a large portion of the expenses need not have been spent if interpreters were booked locally. Also, the justification for these travel claims was not always documented. For example:

- A French-language interpreter was reimbursed $1,895—including $1,134 for a two-night stay, or $567 per night—to travel from London to Toronto in September 2018 to attend a court matter. We noted that, given the Toronto location and the time of year, a more reasonable cost of accommodation would have been about $175–$275 per night. Staff from this courthouse also did not document why they were not able to book a local French-language interpreter in Toronto.
- Cornwall courthouse staff booked the services of a French-language interpreter from the Windsor area, 800 kilometres away, for one day, resulting in a total payment of approximately $1,550. Although the Ministry's policy requires its courthouse staff to give preference to interpreters who live in closest proximity when selecting interpreters from the registry, the staff did not document why they could not book a French-language interpreter in the Cornwall-Ottawa region. We estimated

that this would have saved the Ministry about $1,350, or 87%.

- A third interpreter was reimbursed $3,160 for travel to attend one day of court business in Thunder Bay. This includes 34 hours driving from Toronto to Thunder Bay and back, the mileage claimed by using the interpreter's own car, parking fees, and five days of meals and two nights' accommodation. We estimated a savings of about $2,000, or 63%, on time, mileage and accommodation costs if this interpreter had flown there and back. We noted at least one other instance where the same interpreter was reimbursed for similar travel expenses in the same year.

In contrast to the government-wide travel policy for government employees, the Ministry's travel policy for court interpreters does not require interpreters to use the most economical means of travel. Therefore, the designated court staff signed and approved the invoices without assessing whether or not they were economically justifiable.

RECOMMENDATION 14

To save costs on travel expenses paid to court interpreters, we recommend that the Ministry of the Attorney General (Ministry) require:

- Ministry court staff to book the services of interpreters who reside in or near the region where they are needed and document the justification for any exceptions to this requirement; and
- court interpreters to follow the government-wide employee travel policy that stipulates that the most economical means of travel be used.

MINISTRY RESPONSE

The Ministry agrees and will explore remote interpretation options to minimize the costs associated with long-distance travel from one region to another. This will require consultation with the judiciary, as well as with court staff to ensure that courthouses have the necessary technology and that staff are properly trained.

The Ministry will develop a plan to ensure court interpreters use the most economical means of travel in accordance with the government-wide Travel, Meals and Hospitality Expenses Directive.

4.7 Performance Targets Not Set to Aim for Timely Disposition of Cases

Because responsibility for the courts is shared between the Court Services Division and the judiciary of both Courts, it is up to both parties to participate in establishing effective performance reporting.

Our audit found that the Ontario Court and Superior Court publish some case statistics and relevant court information; however, targets are lacking to measure against actual performance. Thus, Ontario is not as well placed as some other jurisdictions, such as British Columbia and Alberta, to assess the efficiency and effectiveness of its court operations, especially those related to the timely disposition of cases.

The Division has since 2016/17 established 12 key performance indicators and measured them against pre-established targets. These performance indicators include counter wait-time and client satisfaction with counter services. The Division has also gathered financial and operational data and calculated cost per case and cost per courtroom operating hour, for example. However, this cost data was not used to assess the efficiency of court operations among the regions. As well, the Division collects courtroom operating hours, on behalf of the judiciary, but these statistics are not shared with other justice partners or published without the consent of the judiciary.

The Ontario Court publishes a large volume of case statistics on its website; however, none of these have targets associated with them. It reports, for example, annual statistics for each court location

and region, and for the province, on criminal law matters such as:

- number of cases received, disposed and pending disposition, and types of disposition;
- average number of days needed to dispose cases and number of court appearances made before disposition;
- bail outcomes; and
- disposition rates of cases, collapse rates of cases and aging of pending cases.

On family law matters it reports statistics such as the numbers of cases received, disposed of and pending disposition.

The Superior Court publishes case statistics in its annual report, such as the number of new criminal, family, civil and small claims proceedings, by region.

In contrast, many other jurisdictions have established targets to measure court performance and publicly report the results on a regular basis. For example:

- In British Columbia, the provincial court publicly reports on operational standards to assess its ability to manage its caseload effectively. When standards are not met, the report explains the underlying causes and trends, and suggests steps to take, including reallocating resources. It sets targets for key performance measures such as:
  - 100% adult criminal case completion rate, such that every fiscal year the number of cases concluded should equal the number of cases received;
  - 90% of criminal cases concluded within 180 days; and
  - for cases estimated to last less than two days, times to trial of six months for criminal cases, four months for family cases and five months for small claims.
- The State of Minnesota court system publicly reports on its progress toward meeting its performance goals using key measures such as:
  - 1% or less of major criminal cases disposed beyond 12 months;
  - 1% or less of major criminal cases pending beyond 12 months; and
  - 99% of children given final decision on placement or permanency by 18 months, in child protection cases where the child has been removed from the home.
- The Ministry of Justice and Solicitor General in Alberta issue annual reports on performance targets such as:
  - limiting the median elapsed time from first to last appearance for a criminal case in Provincial Court and Court of Queen's Bench of Alberta to 122 days or less; and
  - limiting the lead time to trial for serious and violent crimes in Provincial Court to 22 weeks or less.

RECOMMENDATION 15

To help measure the efficiency and effectiveness of court operations in contributing to a timely, fair and accessible justice system, we recommend that the Ministry of the Attorney General work with the judiciary to:

- review best practices from other jurisdictions and establish targets for key performance indicators such as timeliness in disposition of cases;
- monitor and measure actual performance against targets; and
- report publicly on the results periodically.

MINISTRY RESPONSE

The Ministry agrees to raise the recommendations with the Offices of the Chief Justices to the extent possible while continuing to respect the independence of the judiciary.

Court activity reports and data constitute court information, and the Court Services Division collects and maintains this information at the direction of the judiciary.

Appendix 1: Current Status of 2008 Select Audit Concerns

Prepared by the Office of the Auditor General of Ontario

2008 Select Audit Concerns or Observations	Similar or Related Concerns Noted During Our Current Audits*
Access to Information	
During our audit we experienced significant delays in obtaining key documents from the Ministry of the Attorney General (Ministry). Following our initial requests in December 2007, the Ministry took from three to six months to provide us with several key documents.	Scope limitation and delays in access to information (**Section 3.0**).
Criminal Law Matters	
Serious backlogs existed and were growing, particularly for criminal cases, and more successful solutions were needed for eliminating backlogs.	The backlog of criminal cases continues to grow. Refer to **Chapter 3** of this volume (Criminal Court System, **Section 4.1**).
Family Law Matters	
Backlogs existed in resolving child protection cases.	With limited access we still found delays in resolving child protection cases. Refer to **Chapter 4** of this volume (Family Court Services, **Section 4.1**).
We also noted growing backlogs for non-child protection family cases.	Some delay in obtaining hearings for domestic family law cases. Refer to **Chapter 4** of this volume (Family Court Services, **Section 4.2**).
In 17 court locations, a Unified Family Court exists where all family cases are dealt with by the Superior Court of Justice.	As of May 2019, there were 25 Unified Family Courts across the province. However, the Ministry did not have a concrete plan to achieve its target to expand Unified Family Court in the remaining 25 family court locations by 2025. Refer to **Chapter 4** of this volume (Family Court Services, **Section 4.6**).
Information Systems and Use of New Technologies	
We noted that, since our *2003 Annual Report*, there has been little progress in implementing new technologies to improve the efficiency of the courts, especially for handling criminal cases.	Overall pace of court system modernization remains slow (**Section 4.2**).
Electronic Document Filing—In 2004, the Ministry discontinued its pilot project on electronic document filing because its outdated equipment was prone to failure, its system lacked capacity, the forms were complex, and the necessary investment was deemed too large.	Ontario court system remains heavily paper-based (**Section 4.3**).
Video Court Appearances—In 2003, the Ministry set a target that video be used in 50% of all in-custody court appearances. The Ministry has not reached this target, and the growth in use of video technology has been slow and has essentially levelled off at 35%.	Lack of sector-wide strategy results in underutilization of videoconferencing technology for criminal matters (**Section 4.2.2**).
We noted that FRANK could not differentiate between cases that have exceeded statutory time limits, such as the requirement for a hearing within 120 days, and cases that courts had authorized to exceed these limits. This information would be useful for assessing the extent of backlogs.	FRANK needs significant updates to better support judges and court staff in tracking case file information (**Section 4.2.4**). The number of child protection cases pending disposition captured in the FRANK system was not accurate. Refer to **Chapter 4** of this volume, Family Court Services (**Section 4.1.4**).

2008 Select Audit Concerns or Observations	Similar or Related Concerns Noted During Our Current Audits*
Capital Planning and Courtrooms Utilization	
The need for more courtrooms is particularly serious in the Ontario Court for Justice, which has been experiencing large backlogs.	Existing courtrooms have the capacity to hear and dispose more cases (**Section 4.1**). Key justice partners faulted the Ministry's consultation process in planning new courthouses (**Section 4.4**).
Performance Reporting	
In the Ministry's annual reports, neither the Ministry nor the Division has included case backlogs as a measure of the Ministry's performance and the annual reports do not provide information on the extent of backlogs.	Performance targets were not set to aim for timely disposition of cases (**Section 4.7**).

* Refer to the listed sections for details.

Appendix 2: Courts of Ontario

Source of data: Ministry of the Attorney General

Ontario Court of Justice (Ontario Court)

Provincially appointed and funded judges and justices of the peace.

Criminal Law

- A single judge presides over trials for offences under the *Controlled Drugs and Substances Act* and the *Cannabis Act*. The judge also presides over trials for offences under the Criminal Code, such as summary conviction offences, hybrid offences where the Crown attorney elects to proceed summarily as well as offences where a preliminary inquiry is held.
- Bail Court determines whether a person charged with an offence should be released or detained until their case is resolved.
- A single judge presides over appeals of *Provincial Offence Act* matters.

Family Law

- In areas where there is no Unified Family Court, the Ontario Court hears matters that fall under most provincial legislation such as child protection, adoption, enforcement and custody or support matters in cases where divorce is not being claimed.

Superior Court of Justice (Superior Court)

Federally appointed and funded judges, except for case management masters and deputy judges who are provincially appointed and funded to hear civil and small claims matters.

Criminal Law

- A judge presides over appeals of summary conviction offences. A judge and jury, unless the parties consent to judge alone, presides over trials for indictable offences under the *Controlled Drugs and Substances Act*, the *Cannabis Act* and the Criminal Code. Criminal Code offences heard may include murder and other indictable offences, unless the accused has elected to be tried in the Ontario Court.

Family Law

- In areas where there is a Unified Family Court, this court, as a branch of the Superior Court, hears all family matters.
- In areas where there is no Unified Family Court, the Superior Court hears property issues and support and custody/access matters largely relating to divorce.

Appeals

- Hears appeals of summary offences and family matters from the Ontario Court.

Other Cases

- Hears civil and small claims cases as well as appeals and judicial review of administrative tribunals, government agencies and boards.

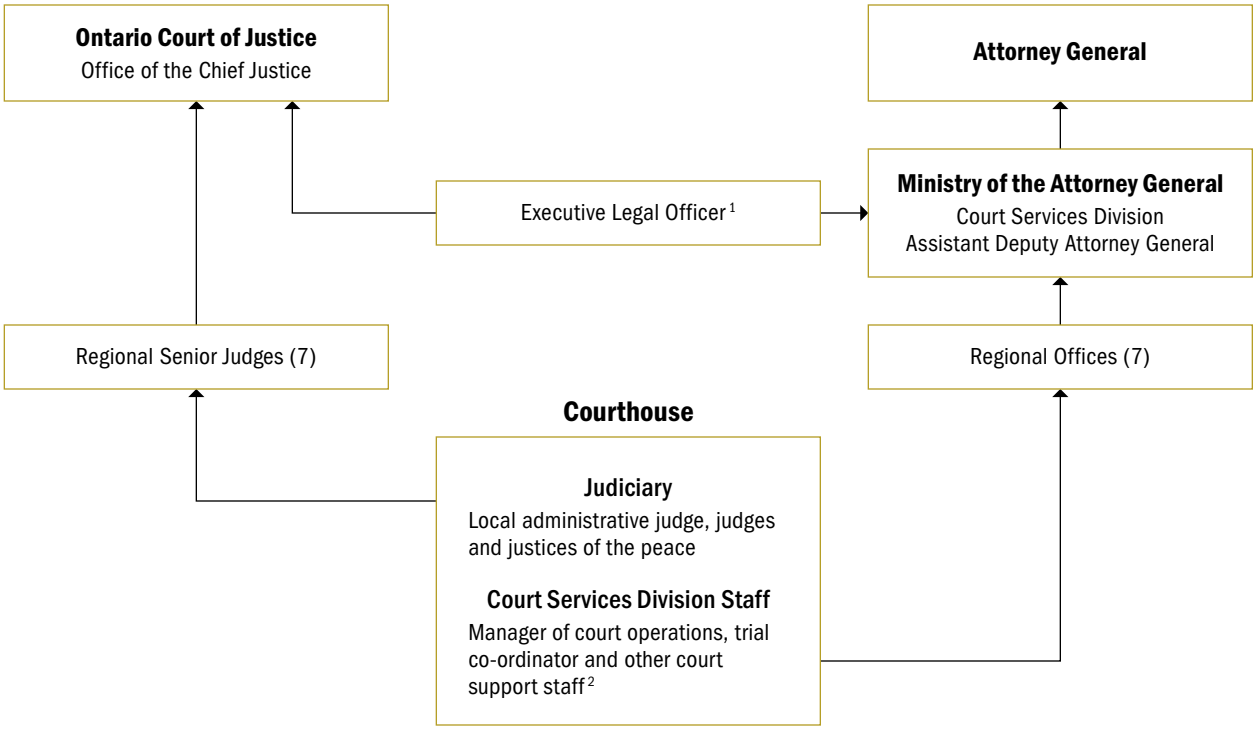
Court of Appeal for Ontario

Federally appointed and funded judges.

- Hears appeals from the Superior Court of Justice and Divisional Court (a branch of the Superior Court).
- Appeals from the Court of Appeal are heard by the Supreme Court of Canada.

Appendix 3: Reporting and Accountability Structure of the Ontario Court of Justice and Ministry of the Attorney General

Prepared by the Office of the Auditor General



1. The Executive Legal Officer (Officer) is responsible for the financial, human resources and related administrative responsibilities of the Office of the Chief Justice. The Officer acts as a liaison between the Office of the Chief Justice and the Ministry of the Attorney General (Ministry) through the Assistant Deputy Attorney General of Court Services Division. The Officer works under the direction of the Chief Justice but is paid salary and benefits by the Ministry.
2. Trial co-ordinators and other court staff work under direction of the judiciary but are hired and paid by the Ministry.

Appendix 4: Excerpt of Memorandum of Understanding (Memorandum) between the Attorney General of Ontario (Attorney General) and the Chief Justice of the Ontario Court of Justice (Chief Justice)

Prepared by the Office of the Auditor General of Ontario

Section	Excerpt
Preamble	The Attorney General and the Chief Justice are both committed ... to providing the people of Ontario with an open, fair, and modern justice system.
Preamble	The Attorney General and the Chief Justice operate under the principle of financial accountability, and recognize that the Attorney General is accountable to the Legislative Assembly of Ontario for the proper use of public funds allocated for the administration of justice in the Province.
2.1 – Role of the Attorney General	The Attorney General is responsible for the following: a) Presenting the budget of the Office of the Chief Justice as part of the estimates of the [Ministry of the Attorney General]; b) Reporting to the Legislature; c) Ensuring that the Office of the Chief Justice is informed of Ministry and Government of Ontario financial and administrative policies that apply to the operations of the Office of the Chief Justice; d) Administering all matters connected with the operation of the [Ontario Court] and all matters connected with judicial officers, other than matters assigned by law to the judiciary and matters assigned to the judiciary by the Memorandum; e) Promoting fair, accessible and timely criminal, provincial offence and family justice services; and f) Promoting fair and timely appointments by the Government of Ontario of new judiciary and senior judicial administrative positions within the [Ontario Court].
2.2.1 – Role of the Chief Justice and the Office of the Chief Justice	The Chief Justice is responsible for the following: a) Supervising and directing the sittings of the [Ontario Court] and the assignment of judicial duties pursuant to the *Courts of Justice Act*; b) Recommending names to the Attorney General regarding the appointment and re-appointment of Associate Chief Justices, Regional Senior Judges and Regional Senior Justices of the Peace; c) Appointing other judicial administrative positions; d) Determining the nature and scope of representation by judiciary and [Ontario Court] employees (including the Executive Legal Officer) on Ministry or related committees, working groups or initiatives; and e) Promoting fair, accessible and timely criminal, provincial offence and family justice services.
2.3 – Role of the Ministry of the Attorney General (Ministry)	The Ministry is responsible for: a) Providing modern and professional court services that support accessible, fair, and timely justice services; b) Storing, maintaining and archiving Court Information and Judicial Information and releasing and providing access to such information ... c) [...]
3.1 – Funding	The operations of the Office of the Chief Justice are funded out of the Consolidated Revenue Fund through the annual Estimates process.

Section	Excerpt
3.4 – Provincial Auditor	The financial and administrative affairs of the Ontario Court of Justice, including the Office of the Chief Justice, may be audited by the Provincial Auditor as part of any audit conducted with respect to the Ministry. Correspondence with the [Office of the Auditor General of Ontario] pertaining to the [audit report] will be forwarded to the Chief Justice by the Attorney General, and any response made by the Attorney General to the Provincial Auditor shall be subject to prior consultation with the Chief Justice.
3.7 – Public Information, Outreach and Openness	The Attorney General and the Chief Justice are committed to improving the level of public understanding about the role played by the courts and judiciary in Ontario's justice system. To this end, they will continue to foster a productive dialogue between courts administration, the judiciary, the legal community, the media and the public.
4.0 – Judicial Information and Court Information	**Definitions:** Judicial Information means information the release of which would impair judicial independence and includes: personal judicial information, information relating to judicial assignments, court policies and programs ... relating to the judiciary, and information and material in any form generated by, or at the request of, the [Ontario Court], its judiciary or employees. Court Information means information other than Judicial Information that relates to proceedings before the Court, and includes: court records relating to individual cases; court calendars and dockets; court activity reports whether in paper or electronic format; and all related reports, data and statistics. Judicial Information and Court Information also include all such information contained in any electronic or other case tracking or recording systems managed by or on behalf of the [Ontario Court].
4.4 – Release of, and Access to, Judicial Information	The Court Services Division and [Judicial Information Technology Office] shall not release, or provide access to, Judicial Information to any person or organization (including any person within the Ministry or Government of Ontario) without the prior consent of the Office of the Chief Justice.
4.5 – Release of, and Access to, Court Information	a) Policies and procedures governing the release of, or access to, Court Information will be in accordance with relevant legislation, case law, and judicial orders, and based on the principles of openness, judicial independence, data accuracy, proper administration of justice, proper purpose, compliance with the law and effective use of public resources. b) [...] c) ... Where the Office of the Chief Justice withholds consent to the release of or access to Court Information to the Ministry, the Office of the Chief Justice will provide a reason to the Ministry for doing so.
6.2 – Trial Coordination	While trial coordinators and designates are within the Court Services Division in terms of Government of Ontario reporting requirements, the trial coordinator or designate, when performing duties as trial coordinator, has the function and responsibility of providing support and assistance to the Office of the Chief Justice and the Regional Senior Judges. a) Day-to-day direction of trial coordinators: The day-to-day direction of a trial coordinator, as it pertains to the execution of duties as a trial coordinator, is a function and responsibility of the Offices of the Regional Senior Judges, subject to managerial supervision by the Court Services Division. All decisions related to the staffing of the office of trial coordinators, including all performance management, are made by Court Services Divisions in consultation with the Offices of the Regional Senior Judges. b) Trial coordinators and providing access to Court Information and Judicial Information: Trial coordinators and designates shall not provide access to Court Information or Judicial Information except in accordance with Section 4. Trial coordinators must refer all requests for Court Information or Judicial Information from individuals inside or outside the Ministry to the Regional Senior Judge or the Office of the Chief Justice.

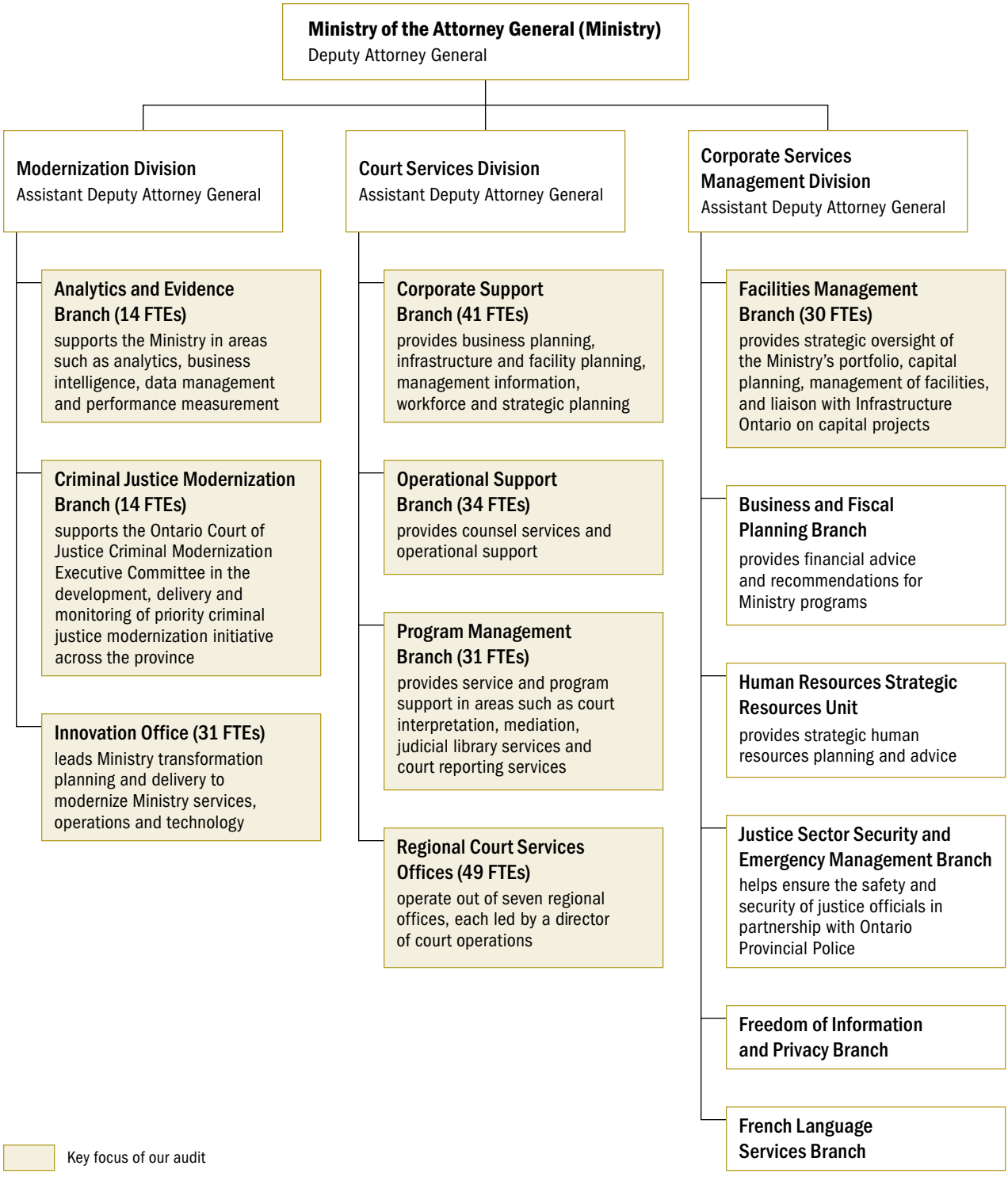
Appendix 5: Excerpt of Memorandum of Understanding (Memorandum) between the Attorney General of Ontario (Attorney General) and the Chief Justice of the Superior Court of Justice (Chief Justice)

Prepared by the Office of the Auditor General of Ontario

Section	Excerpt
Preamble	The Attorney General and the Chief Justice are committed to the importance of the principle of judicial independence and to supporting the core functions of the judiciary associated with adjudication, including judicial dispute-resolution, and assignment and scheduling.
Preamble	The Attorney General and the Chief Justice recognize the dynamic and changing nature of the [Superior Court] and the administration of justice in the Province, and the need for an accessible, modern, effective and efficient justice system that serves the needs and interests of the public.
Preamble	The Attorney General and the Chief Justice operate under the principle of financial accountability and recognize that the Attorney General is accountable to the Legislative Assembly of Ontario for the proper use of public funds allocated to the administration of justice in the Province.
1 – Legislative Authority	a. Courts Administration The Chief Justice or Regional Senior Judges ... are responsible for directing and supervising the sittings of the [Superior Court] and assigning of judicial duties in accordance with section 75 of the [*Courts of Justice Act* (Act)] In matters that are assigned by law to the judiciary, court staff act at the direction of the Chief Justice, in accordance with section 76 of the [Act].
3 – Roles and Responsibilities under the [Memorandum]	a. The Attorney General [acknowledges the responsibility] i) to include the budget of the Office of the Chief Justice as part of the overall Judicial Services allocation and reporting the budget ... within the overall Ministry Estimates submission ...; ii) to ensure that the staff of the Office of the Chief Justice is informed of Ministry and Government financial and administration policies that apply to the operations of the Office of the Chief Justice; iii) to provide the staff of the Office of the Chief Justice with the opportunity to participate on the Division Management Committee of the Ministry's Court Services Division and to provide input into the Division's Five-Year Plan on behalf of the judiciary.
7 – Access to and Confidentiality of Information and Documents	The Attorney General and the Chief Justice agree to develop a protocol that will outline, on a principled basis, when public access is appropriate to court-derived statistical information and documents. Subject to applicable laws, information held by the Attorney General or the Ministry and its officials pertaining to the judiciary shall be held in confidence if the release of that information could impair judicial independence.

Appendix 6: Key Divisions, Branches and Offices of the Ministry of the Attorney General That Support Court Operations

Source of data: Ministry of the Attorney General



Note: FTE = full-time equivalent

Appendix 7: Provincial Judges Remuneration Commission

Source of data: Treasury Board Secretariat

Key Areas	Details
Function	Under the *Courts of Justice Act*, the function of the Provincial Judges Remuneration Commission (Commission) is to inquire into and make recommendations relating to salaries, pensions and benefits for Ontario provincial judges. After receiving written and oral submissions, the Commission provides a report to the Chair of Management Board of Cabinet. The Commission's recommendations on salaries and benefits are binding on the government, but the recommendations on pensions are not binding. The Commission reports to the Chair, Management Board of Cabinet. The Ministry of the Attorney General is responsible for the funding.
Membership	The Commission is composed of three members. One member is appointed by the associations representing provincial judges, one member is appointed by the Lieutenant Governor in Council, and the chair is appointed jointly by the judges' associations and the Lieutenant Governor in Council.
Term	The term of office for members of the Commission begins on July 1 in the year the inquiry is conducted. Commission members serve for four years and are eligible for reappointment. When a vacancy occurs, a new member is appointed to serve for the remainder of the unexpired term.
Remuneration	Appointees to the Commission have their remuneration fixed by Management Board of Cabinet.

Note: The Justices of the Peace Remuneration Commission, similar in structure to the Commission, inquires into and makes recommendations relating to the salaries, pension and benefits of Ontario's justices of the peace.

Appendix 8: Courtroom Utilization by Region and Location, 2018/19

Source of data: Ministry of the Attorney General of Ontario

Region	Location	Ontario Court of Justice Practice Areas (Criminal, Family)	Superior Court of Justice Practice Areas (Criminal, Family, Civil, Small Claims)	# of Courthouses	# of Courtrooms[1]	Average Daily Operating Hours per Courtroom[2]
Central East	Barrie[3]	Criminal only[7]	All	1	14	5.2
	Newmarket[3]	Criminal only[7]	All	1	25	5.0
	Peterborough	Criminal only[7]	All	2	7	3.7
	Durham	Criminal only[7]	All	1	33	3.7
	Cobourg[3]	Criminal only[7]	All	1	4	2.6
	Lindsay	Criminal only[7]	All	1	6	2.4
	Bracebridge	Criminal only[7]	All	1	4	2.1
	Total			**8**	**93**	**3.5**
Central West	Milton[3]	All	All	1	12	5.0
	Brampton[3,4]	All	All	2	47	4.2
	Brantford	All	All	2	8	3.2
	Orangeville	All	All	1	6	2.8
	St. Catharines	Criminal only[7]	All	1	14	2.8
	Hamilton	Criminal only[7]	All	2	29	2.4
	Welland	All[8]	All	1	6	2.3
	Cayuga	All[8]	All	1	3	1.2
	Simcoe	All[8]	All	1	5	1.1
	Total			**12**	**130**	**2.8**
East	Ottawa[3]	Criminal only[7]	All	1	29	4.7
	Cornwall[3]	Criminal only[7]	All	1	10	2.9
	L'Orignal	Criminal only[7]	All	2	4	2.8
	Brockville	Criminal only[7]	All	1	5	2.7
	Kingston	Criminal only[7]	All	3	9	2.4
	Pembroke	All[8]	All	1	6	2.4
	Perth	Criminal only[7]	All	1	3	2.3
	Napanee	Criminal only[7]	All	2	3	1.8
	Belleville	All[8]	All	1	11	1.8
	Picton	All[8]	All	1	2	0.9
	Total			**14**	**83**	**2.5**
North East	Cochrane	All	All	1	2	3.6
	Sudbury[3]	All	All	2	12	3.0
	Sault Ste. Marie[3]	All	All	1	9	2.7
	Haileybury	All	All	1	2	2.4
	Parry Sound	All	All	1	3	2.2
	Timmins	All	All	2	5	2.1
	North Bay	All	All	1	8	2.1
	Gore Bay	All	All	1	2	2.0
	Total			**10**	**43**	**2.5**

Region	Location	Ontario Court of Justice Practice Areas (Criminal, Family)	Superior Court of Justice Practice Areas (Criminal, Family, Civil, Small Claims)	# of Courthouses	# of Courtrooms[1]	Average Daily Operating Hours per Courtroom[2]
North West	Kenora	All	All	1	4	2.7
	Dryden[5]	All	All	1	1	2.6
	Thunder Bay[3]	All	All	1	15	2.2
	Fort Frances[3]	All	All	1	3	1.3
	Total			**4**	**23**	**2.2**
Toronto	College Park[3]	Criminal only	None	1	10	5.0
	1000 Finch Avenue West	Criminal only	None	1	10	4.6
	Old City Hall[3]	Criminal only	None	1	23	4.2
	47 Sheppard[3]	Family only	Small claims only	1	12	4.1
	2201 Finch Avenue West	Criminal only	None	1	12	4.0
	1911 Eglinton	Criminal only	None	1	15	3.6
	393 University[3,6] 330 University[6] Osgoode Hall[6]	None	Family and civil only	3	54	2.6
	311 Jarvis[3]	All[10]	None	1	10	2.5
	361 University	None	Criminal Only	1	32	1.9
	Total			**11**	**178**	**3.6**
West	Goderich	Family only	All	1	3	3.5
	London	Criminal only[7]	All	1	23	3.2
	Windsor[3]	All	All	2	21	3.1
	Guelph	All	All	2	7	3.1
	Walkerton	All	All	1	3	3.0
	Woodstock	All	All	1	5	2.6
	Stratford	All	All	2	4	2.6
	Sarnia	All	All	1	7	2.5
	Kitchener[3]	All[8,9]	All	1	30	2.4
	Chatham	All	All	1	7	2.2
	Owen Sound	All	All	1	6	2.2
	St. Thomas	All[8,9]	All	1	8	1.6
	Total			**15**	**124**	**2.7**
Provincial Total				**74**	**673**	
Average Courtroom Operating Hours by Courthouse Location[11]						**2.8**

1. Number of courtrooms does not include local satellite or fly-in courtrooms, as these are intended to operate as substitute courtrooms for the base courthouse.
2. Courtroom operating hours reflect the number of hours that courtrooms were in use only. They do not include courtroom time that was scheduled but unused when cases collapsed and other court business was not brought in to replace the collapsed cases.
3. Courthouses that we visited during our audit.
4. Brampton courtroom operating hours do not include Brampton proceedings moved to other court locations. Brampton proceedings are regularly moved to Kitchener, Guelph, Orangeville, Milton and Toronto for hearings.

5. Dryden is a base courthouse consisting of one courtroom. Cases can also be heard in two satellite courts (two courtrooms total) and four fly-in courts within the Dryden region. In 2018/19, Dryden courtrooms were in use for a total of 1,911 hours (most of them at the three courtrooms of the base courthouse and the two satellites), resulting in an average of approximately 2.6 hours per day.
6. The Ministry's data is not reported separately for the three courthouses. Osgoode Hall houses the Court of Appeal.
7. The Ontario Court of Justice does not hear family cases in this courthouse location because it is a Unified Family Site, whereby the Unified Family Court Branch of the Superior Court of Justice hears all family cases.
8. As of May 31, 2019, the Ontario Court of Justice no longer hears family cases in this courthouse location, as the Unified Family Court Branch of the Superior Court of Justice hears all family cases.
9. Courthouse location does not hear criminal youth cases.
10. The 311 Jarvis courthouse does not hear criminal adult cases. It hears criminal youth and family cases only.
11. The 2.8 average daily courtroom operating hours are calculated as follows:
    A. For each of the 59 courthouse locations, we calculated the average daily courtroom operating hours, as follows:
        (i) We obtained the total number of courtroom operating hours, including all base, satellite and fly-in courthouses in the location.
        (ii) We determined the total number of courtrooms, excluding satellite and fly-in courtrooms because they are substitute courtrooms for the base courthouse(s) in remote areas and not used as regularly as courtrooms in base courthouses.
        (iii) We divided the total number of courtroom operating hours from (i) by the total number of courtrooms from (ii).
        (iv) We divided the result from (iii) by 249 business days in 2018/19.
    B. We added up the average daily courtroom operating hours of all 59 courthouse locations from step A.
    C. We divided the result from step B by 59 courthouse locations.

Appendix 9: Audit Criteria

Prepared by the Office of the Auditor General of Ontario

1.	Effective governance and administrative structures are in place to oversee and manage court services and operations, including the use of Ministry resources and courtrooms in a timely and cost-effective way.
2.	Effective court services processes are in place to ensure that the Ministry's court staffing resources are analyzed periodically, best allocated and managed efficiently and in a cost-effective manner.
3.	Effective court services processes are in place to ensure that capital and other facility needs for courts are identified, prioritized and managed efficiently and in a cost-effective manner.

Appendix 10: Summary of the Office of the Chief Justice of the Ontario Court of Justice's Response to Our Audit Request to Access Case Scheduling

Source of data: Ontario Court of Justice (Ontario Court)

- The Supreme Court of Canada recognized the independence of judicial administration as a constitutional principle in Reference re Remuneration of Judges of the Provincial Court (P.E.I.).This constitutional principle of the independence of judicial administration is reflected in Ontario's *Courts of Justice Act*:
  - Section 36(1) gives the Chief Justice of the Ontario Court of Justice exclusive responsibility for judicial assignment and scheduling.
  - Section 72 gives the Attorney General responsibility to superintend all matters connected with the administration of the courts, other than judicial scheduling and assignment, judicial education, conduct and discipline, and matters assigned to the judiciary by a memorandum of understanding.
  - Section 73 provides for appointments pursuant to the *Public Service of Ontario Act, 2006* of court staff necessary for the administration of courts.
- The memorandum of understanding signed between the Ministry [of the Attorney General] and the Chief Justice of the Ontario Court of Justice in 2016, states the following:
  - Section 2 reflects the legislative separation between the judiciary's exclusive responsibility over scheduling and assignment, and the ministry's general responsibility for court administration, as set out in the *Courts of Justice Act*.
  - Further, the essence of judicial administrative independence is that the judiciary have control over administrative functions that bear directly on the judicial function, including the direction of the administrative staff engaged in carrying out those functions.
  - Subsection 6.2(a) makes it clear that trial coordinator duties are at the sole direction of the judiciary, consistent with scheduling falling within the sole purview of the judiciary.

Appendix 11: Summary of Publicly Available Information, Information Our Office Obtained During the Audit, and Information Where Our Access Was Denied

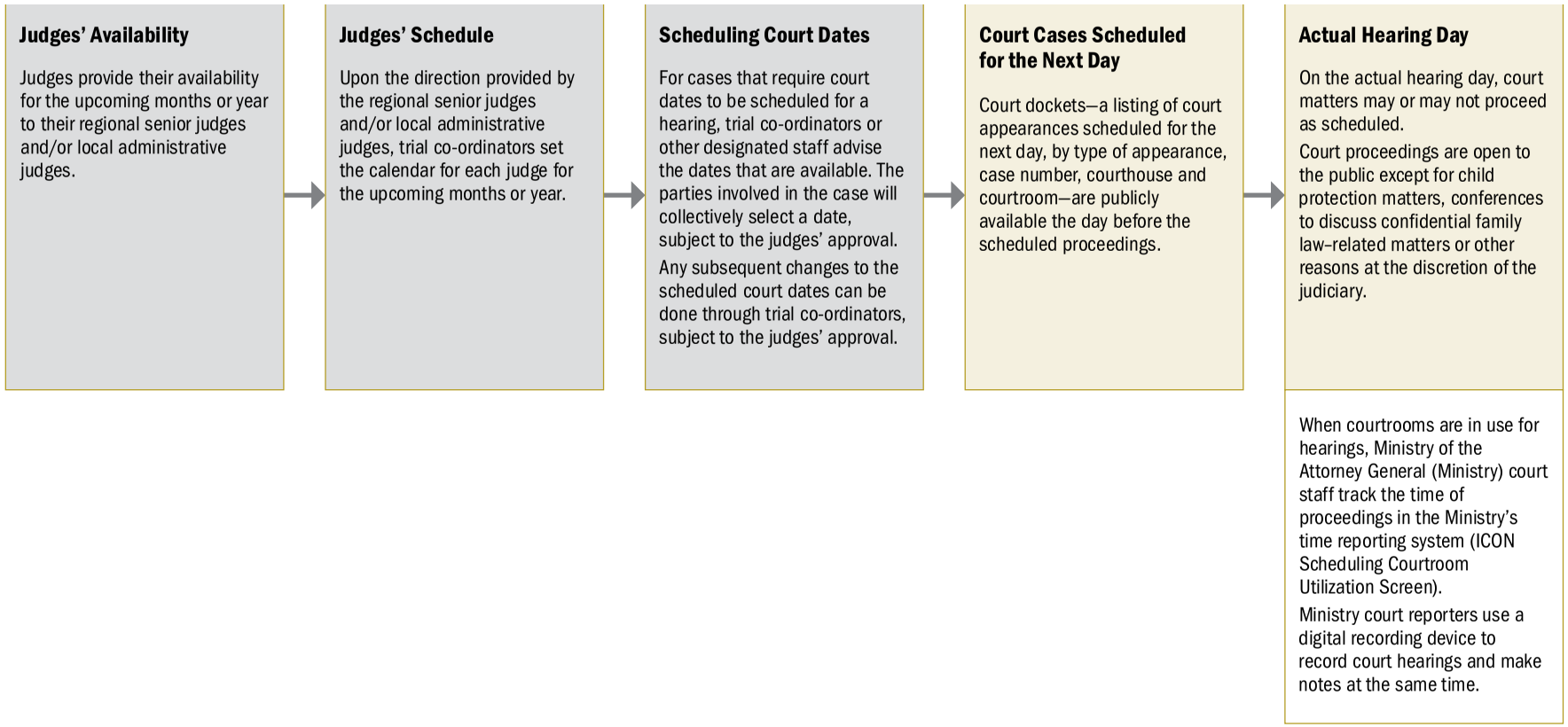
Prepared by the Office of the Auditor General of Ontario

Court Operations	Information That Is Publicly Available		
	Ministry of the Attorney General (Ministry)	**Ontario Court of Justice (Ontario Court)**	**Superior Court of Justice (Superior Court)**
Role and responsibilities of the Ministry of the Attorney General and the Ontario Court of Justice and the Superior Court of Justice	The government's website lists the Ministry's roles and responsibilities, including those support services provided by its Court Services Division, Corporate Service Management Division and Modernization Division.	The memorandum of understanding between the Chief Justice and the Attorney General. (See **Appendix 4** for excepts.)	The memorandum of understanding between the Chief Justice and the Attorney General. (See **Appendix 5** for excepts.)
Court resources and case statistics	Court Services Division (Division) annual report provides information such as the following: • the Division's mission, strategic plan, goals and core services; • expenditures paid by the province for court operations and staffing (see **Figure 3**); • judicial complements paid by the province and those paid by the federal government (**Figure 4**); and • modernization initiatives. The Ministry's website provides a list of courthouses by location and types of cases handled at the courthouses.	The Ontario Court's website provides annual statistics for each court location and region, and for the province, such as: **Criminal law matters** • number of cases received, disposed and awaiting disposition, and types of disposition; • average number of days needed to dispose cases and number of court appearances made before disposition; • bail outcomes; and • disposition rates of cases, collapse rates of cases and aging of pending cases. (See **Chapter 3** of this volume, Criminal Court System.) **Family law matters** • number of cases received, disposed and pending disposition, reported by month, courthouse, region and at the provincial level; and • number of appearances heard by type of appearance, month, courthouse, region and at the provincial level (See **Chapter 4** of this volume, Family Court Services.)	The Superior Court publishes case statistics in its annual report, such as the number of new criminal, family, civil and small claims proceedings, by region.

