

Chapter 3

Section 3.07

Ministry of the Attorney General

Court Services

Background

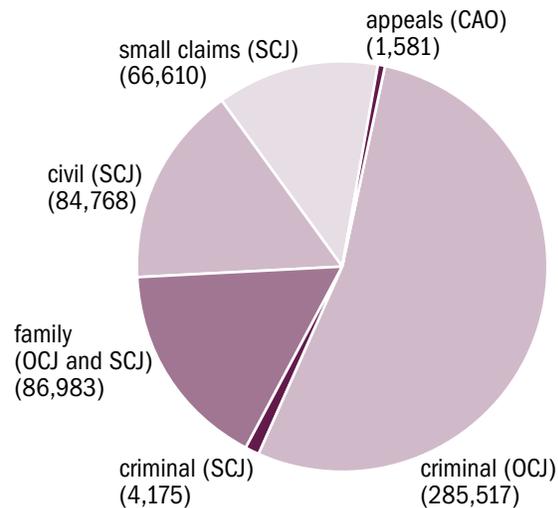
In Ontario, the court system comprises three separate and independent courts of law: the Ontario Court of Justice, the Superior Court of Justice, and the Court of Appeal for Ontario.

The Ontario Court of Justice (OCJ) handles approximately 97% of the 620,000 criminal and criminal youth charges tried annually, including bail hearings, preliminary hearings, and trials. It may also deal with certain family law matters, such as child welfare. The Superior Court of Justice (SCJ) tries more serious criminal cases: family law matters dealing with divorce, division of property, and child welfare; and all civil matters, including small claims. This court may also hear appeals of cases originating in the Ontario Court of Justice. The Court of Appeal for Ontario (CAO) hears appeals from decisions of the Ontario Court of Justice and the Superior Court of Justice. Figure 1 illustrates the caseloads of the courts.

The federal government appoints and remunerates judges in the Superior Court of Justice and the Court of Appeal for Ontario; the province appoints and remunerates judges and justices of the peace in the Ontario Court of Justice. We refer to the judges and the justices of the peace collectively as the Judiciary. As of March 2008, there were about 285 judges and 345 justices of the peace in the OCJ, 300 judges in the SCJ, and 24 judges in the CAO.

Figure 1: Caseloads: Ontario Court of Justice, Superior Court of Justice, and Court of Appeal for Ontario, 2007

Source of data: Ministry of the Attorney General



Justices of the peace work primarily in criminal law matters, including presiding over bail hearings and issuing summonses or search warrants. In addition, collectively, they spend about 45% of their time presiding in municipal courts adjudicating provincial offences, such as those under the *Highway Traffic Act*, and municipal bylaw infractions, such as those under the *Liquor Licence Act*.

The Court Services Division (Division) of the Ministry of the Attorney General (Ministry) supports the operations of the court system through over 225 courthouses and office facilities and 3,000 court support staff. Its primary functions include:

- providing courtroom staff—clerks, interpreters, and court reporters;
- preparing enforcement documentation and enforcing orders, maintaining court records and files, and serving the public and the respective legal counsels;
- providing administrative and support staff and services to the Judiciary, such as trial coordination, court statistics, caseflow management, and information technology; and
- collecting fines.

The Division's expenditures for the 2007/08 fiscal year were \$405 million: \$156 million for operating the offices of the Judiciary and for salaries and benefits for provincially appointed judges and justices of the peace; and \$249 million for administrative and court staffing costs and other expenses required to support the operation of courts. In addition, the Ministry spent about \$77 million on capital projects to modernize and improve court buildings. Revenues pertaining to court services, primarily from fines and court fees, were approximately \$124 million.

Audit Objective and Scope

Our audit objective was to assess whether the Ministry and, where appropriate, the Ministry in conjunction with the Judiciary, had adequate systems and procedures in place to:

- ensure that the Division's resources for courts were managed efficiently; and
- measure and report on the effectiveness of court operations in contributing to a fair and accessible justice system.

The scope of our audit included interviews with ministry officials, as well as examination of files and documentation at the Ministry's head office and visits to three regional offices and nine courthouses. We also considered the recommendations we made regarding court services in our *2003 Annual Report*, our follow-up status report issued in 2005,

and recommendations made to the Ministry by the Standing Committee on Public Accounts regarding our 2003 audit.