Court Operations	Information That Is Publicly Available	Information That Is Not Publicly Available		Why We Need Access to the Information	Impact of Not Getting Access on Completion of Audit
		We Were Given Access	We Were Denied Access		
Ontario Court of Justice (Ontario Court) and Superior Court of Justice (Superior Court)					
Court scheduling	• Daily court dockets (listing of court appearances scheduled for the next day, by type of appearance, case number, courthouse and courtroom) • Court proceedings are open to the public except for child protection matters, any conferences to discuss confidential family law-related matters or other reasons, at the discretion of the judiciary.	• An overview of the court scheduling process for cases by trial co-ordinators, regional senior judges and/or local administrative judges. See **Appendix 12**. • Number of courtrooms by courthouse in the province. • The Ministry's ISCUS (ICON Scheduling Courtroom Utilization Screen) report contains the number of court operating hours reported by courthouse and year. • Digital recording report maintained by Ministry staff during court hearings. We requested full notes of digital audio recordings for approximately 240 court dates and were inadvertently given 125 of the sample selected. For about 115 remaining dates, we received time stamps only without annotations maintained by the court reporters. • Ministry policy for reporting time in ISCUS.	• Court scheduling information, such as court dates historically scheduled and upcoming court dates that were scheduled, maintained by trial co-ordinators who work under the direction of the judiciary. • We were denied access to full annotation for about 115 court dates out of the 240 court dates selected.	To identify the reasons why: • the 55 courthouses (out of a total of 74) that reported above-average delays in disposing cases also operated fewer hours than the Ministry's optimal average of 4.5 hours per day (**Section 4.1.1**); • 23% of our sampled courtrooms were sitting empty during our visits (**Section 4.1.2**); and • multiple breaks and interruptions occurred during court sessions (**Section 4.1.3**).	We were unable to determine: • whether the courtrooms were scheduled for use optimally to address the backlogs of cases identified; and • possible reasons that may have contributed to the lower-than-optimal utilization of courtrooms.

Appendix 12: An Overview of the Court Scheduling Process

Prepared by the Office of the Auditor General of Ontario



Information not publicly available. We requested access to the complete information but our access was refused. See **Section 3.0** for details.

Information publicly available

Information not publicly available. We requested access to both the Ministry's time reports and full notes made by court reporters in their digital recordings for a sample of court hearings selected. We received the Ministry's time reports but not the notes made by court reporters in their entirety. **Section 4.1.3** discusses the details.

Appendix 13: Courthouses with Reported Above-Average Backlog of Court Cases, Combined for All Practice Areas, 2018/19

Source of data: Ministry of the Attorney General

Region	Location	# of Courthouses	# of Cases Pending Disposition at the Beginning of the Year + # of Cases Received During the Year, 2018/19 (A)	# of Cases Pending Disposition at End of the Year, 2018/19 (B)	% of Cases Pending Disposition at the End of the Year, 2018/19 (B) ÷ (A)	% Change in # of Cases Pending Disposition, 2014/15 – 2018/19	Average Daily Operating Hours per Courtroom[1]
Provincial Average					**65**	**23**	
Courthouses operated less than 4.5 hours per day with above-average backlog of court cases							
East	Picton	1	1,393	967	69	13	0.9
Central West	Simcoe	1	7,242	5,616	78	15	1.1
Central West	Cayuga	1	4,115	3,212	78	11	1.2
North West	Fort Frances	1	2,502	1,273	51	75	1.3
West	St. Thomas	1	7,443	5,097	68	30	1.6
East	Belleville	1	12,590	8,299	66	35	1.8
East	Napanee	2	3,086	1,666	54	33	1.8
North East	North Bay	1	10,190	6,440	63	24	2.1
North East	Timmins	2	7,843	4,446	57	38	2.1
Central East	Bracebridge	1	7,460	5,855	78	38	2.1
West	Owen Sound	1	8,010	5,631	70	23	2.2
North East	Parry Sound	1	3,827	2,299	60	34	2.2
West	Chatham	1	11,312	7,832	69	27	2.2
North West	Thunder Bay	1	17,763	11,782	66	32	2.2
Central West	Welland	1	18,311	14,951	82	19	2.3
East	Pembroke	1	7,756	5,071	65	29	2.4
West	Kitchener	1	48,584	33,304	69	34	2.4
East	Kingston	3	12,769	8,241	65	31	2.4
Central West	Hamilton	2	82,989	67,031	81	23	2.4

Region	Location	# of Courthouses	# of Cases Pending Disposition at the Beginning of the Year + # of Cases Received During the Year, 2018/19 (A)	# of Cases Pending Disposition at End of the Year, 2018/19 (B)	% of Cases Pending Disposition at the End of the Year, 2018/19 (B) ÷ (A)	% Change in # of Cases Pending Disposition, 2014/15 – 2018/19	Average Daily Operating Hours per Courtroom[1]
Central East	Lindsay	1	7,817	5,218	67	35	2.4
North East	Haileybury	1	4,180	2,650	63	27	2.4
West	Sarnia	1	11,335	7,218	64	25	2.5
Toronto	393 University Avenue[2] Osgoode Hall[2] 330 University Avenue[2]	3	416,241	397,125	95	20	2.6
North West	Dryden	1	3,886	1,504	39	59	2.6
West	Woodstock	1	8,623	5,849	68	23	2.6
North East	Sault Ste Marie	1	12,464	7,481	60	32	2.7
East	Brockville	1	9,155	6,038	66	34	2.7
Central West	St. Catharines	1	35,467	27,408	77	16	2.8
East	L'Orignal	2	5,207	3,014	58	32	2.8
Central West	Orangeville	1	8,878	6,594	74	21	2.8
North East	Sudbury	2	34,867	25,560	73	20	3.0
West	Guelph	2	17,114	11,226	66	33	3.1
West	Windsor	2	68,755	57,506	84	9	3.1
West	London	1	83,084	66,723	80	19	3.2
Central West	Brantford	2	26,106	20,691	79	16	3.2
West	Goderich	1	4,154	2,744	66	28	3.5
North East	Cochrane	1	6,446	4,408	68	14	3.6
Central East	Durham	1	72,357	54,058	75	35	3.7
Central East	Peterborough	2	13,929	9,377	67	27	3.7
Toronto	47 Sheppard	1	97,414	84,292	87	26	4.1
Central West	Brampton[3]	2	136,091	105,741	78	31	4.2
Subtotal		**55**					

Region	Location	# of Courthouses	# of Cases Pending Disposition at the Beginning of the Year + # of Cases Received During the Year, 2018/19 (A)	# of Cases Pending Disposition at End of the Year, 2018/19 (B)	% of Cases Pending Disposition at the End of the Year, 2018/19 (B) ÷ (A)	% Change in # of Cases Pending Disposition, 2014/15 – 2018/19	Average Daily Operating Hours per Courtroom[1]
Courthouses operated less than 4.5 hours per day							
Toronto	361 University	1	1,745	808	46	(13)	1.9
North East	Gore Bay	1	2,034	1,280	63	10	2.0
East	Perth	1	4,637	2,847	61	11	2.3
Toronto	311 Jarvis	1	6,233	3,578	57	(25)	2.5
West	Stratford	2	6,077	3,897	64	17	2.6
Central East	Cobourg	1	6,008	3,778	63	19	2.6
North West	Kenora	1	6,389	3,210	50	17	2.7
East	Cornwall	1	10,882	6,306	58	3	2.9
West	Walkerton	1	6,295	4,073	65	16	3.0
Toronto	1911 Eglinton	1	12,226	4,441	36	19	3.6
Toronto	2201 Finch Avenue West	1	9,239	3,520	38	6	4.0
Toronto	Old City Hall	1	18,261	6,359	35	(1)	4.2
Subtotal		**13**					
Courthouses operated over 4.5 hours per day							
Toronto	1000 Finch Avenue West	1	9,744	3,397	35	23	4.6
East	Ottawa	1	106,701	81,209	76	25	4.7
Central West	Milton	1	75,442	65,139	86	24	5.0
Toronto	College Park	1	9,722	3,403	35	17	5.0
Central East	Newmarket	1	94,772	73,958	78	30	5.0
Central East	Barrie	1	56,070	38,596	69	26	5.2
Subtotal		**6**					

Above the provincial average backlog in cases pending disposition.

1. Reflects the average number of hours during which courtrooms are in use; these hours do not include the working hours of judicial officials and court staff outside of the courtroom. Calculated as the total number of operating hours reported in ISCUS (the ICON Scheduling Courtroom Utilization Screen) divided by the number of courtrooms in individual base courthouses, divided by 249 (the number of business days in a year).
2. Ministry's data is not reported separately for the three courthouses. This location includes three base courthouses.
3. Brampton courtroom operating hours do not reflect Brampton proceedings moved to other court locations. Brampton proceedings are regularly moved to Kitchener, Guelph, Orangeville, Milton and Toronto for hearings.

Appendix 14: The Ministry of the Attorney General's Capital Plan for Selected Courthouses, as of August 2019

Source of data: Ministry of the Attorney General

Base Courthouse	Capital Plan
Milton in the Central West region operated its 12 courtrooms an average of 5.0 hours per business day in 2018/19.	• The Halton Region Consolidated Courthouse, which will consolidate the Milton and Burlington courthouses, is expected to be completed by 2023. • The new courthouse is projected to have 21 courtrooms, five more than the existing 16 courtrooms in both courthouses.
Ottawa in the East region operated its 29 courtrooms an average of 4.7 hours per business day in 2018/19.	• The Ministry initiated a space utilization study in 2015/16 and completed it in 2018 following stakeholder consultation. The study identified opportunities to meet future needs through a reconfiguration, an addition or a combination of both.
1000 Finch and College Park in the Toronto region operated a total of 20 courtrooms on average between 4.6 hours and 5.0 hours per business day in 2018/19.	• The New Toronto Courthouse with 63 courtrooms, which will hear criminal matters from six Ontario Court criminal courthouses in Toronto (1911 Eglinton, Old City Hall, College Park, 1000 Finch, 2201 Finch and part of 311 Jarvis), is expected to be completed by spring 2022. • The 63 courtrooms are two more than the existing 61 courtrooms dealing with criminal matters that are being replaced for five of the six courthouses. The 12 courtrooms at 2201 Finch will remain open as the Toronto Region Bail Centre.
Brampton in the Central West region operates its 47 courtrooms in its two courthouses. Brampton courtroom operating hours of an average of 4.2 hours per business day in 2018/19 do not include proceedings moved to other court locations.	• A six-storey Brampton addition to the existing courthouse is being constructed. The first two floors, with eight additional courtrooms, were scheduled to be completed by the late fall of 2019.

Appendix 15: Timeline for New Courthouse Build in Toronto

Source of data: Ministry of the Attorney General and the Office of the Chief Justice of the Superior Court of Justice

Timeline	Events
2009	The Ministry of the Attorney General's (Ministry) master plan for Toronto was to build four separate courthouses around the city to handle Ontario Court criminal matters, and a fifth downtown courthouse for Superior Court criminal and family matters and Ontario Court family matters. The Toronto West Courthouse in Etobicoke was the only new build from this plan approved by Treasury Board.
2011	The Province cancelled the plan for the Toronto West Courthouse due to budget constraints. The Ministry continued its work with Infrastructure Ontario to develop a plan to deliver court services in the Toronto region.
January 2014	The Ministry made a new Treasury Board submission for building a new downtown Toronto Courthouse for all Ontario Court criminal matters, now excluding the originally planned courthouse for criminal and family matters handled by Superior Court of Justice (Superior Court). The plan in this submission was significantly different than the plan in 2009.
May 1, 2014	The Province first announced the New Toronto Courthouse project in the 2014 spring budget. A day before the budget was released, a senior Ministry official communicated the decision to the Office of the Chief Justice of the Superior Court for the first time. The then-Chief Justice of the Superior Court wrote to the Ministry's senior management that her Office "was not consulted once on this major capital project."
February 2015	The Ministry indicated to the Office of the Chief Justice of the Superior Court that it was prepared to go back to the Treasury Board to submit a revised business case to include Superior Court family law cases in the new courthouse.
July 15, 2015	After conducting further study, the Ministry confirmed that it could not accommodate the change and informed the Office of the Chief Justice of the Superior Court accordingly.
July 27, 2015	The then-Chief Justice again expressed concern regarding this "truly surprising development," as it was not the outcome her Office had been "led to believe."
June 2017	The Toronto Police Service considered actions it could take to mitigate the anticipated security risks associated with consolidating all criminal matters in the downtown core. The report stated that the Ministry made a "unilateral decision" and the Toronto Police "was not consulted by the Ministry in its decision on court [consolidation]."
March 2018	The Office of the Chief Justice of the Superior Court shared the June 2017 police report with the Ministry.

Chapter 3

Ministry of the Attorney General

Criminal Court System

1.0 Summary

The Criminal Code of Canada is the federal legislation that sets out criminal law and procedure in Canada, supplemented by other federal and provincial statutes. Crown attorneys prosecute accused persons under these laws on behalf of the Criminal Law Division (Division) of the Ontario Ministry of the Attorney General (Ministry).

The Ontario Court of Justice (Ontario Court) and the Superior Court of Justice (Superior Court) received approximately 240,000 criminal cases in 2018/19, an increase of 10% since 2014/15. Over 98% of criminal cases in Ontario are received by the Ontario Court; the remainder, which generally constitute more serious offences such as murder and drug trafficking, are heard by the Superior Court.

The Division operates from its head office in Toronto, six regional offices, four divisional prosecution and support offices and 54 Crown attorney offices across the province. Over the past five years, the Division's operating expenses have increased by 8%, from $256 million to $277 million, mainly because the number of Crown attorneys has increased by 8%.

In July 2016, a landmark ruling by the Supreme Court of Canada in *R. v. Jordan* significantly affected the Ministry's obligation to deliver timely justice. The ruling required that if a case is not disposed within 18 months (for cases tried in Ontario Court) or 30 months (for cases tried in Superior Court), it is presumed that the delay is unreasonable, and Crown attorneys have to contest the presumption and prove otherwise or the charge will be stayed (legal proceedings against the accused are discontinued).

Our audit found that the backlog of criminal cases we noted in our previous audits of Court Services in 2003 and 2008 continues to grow. Between 2014/15 and 2018/19, the number of criminal cases waiting to be disposed increased by 27% to about 114,000 cases.

One result of this backlog is the increasing age of the cases pending disposition, as cases pending disposition for more than eight months increased by 19% from 2014/15 to about 37,000 cases in 2018/19. Of these 37,000 cases, about 6,000 exceeded 18 months. Since the Jordan decision, according to information provided by the Division, 191 provincially prosecuted cases were stayed at the request of the defence by judges who ruled that the prosecution or the court system had been responsible for unreasonable delay. In these cases, justice was denied for the victims.

Another result of the backlog is that accused persons who did not seek or were not granted bail may remain detained in remand for long periods. Approximately 70% of inmates in correctional institutions, amounting to a daily average of over 5,000 inmates in 2018/19, are in remand and have not yet been convicted of the current charges filed against them. This backlog and systemic delay in resolving criminal cases jeopardizes the right of accused

persons to be tried within a reasonable time. Delays also have a significant impact on victims of crime and their families, who may feel they are denied timely justice, and on public confidence in the justice system.

Although the Division has taken a number of initiatives to alleviate these backlogs, the success of these initiatives has been limited and they have been unable to reverse the increasing trend of criminal cases waiting to be disposed.

During our audit, we experienced significant scope limitations in our access to key information related to court scheduling (see Court Operations, **Chapter 2** of this volume). As a result, we were unable to assess whether public resources, such as courtrooms, are scheduled and used optimally to help reduce delays in resolving criminal cases. Also, in our review of the criminal court system, we were refused full access to 175 sampled case files maintained by Crown attorneys. Instead, the Division summarized some of the details for the 175 case files, including reasons for delays, for our review.

Our other significant audit findings include:

- **Criminal cases awaiting disposition are taking longer to resolve.** The Ontario Court of Justice received about 237,000 cases in 2018/19, a 10% increase over 2014/15. Yet the number of cases disposed increased by only 2%. The result is a 27% increase in cases waiting to be disposed—about 114,000 as of March 2019, compared to about 90,000 in March 2015. Between 2014/15 and 2018/19, the average number of days needed to dispose a criminal case increased by 9% (from 133 to 145 days). For the same period, the average appearances in court before disposition increased by 17% (from 6.5 to 7.6 appearances). Based on our own review of readily available judicial decisions on 56 cases stayed as a result of the Jordan decision, we noted that delays were mainly due to lack of timely disclosure of evidence, difficulty in obtaining court dates and/or delays attributed to Crown attorneys.
- **Reasons for aging cases require formal and regular analysis to be done centrally.** The Division has not done formal and regular analysis of aging cases at an aggregate level, that is, at the level of court location, region or the province. This includes, for example, categorizing the reasons why cases are pending disposition or are stayed, and distinguishing whether delays were caused by the defence or by the prosecution or were "institutional"—related to court scheduling, for example. These higher-level analyses can be used to generate regular reports for senior management to highlight areas of concern that have a systemic impact on the criminal court system as well as to help to inform the Division so that Crown resources can potentially be allocated and reallocated proactively.
- **The number of cases disposed has remained nearly constant, although the number of Crown attorneys has increased since 2014/15.** The 8% increase in full-time-equivalent Crown attorneys did not result in a proportional increase in the total number of cases disposed, which was only 2%. The number of cases disposed per Crown attorney varied significantly across the province, from a low of 160 in Toronto region to a high of 354 in West region, against a provincial average of 274 cases. The Division lacks appropriate benchmarks for key performance indicators, such as workloads and average time taken by Crown attorneys to dispose cases, and complete information in determining case complexity for assigning equitable caseloads to its Crown attorneys.
- **The Criminal Law Division and police services lack formally agreed-upon roles and responsibilities for the disclosure of evidence.** In 1999, the Criminal Justice Review Committee recommended a directive to be developed that comprehensively sets out the disclosure responsibilities of the police and prosecutors. Twenty years later, the Division

and police services still could not agree upon a formal policy that clearly defines the roles and responsibilities for timely disclosure. In November 2016, the Division began to engage police services to sign a framework memorandum of understanding (MOU) for the disclosure of evidence. The Division revised the MOU in June 2019. However, at the time of our audit, not all police services had signed the MOU. We were told that this was mainly because of limited police resources and their inability to commit to the increased requirements under the revised MOU.

- **About 85% of bed days are used by inmates who are in remand for more than one month, and some for over a year.** Two factors contribute to the size of the remand population: the number of accused entering remand custody and the length of time inmates spend in remand custody. The Ministry has not regularly analyzed the reasons for accused persons remaining on remand. Based on the summary prepared by the Division on a sample of 30 case files (in lieu of giving us full access to the files) and our interviews of a sample of 24 remand inmates, we found these main reasons: the inmates were dealing with other charges; they remained by their own choice (for example, advised by counsel not to apply for bail or wanted to earn enhanced credit for pretrial custody); they were having ongoing plea discussions with the prosecution; or they could not produce a surety (guarantor) to supervise them while out on bail.
- **Time needed to decide bail applications has increased over the past five years.** Cases where people charged with crimes went through bail courts increased by 4% between 2014/15 and 2018/19, from 91,691 to 95,574. As well, the average number of days needed to reach a bail decision increased, which we estimated resulted in about 13,400 additional inmate bed days in remand over the same period. In contrast to some other provinces, such as British Columbia and Alberta, bail hearings in Ontario are scheduled from 9:00 a.m. to 5:00 p.m., Monday to Friday, with limited use of teleconferences and video-conferences. Ten weekend and statutory holiday courts are available for bail hearings in Ontario, with hours determined solely by the judiciary.
- **Twenty-seven of 32 courthouses where we noted above-average delays in disposing criminal cases also operated less than the Ministry's optimal average of 4.5 hours per day.** There are 68 Ontario Court of Justice courthouses that hear criminal matters. In 2018/19, criminal cases used 67% of total courtroom operating hours. Although courtroom operating hours do not capture working hours for judicial officials or court staff, and Crown attorneys, we noted that the difficulties in obtaining court dates contribute to the systemic delays in resolving many criminal cases in Ontario, as mentioned above. When we attempted to examine the scheduling information that was often maintained by the trial co-ordinators, who are paid by the Ministry but work under the direction of the judiciary, the Offices of the Chief Justices of the Ontario Court of Justice and the Superior Court of Justice refused our request for the information. As a result, we were unable to determine if courtrooms were scheduled optimally to accommodate criminal cases, or reasons why some courtrooms were underutilized.

Mental Health Courts

Twenty-nine of Ontario's specialized courts hear cases for accused persons with mental health conditions. Mental health courts have been in operation since 1997 with the aim of dealing with issues of fitness to stand trial and, wherever possible, slowing down the "revolving door" of

repeated returns to court by these accused, through diversion programs and other appropriate types of treatment.

Our audit found that the benefits of Ontario's mental health courts are unknown. Procedures are not clearly outlined, there is lack of proper data on their operations, and definitions of mental health courts' objectives and intended outcomes are imprecise. In particular:

- **Ontario mental health courts lack specific goals and measurable outcomes.** The mandate and goals set for mental health courts are broad and general, and without specific measurable outcomes, neither the Ministry nor the Ontario Court is able to measure the courts' success in achieving these goals. In contrast, Nova Scotia has set key objectives for its mental health court and evaluated the court's success in reducing recidivism relative to the regular criminal justice system. During our audit, when we inquired of the Office of the Chief Justice of the Ontario Court of Justice whether any reviews have been done on the scheduling and operations of the mental health courts in Ontario, a representative from the Office of the Chief Justice responded that these matters relate to judicial independence and fall outside the scope of the audit. As a result, we cannot confirm to the Legislature that such reviews have been conducted. Ontario has not published any evaluations similar to the Nova Scotia evaluation.
- **Key data is not available to track the users of mental health courts and their case outcomes.** The Ministry's information systems do not distinguish between accused persons who go through a mental health court and those who go through a regular court on the basis of data such as the number of cases received, disposed and pending disposition; time taken to resolve cases; and details of case disposition. As a result, neither the Ministry nor the Ontario Court is able to identify and quantify the number of individuals and cases that were received in mental health courts and their case dispositions.
- **The Division lacks standardized processes for mental health courts.** While the Division's Crown Prosecution Manual contains three separate directives about cases involving mentally ill accused, there are no specific and consistent policies and procedures for the operations of mental health courts. For example, there are no policies to specify who should be accepted into a mental health court and in what circumstances, when a psychiatric assessment is required, or when a formal community-based program or other plans are needed.

This report contains 10 recommendations, consisting of 23 actions, to address our audit findings.

Overall Conclusion

Overall, the Ministry does not have effective systems and procedures in place to know if its resources are being used or allocated efficiently and in a cost-effective way and to support the timely disposition of criminal cases. These are important issues to address in a criminal justice system with long-term and increasing delays in resolving cases and a backlog of remand inmates detained in correctional institutions.

The limitations placed on the scope of our audit left us unable to determine if courtrooms were scheduled and used efficiently and effectively to help reduce backlogs in disposing criminal cases.

The Ministry lacks the key data it needs to measure and publicly report on the results and effectiveness of the operations of mental health courts in Ontario.

OVERALL MINISTRY RESPONSE

The Ministry's Criminal Law Division is committed to ensuring public safety through the provision of effective and efficient prosecution services to the citizens of Ontario.

The prosecution service upholds the public's confidence in the administration of criminal justice by ensuring that prosecutors are strong and effective advocates for the prosecution and also ministers of justice with a duty to ensure that the criminal justice system operates fairly to all: the accused, victims of crime and the public. A prosecutor's role excludes any notion of winning or losing and is exercised openly in public. A prosecutor is a public representative, whose demeanour and actions should be fair, dispassionate and moderate, and unbiased and open to the possibility of the innocence of the accused person.

The Division continuously strives to enhance and improve delivery of core services. Many of the opportunities for improvement highlighted within the report are consistent with actions the Division has undertaken to date and its commitment to deliver highly effective prosecutions and a justice system that is responsive to the changing needs and demands of Ontarians. The recommendations provide confirmation that the areas where the Division has strategically chosen to invest resources and dedicate its efforts will continue to be integral in transforming and modernizing the justice system while demonstrating fiscal prudence and value for money.

2.0 Background

2.1 The Criminal Justice System in Ontario

Ontario's criminal justice system operates under the Criminal Code of Canada (Criminal Code), the federal legislation that sets out criminal law and procedure in Canada, supplemented by other federal and provincial statutes. Crown attorneys employed by the province prosecute accused persons under the Criminal Code and other provincial statutes as agents of the Ontario Ministry of the Attorney General (Ministry). The Public Prosecution Service of Canada prosecutes matters under other federal legislation, such as the *Controlled Drugs and Substances Act*.

Charges for offences that range from homicide, assault, impaired driving, break and enter, and drug trafficking to failure to comply with court, bail and/or probation orders are laid by Ontario Provincial Police, the RCMP, municipal/regional police services and First Nations police. Accused persons may seek the assistance of defence or duty counsel; their case may be disposed through a guilty plea, by the charges being withdrawn or stayed or by a finding of guilty or not guilty at a trial before a judge (and sometimes a jury). If appropriate, a case may also be moved out of the regular criminal justice process to a mental health or other specialized court.

Pending the disposition of a case, the accused may be released on bail or held in remand in a correctional institution. A guilty finding may lead to either a custodial sentence or a non-custodial sentence such as probation, a fine or a period of community service.

In addition to those already mentioned, other key stakeholders in the criminal justice system include corrections staff under the Ministry of the Solicitor General, Legal Aid Ontario, court staff under the Ministry's Court Services Division, and various community support agencies funded by the Ministry of Health, as well as any witnesses or victims. The Ministry's ability to fulfill its mandate to provide a fair and accessible justice system across the province depends significantly on the work performed by all of these stakeholders. For example, the Crown attorney's ability to prosecute a case relies on the timely, complete and admissible evidence collected by police services through their investigative work.

Appendix 1 lists the key participants and their roles within the criminal justice system. **Appendix 2** contains a glossary of terms used in this report.

2.1.1 Key Steps in the Criminal Court Process

The first step in the criminal court process starts with police officers investigating criminal offences and making the decision to lay charges. The accused may be detained while awaiting their bail appearance, typically at the police station or correctional institution, or they may be released from the police station on a condition that requires them to attend court. An accused who was released from the police station must attend court in person for their scheduled court appearance.

An accused person detained by the police appears at a bail hearing. The justice of the peace can either issue a detention order requiring the accused person to remain in remand or issue a bail order releasing the person back into the community while their case is awaiting disposition, or can adjourn the case to a later date. Accused who are being held in a correctional institution may be transported from the facility to the court and back for their appearances in court; in some cases these hearings may be done through video link.

These court appearances may have various purposes, including determining if the accused has engaged legal counsel for their defence, providing initial disclosure of evidence to the defence by the prosecution, and discussing the prosecution and defence positions on the case and if prosecution and defence (the accused, usually aided by counsel) are ready for trial.

When there is a trial, the accused attends and the prosecution presents the evidence in the case. The defence may choose to present evidence in response, but is not required to do so. At the conclusion of the trial, a judge or jury reaches a verdict. If the accused is found not guilty, any conditions or orders that bound them come to an end, and if they were detained in custody they will be released. If there is a guilty verdict, the judge passes a sentence and informs the convicted defendant of the sentence they will face. Sentencing options include one or a combination of custodial and non-custodial sentences.

If, at any time during the course of the court process, the prosecution withdraws the charges or directs a stay of proceedings, or the accused pleads guilty and is sentenced, the case is considered disposed.

Figure 1 illustrates the key steps in an accused person's journey through the criminal court system.

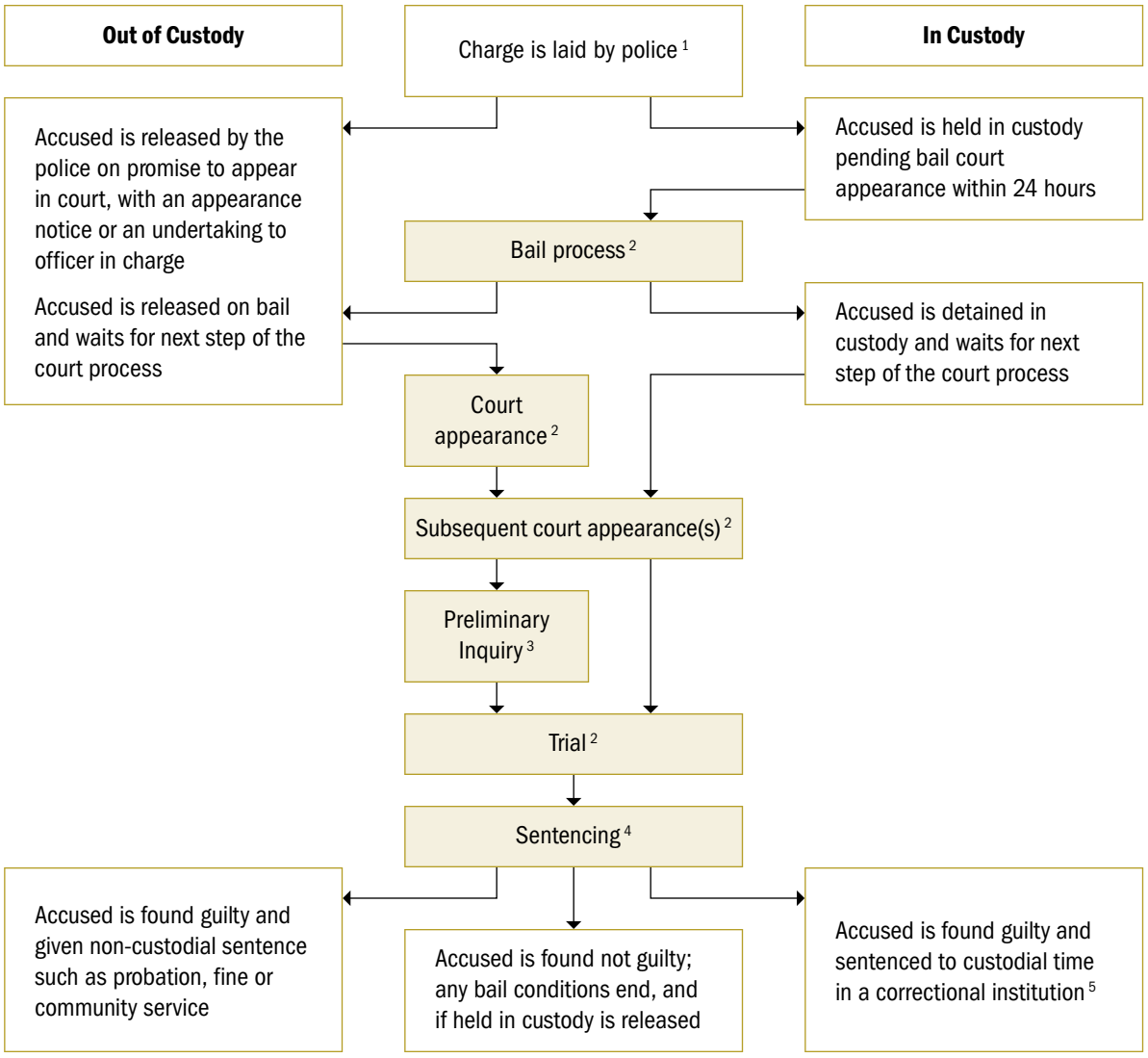
2.1.2 Case File Information System—Integrated Court Offences Network (ICON)

The Ministry's ICON system, serviced by Information and Information Technology's Justice Technology Services cluster (part of the Treasury Board Secretariat), provides case administration support to the Ontario Court of Justice, which hears more than 98% of all criminal matters. Court services staff, under the Ministry's Court Services Division, are responsible for inputting key data into ICON, such as the name of the accused person, date of birth, date of charge(s) laid, type of offence(s), date of court appearance(s) and type of case disposition. A case is recorded as "received" in ICON once the justice of the peace has sworn and/or confirmed the "Information" that is filed by the police in court. A case is recorded as "disposed" in ICON when any of the following happens at any stage of the court process:

- an accused is found guilty before or during a trial and sentenced;
- an accused is found guilty at the conclusion of a trial and sentenced, or is found not guilty and, if in custody, is released;
- an accused's case is diverted, for example, to a mental health court or away from the regular court process, and the accused has successfully completed diversion;
- the case is withdrawn by a Crown attorney if there is no reasonable prospect of conviction or it is not in the public interest to continue the prosecution, or as part of an agreement between the prosecution and the defence;

Figure 1: Overview of Criminal Court Process, Ontario Court of Justice

Prepared by the Office of the Auditor General of Ontario



1. In the Integrated Court offences Network (ICON) system, a case is recorded as "received" when one or more charges are laid by police.
2. In ICON, a case is recorded as "disposed" when one of the following takes place:
   - accused is found guilty before or during a trial and sentenced;
   - accused is found guilty at the conclusion of a trial and sentenced, or is found not guilty and, if in custody, is released;
   - accused's case is diverted, e.g., to mental health court or away from the regular court process, and the accused has successfully completed diversion;
   - case is withdrawn by Crown attorney if there is no reasonable prospect of conviction or it is not in the public interest to continue the prosecution or as part of an agreement between the prosecution and the defence; or
   - judge stays the proceedings, e.g., if the case has exceeded the Jordan timelines and the judge holds the prosecution or the court system ("institutional delay") responsible for the delay.
3. Following a preliminary inquiry, an accused person can be committed for trial in the Superior Court of Justice or can be discharged.
4. Sentencing options include one or a combination of custodial and non-custodial sentences.
5. Provincial system: if accused is sentenced to less than two years. Federal system: if accused is sentenced to two years or more.

- a judge stays (discontinues) the proceedings, for example, if the case has exceeded the Jordan timelines and the judge holds the prosecution or the court system responsible for the delay.

2.2 Ontario's Criminal Courts and Their Caseload

2.2.1 Judicial Responsibility

The judiciary is a separate and independent branch of the government. While members of the judiciary work with the Ministry to administer justice, they have distinct responsibilities as set out in the *Courts of Justice Act* (Act). Under the Act, the regional senior judges and their delegates, under the direction and supervision of the Chief Justices, are responsible for preparing trial lists, assigning cases and other judicial duties to individual judges, determining workloads for judges, determining sitting schedules and locations, and assigning courtrooms.

The Chief Justices of the Ontario Court of Justice (Ontario Court) and Superior Court of Justice (Superior Court) have each signed a publicly available memorandum of understanding with the Attorney General of Ontario that sets out areas of financial, operational and administrative responsibility and accountability between the Ministry and the courts. In particular, the Attorney General and the Chief Justices agree to have timely communication regarding significant matters that affect the mandate of each, such as staffing and facilities issues as well as policy and legislative changes. Further, the memoranda indicate that the judiciary has ownership of court-derived statistical information and documents, such as case files, courtroom operating hours and caseloads, and that the judiciary must approve any access to such information by a third party.

2.2.2 Criminal Caseload

Over 98% of criminal cases in Ontario are received by the Ontario Court. The Superior Court hears the remaining cases, which generally constitute more serious offences such as murder and drug trafficking.

The number of criminal cases received by the Ontario Court in 2018/19 was 236,883, a 10% increase in caseload since 2014/15. **Figure 2** shows the number of cases received and disposed in the Ontario Court from 2014/15 to 2018/19.

The main reason for the increased caseload was an 8% increase in the number of people charged with crimes in Ontario for calendar years 2014–18, according to Statistics Canada figures. Over the same period, Statistics Canada reported a 17% increase in crime incidents reported by police in Ontario. As well, in 2018, Ontario had the second-highest percentage of individuals charged per crime incident (31%) in Canada, equal to Quebec.

Figure 3 shows the five-year trend in the number of criminal cases received:

- administration of justice offences increased by 25%, making up 31% of the caseload;
- crimes against persons increased by 14%, making up 27% of the caseload; and

Figure 2: Number of Criminal Cases Received and Disposed in the Ontario Court of Justice, 2014/15–2018/19

Source of data: Ministry of the Attorney General

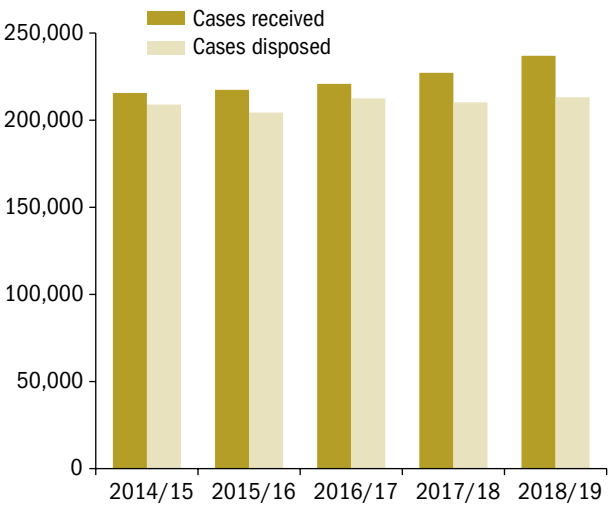


Figure 3: Number of Criminal Cases Received by Offence Type in the Ontario Court of Justice, 2014/15–2018/19
Source of data: Ministry of the Attorney General

Offence Group	# of Cases Received					% Change 2014/15–2018/19	2018/19 % of Total
	2014/15	2015/16	2016/17	2017/18	2018/19		
Administration of justice[1]	57,834	59,714	63,248	67,911	72,176	25	31
Crimes against the person[2]	56,500	57,659	59,363	60,706	64,578	14	27
Crimes against property[3]	49,179	49,689	49,901	51,773	55,274	12	23
Federal statute[4]	24,586	22,318	20,121	19,177	16,019	(35)	7
Criminal Code–traffic[5]	17,682	17,635	17,488	17,094	17,327	(2)	7
Other Criminal Code[6]	9,898	10,341	10,634	10,503	11,509	16	5
Total	**215,679**	**217,356**	**220,755**	**227,164**	**236,883**	**10**	**100**

1. Includes failure to appear before a court, breach of probation, being unlawfully at large, failure to comply with a court order and other offences.
2. Includes homicide, attempted murder, robbery, sexual assault, other sexual offences, major and common assaults, uttering threats, criminal harassment and other crimes.
3. Includes theft, break and enter, fraud, mischief, possession of stolen property and other property crimes.
4. Includes drug possession, drug trafficking, and offences under the *Youth Criminal Justice Act* and other federal statutes.
5. Includes impaired driving and other Criminal Code traffic offences.
6. Includes weapons, prostitution, disturbing the peace and other criminal offences.

- crimes against property increased by 12%, making up 23% of the caseload.

These increases were offset by a 35% decrease in offences under federal statutes and a 2% decrease in traffic-related offences received.

The Superior Court heard 3,298 criminal cases in 2018/19, 9% less than in 2014/15. This decrease was primarily due to receiving 17% fewer appeals against Ontario Court decisions and 37% fewer drug-related cases, offset by a 6% increase in other Criminal Code cases. Together, these three types of cases constituted 96% of the court's caseload in 2018/19. The number of cases awaiting disposition in Superior Court decreased by 10% over the same period.

2.3 Prosecution and Disposition of Criminal Matters

As agents of the Ministry, Crown attorneys in the Criminal Law Division (Division) conduct prosecutions and appeals of accused persons under the Criminal Code of Canada and other criminal laws as part of their overall mandate. The Division operates from its head office in Toronto, six regional offices, four divisional prosecution and support offices and 54 Crown attorney offices across the province. **Appendix 3** presents an organization chart for the Division.

The Division's operating expenses totalled $277.6 million in 2018/19, 87% of which was spent on staffing. It employed 1,570 full-time-equivalent staff, including 1,023 Crown attorneys and 547 other professional staff (including regional directors, managers and support staff). Over the past five years, operating expenses have increased by 8%, mainly because the number of Crown attorneys has increased by 8% (see **Figure 4**). Additional Crown attorneys were hired primarily to meet the demands resulting from the Jordan decision (discussed further in **Section 2.3.4**) and other provincially approved initiatives including the Bail Action Plan, Ontario's Sexual Violence and Harassment Action Plan and cannabis legalization.

2.3.1 Charge Screening Standard

The Crown Prosecution Manual contains Ontario's prosecution policies issued by the Attorney General in the form of directives. It provides mandatory

Figure 4: Criminal Law Division Expenditures and Staffing, 2014/15–2018/19

Source of data: Ministry of the Attorney General

Criminal Law Division	2014/15	2015/16	2016/17	2017/18	2018/19	% Change
# of Crown attorneys[1]	951	963	977	1,019	1,023	8
# of other professional staff[1,2]	541	537	535	547	547	1
Total	**1,492**	**1,500**	**1,512**	**1,566**	**1,570**	**5**
Expenditures ($ 000)	255,896	257,429	263,368	267,630	277,574	8

1. Full-time equivalents.
2. Including regional directors, managers and support staff.

direction, advice and guidance to Crown attorneys on the proper exercise of their discretion. The charge screening directive, which provides the standard that the prosecution must adhere to when proceeding with a charge, states that Crown attorneys must only proceed with a charge (or all charges in a case) where there is a reasonable prospect of conviction and if prosecution is in the public interest.

The Crown attorney has a duty at every stage in the proceeding to assess the reasonable prospect of conviction. If at any stage the Crown attorney determines that there is no longer a reasonable prospect of conviction, the prosecution must be withdrawn. In making this determination, Crown attorneys are instructed to consider various factors such as the availability of evidence; the admissibility of evidence implicating the accused; and an assessment of the credibility and competence of witnesses.

The public interest factor must be considered only after it is determined that there is a reasonable prospect of conviction. No public interest, however compelling, can warrant a prosecution where there is no reasonable prospect of conviction.

2.3.2 Collection of Evidence and the Disclosure Process

The prosecution has a duty to provide the defence with (or disclose) all the relevant evidence that the police have collected during the investigation of the charges in a case. "Disclosure" refers to both the copy of the evidence as well as the manner in which the defence receives a copy of that evidence. Both police and Crown attorneys in Ontario have a responsibility when it comes to disclosure. The police must provide complete disclosure to the Crown attorneys in a timely manner, who in turn must review and vet all evidence, and provide all relevant evidence in their control to the accused or their counsel. This is subject to limits such as various types of privilege. It is the accused's constitutional right, guaranteed by section 7 of the Canadian Charter of Rights and Freedoms (Charter), to know the evidence that will be used against them. Failure to disclose the evidence in a case would be a violation of this right, and risks miscarriage of justice. For these reasons, the duty to make full disclosure is one of the most important obligations in the criminal justice system.

As the first point of contact in a criminal case, the police investigate, make the arrest, charge the accused person and continue to collect evidence. The police are responsible for providing all necessary disclosure documents to the Crown attorney, so that the Crown attorney can make informed decisions on the case in light of all of the evidence and decide whether or not the case can be prosecuted. The Crown attorney usually hands the accused person or their counsel a disclosure package at the accused's first appearance in court or, in some circumstances, before their first appearance. The disclosure package usually includes documents such as:

- copies of police officers' notes;
- witness statements;

Figure 5: Number of Criminal Cases Disposed and the Estimated Number of Accused Persons in Custody
Source of data: Ministry of the Attorney General

	# of Cases Disposed, 2018/19	% of Total Cases	Yearly Range of Accused Persons in Remand,* 2014–18
Before a trial takes place	188,924	89	20,000–22,000
During the trial proceedings	15,890	7	1,000–1,100
Following a trial	8,360	4	520–650
Total	**213,174**	**100**	

* While the number of the accused in remand (detained in custody) is not readily available, the Ministry of the Attorney General has indicated that these numbers were the best estimated yearly range between 2014 and 2018.

- other visual, audio and/or electronic evidence such as CCTV videos/stills, text messages, photographs, DVDs and CDs; and
- a Crown charge screening form that states what charges the Crown is proceeding on and the sentencing position of the prosecution, such as whether the Crown attorney will ask for a custodial sentence if there is a guilty plea or a guilty verdict after a trial.

2.3.3 When a Criminal Case Can Be Disposed

A criminal case can be disposed at any point in a criminal proceeding:

1. before a trial takes place, when either the prosecution withdraws the charges or the accused pleads guilty;
2. during the trial proceedings, when the case collapses on the first day of the trial or another day during the trial, before a verdict is rendered; or
3. following a trial that concludes with a verdict of either guilty or not guilty.

A significant number of accused persons who are still presumed innocent are kept in remand (detained in custody) pending disposition of their cases. **Figure 5** shows the number and percentage of cases disposed in 2018/19 as noted above, and the best estimate for the average number of accused persons in remand between 2014 and 2018.

2.3.4 The Jordan Decision on "Unreasonable" Delay of Trial

The timely disposition of a trial in criminal court is not only a fundamental right of accused persons, entrenched in section 11(b) of the Charter, but also an essential element of public confidence in the criminal justice system.

Timely disposition of criminal matters is also critical for witnesses, victims and their families impacted by crime. It assists the court process with the accurate recollection of information related to the crime and its investigation, and it allows for emotional and psychological closure for the persons affected.

In July 2016, the Supreme Court of Canada ruled in *R. v. Jordan* that the pretrial delay caused by the prosecution (49.5 months in this case) was a breach of the "right to trial within a reasonable time" as guaranteed by the Charter. Consequently, the Court set out a new framework for calculating delay when an application for section 11(b) is filed. It imposed a presumptive ceiling such that if a case is not disposed within 18 months (for cases tried in the Ontario Court) or 30 months (for cases in the Superior Court), the delay is presumed to be unreasonable, and the Crown attorney has to contest this presumption or else the charges will be stayed (legal proceedings against the accused will be discontinued).

Between July 2016 and August 2019, 791 applications were filed by the defence in Ontario to have the court consider cases under the Jordan timeline

and, based on information provided by the Division, 191 provincially prosecuted cases were stayed by the judiciary in Ontario on account of unreasonable delay.

2.4 Mental Health Courts

Ontario has 56 criminal courts that can hear cases where the accused person may have mental health issues. Included in these 56 are 15 dedicated mental health courts and 14 community or drug treatment courts, staffed by psychiatrists and mental health support workers. The amount of sitting time scheduled for hearing mental health–related cases at each court varies; it is determined by the Ontario Court judiciary. **Appendix 4** contains a list of these courts, the year when they were established (since 1997) and their scheduled sitting time.

At any time after charges have been laid, any criminal court participants, including defence counsel, police, the judge, the accused or the Crown attorney, or family members of the accused, can seek to have the Crown attorney refer the case to a mental health court. One of three scenarios typically follows the laying of charges when the mental health of the accused is in question:

- Accused pleads guilty and requests that treatment and participation in ongoing programming for their mental health condition be considered at sentencing. They may receive any sentence the judge determines is appropriate, which may include an absolute discharge; a conditional discharge that binds the accused to meet certain conditions or face possible imprisonment; a fine; a conditional sentence that is to be served in the community; or a jail sentence.
- If the accused person's case is eligible for diversion outside the regular court system, a mental health court support worker will work with the person to develop a program that may include community support, supervision and/or treatment and regular check-ins with support workers and the court. The charges may be withdrawn upon successful completion of the program.
- At any stage of the proceedings, a person may be deemed unfit to stand trial if they have a mental illness that prevents them from understanding what happens in court or the possible consequences of the court proceedings, or communicating with and instructing their lawyer. The judge may order the person to receive treatment in order to return to a "fit" state. If the person is found fit after treatment, their case typically moves back to a regular court unless the accused wishes to avail themselves of some of the assistance of the mental health court workers in that court.

Appendix 5 shows the typical process for an accused person who goes through a mental health court in Ontario.

3.0 Audit Objective and Scope

Our audit objective was to assess whether the Ministry of the Attorney General (Ministry) had effective systems and procedures in place to:

- utilize Ministry resources for courts efficiently and in a cost-effective way;
- support the resolution of criminal law matters on a timely basis, with consistent delivery of court services across the province, in accordance with applicable legislation and best practices; and
- measure and publicly report periodically on the results and effective delivery of court services in contributing to a timely, fair and accessible justice system.

Before starting our work, we identified the audit criteria we would use to address our audit objective. These criteria were established based on a review of applicable legislation, policies and procedures, and internal and external studies. Senior management at the Ministry reviewed and agreed with our objective and associated criteria as listed in **Appendix 6**.

Our audit work was conducted primarily at the Ministry and the seven courthouses that we visited from January to August 2019. These courthouses cover all seven regions into which the Ontario Court of Justice is divided for administrative purposes, and are the Barrie, Brampton, College Park, Cornwall, Fort Frances, Kitchener and Sudbury courthouses. We based our selection of these seven courts on factors including the number of cases received and the trend in the number received, average days needed to resolve a criminal case, the number of cases waiting to be disposed, and other observations we made throughout our audit that prompted further examination.

We obtained written representation from the Ministry, effective November 14, 2019, that it has provided us with all the information it is aware of that could significantly affect the findings of this report, except for the effect of the matters described in the scope limitation section.

The majority of our document review went back three to five years, with some trend analysis going back 10 years. We reviewed relevant research from Ontario and other Canadian provinces, as well as foreign jurisdictions.

We conducted the following additional work:

- Interviewed senior management and appropriate staff, and examined related data and documentation at the Ministry's head office and the seven courthouses.
- Spoke to the senior management at the Office of the Chief Justice of the Ontario Court of Justice, Office of the Chief Justice of the Superior Court of Justice and the Court of Appeal, presided over by the Chief Justice of Ontario.
- Spoke to representatives from stakeholder groups, including defence counsel from the Criminal Lawyers' Association and the Canadian Council of Criminal Defence Lawyers, Legal Aid Ontario, Ministry of the Solicitor General, Ontario Provincial Police and Toronto Police Services, to gain their perspectives on criminal court services in particular.
- Engaged an expert advisor from Alberta with legal and academic background and expertise in criminal law and procedure, evidence, and law and technology, to gain the expert's perspective on overall issues and concerns regarding criminal courts, including court delays, reasons for withdrawal of cases by Crown attorneys, matters to be considered due to the Jordan decision and court efficiencies.
- Considered the relevant issues reported in our 2003 and 2008 audits of Court Services and our 2012 audit of Criminal Prosecutions.
- Reviewed the work conducted by the Ministry's internal audit and considered the results of these audits in determining the scope of this value-for-money audit.

Scope Limitation

The *Auditor General Act* requires the Auditor General, in the annual report for each year, to report on whether the Auditor received all the information and explanations required to complete the necessary work. Section 10 of the *Auditor General Act* states, in part, "The Auditor General is entitled to have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by a ministry, agency of the Crown, Crown controlled corporation or grant recipient, as the case may be, that the Auditor General believes to be necessary to perform his or her duties under this Act." As well, under the *Auditor General Act*, a disclosure to the Auditor General does not constitute a waiver of solicitor-client privilege, litigation privilege or settlement privilege.

Although Ministry staff were co-operative in meeting with us during our court visits, we experienced significant scope limitations in our access to key information and documents that would be required to complete the necessary audit work, as follows:

- **Criminal case files maintained by Crown attorneys**—We asked to review case files maintained by Crown attorneys on a sample basis to obtain case details such as the reasons for delays in resolving some criminal cases. The Ministry's Criminal Law Division (Division) restricted our full access to the selected files, citing various privileges such as litigation privilege (referring to files containing information regarding prosecution strategy and publication bans, for example) and confidential informer privilege (referring to files containing names of confidential informants, whose identity prosecutors have a legal duty to protect by ensuring no disclosure occurs that might tend to reveal the identity of an informer or their status as an informer).

  However, the Division was unable to identify, on a timely basis, how many of the 175 files we selected contained information on confidential informers at the time of our audit. Instead, the Division gave us its summarized case details, including reasons for delays, from the case files we had selected to review.
- **Court scheduling**—In **Section 4.3**, we noted certain courthouses that experienced delays in resolving criminal cases where the courtrooms were not used to the optimal average as defined by the Ministry. We requested access to the court scheduling for these courts, but our request was denied by the Ministry because it did not have approval from the Offices of the Chief Justices of the Ontario Court of Justice and the Superior Court of Justice to provide this information to us, even though Ministry staff have access to the information.

  A representative of the Chief Justice of the Ontario Court responded:

  Judicial administration of the Ontario Court of Justice ("OCJ") is constitutionally and legislatively independent of the government, and as such, the OCJ is not subject to the Auditor General Act.

  A representative of the Chief Justice of the Superior Court also

  reiterate[d] the constitutional and legislative independence of the court and its exclusive jurisdiction over all matters related to judicial administration, including case scheduling. Moreover, as the OCJ [Ontario Court of Justice] already noted, the courts are not subject to the Auditor General Act *nor its operations the subject of this audit.*
- **Review of mental health courts**—In preparing **Section 4.7.1**, when we inquired whether a review of the scheduling and operations of mental health courts in the Ontario Court had been done in the past, the representative of the Office of the Chief Justice of the Ontario Court responded:

  The establishment of specialized courts (including mental health courts) and any judicial review of these specialized courts fall within the exclusive jurisdiction and responsibility of the Chief Justice and her RSJ [Regional Senior Judge] delegates for judicial scheduling. As such, these are matters relating to judicial independence and fall outside the scope of the audit team.

Once again, we were unable to confirm whether such a review had been done in the past, or to determine if the courts were being operated as intended, even though it is Ontario's taxpayers who pay the cost of operating the courts.

The *Courts of Justice Act* states, in part, *"The administration of the courts shall be carried on so as to … promote the efficient use of public resources."* However, without complete access to the information and documents requested, we are unable to assess and determine, on behalf of the Members of the Legislative Assembly and taxpayers, whether public resources, such as courtrooms, are used efficiently and cost-effectively to help reduce delays in some criminal cases.

Our Office did not intend to question verdicts or judges' and Crown attorneys' judgment or opinions in the criminal cases that come before the court. We found this denial of access unusual given that the Chief Justice of the Ontario Court of Justice signed a memorandum of understanding with the Attorney General in 2016. The memorandum's Section 3.4 reads as follows:

> *Provincial Auditor*
> *The financial and administrative affairs of the Ontario Court of Justice, including the Office of the Chief Justice, may be audited by the Provincial Auditor as part of any audit conducted with respect to the Ministry.*

Appendix 7 lists some of the criminal court information pertinent to our audit that is publicly available as well as criminal court information that is not publicly available. For the latter, we further list the specific information to which we received access alongside the information to which we were denied access during our audit. For each area where we were not given access, we explain why we needed the information for our audit purposes and the impact on our audit that resulted from not getting this information. As noted in **Appendix 7**, there were inconsistencies in the rationale for what was or was not provided to us.

4.0 Detailed Audit Observations

4.1 Number of Criminal Cases Awaiting Disposition Continues to Increase

4.1.1 New Cases Received Exceeded Cases Disposed

The backlog of criminal cases we noted in our previous audits of court services continues to grow. The Ontario Court received 236,883 cases in 2018/19, a 10% increase over 2014/15. Yet the number of cases disposed increased by only 2% over the same period. The result is a 27% increase in criminal cases waiting to be disposed —about 114,000 cases as of March 2019 compared to about 90,000 in March 2015. Another result of this backlog is the increasing age of the cases awaiting disposition. **Figure 6** indicates that, between 2014/15 and 2018/19, cases pending disposition for more than eight months increased by 19%, from about 31,000 to about 37,000.

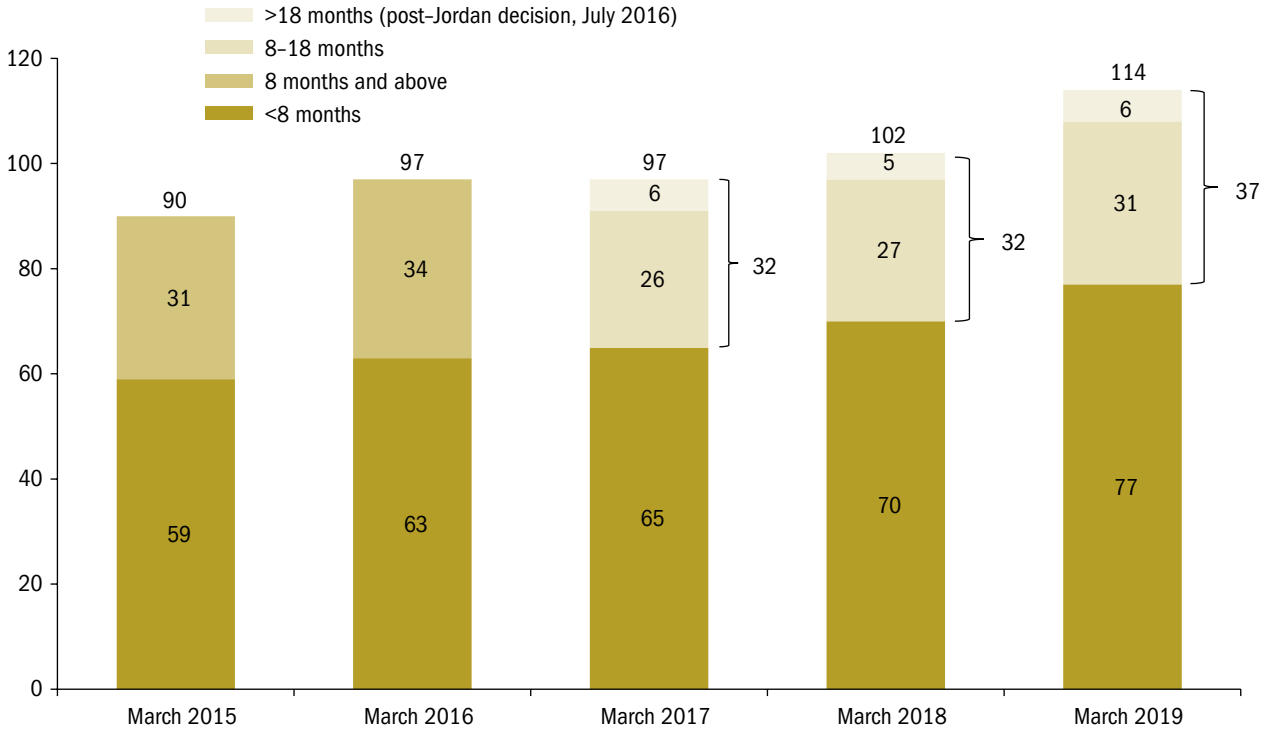
This backlog and systemic delay in resolving criminal cases negatively impacts the Charter right of accused persons to be tried within a reasonable time. Accused who did not seek or were not granted bail may remain detained in remand for long periods; if a case drags on longer than the Jordan timelines the charges may be stayed (permanently by the court). Over time, witnesses may become unavailable and memories may fade. Delays owing to inability to manage and resolve criminal cases on a timely basis also have a significant impact on victims and their families, who may feel they are denied justice, and on public confidence in the justice system.

In August 2016, following the Supreme Court's Jordan decision (**Section 2.3.4**), the Criminal Law Division (Division) began to track cases pending disposition for more than 18 months. As **Figure 6** shows, the number of these cases ranged from about 5,000 to about 6,000 (from 5% to 7% of total pending cases) between March 2017 and March 2019.

We selected a sample of 30 case files where the cases were pending disposition for more than 18 months. We were not given full access to the files. Instead, the Division summarized the reasons for delays in these cases for our review. Using their summaries, we noted that of the 30 files, only 27 contained sufficient information and were pertinent to our analysis. In these 27 cases, the Division's information indicated that both the defence and the prosecution could be responsible for the delays in a single case, in addition to "institutional delays" such as difficulty in obtaining court dates. Multiple

Figure 6: Ontario Court of Justice—Number of Criminal Cases Pending Disposition (000s), by Average Age, March 2015–March 2019

Source of data: Ministry of the Attorney General



reasons were noted for the delay for each case; we noted the three top reasons:

- 25 cases had delays caused by the defence, such as unavailability of defence counsel or change of defence counsel (this is not within the control of the Ministry and is not considered by the judge in calculating Jordan timelines and staying the charges);
- 21 had delays caused by the prosecution, such as lack of timely disclosure of evidence by the police, or attributed to Crown attorneys, such as witnesses not showing up to testify or delays in setting trial dates; and
- 21 were experiencing institutional delays that included problems such as unavailability of courtrooms or of judges who were ill or had a scheduling conflict.

The accused in 12 of these cases were being detained in remand, while the other 15 were out on bail while the case was proceeding in court.

One of the cases we reviewed included nearly all of the reasons for delay we noted. This case related to a major assault and was pending disposition for 28 months, with the accused out on bail. Most of the delay was due to a conflict of interest relating to one judge, another judge's unavailability as a result of illness, difficulty in obtaining court dates, and timely disclosure of evidence from police. The defence counsel was responsible for the balance of the delay, approximately three months. (**Appendix 8** summarizes other cases in this sample.)

The remaining three case files were not usable for our purposes. One case should have been recorded as closed but was erroneously still listed as pending disposition. Two cases were transferred to the Public Prosecution Service of Canada and were no longer being prosecuted by the provincial Crown attorneys.

4.1.2 Cases Are Taking Longer to Resolve—191 Provincially Prosecuted Cases Were Stayed Due to Excessive Delay between July 2016 and August 2019

Contributing to the backlog in cases awaiting disposition is the increasing length of time needed to resolve criminal cases in Ontario. Between 2014/15 and 2018/19, the average number of days needed to resolve a criminal case increased by 9% (from 133 to 145 days), and average appearances in court increased by 17% (from 6.5 to 7.6 appearances).

Figure 7 shows the number of cases stayed by Ontario courts resulting from the July 2016 Jordan decision. The downward trend in the numbers appears to show a slight improvement by Crown attorneys in identifying cases in danger of being stayed. Since the decision, according to information provided by the Division, 191 provincially prosecuted cases have been stayed at the request of the defence by judges who ruled that the prosecution, police and/or court system had been responsible for unreasonable delay. In these cases, justice was denied for the victims.

As of August 2019, 28 applications made by defence counsel to stay cases were pending judicial decision.

The Division does not analyze such cases by court location, by region or province-wide for the types of offence and reasons for delay. We selected a sample of 35 cases (between July 2016 and June 2019) from the 191 stayed cases involving charges to understand why they were stayed and to review the reasons for the prosecution's delay. For 19 of the 35 cases, instead of giving us full access to the files, the Crown attorneys reviewed their case notes and summarized the reasons for delay (on the understanding that a case can have more than one reason for delay):

- eight cases (42%)—court scheduling;
- seven cases (37%)—disclosure of evidence; and
- four cases (21%)—delays attributed to Crown attorneys, such as witnesses not showing up to testify or delays in setting trial dates.

Figure 7: Number of Cases Stayed Due to the Jordan Decision, July 2016–August 2019

Source of data: Ministry of the Attorney General

Time Period	# of Cases
July 2016–December 2016	39
January 2017–June 2017	45
July 2017–December 2017	39
January 2018–June 2018	30
July 2018–December 2018	27
January 2019–June 2019	17
July 2019–August 2019*	6
Total Cases Stayed (A)	**203**
Total Cases Overturned on Appeal (B)	**12**
Net Stayed Cases (A – B)	**191**

Note: In July 2016, the Supreme Court of Canada ruled in *R. v. Jordan* that the pretrial delay caused by the prosecution or the court system breached the Charter "right to trial within a reasonable time." The Court set timelines for disposing criminal cases from the date of charge by the police: 18 months for provincial court, and 30 months for superior court or after a preliminary inquiry for a case that began in provincial court. When a case exceeds these timelines, the defence may request a judge to have the charges stayed. (See **Section 2.3.4**.)

* Data compiled as of August 2019, at which time 28 applications made by the defence counsel to stay cases were pending either argument or judicial decision.

Among the 19 stayed cases where Crown attorneys gave us summaries of their case notes, in one case relating to a $13 million fraud, the judge ruled that delays of approximately four years were primarily due to two sudden medical leaves that left the case with no judge available to hear it. In another case of crime against persons, the judge ruled that the entire delay of 19.5 months was due to lack of appropriate police preparation of a witness and police disclosure issues. An impaired driving case was stayed as a result of not co-ordinating trial dates with a key witness's schedule, adding to the 21-month delay attributed to the Crown attorney.

We did not further analyze the summaries of their case notes for the remaining 16 cases of the 35 we sampled that fell into various categories. In 13 of them, the Crown attorneys could not identify the reason for delays before the end of our audit. In two of the 16 cases, the Division noted that the cases were determined to have been stayed for reasons other than the Jordan decision; we later discovered

from our own independent review that the two cases had actually been stayed under the Jordan decision. One stayed case of the 16 was being appealed by the prosecution at the time of our review.

To confirm the reasons for delays as summarized by the Division and noted above, we selected all 56 judicial decisions that were publicly reported or that the Division provided to us as of August 2019 (excluding judicial stays that were subsequently overturned on appeal), and did our own review of the types of offences charged and the reasons for delay. We noted that 26 were impaired driving cases. Of the remaining 30, one case related to attempted murder; six were sexual assault–related cases; seven were for assault, including assault with a weapon; seven were offences against children; three were firearm-related offences; and the other six cases were for various other Criminal Code offences, including fraud and public mischief.

Among the delays cited, the top reasons given for staying these 56 cases were (on the understanding that a case can have more than one reason for delay):

- 18 cases (32%)—institutional delays owing to courtroom scheduling, lack of judicial resources, difficulty obtaining court interpreters and/or administrative errors;
- 22 cases (39%)—delays in gathering and disclosure of evidence by police and/or Crown attorneys; and
- 16 cases (29%)—delays attributed to Crown attorneys, such as witnesses not showing up to testify or not scheduling court dates in a timely manner.

As with the pending cases we examined that are still moving slowly through the justice system, a case that was stayed by the court may also have experienced a range of delays. For example, we noted that a case originating in 2017 in which the accused faced 14 firearm-related charges was stayed. The delay was just over 20 months, and issues with timely disclosure were a concern throughout the case. In addition, the Crown attorney on this case underestimated the required trial time, and as a result seven of the 20 months of delay were attributed to Crown attorneys' unavailability and other issues relating to their assignment. The judge ruled that if the appropriate amount of time had been scheduled for the trial, what had been accomplished in seven months would have taken much less time. (**Appendix 8** summarizes other cases in this sample.)

In August 2016 the Division began to track cases pending disposition for more than 18 months. The large number of impaired driving cases in our sample of stayed cases suggests that, when cases are approaching the Jordan timeline, Crown attorney offices with limited resources were prioritizing other types of serious criminal cases or, for instance, cases with accused persons having prior criminal records for prosecution so that these cases are not stayed. We asked the Ministry to provide 10-year case histories (January 2009 to July 2019) for a sample of 50 accused whose cases had been stayed. Our objective was to determine if any accused persons whose cases were stayed already had a record of older criminal charges, or if any were charged with new offences they committed after their cases were stayed.

In 11 of the 50 sample cases, the accused either already had a record of older criminal charges before their case was stayed, or went on to be charged with a new offence after their case was stayed.

In another 23 sample cases, we noted that the accused had no charges from before or after their cases were stayed. In the remaining 16 cases, the Ministry had no records relating to case histories—although it informed us that it does not have a unique identifier for accused persons, and some case histories may not be located if, for example, a name has been recorded incorrectly.

4.1.3 Reasons for Aging Cases Require Formal and Regular Analysis Done Centrally

As shown in **Figure 6**, the number of cases pending disposition up to eight months increased by more

than 30%, from 59,000 as of March 2015 to 77,000 as of March 2019. However, we found that the Division has not done formal and regular analysis of aging cases at an aggregate level, that is, at the level of court location, region or province, such as the following:

- categorizing the reasons why cases are pending disposition;
- categorizing the reasons why cases are stayed; or
- distinguishing whether delays were caused by the defence or by the prosecution or were "institutional," for example, related to court scheduling.

These higher-level analyses can be used to generate regular reports for senior management to highlight areas of concern that have a systemic impact on the criminal court system. As well, such analysis can help to inform the Division so that Crown resources can potentially be allocated and reallocated proactively.

Instead of conducting formal and regular analysis on an aggregate level or centrally across the province, the Division relies on assistant Crown attorneys at individual court locations to manage their own cases and inform their Crown attorneys if a case is at risk of being stayed or if they need more help to resolve it.

For their part, Crown attorneys track their cases individually in their case notes. In 2013, the Criminal Law Division developed SCOPE (Scheduling Crown Operations Prepared Electronically), a case management system designed to assist Crown attorneys in electronic scheduling, resource management, case management and disclosure tracking. SCOPE allows Crown attorneys to view and run reports on pending cases by their age and track applications filed by the defence to stay cases due to unreasonable delay under the Jordan decision. In addition, SCOPE extracts are used to provide a dashboard to help managers identify and triage cases nearing the Jordan timelines.

However, the Division can do more in identifying systemic reasons for delays so that the information can help ensure that criminal cases are managed and disposed in a timely manner. The eight-month mark could be a key time for Crown attorneys to start monitoring these cases more closely and to inform the Division through formal data analysis and reporting.

RECOMMENDATION 1

To proactively manage the progress of criminal cases through the court system and resolve them in a timely manner, we recommend that the Ministry of the Attorney General (Criminal Law Division):

- monitor all criminal cases that have been pending disposition for more than eight months by court location and region and analyze the reasons for the delays;
- capture all reasons for cases being stayed by judges;
- distinguish the reasons under the control of the Division (such as availability of Crown attorneys and disclosure of evidence) and the courts (such as scheduling of courtrooms and judges) from those caused by the defence; and
- take timely action, including allocating resources as needed and working with the judiciary to improve the court scheduling process.

MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Division is dedicated to resolving criminal cases as efficiently and effectively as possible, while simultaneously striving to provide the highest quality and standard of prosecution service. For those cases where stays were issued, the Division conducts reviews to take corrective action where required.

The effectiveness of these practices is demonstrated in the decreasing number of stays for delay year over year since the Jordan decision. In the three years since Jordan, July 2016 to

August 2019, the total number of cases disposed was 633,788. Of those cases, only 191, or 0.03%, were stayed for delay.

The Division will actively analyze the data gathered by Crown offices to ensure cases are dealt with as expeditiously and effectively as possible with the appropriate oversight. As well, the Division will continue to have collaborative discussions with the judiciary and the Ministry's Court Services Division on how to maximize courtroom use in a way that provides timely access to justice while respecting the Court's judicial independence.

4.2 Criminal Law Division Efforts Have Had Little Effect on Delays in Disposing Criminal Cases

4.2.1 Number of Cases Disposed Has Remained Nearly Constant Although the Number of Crown Attorneys Has Increased over the Last Five Years

While the number of full-time-equivalent Crown attorneys increased by 8% between 2014/15 and 2018/19, total cases disposed in both the Ontario Court and Superior Court increased by only 2%. The addition of new Crown attorneys did not result in a proportional increase in the total number of cases disposed.

4.2.2 Lack of Benchmarks Has Led to Inefficient Allocation of Crown Attorneys and Vastly Unequal Numbers of Cases Disposed across the Province

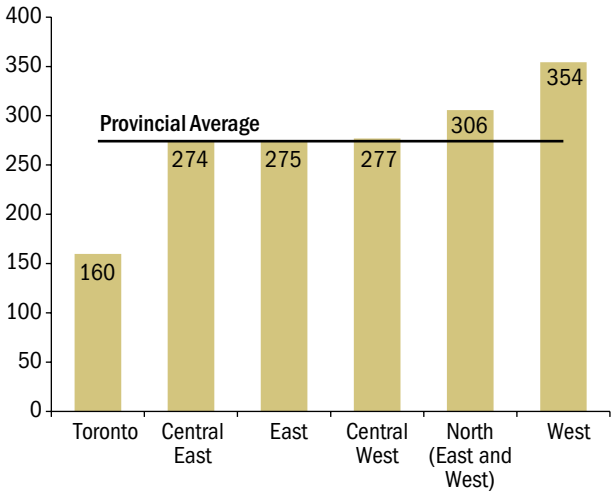
We noted that, overall, the average number of criminal cases disposed per Crown attorney increased by 2.5% over the five-year period ending March 31, 2019; but we also found significant variations in the number of cases disposed (using a five-year average) per Crown attorney across the province, from a low of 160 cases in Toronto region to a high of 354 cases in the West region, compared to a provincial average of 274 cases (see **Figure 8**). We also noted variations in the number of cases disposed per Crown attorney in offices within the Toronto region, from a low of 128 cases in one office to a high of 198 cases in another office.

The Division continues to face challenges in obtaining reliable data and key performance indicators on workloads. This includes determining what is a reasonable workload and the average time Crown attorneys take to resolve cases, especially at the local and regional level. Lack of relevant data and analysis impedes decision-making in assigning Crown attorneys to court locations based on need, balancing workloads so that they are equitably distributed across the province, and allocating Crown attorneys among offices as needed. We note in **Section 4.1**, from the notes that the Division summarized for us when we were not given full access to the case files, that unavailability of a Crown attorney was indicated as one of the top three reasons for delays in resolving cases and, in some circumstances, for cases being stayed.

Inequitable and increasing workloads noted by the Division have caused significant concerns among Crown attorney offices. In a business case submitted in May 2017 by a Crown attorney office for additional Crown attorney resources, the office making the submission noted that:

Figure 8: Five-Year Average Number of Cases Disposed per Crown Attorney Across Six Regions in Ontario, 2014/15–2018/19

Source of data: Ministry of the Attorney General



- it received about 29% more cases in 2017 versus 2016 and expected the increasing trend to continue; and
- it had about two Crown attorneys, versus four to five Crown attorneys in offices having similar numbers of disposed cases.

The office requested an additional permanent Crown attorney and a temporary Crown attorney; the Division accepted this request and provided additional resources.

In February 2019, another Crown office submitted a business case for additional Crown attorney resources to senior management of the Division. The business case used the Division's caseload statistics to identify eight Crown offices located in urban areas with significant differences in resources. The Crown office making the submission:

- received the highest volume of criminal cases in the province, with 189.6 active cases per Crown attorney, versus 86.9 in another office; and
- disposed 76.6 cases per Crown attorney, versus 36 cases in another office.

The business case reported the impact that the workload was having on the Crown attorneys in this office, resulting in a 36% increase in sick days taken by staff over the preceding 13 months. As of August 2019, this business case was still being considered by senior management of the Division.

We identified similar issues in managing Crown attorney workloads in our 2012 audit of Criminal Prosecutions. Since then, the Division has taken some steps to further understand its workload issues. Among the new tools that the Division has created and implemented since 2012 are:

- WRIT, a workforce resourcing tool that lets managers track metrics such as case volume by individual court location and region, the proportion of offence types handled, staffing allocations by position type and related expenses;
- PROStats, which generates customized reports for senior management to monitor the trend in criminal case statistics by court location;
- SCOPE, a scheduling, case management, file management and disclosure tracking tool that can help with case management by, for example, categorizing active cases by age; and
- HUD (Heads-Up Display through SCOPE), which produces real-time dashboards of active cases and case volumes.

Also after our audit in 2012, the Division identified the additional need for a system to define the complexity of different criminal cases and assign caseloads to its prosecutors accordingly. However, after seven years, as of August 2019, the development of this Crown Information Management Model system was in data analysis stage, with an expected completion date by the end of June 2020.

Despite its adoption of new tools, the Division does not have a data-driven and systematic approach to assigning Crown attorney resources consistently across the province that could help decision-makers reduce the backlog of cases. To explain the difficulty it faces in assigning caseloads to its Crown attorneys according to the complexity of cases, the Division listed some of the many factors that drive complexity in criminal prosecutions: type of jurisdiction (urban or rural); size of the Crown office and case volume; experience level of Crown attorneys; type of offence and evidence required to prosecute; number of police services that Crown attorneys have to co-ordinate with in different regions; number of available courtrooms; changes in criminal legislation that are under federal control; increased sophistication of crimes; and increase in the volume of digital disclosure due to advances in digital technology (such as body-worn cameras and videos) and the use of social media.

From February to June 2019, the Division conducted a survey of Crown attorneys in order to quantify and assess the effects of caseload variability and increasing case complexity, but the results were not yet available at the time we completed our audit.

RECOMMENDATION 2

To allocate, assign and reassign Crown attorneys efficiently and appropriately based on case complexity and the need to achieve a reasonable balance in their workloads across the province, we recommend that the Ministry of the Attorney General (Criminal Law Division):

- set a targeted timeline to complete the implementation of the Crown Information Management System;
- allocate Crown resources to cases as needed by criteria including age, complexity and type of case; and
- continuously reassess case status to be able to reallocate cases where needed.

MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Division recognizes the importance of gathering and utilizing data to support the optimal use of existing resources while taking into consideration the resource demands of cases and reasonable expectations for prosecutors. The Division is structured to provide support to local offices on specific types of prosecutions.

To better understand the resource requirements of various types of cases and their complexity, the Division initiated the Crown Information Management System project to support informed decision-making in the utilization of limited Divisional resources. The Division anticipates that the project analysis will be completed by the end of June 2020.

While the information gathered through this project may inform resource-allocation considerations, the Division does not have the flexibility to freely move resources in the manner suggested by the Auditor as a result of Ontario Public Service policies and obligations under various collective agreements. The Division will, however, continue to work with its bargaining-agent partners.