We also communicated with the Chief Justice of Ontario, on behalf of the Court of Appeal for Ontario; the Chief Justice of the Superior Court of Justice; and the Chief Justice of the Ontario Court of Justice (collectively referred to as Chief Justices). The Chief Justices provided us with helpful comments and gave us their perspectives on the court system and the judicial support services provided by the Ministry.

In addition, we contacted certain stakeholders to discuss their perspectives on court operations. These stakeholders included representatives from municipally administered courts, municipal police services, the Ontario Provincial Police, Crown prosecutors, and Legal Aid Ontario. The audit also benefited from our observations made in a concurrent audit we performed on the Ministry of Community Safety and Correctional Services' Adult Institutional Services, which operate Ontario's adult correctional institutions. We also researched courts operations in other provinces and in several U.S. states for comparison purposes.

Our audit followed the professional standards of the Canadian Institute for Chartered Accountants for assessing value for money and compliance. We set an objective for what we wanted to achieve in the audit and developed audit criteria that covered the key systems, policies, and procedures that should be in place and operating effectively. These criteria were discussed with and agreed to by senior management at the Ministry. We designed and conducted tests and procedures to address our audit objective and criteria.

Over the past several years, the Ministry's Internal Audit Division conducted a number of reviews of the Division's operations, including reviews of financial and operational internal controls at several courthouses. The reviews were helpful and of sufficient quality to allow us to reduce the extent of our work in certain areas.

DELAYS IN ACCESS TO INFORMATION

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."

In 2003, we established a formal protocol with the government regarding the interaction of ministries with our Office. The *Handbook for Interaction with the Office of the Auditor General of Ontario*, prepared by the Ontario Internal Audit Division of the Treasury Board Office, Ministry of Finance, for use by ministries states the following:

...information requests should be dealt with expeditiously and documents released in a timely way... In addition, the process agreed upon between Cabinet Office and other Central Agencies, and the Office of the Auditor General of Ontario to record and monitor the timely processing and return of the required information should be followed to ensure that the Auditor General is expeditiously provided with the information they require.

During our audit we experienced significant delays in obtaining key documents from the Ministry. Following our initial requests in December 2007, the Ministry took from three to six months to provide us with several key documents it had used to obtain approval from the Management Board of Cabinet for new capital and program initiatives over the previous five years.

Although the Ministry provided us with other documentation related to these initiatives, delays in obtaining these documents limited our ability to conduct our audit in an efficient manner. For instance, had we received the Ministry's submis-

sions to Cabinet on backlog initiatives within a reasonable time period, we would have planned our work differently while we were in the field. Similarly, key decisions on large capital projects, such as the business case and justification for the projects, were contained in the submissions to Management Board, which were not made available to us during our fieldwork when we were reviewing the related project documentation. We are concerned that this has occurred—especially given that we seldom encounter delays of this extent in obtaining information from other ministries.

Following our audit field work, the Ministry informed us that it would be taking steps to ensure that this does not happen again. Specifically, the Ministry planned to issue a protocol to its senior management team outlining expectations about future co-operation with our Office—including time frames for the collection, review, and approval of required documents in accordance with other established protocols—and setting out the role of the senior management team members to ensure that future document requests are proactively managed.

Summary

In our 1997 and 2003 audits, we reported that serious backlogs in the courts were growing—particularly for criminal cases in the Ontario Court of Justice—and that more successful solutions were needed for eliminating backlogs. Over the last five years, the Ministry has undertaken a number of initiatives, worked collaboratively with the Judiciary, and increased operating funding for courts by almost \$100 million—over half of which occurred in the 2007/08 fiscal year. Despite this effort, the backlogs have continued to grow: at the time of our audit, backlogs were at their highest levels in 15 years.

Our more significant observations on backlogs are as follows:

- Over the last five years, in the Ontario Court of Justice, criminal charges pending grew by 17% to over 275,000, the number of charges pending for more than eight months increased 16%, and it took on average 15 more days and almost two more court appearances to dispose of a charge. Backlogs for family cases, including cases relating to child protection, also continued to grow. Although the average number of days to dispose of a civil case has decreased slightly, it still takes on average more than a year and a half.
- The Ministry has undertaken several key initiatives to address criminal case backlogs in certain courthouses, including implementing improvements to Crown prosecutors' handling of cases and adding more resources to adjudicate and prosecute cases. However, these initiatives were not enough to increase the volume of cases disposed of in order to handle the growth in incoming criminal charges over the last five years.
- The Ontario Court of Justice may not have sufficient judicial resources to meet the increased demand for judicial decisions, notwithstanding the fact that court sitting hours have increased by 10% since 2003. To be comparable to other provinces, Ontario would have to hire significantly more judges and justices of the peace, as well as providing additional court facilities and support staff.
- In 2007, it took on average 9.2 court appearances to dispose of a criminal case—an increase of 26% and 56% from the averages of 7.3 and 5.9 appearances in 2002 and 1997, respectively. Despite efforts to improve management information, the Ministry does not yet have adequate information on the reasons for such a significant increase in court appearances. We also noted that the average number of appearances required for setting a date for trial varied from 0.2 appearances in the East Region to 4.7 appearances in the Toronto Region. In addition, the Ministry's new case-

management system could not determine if child protection cases met the statutory requirement of being resolved within 120 days or those where a judge had decided to extend the timeline, although we noted that almost one-half took longer than 120 days to resolve.

- We were advised that delays and more frequent court appearances occurred in part because accused persons could not obtain legal representation through Legal Aid Ontario or were delayed in doing so. The number of qualifying low-income defendants approved for legal-representation funding by Legal Aid Ontario has not kept pace with the growth in the volume of cases processed by courts and has actually decreased since 2000/01.

Eliminating backlogs over the long term will require significant improvements to information systems and court practices to help make cases flow through courts more efficiently and expeditiously, thus freeing up judicial and court resources to handle more cases. While the Ministry had made some progress in dealing with issues relating to backlogs that we raised in previous audits, many of our concerns have not been fully addressed. For example:

- In 2003, the Ministry began implementing a new information technology system for case management, scheduling, and reporting of family and civil cases. Although this initiative is progressing slowly, we understand that the Ministry is in the process of planning for a single case-management system and does not as yet have an approved strategy for moving forward. It had not fully evaluated whether viable systems exist in other provinces that could be a more cost-effective solution. The use of video for court appearances—which could significantly reduce costs, particularly for police services, and improve public safety—has not reached desired levels.
- There were significant differences in costs for operating courts in the various regions of the province. For example, the average cost

per court operating hour, excluding judicial salaries, ranged from \$302 to \$582—a difference of 93%—and it cost up to 43% more in court operating costs to dispose of a case in the Toronto Region. The reason for such variances has not been formally assessed, in part because the Ministry's financial systems does not allow for costs between regions and courthouses to be compared by court activities.

- Some progress has been made in addressing court security, for the Ministry had made or planned to make repairs to two-thirds of the 21 courthouses we sampled that were identified in the last three years as having significant security deficiencies. However, there continues to be no minimum standard for security in court locations applied across the province.

During our current audit, we also noted the following:

- Ontario needs more courtrooms. In 2007, a consultant hired by the Ministry estimated that 98 more courtrooms were needed immediately. Since then, the Ministry had completed, or had approvals to construct, 38 net new courtrooms and had further approvals to build 33 more courtrooms over the next three years.
- The Ministry had adequate processes in place for ensuring that municipalities that operate *Provincial Offences Act* Courts had established the required procedures and met standards for administering courts. However, the Ministry had not appointed a sufficient number of justices of the peace to preside over municipally administered courts. This resulted in court closures and lost revenues for municipalities until late 2007, when additional justices of the peace were made available.
- Although the Ministry's annual report on the operation of the courts was among the most comprehensive of the reports of all the provinces, there are several key results indicators, such as backlog statistics, that should be included.

Following our fieldwork, in June 2008 the Ministry announced for the first time publicly stated targets for reducing the provincial average of days and court appearances needed to complete criminal cases: it aims to reduce these by 30% over the next four years. While the Ministry indicated that additional resources may be required as one of the elements of a successful backlog- and delay-reduction strategy, it advised us that it believes that fundamental changes to the culture of criminal-case processing in Ontario must be achieved before investing additional resources. Clearly, this will require that the Ministry, the Judiciary, and the legal Bar work together, because no one party can effectively address the backlog issue on its own.