4.2.3 Ministry Data Not Sufficient to Fully Analyze the Reasons Why Crown Attorneys Took Months to Withdraw Charges That Did Not in the End Go to Trial

A Crown attorney may withdraw the charges against an accused person before trial (1) when it becomes clear that there is no reasonable prospect of conviction; (2) as part of the resolution, such as plea bargaining; (3) when it is not in the public interest to prosecute; or (4) for other reasons not categorized by the Division.

We found that the Court Services Division's Integrated Court Offences Network (ICON) system does not capture the withdrawn charges by the four major reasons mentioned above. Although the Crown attorney's case management system (SCOPE) has the capability to capture these reasons, the system has not yet been able to fully cover all locations because, as of August 2019, SCOPE was rolled out across approximately 90% of the province. As a result, the Division was unable to fully analyze the growing trend we saw in the number of cases where charges were withdrawn by Crown attorney before trial, the number of days it took to withdraw and the number of appearances an accused had to make in court before charges were withdrawn. This information can be used to assist the Division to distinguish which areas were within or outside of the control of Crown attorneys, and to help them make timely decisions to withdraw charges when there appears to be no reasonable prospect of convicting the accused, or if it is not in the public interest to prosecute or for other uncategorized reasons.

We noted that, according to ICON, the charges withdrawn by the Province's Crown attorneys ranged from 34% to 40% (71,373 to 84,820) of all cases disposed before trial between 2014/15 and 2018/19 (see **Figure 9**). We noted as well that, in 2018/19, these charges were taking longer to withdraw and the accused required more appearances in court before they were withdrawn:

Figure 9: Criminal Cases Withdrawn by Crown Attorneys before Trial* in Ontario Court of Justice, 2014/15–2018/19

Source of data: Ministry of the Attorney General

	2014/15	2015/16	2016/17	2017/18	2018/19	% Change
# of cases withdrawn	71,373	71,410	76,954	81,026	84,820	19
Average # of days to withdraw	110	117	127	128	126	14
Average # of appearances by accused before case was withdrawn	5.3	5.6	6.0	6.2	6.3	19

* These cases were withdrawn by Crown attorneys for any of the following reasons: (1) because there was no reasonable prospect of conviction; (2) as part of their resolution, by, for example, plea bargaining; (3) because it was not in the public interest to prosecute; or (4) for other reasons. The Integrated Court Offences Network (ICON) does not capture these cases by their reasons. It includes stayed cases but excludes federal offences and bench warrants.

- In 2018/19, Crown attorneys took an average of 126 days to withdraw charges for all reasons before a trial, compared to 110 days in 2014/15, an increase of 14%.
- Similarly, accused persons appeared in court an average of 6.3 times in 2018/19 before withdrawal, compared to 5.3 times in 2014/15, a 19% increase.

Based on the best data available from the Division for 85% of provincial cases received in 2018/19, we noted that of all charges withdrawn before trial by Crown attorneys, 14% were withdrawn because there was no reasonable prospect of conviction; 48% were withdrawn as part of resolution, such as plea bargaining; 12% were not in the public interest to prosecute; and 26% were withdrawn for other reasons that were not categorized by the Division. Again, using the best data available to us, we estimated that in 2018/19, the cost incurred by the prosecution on cases where charges were eventually withdrawn due to reasons other than as part of resolution was roughly $38 million (total 84,820 cases withdrawn X $859 average cost per case incurred by Crown attorney X 52% withdrawn due to reasons other than as part of resolution, such as plea bargaining).

We further reviewed notes summarized for us by Crown attorneys on 50 selected case files that we were refused full access to, and noted 30 cases where there was no reasonable prospect of conviction. These include cases with insufficient evidence to prosecute for reasons such as problems with disclosure (discussed in **Section 4.2.4**). The remaining 20 cases were withdrawn due to other reasons such as plea bargaining or because Crown attorneys decided that it was not in the public interest to prosecute.

We compiled examples of charges withdrawn with no reasonable prospect of conviction. These include the following:

- In an arson and break-and-enter case involving organized crime, the available evidence was limited to a description of a car that would match thousands of vehicles in the city and a fingerprint on a garbage bag in a quasi-public location. The Crown attorney had a considerable amount of potential evidence to review and withdrew the case approximately 14 months after the date of arrest.
- In a domestic-violence case, the complainant was no longer willing to participate in the court process and did not want it to proceed, which removed any reasonable prospect of conviction. This case was withdrawn after eight months.

According to Crown attorneys, there are many reasons that account for the time it takes from the laying of a charge to the case being withdrawn. For instance, disclosure is not always provided by the police at the start of the case but instead throughout the proceedings, and witnesses may not be able to be located or may no longer wish to provide evidence. A Crown attorney must review all

the evidence and may ask for further investigation by the police.

The Ministry's Crown Prosecution Manual notes how difficult it may be for a Crown attorney to finally decide to withdraw charges when there appears to be no reasonable prospect of convicting the accused. We are aware that the withdrawal of charges puts an end to a case, and that before a Crown attorney determines there is no reasonable prospect of conviction, they must exercise due diligence and ensure they have reviewed all the available evidence collected and investigative steps taken.

We have also noted the monetary and personal costs of prolonging a case that ultimately cannot be prosecuted. These include time spent by Crown attorneys, judges, court support staff and others; costs incurred in having the accused make repeated appearances before a court; and the long wait that victims face before cases are disposed. Repeated pretrial court appearances in these cases tie up courtrooms that may be better used to hear pending cases where the prospect of conviction does exist.

RECOMMENDATION 3

To help reduce the costs that result from delaying the withdrawal of charges when there is no reasonable prospect of conviction, and to promote timely disposition of criminal cases, we recommend that the Ministry of the Attorney General (Criminal Law Division) collect complete data that includes the breakdown of all reasons for withdrawal before trial, the average number of days from charge to withdrawal for each reason, and the average number of appearances required by the accused in court for each reason, covering all court locations.

MINISTRY RESPONSE

The Ministry agrees and recognizes the importance of timely and informed decision-making pertaining to the withdrawal of charges. In accordance with their obligations, prosecutors ensure on a consistent and regular basis that they have reviewed all the available evidence collected, and the investigative steps taken, before deciding to withdraw charges.

The Division also gathers data on withdrawals, including capturing the reason for the withdrawal of a case. To address this recommendation, the Division will support comprehensive data collection through its existing case management system and identify best practices.

The decision to continue or terminate a prosecution is one of many instances of the exercise of Crown discretion done in accordance with the Crown Prosecution Manual and in a professional and responsible manner. Due to the dynamic nature of criminal cases, prosecutors have an ongoing obligation to assess the charge screening standard, which is a reasonable prospect of conviction and public interest.

4.2.4 Criminal Law Division and Police Services Lack Formally Agreed-Upon Roles and Responsibilities for Disclosure of Evidence

In our review of notes summarized by Crown attorneys on the case files we selected, we noted problems in obtaining timely and sufficient disclosure of evidence from police. In one case involving possession of property obtained by crime, the police services took approximately six months from the date of arrest to inform the Crown attorney that there was inadequate evidence to prosecute the case. The Crown attorney withdrew the charges four months later. As we noted in **Section 4.1.2**, disclosure was the main factor in delaying 39% of the 56 cases that we reviewed that were stayed under the Jordan decision.

The Division has long been aware of the difficulties in obtaining timely and sufficient evidence for disclosure purposes; however, the delays in delivering timely disclosure continue to contribute significantly to case backlogs.

In 1999, the Criminal Justice Review Committee (Committee) issued its report. The Committee, led by senior members of the judiciary and the Ministry, looked at ways to improve the speed and efficiency of criminal proceedings, while respecting the rights of the accused, the expectations of victims and the needs of society. It recommended, among others things, establishing a provincial co-ordinating committee to develop a directive that sets out the full disclosure responsibilities of the police and prosecutors, and to address disclosure issues on an ongoing basis. At the time of our audit, neither a provincial co-ordinating committee nor a formal policy had been established to clearly define the agreed-on roles and responsibilities of the Division and police services.

The Committee also recommended negotiating a memorandum of understanding between police representatives and the Ministry of the Attorney General. In November 2016, the Division began to engage in a framework memorandum of understanding (MOU) with the Ontario Association of Chiefs of Police to standardize the disclosure process. However, we found that not all of the police services signed the MOU with the Division:

- The first MOU was signed in June 2017 with the Ontario Association of Chiefs of Police, representing the interests of its membership, including the Ontario Provincial Police and chiefs of municipal police services.
- As of March 2019, only 27 out of 47 municipal police services had signed. The Ontario Provincial Police also signed, bringing the total to 28 signatories. None of Ontario's First Nations police services had signed.

The Division was unable to substantiate that signing the MOU has shown significant improvement among the police services that signed the MOU. At our request, the Division gathered the results of the number of disclosure requests made by the Crown attorneys to three police services for our analysis. We reasoned that if disclosure received from the police services to the Crown attorney were organized and complete, it should lead to fewer follow-up requests by Crown attorneys. Our review of the data noted that the results were mixed:

- The Ottawa Police Service has improved in responding to disclosure requests: before signing the MOU it had been receiving requests for between 544 and 1,237 items of disclosure per month, and post-MOU it was receiving between 255 and 976.
- The Toronto Police Service, which had been receiving requests for between 10,032 and 15,371 items of disclosure per month before signing the MOU, was now receiving between 12,164 and 18,592.
- For the Hamilton Police Service, monthly requests for items of disclosure remained relatively stable since signing the MOU, ranging from 1,088 to 1,757, with one month standing out with 896 requests.

The MOU specifies various timelines to be met in the police delivery of disclosure to the Crown attorney. For example, initial disclosure for cases not classified as "major" is expected between 14 and 21 days from the date of arrest. However, the Division does not have a process, including regular reporting, in place to measure if the police services that have signed the MOU are meeting these agreed-upon timelines.

In June 2019, the Division revised the MOU and signed it with the Ontario Association of Chiefs of Police. The revised MOU encourages police and Crown attorneys to prepare checklists and to standardize them where possible, to bring consistency to the process. It also distinguishes between evidentiary documents that need to be transcribed, translated or redacted by police and those to be done by Crown attorneys. The revised MOU also includes an enforcement clause noting that "Police are responsible for monitoring compliance and ensuring implementation of the provisions under this MOU."

As of August 2019, only three municipal police services had signed the revised MOU. All other 59 police services had yet to sign. We followed up

with two of the municipal police services that had not yet signed the MOU. Both of them expressed concerns about lack of adequate resources within police services to meet the MOU's specified timelines and its increased requirements for transcription and redaction of evidence. All three police services agreed that a clear statement of their own and Crown attorneys' roles and responsibilities is essential for both parties to better allocate their limited resources and provide timely disclosure of evidence.

RECOMMENDATION 4

To improve the timeliness and sufficiency of disclosure of evidence to assist Crown attorneys in making their assessment whether to proceed with the prosecution of their cases, we recommend that the Ministry of the Attorney General (Criminal Law Division):

- work with the Ministry of the Solicitor General to clearly define the respective roles and responsibilities of police services and Crown attorneys with regard to disclosure of evidence;
- revise the memorandum of understanding (MOU) between the Ministry of the Attorney General and police services to incorporate their agreed-upon roles and responsibilities and address any concerns that are preventing the remaining police services from signing the MOU; and
- put in place an effective process to regularly monitor and determine if the agreed-upon disclosure timelines have been met by both parties.

MINISTRY RESPONSE

The Ministry agrees with the recommendation and acknowledges that timely disclosure of evidence is a priority for the Division, as it is a shared obligation inherent in delivering effective prosecutions.

To further this objective, the Division will take the necessary steps to work collaboratively with the Ministry of the Solicitor General and police services with respect to disclosure, and clarify the roles and responsibilities of prosecutors and police services to facilitate the finalization of outstanding issues. One recent example is the Criminal Justice Digital Design Initiative where justice system stakeholders, including police services, will have one electronic system for disclosure and data-sharing.

4.3 Twenty-Seven Courthouses Where We Noted Above-Average Delays in Disposing Criminal Cases Also Operated Less than the Ministry's Optimal Average of 4.5 Hours

As of March 2019, Ontario had 673 courtrooms in 74 courthouses (permanent court locations that provide for court appearances with document filing and administrative functions) spread across the province's seven administrative regions, of which 68 Ontario Court of Justice courthouses hear criminal cases. In 2018/19, criminal cases used 67% of total Ontario Court and Superior Court courtroom operating hours; these courtrooms are used for all practice areas, including family, civil and small claims.

We were able to use the case statistics available to us to identify 32 of the 68 Ontario Court of Justice courthouses with reported delays in resolving criminal cases. These 32 courthouses reported above-average delays in disposing criminal cases on at least one of the following indicators in 2018/19 (see **Figure 10**):

- average time needed to dispose a criminal case (provincial average 145 days); and/or
- total number of criminal cases pending disposition at the end of the fiscal year 2018/19 as a percentage of total pending cases at the beginning of the year plus the number of

Figure 10: List of Courthouses with Reported Above-Average Delays in Disposing Criminal Cases, Ontario Court of Justice, 2018/19

Source of data: Ministry of the Attorney General

Region	Location	# of Courthouses	Average # of Days to Dispose of a Criminal Case (Days)	# of Cases Pending Disposition at Beginning of the Year + # of Cases Received, 2018/19 (A)	# of Cases Pending Disposition, End of 2018/19 (B)	% of Cases Pending Disposition, End of 2018/19 (B)÷(A)	Average Daily Operating Hours Used per Courtroom[1]
North West	Fort Frances	1	177	1,646	601	37	1.3
West	St. Thomas	1	140	2,350	813	35	1.6
North East	Gore Bay	1	170	864	263	30	2.0
West	Chatham	1	145	4,015	1,504	37	2.2
North West	Thunder Bay	1	165	6,622	2,680	40	2.2
Central West	Welland	1	170	1,093	537	49	2.3
Central West	Hamilton	2	147	14,010	4,907	35	2.4
Central East	Lindsay	1	152	2,449	849	35	2.4
Toronto	311 Jarvis	1	161	1,705	604	35	2.5
North West	Kenora	1	141	4,383	1,568	36	2.7
East	Brockville	1	146	3,147	904	29	2.7
Central West	St. Catharines	1	162	8,934	3,390	38	2.8
East	L'Orignal	2	166	2,021	625	31	2.8
East	Cornwall	1	163	4,553	1,379	30	2.9
North East	Sudbury	2	152	6,337	2,253	36	3.0
Central West	Brantford	2	153	6,167	2,370	38	3.2
West	Goderich	1	129	1,557	588	38	3.5
North East	Cochrane	1	157	2,091	768	37	3.6
Toronto	1911 Eglinton	1	172	12,226	4,441	36	3.6
Toronto	2201 Finch Avenue West	1	169	9,239	3,520	38	4.0
Toronto	Old City Hall	1	163	18,261	6,359	35	4.2
Central West	Brampton[2]	2	175	28,211	11,249	40	4.2
Subtotal		**27**					
Toronto	1000 Finch Avenue West	1	151	9,744	3,397	35	4.6
East	Ottawa	1	150	17,610	5,260	30	4.7
Central West	Milton	1	146	7,582	2,675	35	5.0
Toronto	College Park	1	124	9,722	3,403	35	5.0
Central East	Newmarket	1	157	17,544	6,043	34	5.0
Subtotal		**5**					

Above the provincial average delays in disposition of criminal cases

1. Courtroom operating hours reflect hours during which courtrooms are in use; they do not measure working hours for judicial officials or court staff. Activity outside of the courtroom is not captured. Calculation is based on the total number of operating hours reported in ISCUS (ICON Scheduling Courtroom Utilization Screen) divided by the number of courtrooms in individual base courthouses, by 249 business days in a year.
2. Brampton courtroom operating hours do not reflect Brampton proceedings moved to other court locations due to a shortage of hearing rooms. Brampton proceedings are regularly moved to Kitchener, Guelph, Orangeville, Milton and Toronto for hearings.

cases received during the same year (provincial average 34%).

We then compared the average daily court operating hours for each of the 32 courthouses with the optimal average of 4.5 hours expected by the Ministry and found the following:

- five courthouses reported averages at or above 4.5 hours; and
- the other 27 reported averages below 4.5 hours.

Of the 27 courthouses that operate less than 4.5 hours daily, we noted that 15 reported a relatively high rate of cases that collapsed on the first day of trial or during the trial, either through withdrawal of charges or a guilty plea: between 69% and 88%. The provincial average was 66%. This helps to partially explain the low utilization rates of their courtrooms: trials that end suddenly with a collapse may leave the rooms sitting empty until they can be rescheduled. Cases that unexpectedly collapse do not appear to be a key factor in the low utilization rates of the other 12 courthouses.

Courtroom operating hours are those hours during which the rooms themselves are in use. They do not measure the working hours of judicial officials, Crown attorneys or court staff. However, the difficulties in obtaining court dates have contributed to the systemic delays we found in disposing criminal cases in Ontario. In the sample case files we discuss in **Sections 4.1.1** and **4.1.2**, this is a key reason provided to explain why cases were pending disposition for more than 18 months and why cases were stayed for unreasonable delay following a Jordan application.

For our audit of the courthouses that appeared to be underutilized, we attempted to examine the courts' scheduling (scheduled days for hearing cases versus days the cases were proceeded with) to follow up on why the courtrooms were not being used at their optimal level. However, the Offices of the Chief Justices of the Ontario Court and the Superior Court refused our request for access to court schedules or other detailed records of court activities that were often maintained by trial coordinators who work under the direction of the judiciary. This refusal represents a limitation on the scope of our audit (see **Section 3.0**).

We discuss courtroom utilization in greater detail in Court Operations (**Chapter 2** of this volume in this Annual Report), and make a recommendation on it there.

4.4 Approximately 70% of Inmates in Detention Are in Remand and Have Not Yet Been Convicted on Their Current Charges

An accused in remand (pretrial detention) has not been convicted on their current charges and under section 11(d) of the Charter is presumed innocent until proven guilty. If an accused person is denied (or does not seek) bail, they will remain in detention. **Chapter 1** of this volume in this Annual Report, **Adult Correctional Institutions**, found that the remand population in adult correctional institutions in Ontario amounted to 71% of all inmates in 2018/19 (based on average daily count), up from 60% in 2004/05. Ontario's remand population first overtook its sentenced population as the majority of inmates in its correctional institutions on an average day in 2000/01. The proportion of remand to sentenced population peaked in 2008/09 and has since remained fairly stable. As of 2018/19, the average daily count of remand inmates in provincial adult correctional institutions exceeded 5,000 (see **Figure 11**).

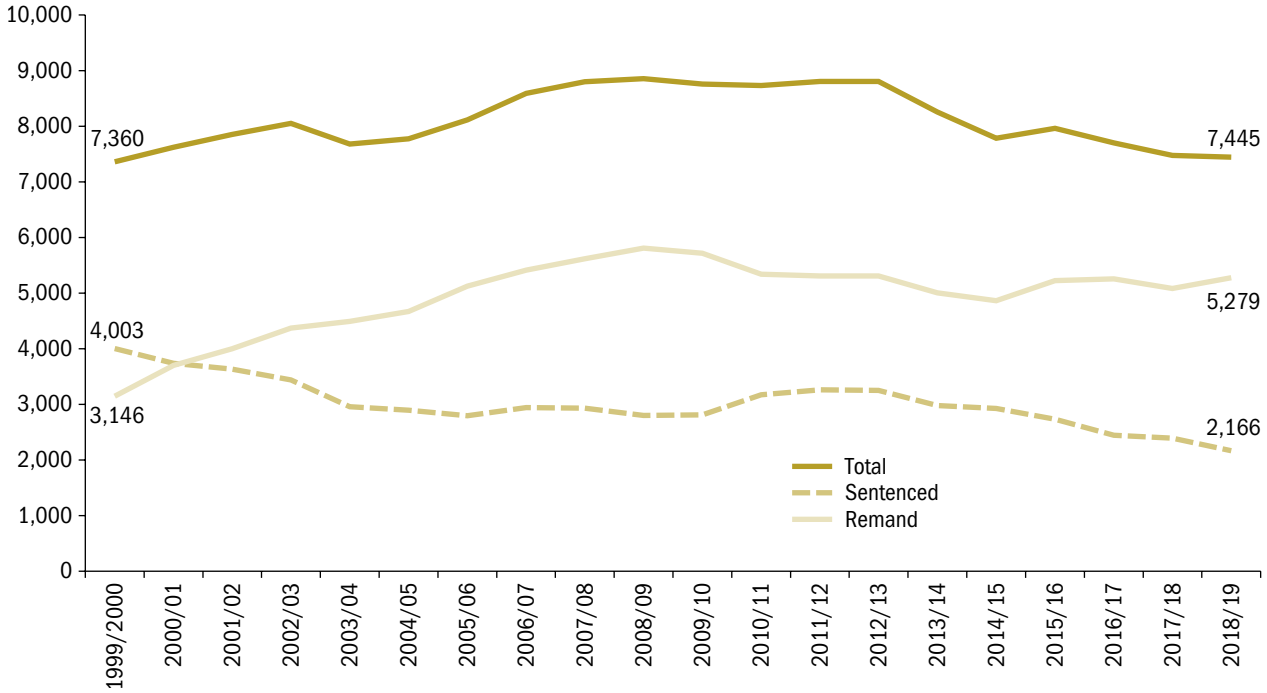
Two factors contribute to the size of the remand population: the length of time accused persons are spending in remand custody and the number of accused entering remand custody.

4.4.1 85% of Bed Days Are Used by Inmates Who Are in Remand for Longer than One Month

The length of stay of remand inmates in Ontario varies widely; it ranges from a low of one day to well over a year. In order to analyze the reasons for this wide range, we divided remand inmates

Figure 11: Average Daily Remand and Sentenced Population in Adult Correctional Institutions, Ontario, 1999/01–2018/19

Source of data: Ministry of the Solicitor General



Note: In 2001/01, the remand population overtook the sentenced population to become the majority of inmates on an average day in Ontario's adult correctional institutions.

into short-stay (detained between one day and one month), medium-stay (detained between one and six months) and long-stay inmates (detained for more than six months). The impact on correctional institutions of these inmates (in terms of the cost to the correctional institutions to maintain and house them) is measured in "bed days," meaning the number of days each inmate occupies a bed. See **Figure 12** for the percentage of bed days used by each of these groups of accused while in remand.

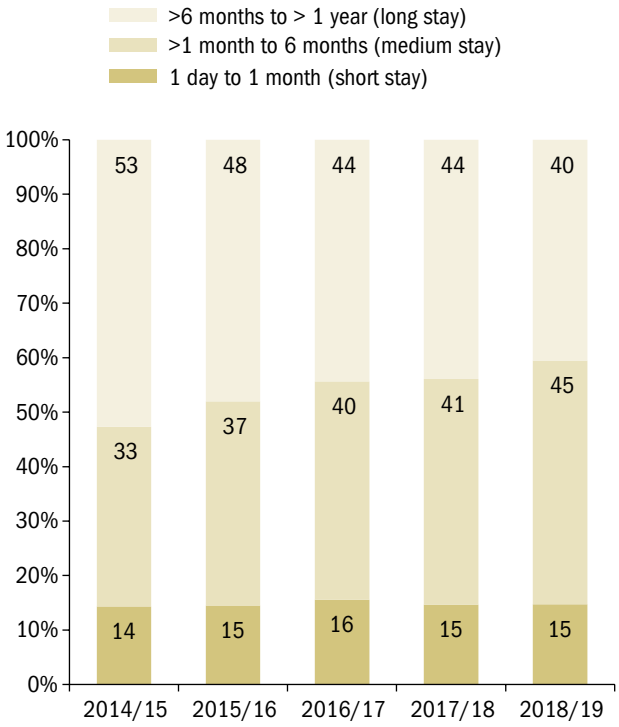
We noted that, over the last five years, short-stay inmates' use of remand bed days stayed steady at 14%–15% of the total. The vast majority of remand bed days, however, are used by medium- and long-stay inmates—84%–86% of the total over the last five years. Yet the balance between these two groups has shifted: the percentage of medium-stay inmates increased from 33% in 2014/15 to 45% in 2018/19, while the percentage of long-stay inmates fell from 53% to 41%.

The Ministry has not regularly analyzed the reasons behind these numbers. So, to understand why accused persons remain in remand, we selected and interviewed a sample of 24 remand inmates at one correctional institution who have not requested bail from the court. We chose five short-stay, 14 medium-stay and five long-stay inmates. We also selected 30 cases from a list of accused who were in remand for up to six months in the same correctional institution in 2018/19, and reviewed notes summarized by Crown attorneys on their case files. Based on our interviews and review of Crown attorneys' notes for all 54 inmates, we identified the top reasons among the multiple reasons each of these inmates gave for remaining in remand:

- 31 inmates were dealing with other charges;
- 22 inmates chose not to seek bail because they had been advised by defence counsel not to apply for bail, they wanted to earn enhanced credit for pretrial custody (maximum 1.5 days credit toward the sentence for

Figure 12: Percentage of Bed Days in Adult Correctional Institutions Used by Short-, Medium- and Long-Stay Inmates in Remand, 2014/15–2018/19

Source of data: Ministry of the Solicitor General



Note: Bed days are the number of days each inmate occupies a bed.

each day spent in remand), or they needed time to prepare a plan to present to the court; or they had health issues that resulted in delay in seeking or obtaining bail;

- 19 inmates were having ongoing plea discussions with the prosecution;
- nine inmates had difficulty producing a surety (a person who promises to supervise the inmate while out on bail, often a family member or friend); and
- eight inmates were awaiting disclosure before requesting bail.

In **Appendix 8**, we provide examples of cases that illustrate the reasons cited above.

The Division has implemented an Embedded Crown initiative that gives Crown attorneys the opportunity to advise the police on bail-related matters, such as whether to release accused persons who promise to appear in court instead of detaining them for a bail hearing. The Crown attorneys work full-time ("embedded") inside the police station. This initiative aims to reduce the proportion of cases starting in bail court. In November 2018, the Division conducted a preliminary assessment of the pilot which found a 2%–10% drop in the percentage of cases where the accused was detained by the police and sent for a bail hearing. The Division plans to decide on the next steps for this pilot once it completes its final evaluation by the end of 2019.

We note in **Section 4.1.1** how the large inmate population in remand can be partly explained by increasing delays in resolving criminal cases.

RECOMMENDATION 5

To help reduce the number of accused persons in detention waiting for their cases to be disposed, and shorten the time inmates on remand must spend in detention, we recommend that the Ministry of the Attorney General (Criminal Law Division):

- complete the evaluation of its Embedded Crown initiative, specifically its potential for reducing the number of accused being remanded in custody; and
- if the initiative is found to be successful, create an execution plan to expedite its implementation across the province.

MINISTRY RESPONSE

The Ministry agrees with this recommendation and has prioritized a number of initiatives, such as the Bail Vettor and Embedded Crown initiatives, aimed at expediting the bail process and taking early bail positions. However, the decision to seek bail rests with the accused, and the decision to release or detain is solely the function of the judiciary.

The issues highlighted regarding bail and the remand population in Ontario have been at the forefront of priority initiatives the Division has undertaken recently. The Division anticipates that it will complete the evaluation

of the Embedded Crown initiative by the end of 2019. This initiative has demonstrated positive outcomes to date, and the final evaluation will ultimately inform the Division's decision whether to expand the program. If a decision is made to expand the program, the Division will develop an implementation plan, including the required investment of resources, to support the expansion.

4.5 Time Needed for Bail Decision Has Increased over the Past Five Years

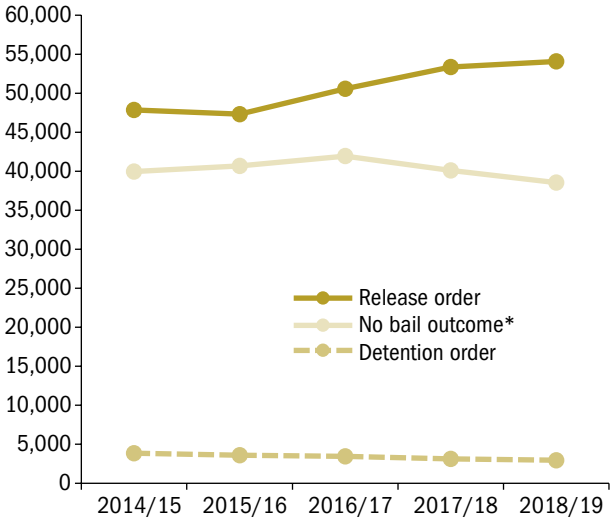
Cases where people charged with crimes went through bail courts in Ontario increased by 4% between 2014/15 and 2018/19, from 91,691 to 95,574. **Figure 13** shows the three types of outcomes at bail hearings—release order, detention order or no outcome—and their five-year trend. Over this period, release orders have seen a small increase, and detention orders and cases with no bail outcome have decreased slightly. As a result, in 2018/19, 54,072 (57%) of those appearing for a bail hearing were released, 2,960 (3%) were detained and 38,542 (40%) had no bail outcome. When no bail outcome is recorded, the accused did not seek bail.

We noted that the average number of days needed to reach a bail resolution increased for two types of inmates from 2014/15 to 2018/19, as follows:

- Where the accused persons were released after a bail hearing, the decision took on average 3.5 days in 2018/19 before the release order was made, compared to 3.1 days in 2014/15. We estimated that this increase is equivalent to more than 9,400 bed days per year.
- Where the accused persons were ordered to be detained after a bail hearing, the decision took on average 14.1 days in 2018/19 before the detention order was made, compared to 11 days in 2014/15—an increase equivalent to nearly 4,000 bed days per year, based on our estimate.

Figure 13: Number of Criminal Cases Resolved in Bail Courts with Decisions, Ontario Court of Justice, 2014/15–2018/19

Source of data: Ministry of the Attorney General



* "No bail outcome" means the accused did not seek bail.

On our visits to the seven courthouses, we observed that the dockets for bail courts were usually long, for example, there were 84 cases scheduled in one bail courtroom in a single day. In Ontario, bail hearings are scheduled from 9:00 a.m. to 5:00 p.m., Monday to Friday, with limited use of teleconferences and videoconferences. Ten weekend and statutory holiday (WASH) courts are available for bail hearings for the seven regions. Records kept by Crown attorneys in one region showed that the WASH court is often closed by noon. In contrast, British Columbia and Alberta have set up a centralized location where a justice of the peace is available for bail hearings by teleconference and videoconference, with extended hours seven days a week from 8:00 a.m. to 11:00 p.m. or midnight. The extended hours allow accused who were arrested later in the day to still receive a bail hearing and possibly be released the same day.

The Ministry has implemented a number of initiatives to reduce bail court delays. However, these were limited to certain locations, and despite

their success they were unable to reverse the province-wide increase in the number of days needed to reach a bail disposition.

- Ontario Court of Justice bail pilot project—In late 2016, courthouses in two locations started using judges to sit in bail courts instead of justices of the peace, who are not required to be trained in the law. The pilot project ended in August 2019; starting in September 2019, justices of the peace resumed sitting in the bail courts. The Ontario Court's evaluation of the pilot's effectiveness to identify options for judicial case management of matters beginning in bail court is scheduled to be completed by February 2020.
- Bail vettors—Between September 2015 and early 2017, Crown attorneys began to be assigned to 10 high-volume courthouses as bail vettors to review bail files, prepare the prosecution's position on the bail decision and meet with defence counsel and support workers before the bail hearing, to determine if there is an appropriate plan of release. Bail vettors also interview proposed sureties to reduce the number that have to testify in court. This initiative was evaluated in 2018 with mostly positive results: more bail outcomes, and decisions taken with fewer bail court appearances by the accused.
- Bail Verification and Supervision Program—The Ministry has implemented this program at all but six courthouses. Accused persons seeking bail who cannot provide a surety may be released and supervised in the community or given mental health supports through certain community organizations. In 2018/19, the program supervised about 12,010 people on bail, above the targeted goal of 8,500 set by the Ministry.

RECOMMENDATION 6

To help reduce the average number of days needed in arriving at a bail outcome, we recommend that the Ministry of the Attorney General (Court Services Division and Criminal Law Division) work with the judiciary to:

- discuss the possibility of expanding court operating hours for bail hearings;
- expand the use of teleconferencing and videoconferencing for bail hearings with extended hours seven days a week from morning to late evening, similar to the best practices in place in British Columbia and Alberta; and
- complete the evaluation of initiatives aiming to increase speed and certainty in the bail process, such as the Ontario Court of Justice bail pilot project, bail vettors and the Bail Verification and Supervision Program, and expand them if they are shown to have positive outcomes.

MINISTRY RESPONSE

The Ministry's Criminal Law Division agrees to closely track and monitor the effectiveness and results of its existing initiatives to improve and create efficiencies in the bail process. The Division anticipates a final evaluation of these programs to be completed by the end of 2020. If the outcomes of these programs are determined to be positive and effective in reducing the time it takes to reach a bail decision, the Division will consider their further implementation.

Any expansion of bail court (days/hours) will represent a significant increase in costs, such as staffing numbers and/or excessive overtime costs for all justice stakeholders.

The scheduling of courts in Ontario is the exclusive responsibility of the judiciary. The Division agrees to engage the judiciary and the Ministry's Court Services Division to explore opportunities and the feasibility of implementing proven best practices in other jurisdictions to facilitate timely bail hearings.

4.6 Administration of Justice Cases Increasingly Consume Criminal Justice System Resources

Administration of justice offences include Criminal Code violations such as failure to comply with bail conditions, failure to appear in court and breach of probation. These offences are sometimes seen as the "revolving door" of the justice system, as most are committed when a person disobeys a pretrial condition or order imposed by a judge relating to a previous offence.

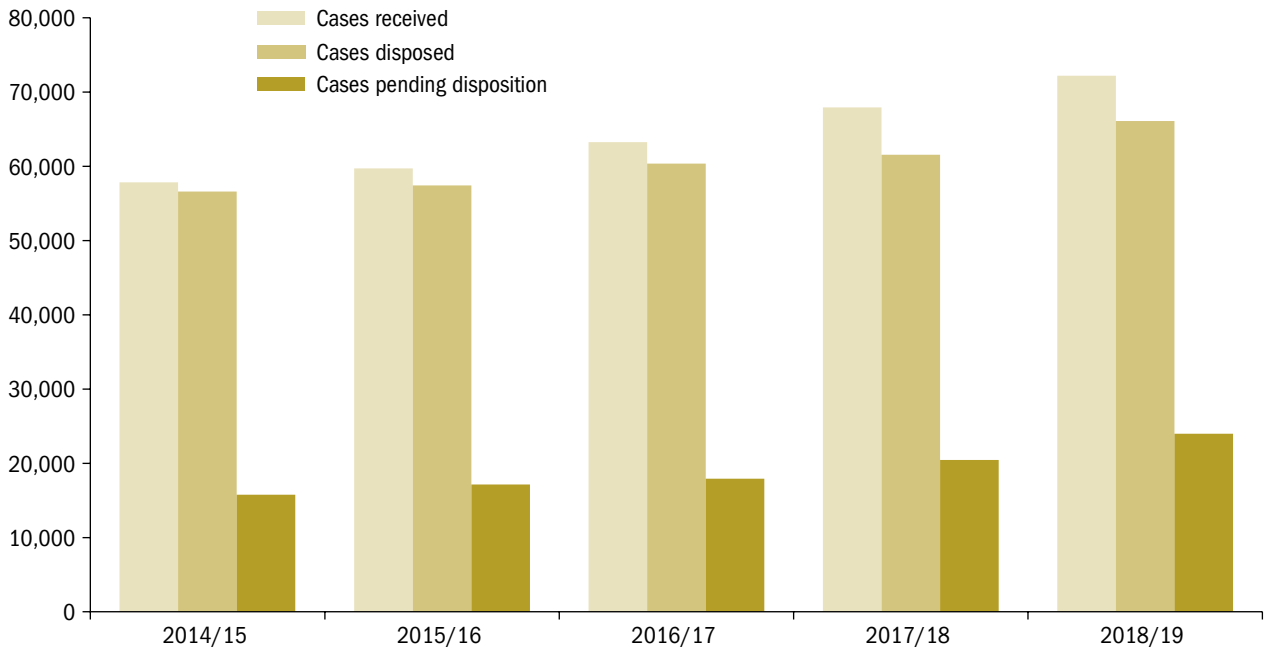
As noted in **Section 2.2**, 31% of the criminal caseload in Ontario consists of administration of justice offences, which have increased by 25% (57,834 versus 72,176) over the last five years (**Figure 14**). Of those, cases pending disposition have increased by 52% (15,772 versus 23,953), as the number of these cases disposed has not kept up with the increase in cases received. (We discuss delays and backlogs for all criminal cases in **Section 4.1**). At the same time, of all the cases withdrawn by Crown attorneys, the percentage of administration of justice cases increased from 24% in 2014/15 to 30% in 2018/19—representing the largest proportion of criminal cases withdrawn of all types of criminal cases in 2018/19. It took an average of 90 days for the Crown attorney to withdraw one of these cases, with the accused appearing in court an average of 6.1 times.

As a result, in recent years, attention has been focused on these offences, as many of them are relatively minor and are non-complex from the prosecutor's point of view, but they take up significant criminal justice system resources.

Failure to comply with a court order is a prosecutable offence under the Criminal Code of Canada, and therefore would require federal law amendments if they were to be dealt with outside the courts and instead in an expedited tribunal setting. As a result, the Division has explored ways to limit the number of these charges that are laid. In August 2017, it began a pilot project in the London court location in co-ordination with the local municipal police service. The pilot addresses three specific offences that are considered minor offences: "failure to appear in court," "failure to comply with a bail order" and "failure to appear for fingerprints." Key to the pilot is that:

Figure 14: Administration of Justice Cases Received, Disposed and Pending Disposition, Ontario Court of Justice, 2014/15–2018/19

Source of data: Ministry of the Attorney General



- both the police and the prosecution agree to make efforts to limit the conditions of release imposed at bail hearings; and
- the police agree to use greater discretion when laying these two charges, and will only lay charges when releasing the accused person would pose an unreasonable level of risk to the community or when there are reasonable grounds to believe that an accused's failure to attend court is an attempt to escape or frustrate justice.

The London pilot has significantly reduced the number of charges local police lay for these two minor offences. Relying on data gathered from the Crown attorney case management system (SCOPE), we found that 784 fewer charges for these offences were laid in the first six months of the initiative than in the previous six months—a 37.5% reduction.

With this success and the pressures arising from the Jordan decision, the Division and the local police services agreed to expand the pilot project to six additional Crown attorney offices (Brantford, Peterborough, Kitchener, Ottawa, Brockville and Sudbury) and police services between spring 2018 and summer 2019. Sites chosen were those that had the largest number of these offences and a pressing need to create court capacity. The Division indicated that it may seek to expand this initiative across the province if it is proven that it could free up some court resources.

RECOMMENDATION 7

To help make better use of Crown attorney resources to prosecute more serious criminal cases, we recommend that the Ministry of the Attorney General (Criminal Law Division) set a targeted timeline to expand the Administration of Justice initiative across the province, if this initiative is shown to be successful after evaluation.

MINISTRY RESPONSE

The Ministry agrees with this recommendation. The implementation of the Division's Administration of Justice offences initiative has demonstrated favourable results, and its outcomes are closely monitored. As noted in the report, the Division has recently expanded the initiative to an additional six sites.

The Division will actively monitor the outcomes of the initiative at these additional sites to inform a future decision on working with the police to expand the initiative.

4.7 Lack of Specific Mandate, Standard Procedures and Goals Limit Potential Benefits of Mental Health Courts

We note in our audit of Adult Correctional Institutions (**Chapter 1** of this volume in this Annual Report) that, in 2018/19, 33% of about 51,000 inmates admitted to provincial adult correctional institutions had a mental health alert on their file indicating possible mental health concerns, compared to 7% of inmates admitted in 1998/99. Although these mental health alerts are not always tied to or dependent on a formal diagnosis, the upward trend of alerts is significant.