Detailed Audit Observations

CASE BACKLOGS AND COURT EFFICIENCY

The success of the judicial system is measured by its ability to resolve disputes in a fair and timely manner. In our previous audits of court services in 1993, 1997, and 2003, we reported that serious backlogs existed and were growing, particularly for criminal cases, and that more successful solutions were needed for eliminating backlogs. Despite several ongoing and new initiatives to reduce backlogs, the situation has largely remained unchanged: the measures put in place to reduce or eliminate backlogs have not been sufficient to reverse the trend. Not only have the backlogs not been reduced—they continue to grow. A major reason for this is that there has been a significant increase in charges laid, which the courts have not been able to keep up with. At the time of our audit, the backlogs were at their highest levels in 15 years.

There are serious ramifications when backlogs in courts are not adequately addressed: the public can develop a perception that the courts are not responsive to its needs; defendants can take advan-

tage of delays to argue that their cases should be withdrawn; and witnesses' memories can fade. Also, long delays caused by backlogs are unfair to accused persons, who deserve to have criminal charges against them resolved within a reasonable time period.

Backlogs and related inefficiencies in court processes also increase the cost to court participants. For instance, as the number of court appearances required to resolve a case increases, costs escalate for the justice system and for defendants. Increased court appearances also put additional demands on local municipal police or the OPP, whose officers may be required to testify in court and/or transport defendants between correctional facilities and courthouses and detain them in custody at courthouses.

Our discussions with five municipal police services confirmed that they experienced additional costs because of backlogs and inefficiencies. Four of the five services estimated that of the total time their officers spent at court because they had been scheduled to testify, 50% to 95% was spent waiting—with the officers often not testifying on the date scheduled. One of the five police services estimated that court inefficiencies cost it approximately \$3 million per year in regular and overtime salaries. The Ministry was not able to provide us with any estimates of the cost of court inefficiencies to it, defendants, or other court stakeholders.

Criminal Cases

In 1992, the Supreme Court of Canada provided a guideline of eight to 10 months as a reasonable period of time to allow for cases to go to trial. The Ministry maintains statistics on how many outstanding criminal charges are older than eight months but did not track the number of cases stayed or dismissed for reasons of undue delay. As of March 2008, the Ontario Court of Justice (OCJ), which handles the majority of criminal cases, had over 275,000 criminal charges pending trial—106,000 of which were older than eight months.

As Figure 2 shows, the backlog of pending criminal charges continues to grow.

Over the five-year period ending in 2007/08, the total number of pending criminal charges in the Ontario Court of Justice grew by 17%, and the number of criminal charges pending more than eight months increased by 14,500 or 16%. In 2007, the OCJ disposed of 585,000 criminal charges, which took, on average, 205 days each. This was an increase of 15 days, or 8%, from 2002.

Not only did the average number of days to dispose of a case increase, so too did the number of court appearances. In 2007, it took on average 9.2 court appearances to dispose of a case—an increase of 26% and 56% from the averages of 7.3 and 5.9 appearances in 2002 and 1997, respectively. The number of days to dispose of a case and the number of appearances varied significantly across the province—from 176 days and 6.5 appearances in the Northwest region to 250 days and 11.4 appearances in the Toronto region. The greatest pressures on court resources were in larger urban areas, particularly in the Greater Toronto Area. By way of comparison, British Columbia's provincial court disposed of criminal cases in an average of 6.4 appearances and 169 days in 2007.

Figure 2: Ontario Court of Justice—Five-year Summary of Average Age of Criminal Charges Pending, as of March 2004–March 2008

Source of data: Ministry of the Attorney General

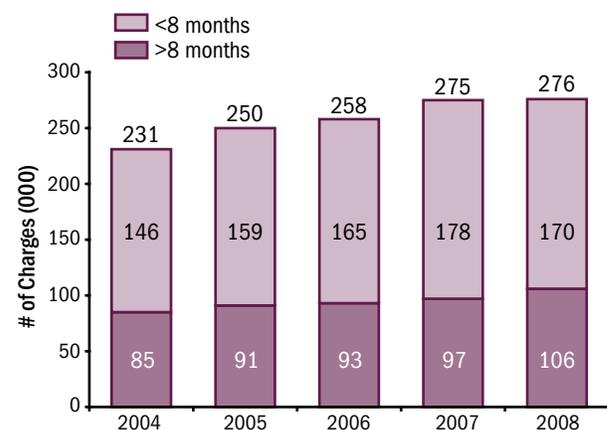


Figure 3 shows that, although there has been an increase in the annual number of criminal charges the OCJ has disposed of, that increase has not helped to reduce the overall backlog because of the generally increasing number of charges received each year.

Frequency of Court Appearances

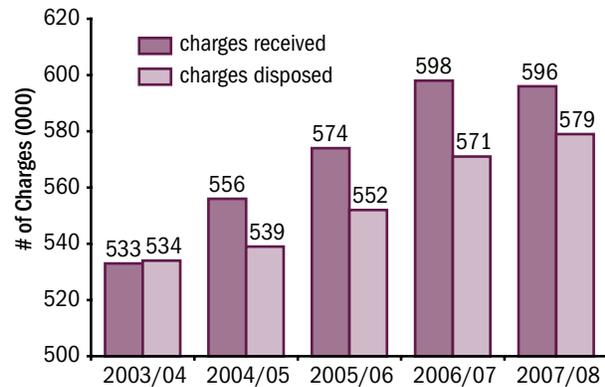
Our discussions with Crown attorneys indicated that, ideally, an accused person should appear before the Judiciary no more than four times before proceeding to trial: first appearance, bail hearing, disclosure request, and the set trial appearance. Moreover, almost 93% of cases are disposed of by the OCJ without a trial and 80% without the need to schedule a trial. The criminal case-management protocol established by the Justice Summit in 2004 notes that if an accused is not prepared to set a trial or preliminary hearing on a third court appearance, the case should be referred from a justice of the peace to a judge so that the reasons for the delay can be dealt with appropriately.

Given that the average number of appearances has been steadily rising—9.2 in 2007, from 5.9 in 1997—it is important for the Ministry to understand the reasons for delays. Since our *2003 Annual Report*, the Ministry has taken steps to collect more information by requiring court clerks to record certain data. However, we found that the information captured was of limited value in identifying the specific factors driving the increase in the number of court appearances prior to trial. For example, the province-wide average of 9.2 appearances was categorized as follows: 3.6 of the appearances were coded as “to be spoken to,” 1.9 as “set date for trial,” 1.8 as “bail hearing”; and the remainder were coded as “first appearance,” “to take a plea,” “pre-trial,” “trial,” “preliminary hearing,” and “other events.”

The number of appearances coded as “to be spoken to” varied across the province from 2.6 in the West Region to 5.2 in the East Region. We were informed that the code “to be spoken to” could represent any instance when the court ordered a

Figure 3: Ontario Court of Justice—Five-year Summary of Criminal Charges Received and Disposed, 2003/04–2007/08

Source of data: Ministry of the Attorney General



hearing, although the Ministry did not know the reason or the stage at which this event occurred. The number of appearances required to set a date for trial also varied from an average of 0.2 in the East Region to 4.7 in the Toronto Region. The Ministry had not formally assessed the reasons why this number varied so significantly across the province.

In 2002, the Division took steps to collect better information about reasons for adjournments in the OCJ. Court staff were asked to use new codes to record reasons for court adjournments, and the party who requested the adjournment, in the Integrated Court Offences Network (ICON) system, the Division’s criminal-case tracking system. However, we were informed that after more than five years of implementation, the information was still not recorded either accurately or consistently. The Ministry told us this was because of difficulties endemic to a fast-paced court environment. Our review of a sample of case files also found that the information pertaining to who requested the adjournments could not be determined from the documentation in the majority of cases.

Causes of Criminal Case Backlogs

In addition to the growing volume of cases and the increase in number of days and court appearances

needed to dispose of a case, our discussions with the Ministry, the Judiciary, and other stakeholders identified many other factors contributing to the growing backlog of criminal cases. The Chief Justices for the Ontario Court of Justice and the Superior Court of Justice indicated to us that backlogs of criminal cases are a concern and felt that additional judicial appointments were necessary to reduce backlogs. Our findings showed that the problem is particularly serious in the Ontario Court of Justice.

Our observations regarding some of these factors are as follows:

- The Ontario Court of Justice may not have the judicial resources needed to handle its current volume of cases. The number of incoming charges has increased by approximately 9% over the last five years (see Figure 3). The increase is consistent with stated federal, provincial, and municipal government initiatives to increase police resources and to prosecute violent crimes aggressively, such as those associated with guns and gangs. According to the Division, judicial resources for the Ontario Court of Justice were increased between 2003 to 2008 by 24 judges and 73 full-time and part-time justice-of-the-peace positions.