Our audit found that the benefits of mental health courts are unknown. Procedures are not clearly outlined, there is lack of proper data on their operations, and definitions of mental health courts' objectives and intended outcomes are imprecise.

4.7.1 Mandate and Objectives of Mental Health Courts Lack Specifics

We found that the mandate and objectives set for mental health courts are broad and general. Without specific measurable outcomes set, neither the Ministry nor the Ontario Court is able to measure the courts' success in achieving the mandate and objectives.

The Ontario Court of Justice Specialized Criminal Court Scheduling Guidelines, effective January 2017, state the following mandate and objectives for specialized courts, including mental health courts: "[to] respond to locally identified populations overrepresented in the criminal justice system with co-ordinated justice, health and social services aimed at the fair and just application of criminal law, including the rehabilitation of offenders and protection of the public."

In the context of mental health, according to the Office of the Chief Justice of the Ontario Court of Justice, this means:

1. *ensuring that the criminal justice process is cognizant of, and takes into account, vulnerabilities that may result from an accused person's mental health issues; and*
2. *ensuring that accused persons with mental health issues are put in touch with the appropriate mental health treatment providers, and that their mental health issues are properly addressed by those with the requisite experience and expertise in mental health treatment.*

Our review of numerous research papers suggests that diverting accused with mental illness away from correctional institutions and/or reducing their repeated contact with the criminal justice system are appropriate goals for mental health courts. To measure success in achieving these goals, some possible outcomes could be:

- to reduce the rate of re-offence or re-arrest;
- to reduce number and/or length of incarceration(s);
- to increase the rate of success in completing community treatment programs; and
- to improve health outcomes of accused persons with mental illness.

We noted that one community agency that provides services in mental health diversion and court support started in 2018 to track the outcomes of its programs and services. It measures, for example, number of individuals successfully diverted compared to all clients served, and percentage of clients released from custody as a result of release plans completed. Another community agency has also started to track outcomes such as whether the accused person achieved bail, was diverted successfully, or received a non-custodial sentence. A third community agency tracks the number of treatment orders issued as well as the number of persons they assist in admitting to a forensic hospital after they are determined to be not criminally responsible and unfit for trial. It also tracks the number of psychiatric assessments performed.

Nova Scotia reported publicly on the operations of its mental health court five years after it was created in 2009. Key statistics reported included the number of individuals referred to the court, and the number and percentage of people who were deemed eligible to participate in the program and of those who successfully completed the program. The court partnered with a university to conduct an independent evaluation, including an assessment of this key objective: the court's success in reducing recidivism relative to the regular criminal justice system. The report also recommended ways to improve the court's effectiveness.

The Ontario Court of Justice Specialized Criminal Court Scheduling Guidelines state that a "Regional Senior Judge and Local Administrative Judge should, in consultation with the court committee, review the scheduling and operation of the court after the first year and at least every two years." As we note in **Section 3.0**, when we inquired whether such reviews have been done, the representative of the Office of the Chief Justice of the Ontario Court responded that these matters relate to judicial independence and fall outside the scope of the audit. As a result, we cannot confirm to the Legislature that such reviews have been conducted. Ontario has not published any such evaluations of the court.

The representative of the Office of the Chief Justice of the Ontario Court has indicated that metrics for the desired outcomes of mental health courts are difficult to identify because of the complexity of individual mental health and mental health treatment, as well as other variables.

4.7.2 Key Data Not Available to Track the Users of Mental Health Courts and Their Case Outcomes

The Ministry's ICON and SCOPE systems do not distinguish between accused persons who go through a mental health court and those who go through a regular court. As a result, neither the Ministry nor the Ontario Court is able to identify and quantify the number of individuals and cases received in mental health courts and their case dispositions, including the number of cases pending disposition, time taken to resolve cases and details of case disposition. This key data is critical to help measure the effectiveness of mental health courts in achieving their intended objectives.

Further, in order to select 30 sample cases where accused persons had gone through a mental health court between 2015 and 2018, we had to locate them manually among numerous public court dockets generated from a selected set of designated mental health courts. We were refused full access to the files. Only after the Division had written case summaries for us could it identify that four cases had not been heard in mental health courts. We then reviewed 26 cases. If the Division flagged or tracked data related to mental health cases separately in its information systems, it would be able to identify these cases quickly and accurately.

RECOMMENDATION 8

To assess whether the mandates and objectives of mental health courts are being met, we recommend that the Ministry of the Attorney General (Criminal Law Division) work with the Ontario Court of Justice to:

- establish specific and measurable goals and outcomes for mental health courts; and
- collect relevant data on the courts' success in achieving these goals and outcomes, (for example the number of people who have gone through the mental health court process, the number of these cases disposed and pending, time taken to resolve cases, and details of case disposition and relevant outcomes).

MINISTRY RESPONSE

The Ministry acknowledges the importance of establishing measurable objectives and gathering data to support the evaluation of mental health courts. To this end, the Division agrees to work in close collaboration with the Ontario Court of Justice to support steps to ensure mental health courts have clear objectives and appropriate data-gathering mechanisms in place to demonstrate the benefits of these courts.

4.7.3 Criminal Law Division Has Not Developed Best Practice Guidance for Mental Health Courts

While the Division's Crown Prosecution Manual contains three separate directives about cases involving mentally ill accused, there are no specific and consistent policies and procedures regarding the operations of mental health courts, such as clarifying who should be accepted into a mental health court and in what circumstances; in what circumstance a psychiatric assessment is required; or when a formal community-based program or other plan is needed.

Our review of the sample summarized notes of 26 case files we selected highlighted inconsistencies in the treatment of accused persons who had gone through a mental health court. In these cases we found inconsistencies in the operation of the mental health courts and lack of uniform access to the services they provide. With no standard for a formal diagnosis of the accused person's mental health by a qualified professional, a miscarriage of justice may result. Lack of formal treatment plans may mean that accused persons' mental health issues are not addressed, potentially leading to repeated contact with the criminal justice system.

According to the summaries provided by the Division on files we were refused full access to:

- In eight cases where the accused pleaded guilty, four accused had both a psychiatric assessment and a formal plan for the courts to consider in sentencing. In the other four cases, either a psychiatric assessment or a formal plan was completed, or neither was. In two of these cases, it was noted that the accused appeared to have a history in that mental health court. The Division's summaries do not always explain why a psychiatric assessment and/or a formal plan was not needed.
- Nine of the 14 cases where the accused were diverted and had their charges withdrawn had a formal plan in place. In two of the five remaining cases, there were no formal plans because the accused refused to comply or participate with the mental health workers and the cases were disposed in other ways. The Division's summaries do not make clear whether a formal plan was in place for the other three cases.
- The remaining four cases either had fitness hearings to ensure the accused was fit to stand trial or the case was still ongoing at the time of our review.

We noted that other provinces, such as Alberta and Nova Scotia, have published key information, such as criteria for admission to mental health court. In addition, the Courts of Nova Scotia publish a best-practice framework for the operation of mental health courts. These include:

- eligibility criteria to determine who should be accepted to appear in a mental health court;
- an eligibility screen to be conducted by a mental health and addictions clinician for establishing a connection between the accused person's mental health disorder(s) and the offence;
- requirements for accused who agree to appear before a mental health court, and are willing to engage in an individualized support plan; and
- a requirement for the accused person to attend court on a regular basis, allowing the specialized mental health court program team to review the accused person's progress frequently as it relates to their support plan, determine incentives/sanctions, and discuss successful completion of the plan.

4.7.4 Many Accused Persons Who Have Appeared in Mental Health Courts Continue to Have Repeated Contact with the Justice System

We are concerned that the objectives and rate of success of the mental health courts and associated programs remain unclear. In **Section 4.7.1** we noted that our review of numerous research papers suggests that diverting accused with mental illness away from correctional institutions and/or reducing their repeated contact with the criminal justice system are appropriate goals for mental health courts. We also noted that to measure success in achieving these goals, some possible outcomes could include reducing the rate of re-offence or re-arrest.

At our request, the Ministry generated for our review a charging history for each of the sampled accused persons whose cases had been heard in a mental health court. We found that of 11 accused who had completed their treatment plan, eight had between two and 38 other charges dating from before and/or after their case was disposed in a mental health court.

In one case, an accused person was charged five times in two years (late 2017–mid-2019), and had been in and out of a mental health court. The charges laid were for low-level criminal offences, including assault, possession of a stolen item under $5,000, and mischief to a window, and they led to approximately 43 appearances in court. The notes in the case files indicated that the accused has made significant improvements but still has an impulse

control issue, has low insight into their outbursts, and has not addressed their substance use. This person was enrolled in a volunteer program and was connected to a doctor on-site. The last charge was still ongoing as of August 2019.

We have discussed our observations with mental health support workers from community agencies, who generally agreed that treatment of mental illness can be a long process. The risk of criminal behaviour can be mitigated with appropriate interventions and continued support, even after the accused person's case is disposed in a mental health court, to minimize recidivism. The success rate of these efforts will vary based on individual and clinical situations, complexity and access to the required support. More information regarding outcomes from the Division and service providers is needed to fully understand the impact of these efforts.

RECOMMENDATION 9

To help guide the operations of the province's mental health courts, we recommend that the Ministry of the Attorney General (Criminal Law Division) work with the Ontario Court of Justice to:

- review best practices from other jurisdictions (such as Nova Scotia);
- assess their applicability to Ontario; and
- put in place best-practice guidance for Ontario.

MINISTRY RESPONSE

The Ministry will work with the Ontario Court of Justice on these recommendations. The Ministry agrees with the recommendation and the decision to undertake a comprehensive jurisdictional scan and review of proven practices and existing research in relation to the operation of mental health courts in other provinces. The jurisdictional review will include an assessment of each demonstrated practice to ensure that implementation would be feasible and beneficial to Ontario.

The Division will also engage other key stakeholders and partners to identify and develop best practices for the operations of mental health courts.

4.7.5 Public Information about Mental Health Courts Is Limited

We noted that the Ministry's and Ontario Court's public websites provide general information on specialized criminal courts, but some basic information specific to mental health courts was difficult to locate. Information on these courts could increase public awareness and understanding of these courts, their uses and their procedures. For example, currently the following information is not normally publicly available:

- the number of mental health courts, their locations and available sitting time;
- description of mental health courts, including their purpose, how they attempt to accomplish it and the typical processes they follow; and
- what an accused person or their family members need to know if they are considering applying to have a criminal case heard in a mental health court.

In contrast, the mental health court in Nova Scotia provides a wide range of information to promote public awareness.

RECOMMENDATION 10

To help increase public awareness and provide better information about the operations and purpose of mental health courts, we recommend that the Ministry of the Attorney General work with the Ontario Court of Justice to make relevant information, such as the number of mental health courts, their locations and available sitting time, and detailed description of the courts and their procedures, widely available to Ontarians.

MINISTRY RESPONSE

The Ministry agrees with this recommendation and understands the importance of providing Ontarians with information pertaining to the operations of mental health courts. The Ministry will engage with the Ontario Court of Justice and explore steps to ensure that all pertinent information is easily accessible and available through appropriate channels. Together with the Ontario Court of Justice, the Ministry will identify where and how public information will be shared.

Appendix 1: Key Participants and Their Roles in the Criminal Justice System

Prepared by the Office of the Auditor General of Ontario

Participants	Roles
Crown attorneys (or prosecutors)	Part of the Criminal Law Division of the Ministry of the Attorney General (Ministry). Crown attorneys are appointed to act as "agents" for the Attorney General and are responsible for the administration of justice, including the prosecution of individuals charged with criminal and quasi-criminal offences.
Court support staff	Part of the Court Services Division of the Ministry. Court support staff provide administrative and courtroom support in all levels of courts; e.g., they schedule court cases at the direction of the judiciary, provide clerical support to the judiciary in the courtroom, maintain court records and files, perform data entry into the Integrated Court Offences Network system, collect fines and fees, and provide information to the public.
Defence counsel	Lawyers hired by a person charged with a criminal offence to represent that person in the court process. Their role is to protect their client's right to a fair trial and to ensure that any reasonable doubts concerning the Crown attorney's case are presented to the court.
Duty counsel (Legal Aid Ontario)	Lawyers employed or retained by Legal Aid Ontario (a provincial agency reporting to the Ministry) to help an accused person who qualifies financially and legally for legal aid services. The legal services they provide include plea-bargaining with the Crown, conducting bail hearings, and assisting with guilty pleas and sentencing.
Judiciary	The collective name used in this report for judges and justices of the peace. Ontario Court of Justice criminal judges case manage proceedings in the court and preside over criminal trials for cases that are not resolved through diversion, withdrawal, guilty pleas or stays. Justices of the peace conduct all intake proceedings in the province, including issuance of process such as Informations and warrants, and preside over the majority of bail hearings.
Provincial and municipal police	Police services that have responsibility and discretion over the investigation of criminal offences and the laying of criminal charges for an offence under the Criminal Code, except where the law requires consent of the Attorney General, and/or the laying of charges under federal laws and provincial statutes. Police personnel also provide physical security within a court location and during transportation for court hearings of accused persons who are remanded in correctional institutions.
Corrections officers	Under the Ministry of the Solicitor General, they oversee accused persons who are in custody. Corrections officers also prepare accused persons for their court appearances and manage the admission and discharge process every time they enter and leave the institution where they are being held.
Community support workers	Trained employees of community agencies funded by the Ministry of Health. They support accused persons appearing in specialized courts, such as mental health courts, by establishing treatment plans and connecting them to appropriate community programs that suit their needs.

Appendix 2: Glossary of Terms

Prepared by the Office of the Auditor General

Bail: A judicial order from the court granting a person charged with a criminal offence a release from custody while waiting for a resolution of their case; generally accompanied by conditions imposed by the court, such as a curfew or a ban on contacting certain persons.

Bed days: The number of days each inmate occupies a bed in a correctional institution.

Case: All charges that are included on the "Information," or the formal accusation, for each single accused. A case may proceed to trial through the regular court or be moved to a specialized court. The case may be disposed when the Crown attorney withdraws the charges; the accused pleads guilty; through a judicial stay of proceedings; or through a verdict of guilty followed by sentencing, or a verdict of not guilty.

Caseload: Cases received (for a court) or prosecuted (for a Crown attorney) and not yet disposed.

Case collapsed: A case that is disposed during the trial stage before the trial is completed, usually due to a guilty plea by the accused or a withdrawal by the Crown attorney.

Case disposed: A case is recorded in the Ministry's records as "disposed" when a case is completed and there are no future court dates. Cases can be considered completed when:

- an accused is found guilty before or during a trial and sentenced;
- the case is diverted (e.g., through community-based sanction in the mental health court) from the regular court process by a Crown attorney;
- charges are withdrawn by a Crown attorney who believes there is no reasonable prospect of conviction or it is not in the public interest to proceed; or as part of an agreement between the prosecution and the defence;
- a judge issues a verdict of either guilty or not guilty after a trial and sentences the accused person; or
- a judge stays (discontinues) the proceedings and releases the accused—e.g., if the judge finds that there is an "unreasonable" delay or there are other violations of the rights of the accused.

Case pending: Active case that has a future court date.

Case received: A case filed against an accused person in a particular court location or jurisdiction.

Case stayed or withdrawn by a Crown attorney: A case is stayed or withdrawn when:

- a Crown Attorney withdraws the charges when there is no reasonable prospect of conviction or it is not in the public interest to proceed; or as part of a resolution agreement between the prosecution and the defence; or
- a Crown Attorney stays the proceedings; they may be recommenced within one year if there is new evidence.

Charge: A formal accusation laid by police against an accused, involving an offence under the Criminal Code or other federal and/or provincial statutes. Charges may be withdrawn by the Crown attorney prosecuting a case.

Court appearance(s): Accused persons who were released from the police station with a promise to appear and accused persons who were released following a bail court appearance must attend court in person for subsequent court appearance(s). Accused who are being held in a correctional institution must be transported from the facility to the court and back for their appearances in court, although in some cases these hearings may be done through video link.
An appearance in court may be followed by further appearances to discuss next steps, including determining if the accused has engaged legal counsel for their defence, determining if all evidence has been disclosed, discussing the prosecution and defence positions on the case, and if prosecution and defence are ready for trial.

Custodial and non-custodial sentences: Custodial sentence: a sentence to spend time in custody in a correctional or federal institution.
Non-custodial sentence: a fine or probation.

Detention or release: The accused may be detained while awaiting their bail appearance, typically at the police station or correctional institution, or they may be released on a promise to appear before the court.

Disclosure: The requirement to provide to the accused and/or defence the evidence collected by the Crown (prosecution) and the police before trial; also, a copy of this evidence. Initial disclosure is usually provided at the accused's first court appearance. The disclosure package usually contains an overview of the case, copies of police officers' notes, witness statements, photographs and other relevant documents.

Diversion: Community justice programs that provide an alternative to a formal prosecution. These programs hold a person accountable through community-based programs. This can be done in any court. There are specialized mental health courts that address community-based sanctions for mentally ill accused. These courts can be used if mental health issues are identified by the defence counsel, the family of the accused or the Crown attorney. In such cases, the accused is referred for treatment and counselling to a community organization. Upon the successful completion of a treatment plan, the Crown attorney may withdraw the criminal charges.

Information: A formal document prepared by the police that names the accused and states the offences that the person is charged with.

Jordan decision: July 2016 decision by the Supreme Court of Canada in *R. v. Jordan* that the pretrial delay caused by the prosecution or the court system breached the "right to trial within a reasonable time" as guaranteed by the Charter of Rights and Freedoms. The Court set out a "presumptive ceiling" at 18 months for cases going to trial in the Ontario Court of Justice, and at 30 months for cases going to trial in the Superior Court of Justice (or cases going to trial in the Ontario Court after a preliminary inquiry).

Judicial stay: A judge stays the proceedings and releases the accused—e.g., if the judge finds "unreasonable" delay or other violations of the rights of the accused.

Mental health court: A specialized court in the Ontario Court of Justice where the case of an accused person who has mental health issues can be diverted for treatment or counselling. In this court, the accused may be certified as either fit or not fit to understand court proceedings in relation to the charge, or may make a plea to the charge. An accused who pleads guilty may request the judge to consider the mental health issue when imposing a sentence.

Preliminary inquiry: On indictable matters with an eligible sentence of 14 years or more, the accused may elect to have a preliminary inquiry. If there is some evidence of each of the elements of the offences, sufficient that a jury could return a verdict of guilty, the accused will be ordered to stand trial. If not, the accused will be discharged and their case completed.

Public interest (to prosecute a case): In making a determination whether to prosecute the case or not, the Crown attorney must also consider whether it is in the public interest to continue the prosecution. The public interest factors must only be considered after it is determined that there is a reasonable prospect of conviction. A number of factors are considered in making this determination, including:

- the gravity or relative seriousness of the incident;
- circumstances and views of the victim, including any safety concerns;
- the age, physical health, mental health or special vulnerability of an accused, victim or witness;
- the prevalence of the type of offence and the actual or potential impact of the offence on the community and/or victim;
- the criminal history of the accused;
- whether the consequences of any resulting conviction would be unduly harsh or oppressive to the accused;
- whether the accused is willing to co-operate or has already co-operated in the investigation or prosecution of others;
- the length and expense of a trial when considered in relation to the seriousness of the offence; and
- the availability of any alternatives to prosecution such as diversion and civil remedies.

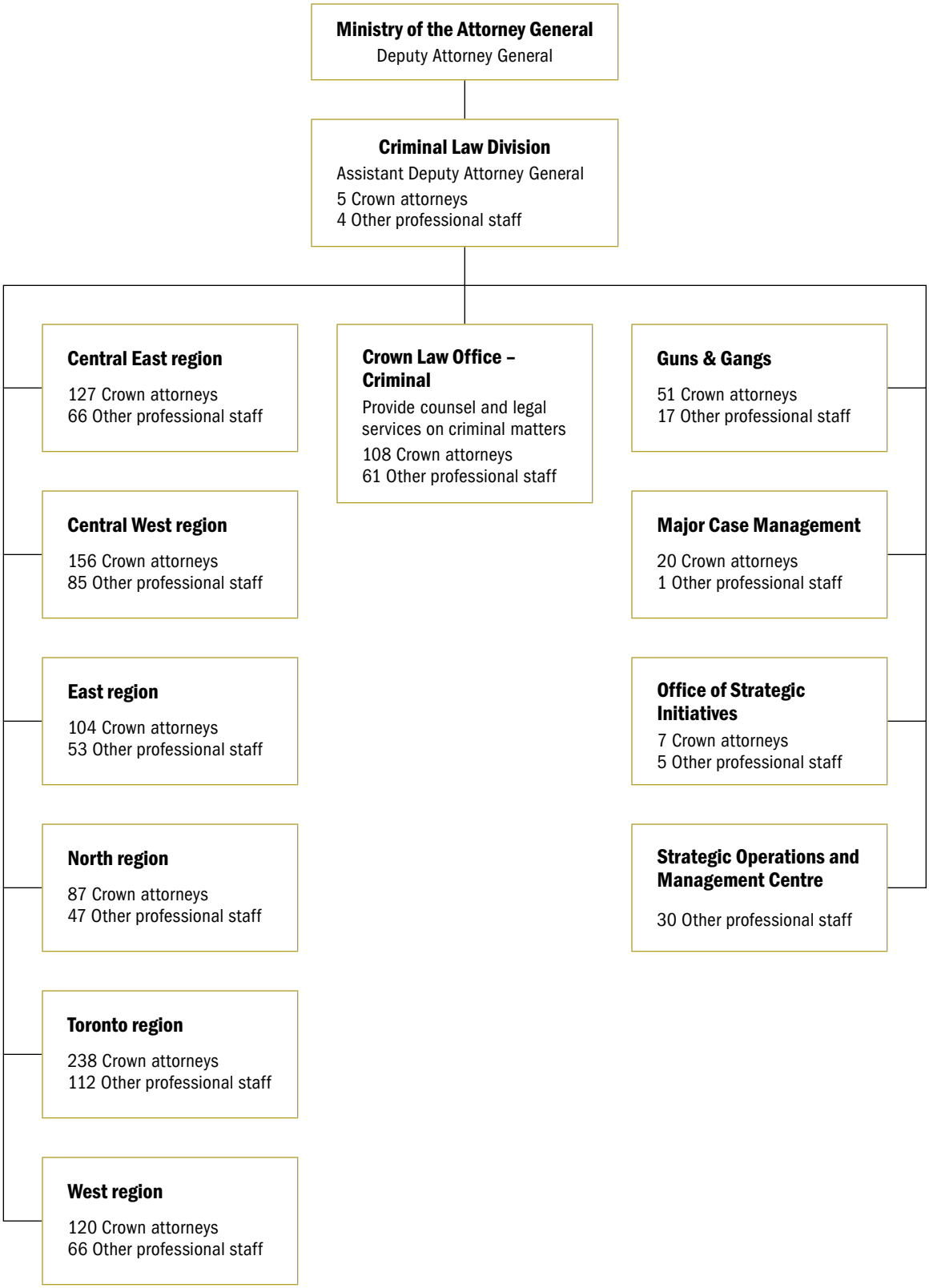
Reasonable prospect of conviction: Crown attorneys must proceed with a charge only where there is a reasonable prospect of conviction and if prosecution is in the public interest. Reasonable prospect of conviction requires more than evidence in a case appearing to be true when first considered; however, it does not require a conclusion that conviction of the accused is more likely than not. The term "reasonable prospect of conviction" indicates a middle ground between these two standards, to be determined by a Crown attorney.

Remand: Temporary detention of accused persons in custody while awaiting the resolution of their case. Accused persons remain in remand if they are awaiting a bail hearing, waive their rights to a bail hearing, or have been ordered to be detained by a judge after a bail hearing.

Withdrawal of charges: The Crown attorney decides not to continue with prosecution of the accused person on the charge(s) laid. The case is then closed and recorded as disposed.

Appendix 3: Criminal Law Division—Organization Chart

Source of data: Ministry of the Attorney General



Appendix 4: List of Criminal Courts That Hear Cases for Accused Persons with a Mental Health Condition, Ontario Court of Justice, as of October 2018

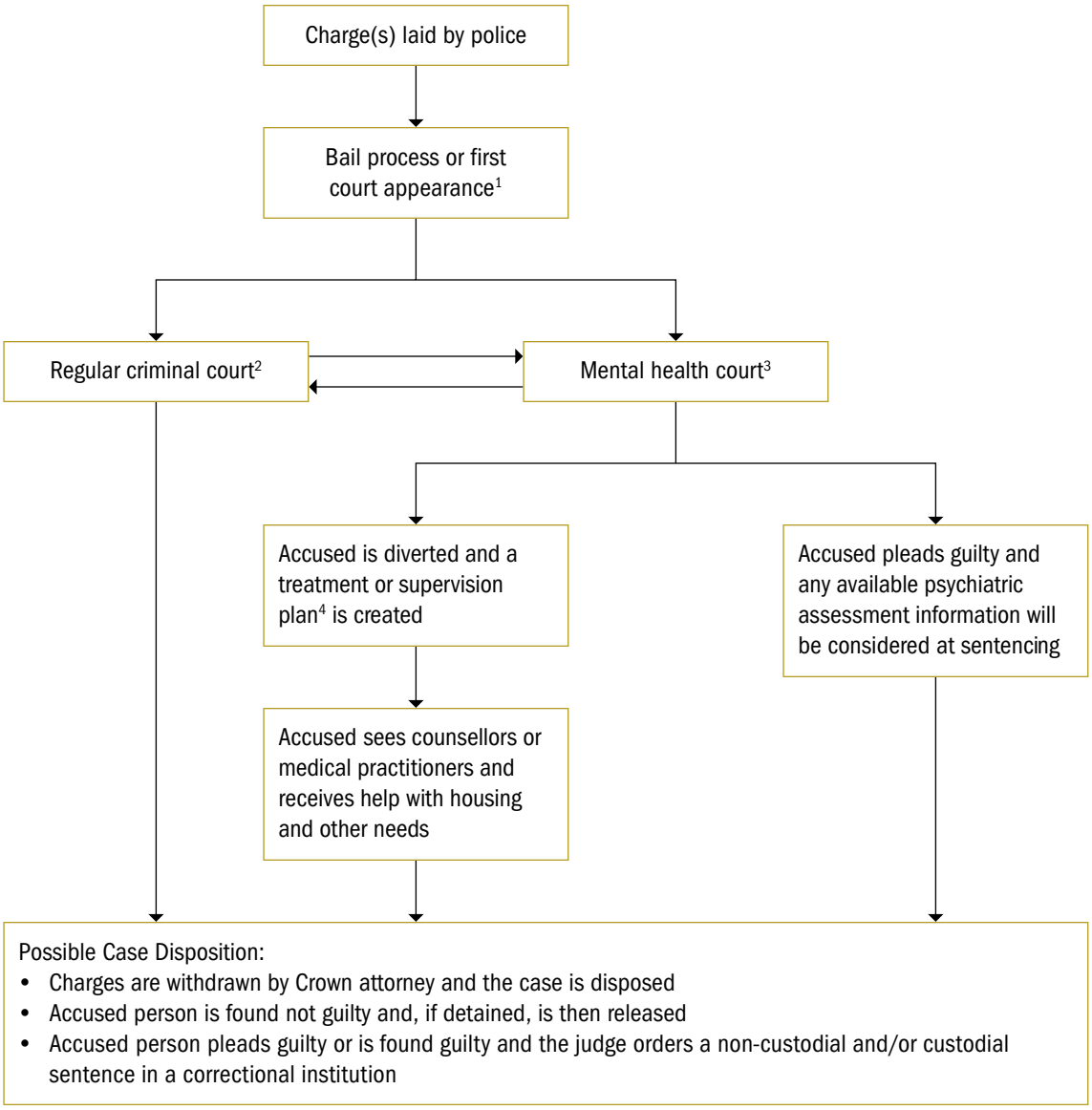
Source of data: Ministry of the Attorney General and Ontario Court of Justice

Base Court Location	Region	Year Established	Court Hours[1]
Dedicated Mental Health Court[2]			
1. Kenora	North West	2010	Twice per month
2. Sault St. Marie	North East	2010	Two days per month
3. Sudbury	North East	2014	Two days per month
4. Brockville[3]	East	2018	Twice per month
5. Ottawa	East	2005	Three times per week
6. Barrie/Orillia[4]	Central East	Not available	Once per month
7. 1000 Finch Ave. W[5]	Toronto	Not available	One day per week
8. Toronto–Old City Hall	Toronto	1998	Five days a week
9. Peel (Brampton)	Central West	1999	Two days per week
10. London	West	1997	One day per week
11. Owen Sound[4]	West	2004	Half day per week
12. Walkerton	West	2011	Twice per month
13. Kitchener	West	Not available	Once per week
14. Waterloo	West	2005	One day per week
15. Windsor	West	2006	Twice per month
Community Treatment Court, Drug Treatment Court or Community Therapeutic Court[2]			
16. Belleville[6]	East	2007	Once per month
17. Newmarket	Central East	May-04	Half day per week
18. Cobourg	Central East	Not available	No set dates
19. Haliburton County (Kawartha Lakes)	Central East	Not available	No set dates
20. Lindsay (Kawartha Lakes)	Central East	Not available	Twice per month
21. Oshawa (Durham)	Central East	2006	Half day per week
22. Peterborough	Central East	2012	Twice per month
23. Burlington	Central West	2013	Twice per month
24. St. Catherines	Central West	Not available	Twice per month
25. Sarnia	West	Not available	Half day per week
26. Stratford	West	Not available	Once per week
27. Oxford	West	2014	Once per month
28. Elgin (St.Thomas)	West	2016	Half day per month
29. Woodstock	West	Not available	Once per month

1. Daily court scheduling pressures may result in cases being heard in another courtroom instead of the designated courtroom.
2. A dedicated mental health court is a specialized court geared to resolving cases solely for accused persons with mental health conditions. Drug treatment, community treatment and community therapeutic courts are specialized courts that resolve cases involving drug and/or alcohol addiction, and may also deal with mental health or other conditions.
3. Mental health matters in Perth can be referred to Brockville mental health court.
4. In addition to a dedicated mental health court, these locations also have a community treatment court, community therapeutic court or drug treatment court that services clients with mental health issues.
5. Not a dedicated mental health court; however, a doctor is present for fitness hearings and approved mental health diversions.
6. Mental health matters in Picton can be referred to Belleville community treatment court.

Appendix 5: The Mental Health Court Process in Ontario

Prepared by the Office of the Auditor General of Ontario



1. At any time after charges have been laid, Crown attorneys have the option to divert the case, referring the accused to mental health treatment and support instead. If the accused person is eligible for diversion, a mental health court support worker will work with the person to develop a program that may include community support, supervision and/or treatment. Any criminal court participants, such as the Crown attorney, defence counsel, police, judiciary, family members of the accused or the accused can apply to refer the case to a mental health court.
2. A regular criminal court hears all criminal cases for accused persons who have been charged by police.
3. A mental health court, where available, hears/resolves criminal cases for accused persons with mental health conditions, aimed at both the rehabilitation of the person and protection of the public. As well, at any time in the court process, either side can raise the issue of "fitness to stand trial." A person is unfit to stand trial if they have a mental illness that prevents them from understanding the nature or object of what happens in court, understanding the possible consequences of what happens in court, or communicating with and instructing their lawyer. If the person is found unfit, the judge may order them to receive treatment in order to return them to a "fit" state. If the person is fit after treatment, they are returned to regular criminal court or mental health court. If the person is found unfit to stand trial and remains unfit even after treatment, the case is transferred to the Ontario Review Board.
4. If the accused person is eligible for diversion, a mental health court support worker will work with the person to develop a treatment plan or program that may include community support, supervision and/or treatment.

Appendix 6: Audit Criteria

Prepared by the Office of the Auditor General of Ontario

1.	Effective court services and Crown processes, such as monitoring the number of cases received, cases withdrawn before or at trial and days needed to resolve a case, are in place to support the resolution of criminal cases on a timely basis and in accordance with applicable legislation and best practices.
2.	Criminal court services and specialized programs are delivered consistently and equitably across all regions in accordance with applicable legislation and in line with best practices.
3.	Technology in the criminal court system is used to its full advantage to reduce costs and to improve efficiency, while at the same time still protecting the fair trial rights of accused individuals.
4.	Appropriate financial, operational and case file management data are collected to provide accurate, reliable, complete and timely information to help guide decision-making and assist with performance management and public reporting in the delivery of court services. In addition, reasonable targets are established to allow evaluation of performance and periodic public reporting. Corrective actions are taken on a timely basis when issues are identified.

Appendix 7: Summary of Publicly Available Information, Information Our Office Obtained During the Audit and Information Where Our Access Was Denied

Prepared by the Office of the Auditor General of Ontario

Criminal Court System	Information That Is Publicly Available	Information That Is Not Publicly Available		Why We Need Access to the Information	Impact of Not Getting Access on Completion of Audit
		We Got Access	We Were Denied Access		
Ontario Court of Justice (Ontario Court)					
Scheduling of criminal cases and key statistics	• Daily court dockets (listing of court appearances scheduled for the next day, by type of appearance, case number, courthouse and courtroom) • Court proceedings are open to the public except for publication bans or other reasons at the discretion of the judiciary • # of criminal cases received, disposed and pending disposition, reported by courthouses, regions and at the provincial level • # of court appearances heard by courthouses and regions, and at the provincial level • # of criminal cases withdrawn, days to withdraw and appearances in court.	An overview of the scheduling process with trial co-ordinators, regional senior judges and/or local administrative judges.	Court scheduling information, such as court dates historically scheduled and upcoming court dates that were scheduled and maintained by trial co-ordinators, who work under the direction of the judicial officials.	To determine if courtrooms were scheduled efficiently and effectively for criminal law matters, and to examine the possible reasons that contributed to the lower-than-optimal utilization of courtrooms. **Section 4.3** discusses this further.	Unable to determine if public resources, such as courtrooms, were scheduled and used optimally to help reduce backlogs in disposition of criminal cases.

Criminal Court System	Information That Is Publicly Available	Information That Is Not Publicly Available		Why We Need Access to the Information	Impact of Not Getting Access on Completion of Audit
		We Got Access	We Were Denied Access		
The Ministry of the Attorney General's Criminal Law Division (Division)					
Criminal case files maintained by Crown attorneys	• The Crown Prosecution Manual contains information on the criminal process and the role of prosecutors in the criminal justice system. It is used by the Attorney General to provide direction to prosecutors.	We asked to review a sample of case files maintained by Crown attorneys in the following areas: • 30 samples of cases pending over 18 months; • 35 samples of cases that were stayed due to the *R. v. Jordan* decision; • 50 samples of cases withdrawn by a Crown attorney; and • 30 samples of cases relating to remand inmates. The Division provided us with summaries of notes made by Crown attorneys in its case management system (SCOPE).	We were not given full access to the case files selected (a total of 145 cases) by the Division, which cited various privileges such as confidential informer privilege and litigation privilege.	To determine the reasons for delays and review other case details in the following areas: • cases pending over 18 months (**Section 4.1.1**); • cases that were stayed due to the *R. v. Jordan* decision (**Section 4.1.2**); • cases where charges were withdrawn by the Crown attorney (**Section 4.2.3**); and • cases where the accused were in remand (**Section 4.4.1**).	Unable to conduct an independent review and assessment of the delays in disposing criminal cases.
Ontario Court of Justice (Ontario Court)					
Mental health court scheduling and operations	• A general overview of specialized criminal courts that have been developed in the Ontario Court of Justice offering a range of programs and supports to address specific needs, including those of persons with mental health or addiction issues. • Court dockets generated from designated mental health courts.	A copy of the Ontario Court of Justice Specialized Criminal Court Scheduling Guidelines, effective January 2017, including the mandate and objectives for specialized courts.	Any reviews of the scheduling and operations of mental health courts, if done in the past.	To determine if any review has been done in the past as specified in the Ontario Court of Justice Criminal Court Scheduling Guidelines. **Section 4.7.1** discusses this further.	Unable to confirm whether such a review had been done in the past or to determine if the mental health courts were being operated as intended.

Criminal Court System	Information That Is Publicly Available	Information That Is Not Publicly Available		Why We Need Access to the Information	Impact of Not Getting Access on Completion of Audit
		We Got Access	We Were Denied Access		
The Ministry of the Attorney General 's Criminal Law Division (Division)					
Mental health court scheduling and operations	• The Crown Prosecution Manual, including the prosecution directives for mentally ill accused.	• List of criminal courts that hear cases for accused persons with a mental health condition. • We requested to review 30 mental health–related case files maintained by Crown attorneys. The Division provided us with summaries of notes made by Crown attorneys from its case management system (SCOPE).	We were not given full access to all 30 case files selected.	To review and assess the efficiency and effectiveness of the criminal court process in place for accused persons with mental health issues. **Section 4.7.2** and **Section 4.7.3** discuss this further.	Unable to conduct an independent review and assessment of the criminal court processes in place for accused persons with mental health issues.

Appendix 8: Examples of Cases Reviewed During Our Audit

Prepared by the Office of the Auditor General of Ontario

Other Cases Pending for More than 18 Months (Section 4.1.1)

Other cases taken from the sample of 30 criminal case files where, on our request, the Criminal Law Division (Division) summarized the reasons for delays in cases pending for more than 18 months:

- A case relating to a major assault was pending for 37 months where the accused was in remand. Defence delay of 11 months was due to change of defence counsel. Delay of 16 months was caused when the court-ordered psychiatric assessment did not address criminal responsibility of the accused person. The Division did not note the explanation for the balance of the delay, which was 10 months.
- A case relating to weapons possession was pending for 24 months where the accused was out on bail. Twelve months of the delay was attributed to delays in receiving disclosure from police due to the complexity of reviewing hundreds of pages of evidence. The remaining 12 months of delay was attributed to unavailability of defence counsel.
- A case relating to a major assault was pending for 25 months where the accused was out on bail. A delay of 13.5 months was attributed to factors including lack of disclosure, adjournment of the case because the victim did not appear to testify and unavailability of the Crown attorney. The remaining delay of 11.5 months was attributed to unavailability of court dates. The matter was sent to Superior Court, but the delays already amounted to 25 months as of July 2019 and the case risked being dropped (according to the Jordan decision, Superior Court cases with delays in excess of 30 months may be dropped if the judge rules that the delay is unreasonable and not caused by the defence).
- A case relating to homicide was pending for 23 months where the accused was in remand. Nine months of the delay was spent awaiting disclosure from police. The remaining 14 months of delays were due to unavailability of witnesses, unavailability of court dates and the judge's illness.

Other Cases Stayed Due to Exceeding the Jordan Timelines (Section 4.1.2)

Other cases taken from the sample of 50 criminal cases stayed by the judge for remaining pending beyond the Jordan timelines:

- Delay in one case of sexual assault was 30 months and 13 days after charge was laid in October 2013. The judge ruled that 15 months of delay was "institutional" (i.e., due to lack of available court dates and to time needed to transfer the case between two locations); 9.3 months of delay was attributed to outstanding disclosure (requested repeatedly by Crown attorney but not provided by the municipal police services); 5.3 months was attributed to "neutral delays," or delays inherent in the court process such as laying the charge and applying for legal aid. Ninety days of delays attributed to the defence was deducted from the total.
- In a case where the accused was charged with making child pornography available, possessing child pornography and accessing child pornography, the total delay was just over 39 months. About eight months of the delay were attributed to court scheduling issues, and about 25 months were attributed to the Crown attorney's delay, which included not providing timely disclosure (the Crown attorney further attributed the delay to receiving an expert's report only 10 day before the start of trial). About six months were deducted from the total delay as attributable to the defence.
- In another case where the accused was charged with fraud, using forged documents and falsifying employment records, the total delay was 46 months. Eight months of the delay were attributed to the defence for delays in retaining counsel. In the remaining 38 months, there were a total of 21 court appearances at the Provincial Court level and five appearances at the Superior Court level. Part of the delay was also attributed to issues with obtaining a French/English interpreter.

Cases Taken from the Sample of 11 Cases (Section 4.1.2)

Cases taken from the sample of 11 cases where the accused had a record of other criminal charges before or after their case was stayed:

- In one case, we noted that the accused had been previously charged with a major assault in 2009 and had pleaded guilty. Between July 2014 and July 2015, other charges of disturbing the peace and sexual assault were laid and subsequently stayed, as the judge ruled that "the Crown lost control of the process of obtaining necessary expert evidence."
- In another case, the accused had been previously convicted for uttering threats in August 2014, and breached her probation in June 2015. Subsequently, in July 2016, this person was charged with child abandonment but the case was stayed, as the judge ruled that the "Crown was not alerted that a trial date was set for 14 months later."

Cases Taken from Our Interviews with 24 Remand Inmates and Review of 30 Crown Attorneys' Notes (Section 4.4.1)

The following cases illustrate the reasons cited:

- A medium-stay inmate in remand for 38 days and charged with break and enter wanted to earn enough enhanced credit in pretrial custody to negotiate with the Crown attorney for a sentence that would be fulfilled by the time already served in remand.
- A long-stay inmate in remand for 208 days had multiple charges of fraud in front of three different courts that they wanted to deal with before applying for bail, to increase the chance of the bail being granted. At the time of the most recent arrest, the accused was already out on bail, but the surety withdrew and the accused also breached bail conditions.
- An inmate accused of a nonviolent sexual offence wanted to plead guilty; however, due to mental health and addiction issues, an assessment was required. The accused was disruptive in court, which led to a delay in resolving the case and extended the stay in remand to 147 days.

Chapter 4

Ministry of the Attorney General

Family Court Services

1.0 Summary

Ontario's family courts—in both the Ontario Court of Justice (Ontario Court) and Superior Court of Justice (Superior Court)—deal most often with issues like divorce, including support, as well as child custody and access. They also hear child protection cases, when courts are needed to determine if a child who is experiencing or at risk of experiencing harm is in need of protection, and to make an order relating to the child's care and custody. In 2018/19, there were about 62,970 new family law cases filed in court—7,410, or 12%, of these were child protection cases.

The *Child, Youth and Family Services Act, 2017* (Act) outlines statutory timelines for certain steps in a case, and relating to the time a child is in the care and custody of a Children's Aid Society (society). The courts are required to adhere to these timelines when the society is seeking to place a child in its interim care and custody.

The Court Services Division (Division), under the Ministry of the Attorney General, is responsible for the administration of courts in Ontario. The Division's main responsibilities are managing court staff, and providing facilities and information technology. The Ministry's court staff work under the direction of the judiciary, when supporting the judiciary in matters assigned to the judiciary by law. The Division also oversees family mediation and information services, delivered by 17 service providers in 2018/19, to assist families going through court processes.

Family law cases are often characterized by fear, anxiety and despair. For married couples going through divorce, additional time spent navigating the family court system and attending different courts for multiple court dates can heighten both the distress and personal financial impacts. Child protection cases are guided by the purpose of promoting the best interests, protection and well-being of children. While courts can help to keep children from physical harm, court delays can result in extended temporary placements, which have the potential to cause psychological and developmental issues. Adults and children need timely access to family courts to lessen the harmful impacts that family law issues can have on their lives.

Overall, our audit found that effective and efficient processes were not in place in the family court system to adhere to the legislated timelines that are designed to promote the best interests, protection and well-being of children. As of July 2019, there were 5,249 child protection cases pending disposition. Of these, 23% had remained unresolved for more than 18 months—some for more than three years. Because the Ministry did not have accurate and complete information captured in its information system, neither the Ministry nor we were able to determine how many of these cases were subject to the statutory timelines required by the Act. Even with the restrictions placed by the Ministry on our access to complete child protection

case files, we identified significant delays in some cases. However, because we were refused complete information, we could not confirm the reasons for the delays, or why the statutory timelines were exceeded.

- **Restricted access to complete child protection case files and delays in receiving limited information impacted our work, and prevented our audit of the delays in resolving child protection cases.** Noting where lack of complete information affected our work, significant findings on child protection cases include:
  - Of the 5,249 child protection cases pending disposition as of July 31, 2019, 1,189 cases (or 23%) had been pending for longer than 18 months. Of these cases, 762 had exceeded 30 months pending. Under the *Child, Youth and Family Services Act, 2017*, the court can make an order for interim society care for up to 18 months for children under six years old, and up to 30 months for children between the ages of six and 17. After our multiple requests to review the complete case files, only the redacted case histories, with listings of consequential court events, were provided by the Ministry for our sampled cases. After further requests, representatives from the Offices of the Chief Justices of the Ontario Court and the Superior Court released the redacted written directions of the judge at each appearance (called endorsements) from a small number of select cases for our review. However, these documents were not sufficient for us to examine details of the cases to determine whether the statutory timelines were applicable and/or reasons for the delays.
  - Representatives from both the Offices of the Chief Justices of the Ontario Court and the Superior Court cited section 87(8) in the *Child, Youth and Family Services Act, 2017*, which states: "No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding, or the child's parent or foster parent or a member of the child's family." This clause was used as the rationale for limiting our Office's access to complete child-protection files of the cases that we selected, although we informed the Offices of the Chief Justices that we had no intent to identify individuals in this report.
  - The Ontario Court published its *Guiding Principles and Best Practices for Family Court* to help judges to manage child protection cases. One of the guidelines states that "… child protection matters whose outcome would affect the well-being and day-to-day physical, emotional and/or mental health of children should be considered matters where time is of the essence. Scheduling of these matters should reflect this." Again, because we were not provided with key documents on court scheduling (also see Court Operations, **Chapter 2** of this volume), we were unable to determine if child protection matters were scheduled as early as possible, and whether the Ontario Court is following its own guiding principles and best practices.
  - The Superior Court also established Best Practices for Child Protection Cases, to address the scheduling, assignment and conduct of each step in a child protection case. Unlike the Ontario Court, the Superior Court's best practices guide is not publicly available. We requested a copy of it, but the representative from the Office of the Chief Justice of the Superior Court refused to provide a copy to us.

Domestic family law cases, other than child protection cases, represented 88% (or 55,560) of new family law cases received in 2018/19. There are no

legislated timelines for domestic family law cases, such as divorce, child custody and access, child and spousal support, and adoption, except for the first access and custody hearing for a child. There are best practice guidelines, which, in this case, we were provided. However, based on the information provided by the Offices of the Chief Justices of both the Superior Court and the Ontario Court, we noted the following:

- **Next available court hearing dates for case conferences at a few Superior Court locations exceeded Family Law Best Practices timelines for domestic family law cases.** In 2018/19, the Superior Court held a total of approximately 16,000 case conferences that are meant to help parties settle as many issues as possible without the need for a trial. We examined case conference wait times for five specific dates between April 2018 and April 2019, based on information provided by the Office of the Chief Justice of the Superior Court. We noted that 43 of the 50 Superior Court locations met the best practice guideline of six weeks on at least one of the five dates that we examined. At only seven Superior Court locations, if a new request for a case conference was received on the five dates we examined, the parties would have waited for as long as 10 to 12 weeks, exceeding the suggested best practice guideline. However, because we were not given access to court scheduling information, we were unable to verify the completeness and accuracy of the data provided by the Office of the Chief Justice of the Superior Court.
- **Most Ontario court locations reported a minimal wait for the next available first court appearance.** The Ontario Court also established *Guiding Principles and Best Practices for Family Court*, but unlike the Superior Court, the guiding principles do not specify targets for maximum timelines from filing a family law application to a first court appearance. We reviewed the data provided by the Office of the Chief Justice of the Ontario Court for its 36 family court locations for the calendar years 2016, 2017 and 2018. We noted that minimal waits of within a month were reported for 27 Ontario Court locations. However, data provided by six other court locations was either limited or missing altogether. Only three court locations reported delays where applicants waited two to three months for a first court appearance. Again, because we were not given access to court scheduling information, we were unable to verify the completeness and accuracy of the data provided by the Office of the Chief Justice of the Ontario Court.
- **Neither the Ontario Court nor the Superior Court publicly report their next available hearing dates for domestic family law cases.** The courts do not publish data or information on next available hearing dates for family court appearances. As a result, parties in domestic family law cases do not know the expected wait times for hearings at these courts. By comparison, the British Columbia Provincial Court posts a public report twice a year, which describes the time from the date a request or order is made for a conference or trial, to the date when cases of that type can typically be scheduled.

Our audit also found that the data captured in the Ministry's case file information system, FRANK, was inaccurate. Therefore, it could not be relied on by the Ministry, or judges from either the Ontario Court or the Superior Court to monitor and manage their cases. In particular:

- **The number of family law cases captured in the FRANK system as pending disposition was not accurate.** In April 2019, a review led by the Office of the Chief Justice of the Superior Court found that of the 2,844 child protection cases in both the Superior and Ontario courts that had been pending for over 18 months as of March 31, 2019, 1,517 cases, or 53%, were incorrectly recorded in

FRANK as "pending." These cases, identified after updated numbers were provided as of July 31, 2019, should have been disposed. Further, based on our review of a sample of 70 domestic family law cases pending disposition for over a year as of March 31, 2019, we found that 56% were recorded incorrectly as pending, though they were either disposed, or had been inactive for over a year. Because of the inaccuracies identified, we could not rely on FRANK to perform accurate trend analyses of time taken to dispose of cases and the aging of cases pending disposition.

- **The Ministry lacks a formal policy on quality reviews of data captured in FRANK.** The Ministry has a data quality review process and guideline for managers and supervisors at each courthouse to review the accuracy and completeness of data in FRANK. However, we found that none of the seven courthouses we visited followed the Ministry's guideline consistently in 2018/19. As a result, the Ministry did not know which types of data entry errors were most common, or why they occurred. Therefore, it was unable to prevent the recurrence of these errors through training, or by adding system controls over data entry to the FRANK system. Most importantly, it did not know the extent of inaccurate data in the system.

The Ministry contracts third-party service providers to deliver a number of services, such as on-site and off-site mediation intake and mediation, and information and referral services for the family court process. Between 2014/15 and 2018/19, the Ministry's expenditures on contracts with 17 service providers ranged between $6.9 million and $7.2 million annually. Over the same time period, there was an average of about 4,500 mediation cases per year, involving family law cases both in court, and out of court. Almost 80% of these cases were fully or partially settled through mediation. Some of our significant findings on the Ministry's contract management are as follows:

- **The Ministry is paying for on-site mediators' availability at courthouses, not necessarily for mediation work performed.** Between 2014/15 and 2018/19, the Ministry paid an annual average of approximately $2.8 million for about 34,450 hours per year of on-site mediation, but only about 7,200 hours, or 20%, involved mediation or mediation-related work. The balance of about 27,250 hours, or 80%, was billed for on-site availability only. Under the existing contracts, service providers bill the Ministry for the number of hours a mediator is available at the courthouse, not for the number of hours of mediation work performed. The invoices submitted by the service providers did not indicate the type of work, if any, that mediators performed for 80% of the total hours billed for on-site availability.
- **The Ministry does not exercise proper oversight of payments made to service providers.** Service providers bill the Ministry each month, up to a pre-determined yearly maximum for services they provide. The Ministry relies on service providers to bill accurately for the services provided, but does not verify whether the service providers worked the hours billed.
- **The use of Ministry-funded mediation services has varied levels of uptake at different court locations.** Mediation, when used appropriately, can be more cost-effective for both the parties and the Ministry for resolving family law cases. We found that, for instance, at locations that had an average of fewer than 750 eligible cases, the percentages of cases directed to mediation ranged from an average low of 2% of cases to a high of 17% of cases between 2014/15 and 2018/19. However, the Ministry has not conducted an analysis to determine why some service providers had more cases directed to them than others.

Other significant findings include:

- **The Dispute Resolution Officer Program (Program) could increase cost savings if expanded.** Dispute resolution officers meet with parties who have filed a motion to change an existing court order before the parties meet with a judge. This Program involves senior family lawyers appointed by Superior Court regional senior judges to help parties resolve their outstanding issues on a consent basis. The Superior Court was operating the Program in nine of 50 Superior Court locations at the time of our audit. We estimated that the net savings realized at the nine participating courthouses totalled about $355,000 in 2018/19.
- **The Ministry did not have a firm plan to achieve its 2025 target for Unified Family Court expansion.** Ontario has had unified legal jurisdiction for all family law matters through Unified Family Courts in 17 locations since 1999. Twenty years later, in May 2019, the Ministry unified the family law jurisdictions in eight additional locations, bringing the total number of Unified Family Courts to 25. Parties in these locations need to attend only one court to resolve their family law–related issues. In contrast, families that live in the remaining 25 locations without these courts may need both the Ontario Court and the Superior Court to resolve their family law–related issues. In 2017, the Ministry, in conjunction with the Superior Court and Ontario Court, set a target to complete the province-wide expansion of Unified Family Courts by 2025. As of August 2019, the Ministry was still conducting a needs assessment at the remaining 25 court locations to accommodate the expansion.

This report contains 17 recommendations, consisting of 26 actions, to address our audit findings.

Overall Conclusion

Overall, we encountered a lack of transparency in obtaining access to information to be able to audit whether child protection cases were handled in accordance with the statutory timelines as required by the *Child, Youth and Family Services Act, 2017* in the best interest of the child. Representatives from both the Office of the Chief Justice of the Ontario Court of Justice and the Office of the Chief Justice of the Superior Court of Justice cited section 87(8) in the *Child, Youth and Family Services Act, 2017*, which states: "No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding, or the child's parent or foster parent or a member of the child's family." This clause was used as the rationale for limiting our Office's access by not providing us with complete child-protection files that we selected, although we informed the Offices of the Chief Justices that we had no intent to identify individuals in this report.

Because the Ministry did not have accurate and complete information captured in its information system, we were also unable to determine, nor could the Ministry, how many child protection cases were subject to the statutory timelines required by the *Child, Youth and Family Services Act, 2017*.

Our complete access to child protection files was initially refused. While partial access to the files was subsequently granted, information was then delayed, and limited to only part of what we requested. As a result, we were not able to determine the reasons for delays in child protection cases, or determine why the statutory timelines under the *Child, Youth and Family Services Act, 2017*, were exceeded, which could put children at unnecessary risk.

We also found that the Ministry did not have effective management and oversight of its contracts with service providers delivering family mediation and information services across the province.

OVERALL MINISTRY RESPONSE

The Ministry of the Attorney General (Ministry) appreciates the comprehensive audit on Family Court Services conducted by the Auditor General and welcomes her recommendations on how to improve services to Ontarians seeking access to justice on family law issues.

Access to justice in family law cases is of key importance to the Ministry, as it recognizes the impact these cases have on participants in the family court system. The Ministry has been moving forward with initiatives that will make a difference to Ontarians and support the efficient use of resources in administering the family court system.

Many of the recommendations in this report support the objectives of the Ministry's current transformation strategy, which focuses on modernizing the justice system, including increasing online services for the public and streamlining court processes to create efficiencies.

As the Ministry moves forward, the recommendations in this audit will help inform its next steps and assist in identifying areas for improvement. The Ministry undertakes to work closely with the judiciary, as well as other key justice partners, including Justice Technology Services and the Ministry of Finance, to ensure a broader-sector approach to addressing the audit's recommendations and to better serve the people of Ontario.

2.0 Background

2.1 Family Court System in Ontario

In Ontario, three courts handle family law cases—the Ontario Court of Justice (Ontario Court), the Superior Court of Justice (Superior Court), and the Family Branch of the Superior Court, often referred to as the Unified Family Court.

Due to the division of powers and responsibilities of the federal and provincial governments in the *Constitution Act*, family law in Canada is an area of law of shared jurisdiction between the two levels of governments. The Superior Court deals with primarily federally legislated family law matters, and the Ontario Court deals with provincially legislated family law matters. **Figure 1** illustrates the legal jurisdiction of the three courts for common family law issues.

2.1.1 Unified Family Court

Unified Family Courts allow parties to handle all of their family law–related matters in one court. This eliminates the stress and confusion for parties, especially those who may need to decide which court has jurisdiction to resolve their issues first. For example, a couple going through a divorce with an ongoing child protection matter, living in a municipality with a Unified Family Court would be able to deal with only one court for all of their legal issues. In contrast, families that live in a jurisdiction without a Unified Family Court would have the child protection case heard by one judge in the Ontario Court, while the divorce would be heard by another judge in the Superior Court. Further, family law issues are often dynamic, and evolve with time. The court that fits the parties' needs at the beginning of the process may not be able to deal with future issues. A new case in another court may be required, causing additional delay and frustration. Unified Family Courts would benefit especially parties who are not represented by lawyers. In 2018/19, more than 50% of parties were unrepresented at the time they filed applications or motions to change an existing court order.

Ontario has had unified legal jurisdiction for all family law matters through Unified Family Courts in 17 locations since 1999. Effective May 13, 2019, Ontario unified an additional eight locations, bringing the total number of Unified Family Courts to 25. At these locations, the Ontario Court effectively loses jurisdiction to hear family law cases; these

Figure 1: Family Law Jurisdiction in Ontario for Common Family Law Issues

Source of data: Ministry of the Attorney General

Family Law Issues	Unified Family Court[1]	Superior Court of Justice	Ontario Court of Justice
Adoption	✓		✓
Child and spousal support	✓	✓	✓[2]
Child custody and access	✓	✓	✓[2]
Child protection	✓		✓
Division of property	✓	✓	
Divorce	✓	✓	
Domestic violence	✓	✓	✓
Enforcement	✓		✓

1. The Family Branch of the Superior Court of Justice.
2. Not related to a divorce.

cases are transferred to the Unified Family Court under the Superior Court. In the remaining 25 family court locations, both the Superior Court and Ontario Court handle family law cases according to the prescribed legal jurisdictions, listed in **Figure 1**.

Figure 2 shows the breakdown of family law cases received by type and court in 2018/19. The percentage breakdown of cases received by each court has been relatively stable between 2014/15 and 2018/19.

2.2 Family Law Cases

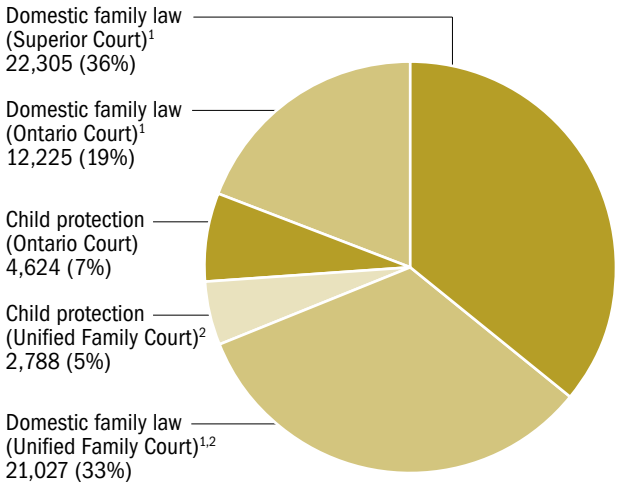
Family law is about the rights and responsibilities of people in family relationships—children, spouses and parents. People who are married or in common-law relationships have certain rights and responsibilities to each other under family law. People who have children have additional legal rights, and responsibilities, in relation to their children.

The federally legislated *Divorce Act*, as well as the provincial *Family Law Act*, the *Children's Law Reform Act* and the *Child, Youth and Family Services Act, 2017*, apply to families and children. The most common issues dealt with in family court include:

- divorce—for married couples, a divorce must be granted by the court to end the marriage, and a spouse must be divorced to remarry;

Figure 2: Family Law Cases Received, the Ontario Court of Justice (Ontario Court), Superior Court of Justice (Superior Court), and the Unified Family Court, 2018/19

Source of data: Ministry of the Attorney General



1. Domestic family law cases include family law cases other than child protection cases such as divorce, child custody and access, child and spousal support and adoption.
2. The Unified Family Court is a branch of the Superior Court.

- child custody and access—parents who are separating must determine where the children will live and how much time they will spend with each parent, and which parent will make major decisions about the children's care;

- child and spousal support including enforcement—all parents are responsible for financially supporting their dependent children, and spouses may be responsible for financially supporting each other;
- division of family property—when married couples separate, they must divide any increase in money or property they acquired while married;
- child protection—the courts can help children and youth who have been, or are at risk of being, abused or neglected; and
- domestic violence—family courts can issue restraining orders, or make orders for exclusive possession of the matrimonial home in cases of domestic violence.

In 2018/19, there were about 62,970 family law cases received by family courts. About 7,410, or 12%, of these were child protection cases. See **Appendix 1** for information about participants in the family court process.

2.2.1 Child Protection Cases

In family law, there are statutory timelines for certain steps in a child protection case, including the time a child is in the interim care and custody of a society. If parents are not able to care for their children appropriately, plans are made for their permanent care in a timely manner.

The *Child, Youth and Family Services Act, 2017* (Act), outlines the powers and responsibilities of children's aid societies, which protect children and youth who may be experiencing or are at risk of experiencing harm, such as abuse or neglect.

If the society suspects a child is at risk of harm, a children's aid society (society) can seek a court order to supervise the parent(s) and the child, or remove the child from an unsafe environment, if the risk of harm is too serious. In the latter case, the society may place the child in the care of another person, such as a relative or foster parent(s). See **Appendix 2** for an overview of the process of a child protection case.

While the case proceeds in court, the court can order the child in the society's temporary custody and care to live with another person, such as a foster parent, until the court case is resolved—at which time the court makes a final determination of where the child should live.

If the court finds the child is in need of protection, and the court is satisfied that a court order is necessary to protect the child in the future, the court can issue a final order that may include, among others:

- Supervision order—the child is placed in the care and custody of a parent or another person, subject to the supervision of the society.
- Interim society care—the child is placed in the care and custody of a society. The society can place the child, for example, in foster care, for a maximum of 18 months or 30 months, depending on the age of the child.
- Extended society care—the child is placed in the care of a society until the child turns 18. The society places the child, for example, in foster care or in a group home, and the child may be adopted.

When a child is placed in interim society care, the Act lays out different statutory requirements for two age groups:

- For a child younger than six—the Act permits children younger than six to be in the interim care of a society for up to a year before a final decision is made on their placement. The period of time permitted for a child to be in interim society care is subject to a maximum six-month extension, if it is in the best interests of the child. When a child is in interim care, by the end of 12 months or 18 months, with an extension, the court must make an order to either permanently place the child in extended society care, or remove them from the society's custody and care by returning them to the parent(s) or placing the child with another person such as a relative, though that placement may still be subject to the society's supervision.

- For children between the ages of six and 17—the Act permits children between the ages of six and 17 to be in the interim care of a society for up to two years. The order for interim care is subject to a maximum six-month extension, if it is in the best interests of the child. By the end of two years, or 30 months, with an extension, the court must make an order to either permanently place the child in extended society care, or remove them from the society's custody and care by returning them to the parent(s) or placing the child with another person such as a relative, though that placement may still be subject to the society's supervision.

When making decisions in child protection cases where an order is being made to place the child in interim care with a society, the court is required to adhere to these legislative timelines. The Act calculates these time limits from the first day the child has been in the care and custody of a society. The court is responsible to ensure the child does not remain in an uncertain, temporary care arrangement beyond statutory timelines.

Further, the *Family Law Rules*, a regulation under the *Courts of Justice Act* established 20 years ago, specifies timelines that child protection cases must follow to ensure cases are advancing through the system in a timely fashion. **Appendix 3** shows the events in a child protection case, a description of each event, and the respective statutory timelines.

2.2.2 Family Law Cases Other Than Child Protection Cases (Domestic Family Law)

The *Family Law Act* and the *Divorce Act* provide the legislative framework and procedures to settle the affairs of a marriage after a relationship breakdown. These issues include spousal and child support, division of property, and possession of the matrimonial home. The *Children's Law Reform Act* deals with matters such as custody of and access to children. **Appendix 4** explains the key steps for these types of family law cases.

The Ontario family law system encourages parties involved in a domestic family law case to settle disputes without a trial. In 2018/19, only 8% to 10% of all appearances scheduled in family court were part of a trial. Most of a family court judge's time is spent facilitating dispute resolutions through case conferences and settlement conferences.

There are no legislative timelines that domestic family law cases are required to follow, except that the first hearing of access and custody to a child case is to be held within six months of the application being filed. How ready and willing the parties are to proceed is the main driver of case progress, but the courts should be available when parties require their services.

As shown in **Figure 1**, both the Superior Court and Ontario Court hear domestic family law cases.

The Superior Court established the *Family Law Best Practices* for scheduling and conducting family law cases to guide each case to resolution without undue court delay. The Superior Court provided us with its *Family Law Best Practices*, which sets the maximum time frames for scheduling events once requested by the parties, as follows:

- case conferences—within four to six weeks;
- settlement conferences—within eight weeks;
- short motions—within four weeks;
- long motions—within eight to 12 weeks; and
- short trials—within eight to 12 weeks.

The Ontario Court established and published *Guiding Principles* and *Best Practices for Family Court*, but it does not specify the maximum timeframes for scheduling events once requested by parties. It only collects information on the length of time it takes to schedule a first court appearance after a court application is filed.

2.3 Services Aimed at Helping Parties to Streamline and Resolve Their Family Law Cases More Quickly

Going to court to resolve family issues can be expensive for the parties. It involves paying legal fees, taking time off work, and paying for childcare while attending court. It is also a stressful and emotionally draining process. The Canadian Forum on Civil Justice reported in 2016 that "over half (51%) of people who reported having a [civil or family] legal problem experienced stress or emotional difficulty as a direct consequence of having that problem." To ease stress, services should be available, where appropriate, to allow parties involved in family court matters to mediate or settle the issues more quickly, and to support attempts to facilitate early resolution, rather than going through a lengthy and expensive court process.

2.3.1 Family Mediation and Information Services

Since 2011, the Ministry of the Attorney General (Ministry) has offered family mediation and information services at all courthouses that handle family law cases. These courthouses are called "base courthouses" by the Ministry. They have facilities for court appearances, and also provide document filing and other administrative services and functions.

The Ministry contracts third-party service providers to deliver a range of services associated with the family court process. See **Appendix 5** for the key entry points to these services and the process for mediating a case:

- On-site mediation intake and mediation sessions—free to the parties and intended to resolve narrow issues at the courthouse on the day of the court appearance. Each on-site mediation session typically takes two to three hours, which includes initial screening of the parties and mediation, if appropriate.
- Off-site mediation intake and mediation sessions—offered at a subsidized rate of $5/hour to $105/hour for each party, depending on their income and number of dependents. This typically takes place at the service provider's or mediator's place of business.
- Information and referral—performed by the Information and Referral Co-ordinator located in the Family Law Information Centre at family court locations, free of charge and available to anyone. The co-ordinator learns the individual's family law–related issues and matches them with appropriate services, such as shelter and legal services.
- Information sessions—free of charge for those involved in certain types of family law cases, and for the public to provide information on topics such as the effects of separation and divorce on parties and children, the court process, and alternative dispute resolution options like mediation. These sessions are typically delivered at courthouses, either during the day or after hours.

When effective, alternatives like mediation can divert less complicated matters away from the court, helping to maximize the use of court resources. Between 2014/15 and 2018/19, there was an average of about 4,500 mediation cases per year, involving family law cases that were both in and out of court. Almost 80% of these cases were fully or partially settled through mediation.

The Ministry has historically procured service providers for three-year terms, with two one-year extensions, at the discretion of the Ministry. The last contracts signed with 17 service providers expired on March 31, 2019; the new contracts were effective April 1, 2019, signed with 16 of mostly the same service providers. Providers bill the Ministry monthly for their services based on hourly rates up to a pre-determined, annual maximum amount. Between 2014/15 and 2018/19, the Ministry's expenditures on these contracts increased by about 5% from $6.9 million to $7.2 million annually. The maximum annual amount was $7.5 million per

Figure 3: Breakdown of Expenditure by Type of Service, 2014/15–2018/19 ($ million)

Source of data: Ministry of the Attorney General

Service	2014/15	2015/16	2016/17	2017/18	2018/19	5-Year Change (%)
On-site mediation	2.53	2.55	2.81	2.96	2.99	18.18
Information and referral co-ordinator services	3.00	2.91	2.89	2.88	2.92	(2.67)
Off-site mediation	0.74	0.72	0.69	0.67	0.74	–
Off-site mediation – intake	0.42	0.40	0.39	0.38	0.39	(7.14)
Information session	0.21	0.20	0.20	0.20	0.20	(4.76)
Total	**6.90**	**6.78**	**6.98**	**7.09**	**7.24**	**4.93**

Note: The Ministry entered into 46 contracts with 17 service providers for the 2014/15 to 2018/19 term to provide services at the 50 family court locations. Some contracts included more than one location.

year. See **Figure 3** for a breakdown of the annual amount paid by type of service in the last contract term. **Appendix 6** lists the 17 service providers and the amounts paid by the Ministry in 2018/19.

2.3.2 Dispute Resolution Officer Program

Dispute resolution officers meet with parties who have filed a motion to change an existing court order, such as a child custody order, before the parties meet with a judge. The program was developed to help parties resolve their outstanding issues on a consent basis early in their court proceeding, with the assistance of a dispute resolution officer instead of a judge. Dispute resolution officers are senior family lawyers appointed by a Superior Court regional senior judge. Unlike a judge, however, they cannot make orders on their own, or award costs to parties. If no resolution is reached, they make the case "judge-ready" by organizing the issues, and if required, obtaining a signed order from a judge for information disclosure.

The program was launched in 1996 by the Superior Court at one Toronto court location. It expanded to eight additional court sites between 2012 and 2015. At the time of our audit, the program was in place at nine court locations. It is usually scheduled to run one to four sessions each week, depending on the court location. Dispute resolution officers are paid $250 per session, for each day they are scheduled to run the program—significantly less than a judge's daily salary. The total expenditure for the program in 2018/19 was $169,000.

2.3.3 Child Support Service Online Tool

Effective April 4, 2016, eligible parents and caregivers in Ontario have been able to set up and update child support arrangements, without going to family court, by using the Child Support Service online tool. One parent can apply to use the tool to set up or update child support arrangements; the other parent can accept or decline to use the tool. The tool costs $80 per person per use.

Users provide consent and information required through the online tool. Staff at the Ministry of Finance then calculate the support amount, using income information provided by the parents or this Ministry's direct access to income information from the Canada Revenue Agency, and issue a notice. This child support amount is enforceable, like a court order. People who use the tool successfully do not need family court to set up or update child support, saving legal fees, and the time and cost of appearing in court. When more people use this system successfully, court resources can be used for more complex cases.

The Ministry of the Attorney General led the development of the tool. It was jointly funded by the Ministry of the Attorney General, the Ministry

Figure 4: Child Support Service Online Tool–Implementation and Operating Cost, and Revenue Collected, 2014/15–2018/19 ($ million)

Source of data: Ministry of the Attorney General

	2014/15–2015/16	2016/17	2017/18	2018/19	Total
Implementation cost[1]	5.70	–	–	–	**5.70**
Operating cost[2]	–	0.40	0.41	0.35	**1.16**
Total cost	**5.70**	**0.40**	**0.41**	**0.35**	**6.86**
Revenue collected[3]	–	0.01	0.02	0.03	**0.06**
Net cost	**5.70**	**0.39**	**0.39**	**0.32**	**6.80**

1. Funded over two fiscal years (2014/15 to 2015/16) by ServiceOntario ($4.1 million), Ministry of Finance ($0.8 million), the Family Responsibility Office ($0.5 million), and Ministry of the Attorney General ($0.3 million).
2. Solely paid by the Ministry of the Attorney General.
3. The fee to use the service may be waived if the individuals using the tool meet the conditions set out in the respective regulation under the *Administration of Justice Act*.

of Finance, the Family Responsibility Office (which collects, distributes and enforces court-ordered support payments) and ServiceOntario. The total implementation cost was $5.7 million. The Ministry of the Attorney General pays ongoing operating costs of approximately $350,000 to $410,000 per year. **Figure 4** shows the implementation cost, operating cost, and revenue collected between 2014/15 and 2018/19.

2.4 Ministry's Administration Support for Family Courts

The Ministry provides support services to all courts, including those that hear family law matters. In particular, the Ministry's Court Services Division (Division) staff:

- provide judicial support inside and outside of courtrooms; the staff act at the direction of the judicial official when assisting the judiciary in matters assigned to the judiciary by law;
- assist the public at court counters processing applications and documents; and
- maintain court records, and perform data entry in the family law case file tracking system, FRANK.

Family Law Case File Tracking System

The Division uses FRANK, an information system, to track family law case files. The Division is responsible for the collection and quality of the court's data. The Ministry stores, maintains, archives, releases and uses this data under the direction of the judiciary. It tracks information such as the names of parties, types of cases, dates and locations where applications are filed, dates and types of document submissions, and dates of court events.

Court staff are required to enter data in the FRANK system when parties submit documents. After each court event, staff must retrieve the physical files including the judge's endorsements, and enter adjournment dates or orders issued, if any.

3.0 Audit Objective and Scope

Our audit objective was to assess whether the Ministry of the Attorney General (Ministry) had effective systems and procedures in place to:

- utilize Ministry resources for courts efficiently and in a cost-effective way;
- support the resolution of family law matters on a timely basis, with consistent delivery of court services across the province, in accord-

ance with applicable legislation and best practices; and

- measure and publicly report periodically on the results and effective delivery of court services in contributing to a timely, fair and accessible justice system.

Before starting our work, we identified the audit criteria we would use to address our audit objective. These criteria were established based on a review of applicable legislation, policies and procedures, and internal and external studies. Senior management at the Ministry reviewed and agreed with our objective and associated criteria as listed in **Appendix 7**.

Our audit work was conducted primarily at the Ministry, and the seven court locations, covering all seven regions that we visited from January to August 2019. The seven courthouses were Newmarket, Ottawa, Sault Ste. Marie, Thunder Bay, Milton, Windsor and 311 Jarvis Street, Toronto. We based our selection of courthouses on factors including number of cases received and the trend in the number received, average days needed to dispose of a family law case, number of cases waiting to be disposed, and other observations we made in our audit that prompted further examination.

We obtained written representation from the Ministry, effective November 14, 2019, that it has provided us with all the information it is aware of that could significantly affect the findings of this report, except for the effect of the matters described in the scope limitation section.

The majority of our audit work covered information going back three to five years, with trend analysis from the past five years. We also reviewed relevant information from other Canadian provinces.

We conducted the following work:

- Interviewed senior management and appropriate staff, and examined related data, domestic family law case files and other documentation at the Ministry's head office and the seven courthouses.
- Spoke to senior management at the Office of the Chief Justice of the Ontario Court of Justice (Ontario Court) and the Office of the Chief Justice of the Superior Court of Justice (Superior Court).
- Spoke to representatives from Legal Aid Ontario, the Office of the Children's Lawyer, the Family Responsibility Office, the Association of Children's Aid Societies, the Association of Native Child and Family Service Agencies of Ontario, selected children's aid societies, selected service providers of family mediation and information services, and the Ontario Association for Family Mediation to gain their perspectives on family court services in particular.
- Engaged an expert advisor within Ontario with an extensive family law background and expertise.
- Considered the relevant issues reported in our 2008 audit "Court Services."
- Reviewed the work conducted by the Ministry's internal audit and considered the results of these audits in determining the scope of this value-for-money audit.

Scope Limitation

The *Auditor General Act* requires the Auditor General, in the annual report for each year, to report on whether the Auditor received all the information and explanations required to complete the necessary work. Section 10 of the *Auditor General Act* states, in part, "The Auditor General is entitled to have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by a ministry, agency of the Crown, Crown controlled corporation or grant recipient, as the case may be, that the Auditor General believes to be necessary to perform his or her duties under this Act."

In addition, the memorandum of understanding signed between the Attorney General and the Chief Justice of the Ontario Court of Justice in 2016 states, in Section 3.4, "The financial and

administrative affairs of the Ontario Court of Justice, including the Office of the Chief Justice, may be audited by the Provincial Auditor as part of any audit conducted with respect to the Ministry."

Although Ministry staff were co-operative in meeting with us during our court visits, we experienced significant scope limitations in our access to key information and documents that would be required to complete the necessary audit work, mainly related to court scheduling and child-protection case files. We discuss our restricted access to matters related to court scheduling in **Chapter 2**, Court Operations, in this volume.

With respect to child protection cases, we requested access to review a sample of child-protection case files to assess whether effective and efficient court services processes are in place for these cases as required by applicable legislation, such as the statutory timelines stipulated under the *Child Youth and Family Services Act, 2017*, and the F*amily Law Rules* under the *Courts of Justice Act*. However, our Office was refused complete access to the documents we needed to complete our work in this area.

Representatives from both the Office of the Chief Justice of the Ontario Court of Justice and the Office of the Chief Justice of the Superior Court of Justice cited section 87(8) in the *Child, Youth and Family Services Act, 2017*, that:

> *No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding, or the child's parent or foster parent or a member of the child's family.*

This clause was used as the rationale for limiting our Office's access by not providing us with complete child protection files that we selected, although we informed the Offices of the Chief Justices that we had no intent to identify individuals in this report. Our objective was to determine why there were delays in the courts in meeting statutory timelines in child protection cases.

Subsequent to our ongoing audit requests and after considerable time had passed, the Ministry, with the approval of both Offices of the Chief Justices, provided only a limited portion of the case documents we had requested, as follows:

- For the 85 cases selected, we were provided case history reports with the child's and parties' names redacted. A case history report provides dates and types of events scheduled and/or occurred, as well as orders issued. However, it does not explain, for example, why multiple adjournments were granted, even when it appeared that the cases had already passed the statutory timelines.
- For 15 of 85 cases selected, we were provided with the judges' endorsements made in each case (mostly handwritten) and orders with the child's and parties' names redacted. These handwritten endorsements were made by judges to document key facts and timelines of a case and are considered a part of judicial orders. However, because these endorsements were handwritten and redacted, some of them were not legible enough to read and fully understand the details of each case.

Because we were refused complete access to the case files, we were unable to identify whether the amount of time the subject children had been in care exceeded the timelines in the Act, and the reasons for any delays there might have been. We inquired further, but the Court Services Division refused to allow its staff to assist us with questions about why some cases were delayed, why some cases remained unresolved and why some adjournments were granted, as well as other questions about the final decisions made by the courts. The Division's management responded that Ministry staff were not able to comment about the decisions made by the Courts.

We then requested both the Offices of the Chief Justices to provide reasons for some of these case delays. A representative from the Office of the Chief Justice of the Ontario Court of Justice responded that our audit questions related to judicial case

management, which was not within the scope of the audit mandate. A representative from the Office of the Chief Justice of the Superior Court of Justice stated that judges' endorsements speak for themselves, and it was not appropriate for their office to try to interpret them.

Appendix 8 outlines the restriction in access to information that we encountered during our audit. **Appendix 9** lists some of the information related to child protection cases and domestic family law cases that was publicly available. For the case-related information that was not publicly available, we listed the specific information that we requested and received access to, versus what we requested but were refused access to during our audit. For information we were refused, we provided an explanation of why we needed the information for our audit purposes, and the impact on our audit.

4.0 Detailed Audit Observations

4.1 With Only Limited Access, We Managed to Confirm That There Are Delays in Resolving Child Protection Cases beyond Statutory Timelines

4.1.1 Unresolved Child Protection Cases Pending Longer than the Statutory Timelines Required by the *Child, Youth and Family Services Act, 2017*

We found that 23%, or 1,189, of the 5,249 child protection cases that were unresolved as of July 31, 2019, had exceeded 18 months. Of the 1,189 child protection cases, 762 had exceeded 30 months. Under the *Child, Youth and Family Services Act, 2017*, the court can make an order for interim society care for up to 18 months for children under six years old, and up to 30 months for children between ages six and 17. However, of the 1,189 pending child protection cases, the Ministry did not track and therefore was unable to identify how many children were in the interim care of the society, or in a temporary arrangement such as foster care. In fact, some cases were still unresolved after more than three years (**Figure 5**). Research and studies found that children in foster care have disproportionately high rates of physical, developmental and mental health problems. Therefore, the earlier these cases can be resolved, the better for each child's well-being. This is especially true for younger children.

During our audit, we were refused full access to review child protection cases (details in **Section 3.0** and **Appendix 8**). Of the 85 child protection case files requested, we received only the redacted case history reports, which contain listings of scheduled court events and orders issued. Upon further requests, we obtained redacted judicial hand-written endorsements for only 15 of the cases. These documents were insufficient for us to determine if or how many of these cases were even subject to the statutory timelines allowed under the Act. As well, we could not confirm reasons why some cases exceeded the timelines considering the best interests of the children.

Based on the delayed and limited information provided to us, we noted that some cases involved children who had been in foster care for far longer than the statutory timelines. For example:

- In 2013, the Ontario Court ordered two children, aged six and eight, into temporary foster care after a children's aid society (society) had removed them out of concern for the children's well-being. In 2017, four years after the case was filed, the court ruled that the children were in need of protection, and determined that a trial was required to decide if the children should remain in the society's care. In late 2018, the court heard a motion brought by the society seeking an order that the children be placed in their extended care. Four months later, in early 2019, the court granted the society's motion, establishing permanency for the two children—five years after the case was filed.

Figure 5: Number of Child Protection Cases Pending Disposition, by Length of Case, as of July 31, 2019

Source of data: Ministry of the Attorney General

	# of Child Protection Cases Pending Disposition, as of July 31, 2019	% of Total
Less than six months	2,507	
Six to less than 18 months	1,553	
Subtotal (less than 18 months)	**4,060**	**77**
18 to less than 30 months	427	
30 months to 3+ years	762	
Subtotal (18 months and over)	**1,189***	**23**
Total	**5,249**	**100**

* This number incorporated the correction made as a result of the errors (1,517 cases and 138 cases) identified by the Office of the Chief Justice of the Superior Court of Justice and based on our audit, as mentioned in **Section 4.1.4**.

- In 2014, five children ranging in age from three to 14 were placed in temporary foster care. After a series of court dates over almost four years, the court held a five-day trial in early 2018. The court ruled, after about two months, that that the children were in need of protection, and that the trial would continue. Eight months later, the trial resumed for only one day in late 2018. In early 2019, the court set two, one-day trial dates later in 2019. At the time of our audit, no final court decision had been rendered, although the children had already been in temporary foster care since the case was filed nearly six years earlier.
- In fall 2017, a society removed a newborn at birth. At the time, the Superior Court ordered that the child be placed in temporary foster care. In early 2019, 15 months after the society filed the case, a judge issued a summary judgment motion based on facts evident to the case, determining the child was in need of protection, and made a final order for the child to be placed in extended society care until adopted. This case was especially time sensitive because babies form strong attachments to early caregivers.
- Two children, aged one and six, were placed in temporary foster care in 2016. The trial was not held until two years later in 2018. The Ontario Court ruled the children should be placed in the extended care of the society. However, this decision was not issued by the court until late 2018, almost two and half years after the case was filed with the court.

We also noted two publicly available court decisions where children were in foster care for longer than allowed by the statutory timelines:

- A 2015, Ontario Court of Appeal decision, *C.M. v. Children's Aid Society of the Regional Municipality of Waterloo*, found that the children involved in the case had been in care for more than five years by the time of the appeal. The court decision reiterated that none of the legislated time limits under the then *Child and Family Services Act* were even remotely adhered to in this case.
- A 2017 decision by the Superior Court of Justice in the case of *Children's Aid Society of Ottawa v. B.H.* involved a 22-month-old child who had been in the interim care of the society since birth. The Superior Court stated the "legislature has directed that a child this age should not be in care longer than 12 months. This time limit is clearly meant to minimize the negative effects on a child of the instability and disruption inherent in an application like this one. The boy's bond with his interim caregiver is now deeper than it ought to have been

allowed to get. Delays in the court proceedings unfolded as it did at least in part because of a lack of judicial resources as the Court was not available to hear the matter earlier."

In order to monitor and identify child protection cases that are close to exceeding the statutory timelines, the courts need the following critical information: 1) whether a child is in temporary or interim society care, including foster care, and, if so 2) how long the child had been in temporary or interim society care, and 3) the age of the child involved. However, we found that the FRANK system does not have the capability to provide this critical information to the court to assist in monitoring for these cases proactively. For example, FRANK could not identify how many of the 1,189 cases pending disposition for more than 18 months as of July 31, 2019, involved children placed in interim society care, such as foster care—the criteria used to determine whether statutory timelines required under the *Child, Youth and Family Services Act, 2017*, apply. Without this needed capability in FRANK, the only way for the court to monitor for these attributes would be to retrieve each physical case file and review court events, such as orders issued, and manually calculate the number of days in care. This is why we requested the age of the child and whether the child was placed in temporary or interim society care from individual files, so that we could calculate the number of days in care in accordance with statutory timelines. However, our request for this information was denied (**Section 3.0** discussed our scope limitation).

We noted the State of Minnesota court publicly reports on the length of time it takes for children who are removed from their custodial parents to find permanent homes. The court sets a goal to have 99% of these child protection cases concluded within 18 months from the time of removal. However, Ontario sets no such target for managing child protection cases.

RECOMMENDATION 1

To support the protection of children in care and consistent compliance with statutory timelines required under the *Child, Youth and Family Services Act, 2017*, we recommend that the Ministry of the Attorney General work with the judiciary to complete a review of child protection cases, and identify areas where improved court systems and processes would result in earlier resolution of cases.

MINISTRY RESPONSE

The Ministry agrees to continue to work with the Offices of the Chief Justice for the Ontario Court of Justice and the Superior Court of Justice, as well as with other justice partners to identify the reasons for delays in child protection cases that lie within the Ministry's mandate to address. To this end, the Ministry will continue to address areas for improved court systems and processes that could contribute to earlier resolution of child protection cases.

For example, the Ministry has recently, in June 2019, implemented changes to the information displayed on daily court dockets so that the child protection files listed include each child's date of birth. Placing this information within the daily court docket (previously only included within court file itself), together with existing case-specific information about the age of the case, permits the presiding judge to more easily assess the relevant requirements and timelines that may apply.

RECOMMENDATION 2

To support the protection of children in care, and to assist the courts in managing child protection cases subject to statutory timelines required under the *Child, Youth and Family Services Act, 2017*, we recommend that the Ministry of the Attorney General upgrade the FRANK system to monitor and track critical

information, including whether a child is in temporary or interim society care such as foster care, and if so, how long the child had been in temporary or interim society care, and the age of the child involved.

MINISTRY RESPONSE

The Ministry agrees to work with Justice Technology Services to upgrade the FRANK system to capture the metrics recommended to assist courts in managing child protection cases.

4.1.2 Restrictions Placed on Our Audit Prevented Us from Concluding Whether Child Protection Cases Were Managed According to the Ontario Court of Justice's Best Practices Guidelines

Both the Ontario Court and the Superior Court have responsibilities to manage child protection cases. The Ontario Court published its *Guiding Principles and Best Practices for Family Court* that state:

- "… child protection matters whose outcome would affect the well-being and day-to-day physical, emotional and/or mental health of children should be considered matters where time is of the essence. Scheduling of these matters should reflect this."
- "Judicial time should be made available so these matters will be completed in a timely fashion."
- "Child Protection adjournments must be judicially managed and reasons should be provided to ensure that unnecessary adjournments are not made."
- "When a Child Protection trial is set, it should be set for continuous days."
- "If the dates set for Child Protection trials are insufficient, dates for continuation must be given priority."

The Superior Court also established *Best Practices for Child Protection Cases*, which address the scheduling, assignment and conduct of each step in a child protection case. This best practices guide is not publicly available, so we requested a copy of it. However, a representative from Office of the Chief Justice of the Superior Court refused to provide a copy for our audit purposes.

Once again, we were unable to determine if child protection matters were scheduled as early as possible, or why they were adjourned multiple times. However, based on the limited information that we were able to obtain, we noted the following examples where multiple adjournments occurred that prolonged the cases:

- The Ontario Court issued a temporary supervision order in 2015 placing a child in the care of a parent after a motion was filed by a children's aid society (society). In early 2016, the court ruled that a nine-day trial was needed to decide the final custody of the child. The case was then adjourned for six months to schedule a trial date. The trial did not take place, however, as the parties filed a motion to continue their case discussions. In about six months, between late 2016 and early 2017, several court dates were scheduled but did not proceed because a judge was not available, and there was insufficient court time available on the days the events were scheduled. In mid-2019, four years after the case was filed, the court decided the final custody of the child.
- In one of the cases described in **Section 4.1.1**, we noted that 19 adjournments were granted by the Ontario Court. The court's decision noted that the society requested the adjournments between 2013 and 2017. We noted 14 of the adjournments resulted in more than 30 days between scheduled court events.
- In another case mentioned in **Section 4.1.1**, we noted that the Ontario Court scheduled three trial days over a one year period—one day in 2018, and two days in 2019 that were three months apart, contradicting the Ontario Court's best practice guide, which states that

a child protection trial should be scheduled for continuous days.

We also noted that while the FRANK system tracks individual dates of adjournments when granted by the courts, it does not have the capability to calculate the total number of adjournments granted per case, or the time between the adjournments. This information would be useful for judges to assess the progression of child protection cases without manually counting the number of adjournments from case history reports.

RECOMMENDATION 3

To assist judges of the Ontario Court of Justice and the Superior Court of Justice manage and resolve child protection cases in a timely manner, we recommend that the Ministry of the Attorney General upgrade the FRANK system to provide useful information about court adjournments, such as the total number of adjournments granted per case and the time between adjournments.

MINISTRY RESPONSE

The Ministry agrees to work with representatives from the Offices of the Chief Justice for the Ontario Court of Justice and the Superior Court of Justice to explore ways in which more "at-a-glance" information can be provided to support the judiciary, in addition to the information within the court file itself, and which may otherwise be obtained through the parties and the evidence filed on their behalf.

4.1.3 Non-compliance with the 120-Day Statutory Timeline as Required under the *Family Law Rules*

The *Family Law Rules*, a regulation under the *Courts of Justice Act*, establishes five statutory timelines to help ensure child protection cases progress in a timely manner by reducing unjustified or unnecessary adjournments. One of the timelines states that a "hearing" must be held within 120 days from the date the application is filed with the court. In most circumstances, it is in the child's interest for the case to be resolved within 120 days, unless the courts determine otherwise.

Of the 7,199 child protection cases that were disposed of as of March 31, 2019, 4,103 (or 57%) exceeded the 120-day statutory timeline. However, information maintained in FRANK did not provide sufficient, detailed reasons why these cases were extended, considering the best interests of the children.

Representatives from the Offices of the Chief Justices of the Ontario Court and the Superior Court indicated that the 120-day timeline was not always practical or applicable in all child protection cases.

RECOMMENDATION 4

To support the well-being and best interests of the child and to help guide the timely disposition of child protection cases, we recommend that the Ministry of the Attorney General work with the judiciary to revisit the applicability of the 120-day statutory timelines and reinforce the circumstances in which this timeline should be followed and enforced.

MINISTRY RESPONSE

The Ministry agrees to share this recommendation with the Offices of the Chief Justice for the Ontario Court of Justice and the Superior Court of Justice, and with the Family Rules Committee, an independent body that has the jurisdiction to make the Family Law Rules (including any rules regarding case management and timelines), subject to the Attorney General's approval, under the *Courts of Justice Act*.

4.1.4 The Number of Child Protection Cases Pending Disposition Captured in the FRANK System Was Not Accurate

According to the FRANK system, there were a total of 6,417 child protection cases pending disposition as of March 31, 2019, and 2,844 (or 44%) of these cases were older than 18 months. A review led by the Office of the Chief Justice of the Superior Court with assistance from the Ministry found that cases were not updated or incorrectly recorded by the Ministry's court staff in FRANK as "pending," or still active, when they should have been closed.

In July 2019, after the Superior Court's review, an update from the FRANK system found that of the 2,844 cases that were recorded in March 2019 as pending disposition for over 18 months, 1,517 cases had been closed. The Ministry provided an update confirming that 1,327 cases were pending as of July 31, 2019. We used this number to arrive at **Figure 5** in **Section 4.1.1**. After receiving the updated information on cases pending, we noted significant revisions at some court locations. The pending numbers from one courthouse declined from 393 cases to only 10 cases, and the number from another courthouse declined from 277 cases to 37 cases.

During our audit, we also found that information in the FRANK system showed another courthouse where 138 cases had been pending disposition for three years or more. This is considered abnormal, based on the number of cases received by this courthouse. After our inquiries, the court staff verified and confirmed that all 138 cases had been inactive since 2004 and therefore should be recorded as "disposed" in FRANK, rather than "pending disposition." We deducted these 138 cases for **Figure 5** in **Section 4.1.1**.

Accurate and timely information about the number of child protection cases pending disposition is critical. Both the courts and the Division need this information to monitor and manage cases according to the statutory timelines under the *Child, Youth and Family Services Act, 2017* and the *Family Law Rules* under the *Courts of Justice Act*.

Because of the inaccuracies identified, we could not rely on FRANK to perform an accurate trend analysis of time taken to dispose of cases and the aging of pending cases. For example, we noted that in 2016/17 the Ministry conducted a clean-up exercise and identified over 2,000 cases that were incorrectly recorded as pending in FRANK. Despite the clean-up exercise, we found further discrepancies in FRANK that were not reconciled by Ministry staff, as shown in **Figure 6**.

Figure 6: Number of Child Protection Cases Received, Disposed and Pending Disposition, as Reported in FRANK and Data Discrepancy, 2014/15–2018/19

Source of data: Ministry of the Attorney General

	2014/15	2015/16	2016/17*	2017/18	2018/19	Source of Data
# of cases pending disposition, beginning of year **(A)**	7,632	8,137	8,423	6,108	5,722	FRANK Information System
# of cases received, during year **(B)**	9,343	8,824	8,759	8,509	7,412	FRANK Information System
# of cases disposed, during year **(C)**	8,838	8,440	10,862	8,890	7,199	FRANK Information System
# of cases pending disposition, end of year (D)=(A)+(B)–(C)	**8,137**	**8,521**	**6,320**	**5,727**	**5,935**	**Subtotal**
# of cases pending disposition, end of year **(E)**	8,096	8,423	6,108	5,722	6,417	FRANK Information System
Discrepancy (D)–(E)	**41**	**98**	**212**	**5**	**(482)**	

* The Ministry conducted a data clean up exercise in February 2017 and identified over 2,000 cases that were wrongly recorded as "pending" in FRANK. The 10,862 resolved cases and 6,108 cases pending disposition were adjusted with the error corrected.

RECOMMENDATION 5

So that the Ontario Court of Justice and the Superior Court of Justice can monitor the current status of child protection cases, we recommend that the Ministry of the Attorney General:

- review all child protection cases captured in FRANK as "pending" to confirm their status and make the necessary corrections; and
- conduct a regular review of cases pending disposition for over 18 months to confirm the accuracy of the information and make the necessary corrections.

MINISTRY RESPONSE

The Ministry agrees, in consultation with the Offices of the Chief Justice for the Ontario Court of Justice and the Superior Court of Justice, to take the steps identified in the recommendation.

4.2 Some Delay in Obtaining Hearings for Domestic Family Law Cases

4.2.1 Delay in Obtaining Next Available Court Date at a Few Superior Court Locations

For family law cases other than child protection cases, we found that a few Superior Court locations were unable to offer timely court dates for various types of court appearances in accordance with its *Family Law Best Practices*, provided to us and discussed in **Section 2.2.2**.

Our review was based on the records provided by the Office of the Chief Justice of the Superior Court for its 50 family law court locations. The records showed the number of weeks to the next available hearing date that the courts could offer for various types of hearings on five specific dates between April 2018 and April 2019. However, because we were refused access to court scheduling information, we were unable to verify the completeness and accuracy of the data provided by the Office of the Chief Justice of the Superior Court.

To assist in resolving a family law case, the most common court events are case conferences, and settlement conferences. The goal of a case conference is to determine if some or all outstanding issues could be settled, and to ensure all documents have been exchanged between the parties involved. The goal of a settlement conference is to settle all or some issues permanently without proceeding through a full court process. These conferences involve the parties meeting with a judge, and are usually scheduled for 45 minutes to an hour.

In 2018/19, the Superior Court held approximately 16,000 case conferences and 14,000 settlement conferences. Our review of the records, provided by the Office of the Chief Justice, noted the next available hearing date at a few court locations were longer than the Superior Court's best practice timeline. In particular:

- for case conferences, seven of the 50 court locations did not meet the suggested best practice timelines on all five dates. At four of seven court locations, the parties waited as long as 10 to 12 weeks, compared to the best practice of six weeks; and
- for settlement conferences, six of the 50 court locations did not meet the suggested timeline of eight weeks on all five dates; some parties waited up to 16 weeks.

The Superior Court also tracks the next available hearing dates for both short and long motions. A short motion is defined as requiring less than one hour in court, and a long motion requires over one hour, up to a full day in court. Motions allow the parties to ask the court to make temporary decisions on the matters they have asked the court to decide. Either party can make motions before the court. For example, one party could ask a judge for a temporary order determining where the children will live, and how much time they will spend with each parent. This temporary decision would be in place until the court makes final decisions about custody and access. In 2018/19, the Superior Court heard approximately 35,000 family law motions. Based on the same records provided by the Office

of the Chief Justice the Superior Court for its 50 family law court locations, on five specific dates, between April 2018 and April 2019, we found:

- for short motions, two of the 50 court locations were unable to meet the best practice timeline of four weeks on all five dates. Instead some parties waited up to nine weeks.
- for long motions, four of the 50 court locations did not meet the best practice timeline; some parties waited up to 36 weeks for all five dates, compared to the best practice of 12 weeks.

For family law cases where the parties were unable to resolve all issues, a trial is usually required. In 2018/19, the Superior Court heard approximately 2,000 trials. Short trials are defined as trials up to 10 days in length. We reviewed the same records provided by the Office of the Chief Justice of the Superior Court for its 50 family law court locations, on five specific dates, between April 2018 and April 2019. The next available court dates for short trials at four of the 50 court locations did not meet the best practice timeline of 12 weeks on all five dates. Some parties waited up to 34 weeks.

The *Family Law Rules*, under the *Courts of Justice Act*, require family law trials and other court events to be held at courthouses in the municipality where the parties reside. Therefore, parties living in municipalities experiencing high wait times are unable to move their cases to jurisdictions with shorter wait times unless special approvals are obtained from the judiciary.

Although the Courts attempt to resolve family law cases as soon as possible, a representative from the Office of the Chief Justice of the Superior Court indicated that it has been difficult to meet the court's own best practice timelines due to insufficient judicial resources and/or lack of courtrooms. Our Office was unable to validate this, as our Office was denied access to court scheduling by the judiciary.

We reviewed courtroom usage data for courts province-wide. We noted the average number of courtroom operating hours per day in 2018/19 for the Brampton, Milton, Ottawa and Newmarket courts was significantly higher than the provincial average. Therefore, the lack of court facilities could be impacting the wait times for various family law court events at these specific courthouses.

4.2.2 Most Ontario Court Locations Reported Minimal Waits for the Next Available First Court Appearance; Missing or Limited Data Reported for Some Other Locations

The Ontario Court also established *Guiding Principles and Best Practices for Family Court*, but it does not specify targets for maximum timelines from filing family law application to a first court appearance. The Ontario Court's 37 family court locations only report data on the next available date for a first court appearance. At a first appearance, the parties usually meet with a court clerk to ensure all relevant documents are filed with the court and served on the other party; the clerk can then schedule a case conference.

We reviewed the data for first court appearances provided by the Office of the Chief Justice of the Ontario Court for its 36 family court locations for the calendar years 2016, 2017 and 2018, and noted that:

- six court locations either did not submit any data or provided very limited data on first court appearances;
- minimal waits, within a month, were reported for 27 court locations; and
- only three court locations reported delays where the applicants waited two to three months for a first court appearance.

Unlike the Superior Court, the Ontario Court does not gather wait time information for other court events involved in a family law cases, such as case and settlement conferences, motions and trials. Therefore, the amount of time parties wait for these family law events in Ontario Court is unknown. **Appendix 4** shows the steps of a typical domestic family law case.

Again, because we were refused access to court scheduling information, we were unable to verify the completeness and accuracy of the data provided by the Office of the Chief Justice of the Ontario Court.

RECOMMENDATION 6

To provide timely access to justice specifically for family law cases other than child protection cases, we recommend that the Ministry of the Attorney General, in conjunction with the judiciary:

- establish reasonable timelines or best practices for key court events for resolving family law cases received by the Ontario Court of Justice; and
- monitor reasons for significant delays and take corrective action where warranted for both the Ontario Court of Justice and Superior Court of Justice.

MINISTRY RESPONSE

The Ministry agrees to share the recommendation with:

- the Ontario Court of Justice and Superior Court of Justice, who have the exclusive responsibility and control over the scheduling of cases and assignment of judicial duties under the *Courts of Justice Act*; and
- the Family Rules Committee, an independent body that has the jurisdiction to make the Family Law Rules (including any rules regarding case management and timelines), subject to the Attorney General's approval, under the *Courts of Justice Act*.

4.2.3 Family Courts Do Not Publicly Report on Next Available Court Dates in Domestic Family Law Cases

Neither the Superior Court nor the Ontario Court publishes data or information on wait times for various family court appearances. As a result, parties in family law cases will not know the expected wait times for family court appearances in the Superior Court, or the wait time for a first court appearance in the Ontario Court.

By comparison, the British Columbia Provincial Court began posting public reports in 2005. The reports, posted twice a year, detail the time from the date a request or order is made for a conference or trial, to the date when cases of that type can typically be scheduled. It is an estimate, or expected wait time, of when court time would be available for a particular event. Based on the publicly reported statistics, parties accessing the British Columbia Provincial Court system can determine the overall wait time for family law case conferences, motions and trials based on length and wait times at any family court location across the province.

RECOMMENDATION 7

In order to allow the public to be more informed on wait times, we recommend that the Ministry of the Attorney General, in conjunction with the judiciary, improve the transparency of both the Ontario Court of Justice and Superior Court of Justice by publishing information such as targets and expected wait times for key family court events, by court location.

MINISTRY RESPONSE

The Ministry agrees to raise the recommendation with the Offices of the Chief Justice for the Ontario Court of Justice and the Superior Court of Justice to the extent possible while continuing to respect the independence of the judiciary.

Court activity reports and information with respect to wait times constitute court data/information, and the Court Services Division collects and maintains this information at the direction of the judiciary.

4.2.4 Pending Numbers of Domestic Family Law Cases Captured in FRANK Are Inaccurate

There were 183,997 domestic family law cases recorded as "pending" as of March 31, 2019 in the FRANK case file tracking system. Of these, 30,691, or 17%, were less than a year old; 43,102, or 23%, ranged from one to five years old; and 110,204, or 60%, were over five years old.

Based on our review of a sample of domestic family law cases pending disposition for over a year as of March 31, 2019, we found that 56% were either disposed or had been inactive for over a year. Therefore, the number of pending cases recorded in FRANK is overstated. In the sample of 70 cases we reviewed:

- 25% were actually disposed in court but recorded as pending in FRANK because these cases were not updated by court staff properly, or in a timely manner.
- 31% did not show any court activity for a year after the last event on file. These cases, which range in age from one to 10 years, appeared to have been abandoned by the parties. The court staff had not followed up to confirm the status of these cases.
- 44% were active cases. These cases either had a court date coming up, or some court activity in the year leading up to our review. In these cases, we noted that delays were due to issues with the parties' readiness.

Therefore, our audit found that a minimum of one quarter of the pending cases we reviewed were not updated in FRANK properly, and as such, the statistics for these cases in FRANK were not reliable. As a result, neither the Ministry nor the courts effectively monitored how cases were progressing through the family court system.

The status of case files (received, disposed, or pending disposition) is important to monitor to understand where there is demand for family court services, and to plan for the future allocation of resources across the province.

Further, we observed that these inaccuracies cause inefficiencies in other courthouse operations. For example, we saw that storage space and office hallways in almost all seven courthouses we visited were overflowing with boxes of case files.

Courthouses are required to keep files on-site for an average of three years after cases are closed. However, we noted that staff are unable to easily identify files that are old enough to be archived to make space for new files. As a result, court staff continue to store and maintain unnecessary case files on-site, contributing to overflowing case files at courthouses.

The courthouses we visited indicated that staff would have to go through physical case files to review the status of each pending case to update the FRANK system. One courthouse had approximately 28,000 cases pending for five years or more as of March 31, 2019, the largest number in the province. Staff from this courthouse said that they were only able to dispose 92 of these cases in FRANK, and could not confirm whether the remaining pending cases were still active or not. They also indicated that they could not review all of these long-standing pending cases due to other priorities for staff resources.

Figure 7 shows the number of domestic family law cases received, disposed and pending disposition between 2014/15 and 2018/19 as reported in FRANK, as well as the discrepancy in cases that we calculated that had not been reconciled by Ministry staff.

RECOMMENDATION 8

To report the statistics on pending cases accurately so that case files that should be closed are removed from active-case files at courthouses, we recommend that the Ministry of the Attorney General, specifically for family law cases other than child protection cases:

- review existing pending case files to determine their current status;

Figure 7: Number of Domestic Family Law Cases Received, Disposed and Pending Disposition, as Reported in FRANK and Data Discrepancy, 2014/15–2018/19

Source of data: Ministry of the Attorney General

	2014/15	2015/16	2016/17	2017/18	2018/19	Source of Data
# of cases pending disposition, beginning of year **(A)**	160,622	164,921	169,927	178,292	186,701	FRANK Information System
# of cases received, during year **(B)**	62,437	60,686	60,042	56,918	55,557	FRANK Information System
# of cases disposed, during year **(C)**	57,857	55,484	51,489	50,491	59,462	FRANK Information System
# of cases pending disposition, end of year (D)=(A)+(B)−(C)	**165,202**	**170,123**	**178,480**	**184,719**	**182,796**	**Subtotal**
# of cases pending disposition, end of year **(E)**	164,921	169,927	178,292	186,701	183,997	FRANK Information System
Discrepancy (D)−(E)	**281**	**196**	**188**	**(1,982)**	**(1,201)**	

- follow up on cases that have been inactive for over a year to confirm their status; and
- update the FRANK case file tracking system accordingly.

MINISTRY RESPONSE

The Ministry agrees, in consultation with the Offices of the Chief Justice for the Ontario Court of Justice and the Superior Court of Justice, to take the steps identified in the recommendation.

4.3 Poor Contract Management and Oversight of Family Mediation and Information Services

4.3.1 The Ministry Paid an Average of $2.8 Million per Year for On-site Mediation Services but Only about One-Fifth of These Hours Were for Mediation

Our audit found that the Ministry lacked proper contract management and oversight of family mediation, and information and referral co-ordinator services provided by third-parties across the province. In particular, the Ministry's contracts with service providers for family mediation services do not tie pay to the mediation work performed in the courthouses.

For on-site mediation, service providers bill the Ministry for the number of hours a mediator was available at the courthouse, not for the actual number of hours of mediation services provided. Between 2014/15 and 2018/19, service providers billed about $2.8 million per year, on average, for 34,450 hours of availability for on-site mediation services. However, based on the number of on-site mediation intakes, and the number of mediation sessions completed, we estimated that on-site mediators engaged in mediation work for only about 7,200 hours, or just over 20% of the total hours billed. The invoices submitted by service providers did not indicate the type of work, if any, the mediators engaged in for the remaining time billed—almost 80% of the hours spent on-site.

We found that the Ministry contracts with the service providers neither focus on the activity of providing on-site mediation services, nor appropriately incentivize service providers to promote these services, as discussed in **Section 4.3.3**. For the contracts ended March 31, 2019, and the new contracts effective April 1, 2019, the only performance requirement for on-site mediation was a minimum number of hours the service provider was required

Figure 8: Ministry Payments for On-Site Mediation Services versus Hours of Mediation Services Performed, Select Examples, 2018/19

Source of data: Ministry of the Attorney General

Court Location	Ministry Payment for On-site Mediation Services ($)	# of Family Law Cases Received[1] By Court Location	Minimum # of Hours Required by the Contract	# of Hours Billed by the Service Provider (A)	Estimated Hours of Mediation Services Performed[2] (B)	On-site Mediation Service Utilization Rate (%) (B/A)
A	108,700	1,500	1,092	1,087	98	9
B	98,900	3,000	1,560	1,648	81	5
C	83,100	700	780	923	32	3

1. Number of divorce, child and spousal support, and child custody and access cases received by court location.
2. The sum of all on-site mediation intakes, assuming half an hour per intake, and all on-site mediation sessions completed, assuming two hours per mediation sessions.

to be available. However, the Ministry paid service providers the same hourly rate regardless of the services performed, whether the time was spent on actual mediation, which use their professional skills, as opposed to other administrative duties, or simply being available. As such, service providers could still provide the minimum number of hours required without engaging in the mediation work that helps divert cases away from the court system.

Figure 8 shows examples of service providers that met, or were close to meeting the performance requirement, but were not actively engaged in mediation services. For example, in 2018/19, the Ministry paid $108,700 to a service provider at court location "A" based on 1,087 hours billed—almost the minimum of 1,092 hours stipulated in the contract. We found, however, that this service provider only provided the equivalent of about 98 hours of mediation. This means that most of this payment was for availability, and not necessarily mediation-related work.

RECOMMENDATION 9

To increase the value for money paid for on-site mediation services, we recommend that the Ministry of the Attorney General work with the Family Mediation and Information Service providers to establish an activity-based payment structure in their contracts.

MINISTRY RESPONSE

The Ministry agrees to review the service delivery model for Family Mediation and Information Services and consider options for an activity-based payment structure for the next procurement cycle.

4.3.2 Use of Ministry-Funded Mediation Services Has Varied Uptake at Court Locations

The family justice system is complex and there are many participants involved. Parties may find out about mediation themselves or be directed to try mediation by, for example, judges, their lawyers, or duty counsel from Legal Aid Ontario. Mediation, when used appropriately, can be more cost-effective for both the parties and the Ministry for resolving family law cases. Parties can benefit from more use of mediation services, instead of going through the court system for resolving their family law matters.

However, the Ministry has not been a strong promoter of the mediation services it funds. The Ministry delegated the responsibility to promote mediation services to the individual service providers through their service provider contracts.

This delegation has contributed to differences in uptake of mediation at different court locations. Between 2014/15 and 2018/19, an average of about 3,700 family law cases per year were directed

Figure 9: Lowest and Highest Percentage of Domestic Family Law Cases Directed to Ministry-Funded Mediation Intake Services, Average between 2014/15 and 2018/19

Source of data: Ministry of the Attorney General

Average Level of Family Law Cases Received[1]	# of Contract Locations[2]	Lowest (%)	Highest (%)
>3,000	3	2	6
1,501–3,000	9	4	14
751–1,500	7	3	12
<750	27	2	17

1. Five-year annual average number of divorce, child and spousal support, and child custody and access cases received by court location.
2. Some contracts consist of services to more than one court location; however, service providers were not required to separately report on services delivered by location.

to service providers for screening to determine if the case was appropriate for mediation. This represented only about 6.5% of all family law cases that were potentially eligible for Ministry-funded mediation. While the percentage of cases that were eligible for funding remained relatively stable over the five-year contract term, the average percentage of eligible cases sent for mediation screening varied significantly as shown in **Figure 9**. For example, for locations receiving an average of fewer than 750 eligible cases, the percentage of cases directed to mediation ranged from a low of 2% to a high of 17%. This variation means that some court locations use more mediation services than others.

We also noted that the main source of referral to mediation varied between locations. While some locations saw the most referrals from lawyers, others saw the most referrals from judges and the parties themselves. However, other than informal discussion between the Ministry and the service providers, the Ministry had not conducted an analysis to determine why some service providers had more cases directed to them than others.

For the new service provider contracts effective April 1, 2019, the Ministry requires each service provider to promote mediation with local justice partners, such as the family law bar and the local judiciary, and provide quarterly reports on the results of their efforts. It is unclear whether this is an effective strategy, as the contracts do not provide any incentives to service providers to invest in promotion.

RECOMMENDATION 10

To promote the use of Ministry-funded mediation services that can help to divert less complicated matters away from the courts, we recommend that the Ministry of the Attorney General:

- determine the desired long-term plan for mediation services;
- monitor the uptake of mediation services to determine the effectiveness of the outreach programs; and
- collaborate with justice system partners to create a province-wide communication strategy to increase the use of family mediation services and communicate this to the family court system's participants.

MINISTRY RESPONSE

The Ministry agrees to determine the long-term plan for mediation services and monitor uptake of these services. It will explore opportunities to collaborate with justice partners on a province-wide communication strategy to promote Family Mediation and Information Services. The Ministry will continue to meet quarterly with managers of the court and service providers to discuss uptake of family justice services, contract management and outreach activities. Service providers are currently contractually required to develop the schedule of on-site mediation services in consultation with the manager of the court and the judiciary.

In the next procurement cycle, the Ministry will consider additional performance targets related to outreach and uptake.

4.3.3 Ministry Did Not Set Targets for Percentage of Family Law Cases Directed to Mediation Intake Service

The Ministry offers on-site and off-site mediation (see **Appendix 5** for a description of these services) to parties with ongoing court cases to try to resolve their family law–related issues outside the courtroom. One of the primary goals of these services is to divert appropriate cases away from the court to free up courtroom resources for more complex cases. While mediation is a voluntary process, and not all cases can be mediated, parties should have the opportunity to try it. Therefore, the number of cases directed to mediation for intake is an important measure for monitoring these Ministry-funded services. The Ministry requires service providers to report the number of mediation intakes they perform under their service agreements. However, the contracts do not set Ministry targets for mediation intake at each court location. Targets would encourage service providers to promote the use of mediation for appropriate family law cases.

RECOMMENDATION 11

To maximize the benefits of using mediation services when appropriate, we recommend that the Ministry of the Attorney General work with family mediation and information service providers to set a target for the percentage of eligible family law cases to be mediated each year, and include the agreed-upon targets in the contracts between them.

MINISTRY RESPONSE

The Ministry agrees to review the service delivery model and consider additional performance targets related to uptake of services in the next procurement cycle.

4.3.4 Ministry Lacked Proper Oversight of the Bills Submitted by Service Providers

As explained in **Section 2.3.1**, service providers bill the Ministry each month, up to a pre-determined yearly maximum for services they provide. The Ministry relies on the service providers to bill accurately for the services provided. Our audit reviewed the Ministry's existing billing verification process. We found that while the Ministry checks for mathematical errors and for basic reasonableness of the billings, such as identifying unusually long days billed by a certain mediator, it does not verify whether the hours of services billed were actually worked.

The Ministry's Internal Audit raised the same concern in its January 2017 report. The report noted that the Ministry had no process in place to validate the hours invoiced by the service providers. Internal Audit recommended that the Ministry perform periodic, random reviews of a sample of reported hours against source documents, such as timesheets and mediation files.

Although Internal Audit made this recommendation in 2017, the Ministry has not completed any reviews of billing and source documentation. In November 2017, the Ministry informed Internal Audit that it had developed a schedule for conducting visits to review the operations of all service providers on a regular basis. However, no visits were actually performed.

RECOMMENDATION 12

To improve the financial controls in place to validate monthly billings of service providers and confirm services have been rendered, we recommend that the Ministry of the Attorney General perform periodic reviews to verify services billed against source documentation.

MINISTRY RESPONSE

The Ministry agrees to monitor monthly invoices submitted by service providers and explore options to create an enhanced invoice with more

Figure 10: Child Support Service Online Tool—Number of Applications Initial Set-up and Recalculation of Child Support, 2016/17–2018/19

Source of data: Ministry of the Attorney General

Fiscal Year	# of Applications Received (A)	# of Applications Processed Successfully[1] (B)	Applications Processed Successfully (%) (B/A)
Child Support Initial Set-up[2]			
2016/17	145	11	8
2017/18	176	16	9
2018/19	382	25	7
Subtotal	**703**	**52**	**7**
Child Support Recalculation[2]			
2016/17	85	31	36
2017/18	143	52	36
2018/19	260	76	29
Subtotal	**488**	**159**	**33**
All Applications			
2016/17	230	42	18
2017/18	319	68	21
2018/19	642	101	16
Total	**1,191**	**211**	**18**

1. Final notices were issued for applications that were processed successfully.
2. Applicants can apply to use either the initial set-up or the recalculation function of the tool.

details to address the Auditor's concerns. The Ministry agrees to perform periodic reviews in person at service provider offices/court locations.

4.4 Usage of the Child Support Service Online Tool Fell Far Short of Initial Projection

4.4.1 The Province Spent $6 Million on the Tool but Usage Was Only 3.2% of Its Initial Projection

As discussed in **Section 2.3.3**, the Child Support Service online tool allows eligible parents and caregivers to set up and update child support arrangements without going through the family court process. In its 2013/14 business case, the Ministry of the Attorney General projected that the Child Support Service online tool (online tool) would receive 10,000 applications in 2017/18. However, in 2017/18, it only received about 320 applications—about 3.2% of the projection. The Ministry and other partner ministries spent $5.7 million on implementing the online tool, but as of March 2019, the total number of applications received since its launch in 2016/17 was only 1,191 (see **Figure 10**). The Ministry has not done an evaluation of the tool to determine why the uptake has been low. We identified the following reasons contributing to the low uptake:

- The online tool is a voluntary service that both parents must consent to use, which may limit some potential use.
- Similar to other Canadian jurisdictions, the eligibility to use the tool is restricted. For example, the child support payor cannot earn more than 20% of their annual income from self-employment.

- In Ontario, an $80 non-refundable fee is charged to the applicant at the time of applying, regardless of whether the other party agrees to use the tool, which may be a barrier for some. We noted that Alberta's Child Support Recalculation Program would perform the recalculation and invoice the parties only if the recalculation was successful.

As well, the Ministry has not done a cost/benefit analysis to assess whether this tool should be maintained or if any other modification should be made.

RECOMMENDATION 13

To help informed decision-making about the Child Support Service online tool, we recommend that the Ministry of the Attorney General perform a cost/benefit analysis to assess whether this tool should be maintained or modified and/or promoted more.

MINISTRY RESPONSE

The Ministry agrees to perform a cost/benefit analysis to assess whether the Child Support Service online tool should be maintained or modified and/or promoted more.

The Ministry is currently in discussions with the Family Responsibility Office about potentially developing targeted communication to their clients.

4.4.2 Only 18% of Applications Processed Successfully Since the Online Tool Was Implemented in 2016/17

As shown in **Figure 10**, as of March 2019, the Ministry had processed very few applications successfully. The percentage has fluctuated and remained quite low since 2016/17, at between 16% and 23% per year. However, the Ministry did not have the information it needed to analyze reasons for the high rejection rates.

Staff at the Ministry of Finance process applications submitted through the online tool, using income information provided by the parents, or using this Ministry's direct access to income information from the Canada Revenue Agency, and provides the Ministry of the Attorney General high-level statistics, such as the number of applications received, the number of applications successfully processed, and the number of applications rejected. However, the Ministry of the Attorney General did not request that the Ministry of Finance provide reasons for the significant number of applications that could not be processed, and therefore, was unable to identify the root causes to address them.

During our audit, we requested and reviewed about one-third of the rejection letters issued by the Ministry of Finance in 2018/19. Because the Ministry of Finance's system, called "ONT-TAXS," did not track the reasons in the rejection letters sent to applicants, the Ministry of Finance's staff regenerated the letters for our review. Since our audit request in August 2019, the Ministry of Finance has been working on a new report for the tool to provide a list of rejection letters, and the reason for each rejection, as part of its monthly reporting to the Ministry of the Attorney General.

Through our review of a sample of rejection letters, we identified that staff at the Ministry of Finance had rejected a majority of the applications because the payors did not submit the information required for them to perform the calculation. However, the rejection letters did not include enough detail for further analysis of the root causes of the high rejection rate.

RECOMMENDATION 14

To potentially increase the use of the Child Support Service online tool, we recommend that the Ministry of the Attorney General:

- collaborate with Ministry of Finance to track and analyze reasons for unsuccessful applications; and
- review the online application and approval processes in other jurisdictions to identify areas that could help Ontario increase the

success rate of using the tool, and implement improvements identified.

MINISTRY RESPONSE

The Ministry agrees to work with the Ministry of Finance on a change request that will update reporting requirements to include enhanced tracking of reasons for unsuccessful applications. Ministry representatives participate in regularly scheduled meetings with provincial and territorial partners to discuss their respective administrative recalculation services, share best practices and identify areas for improvement. This engagement will be continued in order to explore ways to increase uptake and success rates of Ontario's online child support service.

4.5 Dispute Resolution Officer Program Could Be Expanded to Increase Potential Cost Savings

As explained in **Section 2.3.2**, in 1996 in Toronto, the Superior Court launched the Dispute Resolution Officer Program (Program) for hearing cases where a party files a motion to change an existing court order. It had expanded it to only nine out of 50 Superior Court locations by the time of our audit. As a result, not all parties have the same access to the Program across the province.

In January 2019, the Ministry and the Office of the Chief Justice of the Superior Court evaluated the Program to assess whether it delivered meaningful progress in family law cases. The Ministry's goal was to achieve any one of the following, in 50% of its cases: full resolution of the matter, partial resolution of the matter, an order for disclosure order, or a withdrawal of the motion. The evaluation indicated that overall, six out of nine courthouses exceeded the 50% benchmark on average, each year, from 2013/14 to 2016/17. However, at the time of our audit, the Ministry and the Superior Court had not yet finalized the evaluation, and had not concluded whether the Program should remain in the nine courthouses currently served, be expanded to additional courthouses or be eliminated entirely.

We obtained the most current data available and noted that, in 2018/19, of the 1,486 cases heard by dispute resolution officers:

- 17% (259) reached a full settlement; 19% (274) reached partial settlement; 64% (953) did not achieve any settlement; and
- 15% (216) generated disclosure orders.

The Ministry could not determine the number of motion withdrawals that might have been made following the meeting with a dispute resolution officer.

Based on this data, we performed a preliminary financial assessment of the Program to determine whether it could result in cost savings if expanded, considering that when the Program was used, there was no resolution 64% of the time. We compared the cost of the Program to the additional costs to the courts if all matters were sent directly to a judge. We estimated that the net savings realized for the nine participating courthouses totalled about $355,000 in 2018/19. If the Program expands to other Superior Court locations and possibly Ontario Court locations, the Province could benefit from further potential savings, while freeing up more judicial time and courtrooms to hear other types of cases.

RECOMMENDATION 15

In order to free up more judicial and courtroom time, and increase potential cost savings, we recommend that the Ministry of the Attorney General, together with the judiciary, complete their assessment of the costs and benefits of expanding the Dispute Resolution Officer Program across the province, where appropriate.

MINISTRY RESPONSE

The Ministry agrees to extend the Dispute Resolution Officer Program pilot for another year to build in additional key performance indicators and complete a further evaluation.

4.6 Ministry Did Not Have a Firm Plan to Achieve Its Target to Expand Unified Family Court across the Province by 2025

There is a need to streamline the process for parties seeking resolution to their family law issues in court. The expansion of Unified Family Court was identified as a means to achieve this. The Ministry set a target in 2017 to complete a province-wide expansion of Unified Family Court in Ontario by 2025 but, at the time of our audit, the Ministry was unlikely to achieve this target as it had not completed a plan to do it.

As discussed in **Section 2.1** and **Figure 1**, there is a split of legal jurisdiction between the Ontario Court and the Superior Court. It is not efficient or simple for parties to resolve their family issues. For instance, often, the parties must attend both the Superior Court and the Ontario Court to resolve their family law–related issues because no one court can deal with all related issues. The Ministry estimated that there were approximately 4,000 instances per year where parties were required to attend both courts. Unifying the legal jurisdiction under one court means parties need to attend only one court to resolve their family law–related issues.

Ontario has had unified legal jurisdiction for all family law matters through Unified Family Courts in 17 locations since 1999. The Unified Family Court is a branch of the Superior Court; judges are appointed and paid by the federal government. As such, Ontario must have the support of the federal government to expand the number of Unified Family Court locations. **Appendix 10** shows the timeline of key events since the Unified Family Court was first established in Ontario.

In 2017, the Ministry, in conjunction with the Superior Court and Ontario Court, proposed to complete a province-wide expansion of the Unified Family Court by 2025. On May 13, 2019, the Ministry completed the first phase of this expansion by unifying an additional eight court locations, bringing the number of Unified Family Court locations in Ontario to 25 out of a total of 50 locations.

The Ministry expected that significant facilities improvements would be needed for the remaining locations. As of August 2019, the Ministry was still conducting a needs assessment on the existing facilities to accommodate the unification at the remaining 25 locations. Brampton, Milton and Toronto—three of the busiest family court locations in the province—are among the locations the Ministry expected would pose the most significant facility challenges.

All three of these locations were undergoing significant planning for improvements, or construction was underway at the time of the audit. The Ministry was consulting with the judiciary and stakeholders to identify options for accommodating Unified Family Courts in Brampton and Milton, but it had not yet confirmed the plans for these two locations at the time of the audit. The facility needed to accommodate a Unified Family Court in Toronto is significant, as family law matters are heard in three courthouses—393 University Avenue (Superior Court, and matters being relocated to 361 University Avenue), 311 Jarvis Street (Ontario Court), and 47 Sheppard Avenue (Ontario Court). There were no plans yet to consolidate all family matters in Toronto at the time of the audit. While in 2009, the Ministry had envisioned consolidating the Superior Court and Ontario Court family law cases in the New Toronto Courthouse, the Ministry reassigned the new courthouse for hearing the Ontario Court's criminal matters only in 2014.

RECOMMENDATION 16

To complete the expansion of Unified Family Court across the province by the target date of 2025, we recommend that the Ministry of the Attorney General:

- finalize a plan to execute the expansion of Unified Family Courts in the remaining 25 family court locations, including completing the location needs assessment; and

- confirm commitment from the federal government for additional judicial appointments necessary.

MINISTRY RESPONSE

The Ministry agrees to work in partnership with the Offices of the Chief Justice of the Superior Court of Justice and the Ontario Court of Justice to finalize a plan to expand the Unified Family Court across the remainder of the province. A local needs assessment is under way.

The Ministry agrees to seek a commitment from the federal government for the additional judicial positions necessary.

4.7 Ministry Lacks Formal Policy on Quality Reviews of Data Entry

As discussed in Section 4.1.4 and Section 4.2.4, we identified that the data in FRANK was not always reliable. Regular quality reviews are important to help improve this and avoid its recurrence.

The Ministry has a data quality review process and guideline that recommends a manager or supervisor review the physical case files against data entered in the FRANK system for completeness and accuracy, using a review checklist developed by the Ministry. The guideline states that the manager or supervisor at each courthouse should select a minimum of three to five different court files each week. Where data entry errors are identified, the reviewers should make any corrections and educate staff as required. However, there is no requirement for the managers and supervisors to follow the Ministry's review process and guideline.

Based on our visits at the seven court locations where we conducted detailed audit work, we found that none followed the Ministry's guideline for data entry review in 2018/19, as follows:

- Two court locations did not perform any reviews, although one of the locations developed and followed its own quality review process.
- The other five court locations performed reviews on 23 to 144 files, below the minimum total of between 156 and 260 files per year, as three to five files per week are recommended by the Ministry.

As well, we noted that the Ministry did not track performance or collect the results of courthouse reviews. Consequently, the Ministry did not know what types of data entry errors were most common, or why they occurred. Therefore, the Ministry was unable to prevent recurrences of these errors through training, or by adding system controls over data entry to the FRANK system.

RECOMMENDATION 17

To correctly capture and maintain accurate information in the FRANK case file tracking system, we recommend that the Ministry of the Attorney General:

- require staff at all court locations to perform data entry reviews regularly and consistently; and
- collect, review and monitor results of data entry reviews performed at all court locations to identify and address common errors, to incorporate them in future FRANK training and/or identify needed system improvements.

MINISTRY RESPONSE

The Ministry agrees and will take the steps identified in the recommendation to ensure staff are performing data entry reviews on a regular basis and to use the results of the reviews to further strengthen mechanisms to identify and address any common errors, and make system improvements to FRANK where feasible.

Appendix 1: Participants in Family Court Process

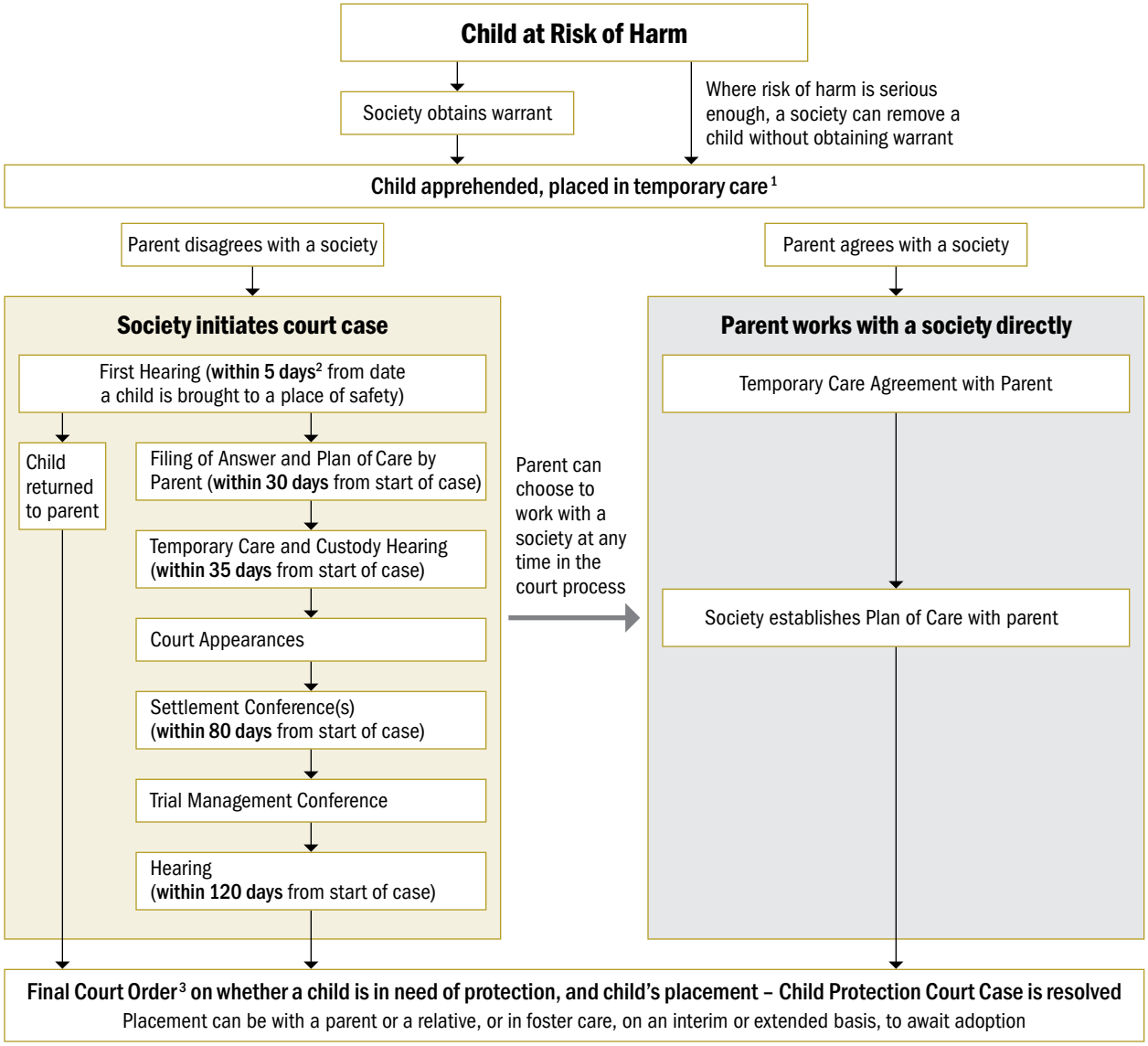
Prepared by the Office of the Auditor General

Participants	Roles	
Court Support Staff	Part of Court Services Division, a division of the Ministry of the Attorney General (Ministry). Court staff schedule court cases at the direction of the judiciary, maintain court records and files, collect filing fees, provide administrative support to the judiciary, and provide legal information to the public, where needed.	
Judiciary	Judges that preside over family court events. Where appropriate, they work with family law case participants to resolve their cases without proceeding to a trial.	
Duty Counsel	Lawyers paid by Legal Aid Ontario (a provincial agency reporting to the Ministry) to help individuals who cannot afford counsel. They do not represent an individual for their entire case until resolution, but assist those who meet Legal Aid Ontario's financial eligibility threshold and are in court on a given day. They perform tasks such as negotiating settlement terms with the opposing party or the opposing party's legal counsel.	
	Child Protection Cases	**Domestic Family Law Cases**
Applicant	The party that starts the child protection case in court. A children's aid society is typically the applicant of a child protection case.	The party that files the application or motion to change an existing court order to start the family law case in court. The Family Responsibility Office can also bring court action against child and spousal support payors who are in arrears.
Respondent	The party that the case is filed against. A parent or custodian, who is believed to be putting a child in danger, is typically the respondent to a child protection case.	The other party in the relationship, which the applicant filed claims against. There is no respondent in a divorce case where the spouses jointly apply for divorce.
The Office of the Children's Lawyer (Children's Lawyer)	The Children's Lawyer may be directed by the court to assign a lawyer to represent a child who is the subject of a child protection proceeding; this could include parents of a minor child (younger than 18 years old).	Where necessary, the Children's Lawyer helps to provide independent information about the child's needs, wishes and interests by assigning a lawyer to represent the child, a clinician to write a report for the court, or both.
Other interested party	Parties other than the applicant or respondent of a case who have an interest in the placement of the child in need of protection, such as grandparents.	Parties other than the applicant or respondent of a case who have an interest in the case, such as extended family members.
Family Court Streamlining Services (see **Section 2.3**)	Not Applicable.	Services such as Family Mediation and Information Services and the Dispute Resolution Officer Program that help to divert less complicated family law cases away from court, or attempt to settle the cases more quickly.

Appendix 2: Key Steps in a Child Protection Case in the Ontario Court of Justice or the Unified Family Court

Prepared by the Office of the Auditor General

A child protection case involves a children's aid society (society) removing a child from an unsafe environment and bringing them to a place of safety, or supervising parental care of the child. If a society finds that a child is at risk of harm, such as abuse or neglect, and the society is unable to work with the parents to create a safe environment for the child, the society will initiate the removal of the child, placing the child in another environment, such as foster care. The society will then file a court application outlining the reasons for removing the child, to which the parents can respond. If the society determines that removal of the child is not necessary, the society will seek a court order to supervise the parents and the child. Once a child protection case is initiated, there are a number of statutory time limits to complete steps in the case to ensure timely resolution, as outlined below. These statutory timelines are applicable to all child protection cases, regardless of whether the child is removed or not, except for the first hearing, which is applicable only to cases involving removal of the child from an unsafe environment.



1. When a society removes a child from the care of the parent(s), the society can establish temporary care in a foster home, or in a relative's home that it has assessed to be safe.
2. Excluding weekends and holidays.
3. The decision can be reached on consent by all parties involved, or if parties cannot come to an agreement, it is determined by a judge either at trial or in a summary judgment motion. In a summary judgment motion, when appropriate, a judge may issue a decision without the consent of all parties based on the facts evident in the case.

Appendix 3: Key Steps of a Child Protection Case in the Ontario Court of Justice or Unified Family Court

Source of data: Ministry of the Attorney General

Step in the Case	Description	Maximum Time for Completion, from the Date the Case is Filed
First Child Protection Application		
First hearing	Where a child has been removed form an unsafe environment, the children's aid society (society) must proceed to court within five days for a first hearing. The first hearing usually results in the society obtaining the judge's order deciding where the child will be placed temporarily, and the conditions of the placement, such as foster care or in a relative's home. A future date for a temporary care and custody hearing may also be set. Alternatively, a judge can decide to return the child to the parent with or without the supervision of the society.	5 days*
Service and filing of answers and plans of care	The parent must submit an Answer and Plan of Care within 30 days to respond to the concerns raised by the society. The society must also submit a Plan of Care within 30 days to support its application. The plan must address where the child will live, who will take care of the child, and why each party believes this plan is in the best interests of the child.	30 days
Temporary care and custody hearing	A temporary care and custody hearing is supposed to take place within 35 days. The purpose of the hearing is to decide what happens to the child while the case is ongoing. The hearing provides the first chance for the parent to present their side of the case, and what they want. A judge listens to what each party involved in the case has to say, reviews the evidence presented and issues a temporary order.	35 days
Court appearances	Court appearances are scheduled to discuss the case with a judge and to try to reach an agreement between the parent and the society without a hearing or a trial. It usually focuses on what has to be done to reach a final placement decision. This might include the parties updating the court on the child's status and what has occurred, as well as setting deadlines for filing and discussion about issues that remain outstanding.	n/a
Settlement conference(s)	Settlement conferences usually focus on discussing the issues to see if the parent and the society can agree on any of them. The judge may state a potential decision in the case, to help the parties understand what the court might order if the case goes to trial. A settlement conference is supposed to take place within 80 days after the society starts a child protection application. The court may delay a settlement conference if the parent is (or the parents are) working on the issues and not ready to proceed to settlement yet.	80 days
Hearing	A hearing is held to determine whether the child is in need of protection.	120 days
Status Review Application		
A status review application starts a new court application. A party can ask that the court reviews the child's placement that was ordered by the court in the previous child protection case, a minimum of six months after. A status review is not an appeal or a review of the last order, but a review of the child's situation since the last order.		Same timelines as above are applicable

* Excluding weekends and holidays.

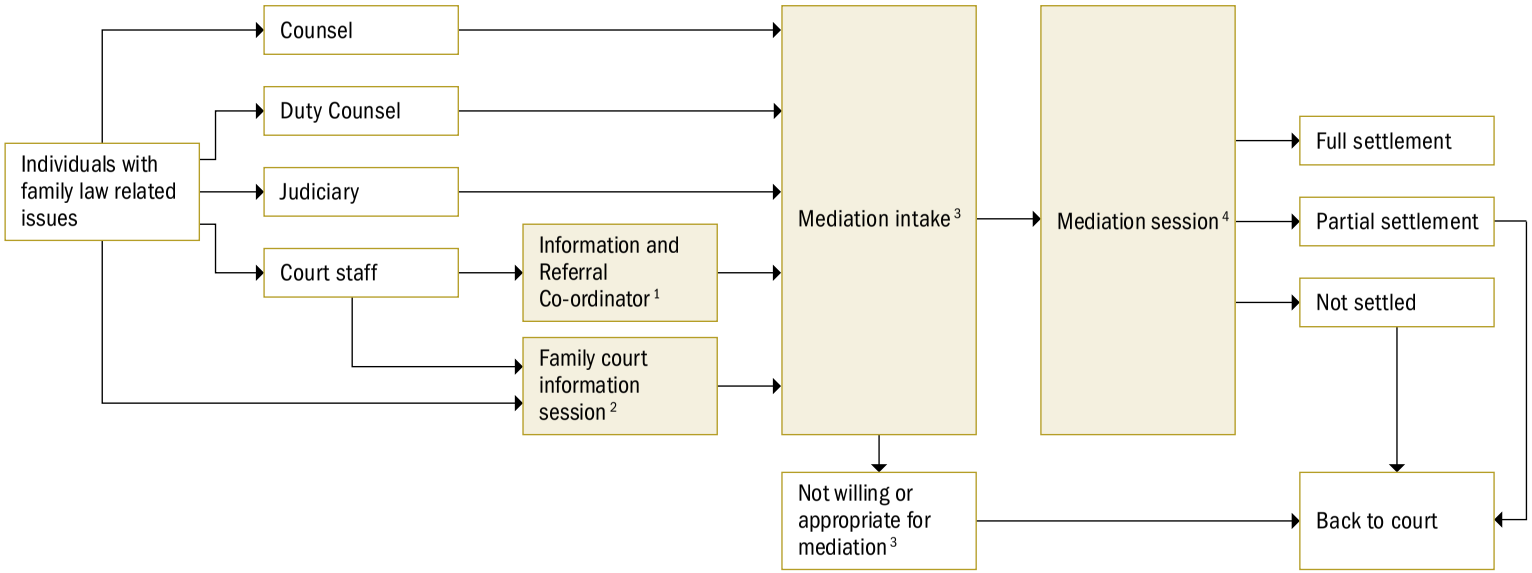
Appendix 4: Key Steps of a Typical Domestic Family Law Case

Source of data: Community Legal Education Ontario

Steps in the Case	Description
Application	• The applicant submits the appropriate forms and documents at the appropriate court location, which starts the case, then receives a court file number from the court staff. • The applicant serves the court-issued application on the other party (the respondent). • The respondent fills out forms in response to the claims outlined in the application, indicating if they agree or disagree with the applicant's claims, and/or make claims of their own.
Family Court Information Session	• An information session separately attended by the applicant and respondent. The session provides the parties with basic information on family law, the court process and the alternatives to court such as mediation.
First Appearance	• The First Appearance (if one is scheduled) is an administrative court appearance. The majority of First Appearances are in front of a court clerk (Ministry staff) but could also be in front of a judge in some court locations. The court clerk or judge meets with the parties to check that all documents are complete and have been properly served.
Case Conference	• Case conferences are held either in a courtroom or a conference room at the court location; they are meetings between a judge and the parties, including any lawyers. • The discussions include identifying any issues that need to be solved, ways to solve those issues without going to a trial, information that needs to be shared, and next steps to resolve the issues. If the parties agree on any issue during a case conference, the judge can make an order to resolve that issue.
Motion	• After a case conference, the parties can ask the court to make a temporary order about any issues with a motion. • Motions can be short or long. At most family court locations, short motions are scheduled for up to an hour and long motions are scheduled for more than one hour.
Settlement Conference	• If the parties have not sorted out the issues after one or more case conference, the judge may schedule a settlement conference to help settle the issues. • In a settlement conference, the judge plays a more active role in trying to get the parties to agree on the issues. They focus on hearing attempts that the parties have made at settling the issues, and are more likely to provide an opinion on how the parties should settle.
Trial Management Conference	• If the parties have not settled the issues, the judge sets a date for a trial management conference where he or she will discuss how the trial will proceed, how long the trial will take, a trial date, and can provide a last chance to resolve the parties' issues.
Trial	• Trials are typically a set number of days where the lawyers, or parties themselves if self-represented, present evidence to the judge, and call and cross-examine witnesses. At the end of the trial, the judge makes a decision on all issues tried. • The judge administering the trial must be a different judge from the case conference and settlement conferences judge. • There are no jury trials in family law. • Trials can be short or long. In the Ontario Court of Justice, short domestic family law trial generally is defined as matters requiring two days or less while a long trial is generally defined as three or more days. In the Superior Court of Justice, the definition for a short trial varies from less than three days to 15 days, depending on the court location. The definition for a long trial varies between over three days and 15 days.

Appendix 5: Key Entry Points and the Typical Process for Ministry-Funded Mediation Services

Prepared by the Office of the Auditor General of Ontario



1. The Information and Referral Co-ordinator is located in the Family Law Information Centre at family court locations. It is free of charge and available to anyone. A service provider staff learns and understands individuals' family law-related issues and matches them with services appropriate to their needs, such as shelter services, legal services, and social assistance programs.
2. A family court information session, free of charge, is for those involved in certain types of family law cases, and the public. It provides the parties with information on the effects of separation and divorce on parties and children, the court process, and alternative dispute resolution options like mediation.
3. Mediation intake is performed by accredited mediators and assesses the parties' appropriateness for mediation. Parties may not be willing to mediate, or the case may not be appropriate for mediation due to the presence of power imbalance in a relationship or domestic violence, which does not enable the parties to mediate in a safe and constructive way.
4. Mediation sessions are performed by accredited mediators. On-site mediation is free to the parties and intend to resolve narrowly scoped issues on the day of the court appearance at the courthouse, typically taking two to three hours per session, including intake. Off-site mediation typically occurs at the service provider's or mediator's own office involving more complex issues. It is offered at a subsidized rate of $5/hour to $105/hour for each party depending on their income and number of dependents.

Appendix 6: Family Mediation and Information Services Contracts, 2018/19

Source of data: Ministry of the Attorney General

Service Provider	2018/19 ($ 000)	# of Contracts
AXIS Family Mediation Inc.	937	4
Blue Hills Child and Family Centre	276	1
Bridging Family Conflict Inc.	226	1
Coppola and Associates Inc.	206	2
Daniel Francis Lanoue	88	1
Durham Mediation Centre Inc.	358	1
Kawartha Family Court Assessment Service	269	3
Keith Fraser	130	2
Limestone Mediation Ltd.	254	2
mediate393 Inc.	1,260	2
Mediation North Inc.	773	9
Michael J. Kushnir	357	3
Peel Family Mediation Services	591	2
The Mediation Centre Inc.	781	9
The Mediation Centre of Hamilton-Wentworth	155	1
The Mediation Centre of Simcoe County Inc.	415	2
Vicky Visca & Associates	163	1
Total	**7,239**	**46**

Note: Some contracts include services provided for more than one court location.

Appendix 7: Audit Criteria

Prepared by the Office of the Auditor General of Ontario

1.	Effective and efficient court services processes are in place for child protection cases in accordance with applicable legislation.
2.	For family law matters other than child protection cases, effective court services processes are in place to support timely court appearances as needed.
3.	Technology is used to its full advantage to improve efficiency and effectiveness of the family court system and reduce costs.
4.	Effective processes are in place to procure and manage service providers in delivery of family court services, including the Family Mediation and Information Services, in accordance with applicable government directives and best practices. Performance of service providers are monitored and evaluated on a timely basis.
5.	Appropriate financial, operational and case file management data are collected to provide accurate, reliable, complete and timely information to help guide decision-making and assist with performance management and public reporting in the delivery of court services. In addition, reasonable targets are established to allow evaluation of performance and periodic public reporting. Corrective actions are taken on a timely basis when issues are identified.

Appendix 8: Difficulties Encountered During our Audit

Prepared by the Auditor General of Ontario

Date	Events
Mid-March	• We first indicated to the Ministry of the Attorney General (Ministry) that we needed to review both child protection and domestic family law case files during our court visits. • Staff from the Court Services Division flagged that information pertaining to child protection cases could not be released without judicial approval according to section 87(8) of *Children, Youth and Family Services Act, 2017* (Act) which states "No person shall publish or make public information that has the effect of identifying a child who is witness at or a participant in a hearing or the subject of a proceeding, or the child's parent or foster parent or a member of the child's family."
End of March	• We requested a listing of pending cases for child protection, and domestic family law cases. • We received the listing of pending domestic family law cases shortly after our request. We did not receive the list of pending child protection cases.
April	• Staff from the Court Services Division responded to us that "the OCJ [Ontario Court of Justice] is not authorizing release of the child protection pending list. An order is required for access to adoption and child protection matters unless the Auditor General can point to an exemption to legislative restrictions..."
May	• The Auditor General met with the Chief Justice of the Ontario Court of Justice (Ontario Court) to discuss the concurrent audits, including our Office's access to child protection files. • Representative from the Office of the Chief Justice of the Ontario Court indicated that "Sections 87(4) and 87(8) of the (Act) preclude public attendance at hearings and preclude making public identifying information available." According to the Office of the Chief Justice, this legislation restricted our Office's access to child protection case files. • Representative from the Office of the Chief Justice of the Ontario Court later agreed to release a listing of child protection cases (both disposed and pending disposition) for us to select a sample of cases for review. • Representative from the Office of the Chief Justice of the Ontario court also agreed that, once we selected a sample from various courthouses, it would authorize the Ministry to release the case history reports to us, with personal information redacted. Representative from the Office of the Chief Justice of the Ontario court did not authorize the Ministry to release the complete and more detailed case files to us.

End of May	• We obtained the child protection case listings and selected a total of 85 cases (about 10 from each of the seven courthouses[1] we visited, and 15 additional cases from one courthouse that had an unusually high number of cases pending disposition) for our sample.
	• We received all 85 case history reports within two weeks of our request. Personal information was redacted from the case history reports.
	• Because the redacted case history reports did not contain key information, such as the children's ages and whether they were in interim care such as foster care, these reports alone could not be used to determine whether the statutory timelines required under the Act were applicable in the selected cases.
	• When we asked for further information, staff from the Court Services Division indicated that "Court staff must not provide the audit team:
	  • Any materials in the child protection files (including the endorsement[2] records)
	  • Any identifying information about the parties, related individuals (e.g. foster parents) and/or children named in the files; or
	  • Information about the reasons for delay, why the case remains on the pending list, why any adjournments have been granted, or details about the final disposition made."

Date	Events
June	• Our office contacted the Office of the Chief Justice of the Ontario Court and the Office of the Chief Justice of the Superior Court, and asked for further access to child protection cases. Both Offices of the Chief Justices agreed to release judges' endorsements[2] for the sample cases. • The selected judicial endorsements required redaction of personal information, and review by the Ministry and the Offices of the Chief Justices before they would be released to the audit team. • We first requested eight child protection cases, and received the related redacted endorsement within two weeks, by the end of June. • The Ministry indicated that, for the first sample of eight, "Court staff have done a lot of work to assemble the requested documents for our review, but there has also been a need for a lot of back and forth between ourselves and the courts to make sure that the packages are complete and properly redacted."

July	• The Auditor General sent a letter to the Deputy Attorney General expressing her concerns about the audits, including our limited access to child-protection case files.
	• The Deputy Attorney General acknowledged our requests and indicated that the Ministry was working with the Courts to "develop a balanced approach that permits Court Services Division to release redacted parts of the child protection files to your office, while complying with its statutory obligations."
	• We selected an additional seven cases (for a total of 15) to review. Again, we were provided the related redacted endorsements,[2] but not the actual case files. We received the endorsements by the end of July.
	• We reviewed all of the redacted endorsements and had many questions about adjournments and delays. We submitted our questions to both the Offices of the Chief Justices of the Ontario Court and Superior Court.
	  • Representative from the Office of the Chief Justice of the Ontario Court responded that "The questions you have forwarded, however, relate to specific judicial case management or judicial decision-making in specific child protection files, which is not within the scope of the audit team's mandate."
	  • Representative from the Office of the Chief Justice of the Superior Court responded that "Judges' endorsements speak for themselves. It is not for us to interpret them."

Mid-July to August	• We approached the Ontario Association of Children's Aid Societies and other children aid societies to ask for their perspectives about court delays in resolving child protection cases. • Two of the children's aid societies provided us with two cases as examples of how children were affected by lengthy court processes.

1. The seven courthouses were Newmarket, Ottawa, Sault Ste. Marie, Thunder Bay, Milton, Windsor, and 311 Jarvis Street, Toronto.
2. Endorsements or endorsement records are written directions of the judge at each appearance.

Appendix 9: Summary of Publicly Available Information, Information Our Office Obtained During the Audit, and Information Where Our Access Was Denied

Prepared by the Office of the Auditor General of Ontario

Family Court Services	Information That Is Publicly Available	Information That Is Not Publicly Available		Why We Need Access to the Information	Impact of Not Getting Access On Completion of Audit
		We Were Given Access	We Were Denied Access		
Ontario Court of Justice (Ontario Court)					
Scheduling of child protection cases	*Guiding Principles and Best Practices for Family Court* to help judges to manage and make rulings in child protection cases. One of the guidelines states "...child protection matters whose outcome would affect the well-being and day-to-day physical, emotional and/or mental health of children should be considered matters where time is of the essence. Scheduling of these matters should reflect this."	An overview of the court scheduling for child protection cases with trial co-ordinators, regional senior judges and/or local administrative judges.	Court scheduling information, such as past court dates and upcoming court dates that were scheduled, maintained by trial co-ordinators who work under the direction of the judicial officials.	To determine if child protection cases were scheduled according to the Ontario Court's *Guiding Principles and Best Practices for Family Court* (**Section 4.1.2**).	Unable to determine if child protection matters were scheduled as early as possible to avoid unnecessary delays.
Superior Court of Justice (Superior Court)					
Scheduling of child protection cases	The Superior Court's annual report (for 2015 and 2016) mentioned that "In 2015, the Superior Court of Justice implemented new Best Practices for Child Protection Cases, which address the scheduling, assignment and conduct of each step in a child protection case."	• An overview of the court scheduling for child protection cases with trial co-ordinators, regional senior judges and/or local administrative judges. • The next available trial dates for child protection cases, by courthouse, between October 2017 and April 2019.	• A copy of the complete version of the *Best Practices for Child Protection Cases*. • Court scheduling information, such as past court dates and upcoming court dates that were scheduled, maintained by trial co-ordinators.	To review the *Best Practices for Child Protection Cases* established by the Superior Court and examine compliance against its own best practices. (**Section 4.1.2**)	Unable to determine if child protection matters were scheduled as early as possible to avoid unnecessary delays.

Family Court Services	Information That Is Publicly Available	Information That Is Not Publicly Available		Why We Need Access to the Information	Impact of Not Getting Access On Completion of Audit
		We Were Given Access	We Were Denied Access		
Ministry of the Attorney General, Ontario Court of Justice and Superior Court of Justice					
Child protection cases	**Ontario Court of Justice** • # of cases received, disposed and pending disposition, reported by month, by courthouse, by region and province-wide. • # of appearances heard by type of appearance, by month, by courthouse, by region, and province-wide. **Superior Court of Justice** • Aggregated number of family law cases received by region, but not separated into child protection cases and domestic family law cases.	• Case statistics from FRANK, separately reported for child protection cases. • Of the 85 child protection case files requested, we received a redacted listing of court events (called the case history report) for all 85 cases, and redacted endorsements (mostly hand-written) made by judges for only 15 of the 85 selected cases, given the amount of time Ministry staff spent redacting these endorsements.	• Complete child protection cases files for all 85 selected samples. • Answers to our inquiries directed to the Ministry's court staff about the sampled cases, such as information about the reasons for delays, why the case remains on the pending list, and why any adjournments have been granted. • Answers to our inquiries directed to representatives from the Ontario Court and the Superior Court regarding the redacted information.	To determine 1. whether a child is in interim society care, such as foster care, and 2. the age of the child involved. This information is critical to determine whether the cases are subject to the statutory timelines under the *Child, Youth and Family Services Act* (Act). If the cases are subject to the statutory timelines, we need to determine how long the child has been in interim society care, and whether the cases exceeded the statutory timelines as well as the reasons for the delays.	Unable to examine details of the selected cases to determine whether they were subject to the statutory timelines under the Act and/or the reasons for delays. Cases not resolved within the statutory timelines may leave the child in uncertainty for longer than necessary (Discussed in **Section 4.1**).

Family Court Services	Information That Is Publicly Available	Information That Is Not Publicly Available		Why We Need Access to the Information	Impact of Not Getting Access On Completion of Audit
		We Were Given Access	We Were Denied Access		
Ontario Court of Justice and Superior Court of Justice					
Scheduling of domestic family law cases	**Ontario Court of Justice** • *Guiding Principles and Best Practices for Family Court* to help judges manage and make rulings in domestic family law cases. **Superior Court of Ontario** • The Superior Court's annual report mentions it developed and implemented new practices for family cases, but its *Family Law Best Practices* is not publicly available.	**Ontario Court of Justice** • Wait time data for first court appearances at 37 family court locations for the calendar years 2016 to 2018. **Superior Court of Ontario** • We were provided the *Family Law Best Practices*, which sets the maximum timelines for scheduling domestic family law events, such as case conferences and settlement conferences. • Wait time data for various court events between October 2017 and April 2019.	Court scheduling information, such as past court dates and upcoming court dates that were scheduled, maintained by trial co-ordinators.	To determine the following in **Section 4.2.1**: 1. if the wait time data provided to us were complete and accurate; and 2. to validate the reasons for delays in obtaining court hearing dates.	Unable to determine the completeness and accuracy of the wait time data provided to us, and confirm the reasons for delays. Delays in obtaining court dates for domestic family law cases prolong the time that a family must spend in resolving their issues, leaving them in distress and uncertainty.
Ministry of the Attorney General, Ontario Court of Justice and Superior Court of Justice					
Domestic family law case	**Ontario Court of Justice** • # of cases received, disposed and pending disposition, reported by month, by courthouse, by region and province-wide. • # of appearances heard by type of appearance, by month, by courthouse, by region, and province-wide. **Superior Court of Justice** • Aggregated number of family law cases received by region, but not separated into child protection cases and domestic family law cases.	• Case statistics from FRANK, separately reported for domestic family law cases. • We received and reviewed 70 domestic family law case files in their entirety.	None	Not applicable	Not applicable

Appendix 10: Key Events of the Unified Family Court Expansion

Source of data: Ministry of the Attorney General (Ministry)

Date	Key Events
1977	Hamilton becomes the first Unified Family Court in Ontario.
1995	The Ministry unifies the family law jurisdiction in an additional four locations.
1999	The Ministry unifies the family law jurisdiction in another 12 locations, bringing the total to 17.
2002, 2012	The Ministry attempts to expand the number of Unified Family Court locations again in these two years but does not receive the necessary support from the federal government for judicial appointments to complete the expansions.
Jun 2017	The federal government formally releases a call for proposals for Unified Family Court expansion from interested Canadian jurisdictions.
Sep 2017	The Ministry in collaboration with the judiciary, finalizes the response to the request, recommending Ontario expand Unified Family Court locations in phases. The Ministry also proposes to complete the province-wide expansion by 2025.
May 2019	The Ministry completes the first phase of the expansion, unifying the family law jurisdiction in eight locations, bringing the total number of Unified Family Court locations in Ontario to 25, serving approximately 50% of the province's population. This phase involves court locations that require minimal changes to facilities. For example, one location requires one additional courtroom, and another requires minor refurbishment to judicial chambers.
Jun–Aug 2019	The Ministry begins to conduct a needs assessment on the existing facilities of the remaining 25 locations to accommodate the unification. For instance, the Ministry estimated it would need approximately 50 new federal judicial appointments to serve these locations. The Ministry would need to find space for these newly appointed judges, as well as office space for the additional support staff. The assessment had not been completed as of August 2019.

Office of the Auditor General of Ontario

20 Dundas Street West, Suite 1530
Toronto, Ontario
M5G 2C2

www.auditor.on.ca

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