Several factors may affect the number of judges required to administer any province's justice system efficiently. Our analysis of comparative judicial resources in other provinces indicates that, in order to have judicial resources comparable to other provinces, Ontario would need significantly more judges and justices of the peace, as well as additional courtrooms and court staff to accommodate this increase. Ministry data also show that Ontario judges hear more criminal cases than judges in any other province and that Ontario has significantly fewer judges per capita than other provinces.

To deal with existing and growing demands for judicial decisions and its courts, the Ministry may have limited solutions: obtain additional funding to allow for greater

judicial and court resources (which may not be possible given competing demands from other government programs); work with the Judiciary and court users to streamline court operations to move criminal cases through the courts more efficiently and expeditiously; or a combination of both. Certain other possibilities, such as decreasing the number of incoming cases—which is largely dependent on the number of charges being laid—are not within the Ministry's control.

- The prosecution of criminal cases is increasingly complex. The number of charges laid in each case, the amount and types of evidence presented, and the large number of persons who can be involved in a single crime, all contribute to the number of court appearances and time it takes to complete cases. The Judiciary indicated to us that the inability of the police and the Crown to provide timely disclosure, particularly in response to follow-up or supplementary requests, increases the number of appearances and slows cases down.
- The inability of accused persons to obtain legal representation in a timely manner—or any representation at all—through Legal Aid Ontario can cause delays and more frequent court appearances because the Judiciary may postpone proceedings to allow the accused more time to arrange legal counsel. The Judiciary also advised us that Legal Aid was a key player in expediting criminal charges through the courts. We noted that Legal Aid representatives able to accept applications were located in only nine of the 60 criminal court locations. As Figure 4 shows, since 2000/01, the number of legal aid certificates issued by Legal Aid Ontario to qualifying low-income defendants to pay for their legal representation has not grown, even though there has been a significant increase in the number of charges being laid. In July 2007, the government announced a plan to allocate \$51 million over three years in new funding to Legal Aid

Figure 4: New Criminal Charges Received and Legal Aid Certificates Issued, 2000/01–2007/08

Source of data: Ministry of the Attorney General and Legal Aid Ontario

	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	Change Over 8 Years (%)
new criminal charges received	502,963	524,824	546,547	533,424	556,380	573,646	598,037	595,611	18.4
Legal Aid criminal certificates issued	65,279	63,023	61,074	60,735	61,666	65,510	65,784	64,335	-1.4
% of criminal charges covered by certificates	13.0	12.0	11.2	11.4	11.1	11.4	11.0	10.8	-16.8

Ontario to improve access. In July 2008, an independent review of the legal aid system reported its findings on Legal Aid Ontario's legislation, governance, administration, and service delivery to the Attorney General.

- For criminally accused persons remanded in custody awaiting trial, courts typically give double or sometimes even triple credit for time served in incarceration prior to sentencing. For instance, in addition to earned remission—which gives an inmate a one-third reduction in his or her sentence—a person sentenced to a one-year prison term who had already spent four months incarcerated before being sentenced would likely be released upon sentencing on the basis of the time already served. Stakeholders suggested to us that there are many questionable and unnecessary appearances in courts prior to trial by incarcerated persons in remand that have little value in moving cases forward. Such appearances cause delays, increase court costs, and contribute to backlogs. In some cases where a guilty outcome is considered probable, we were informed that an incentive may exist for the accused to delay the trial and delay pleading guilty to maximize the time in custody while in remand. Our discussions with stakeholders in courts and prisons indicated that the prevalence of the doubling

or tripling sentencing credit has grown over the last 10 years. We noted that, although the total number of inmates in Ontario prisons has increased by only about 10% over the last 10 years, the proportion of inmates remanded in custody awaiting trial has increased from 40% to almost 70% during that period.

- Over the last 10 years, there has been greater incarceration of inmates in correctional institutions in areas remote from courthouses, partly because of the expansion of the province's larger "superjails," which are more cost-effective correctional institutions. An unintended consequence has been the increased travel time needed for defence counsel to visit inmates in these more remote facilities. During our audit, we heard anecdotally from various members of the justice community that defence counsel more often arrange for their clients to be brought to court—rather than to appear by means of video technology—because it is more convenient or preferential to counsel to meet clients at a courthouse than to visit them at a more distant institution. Counsel may also take actions that result in more frequent court appearances for their clients, which may cause corrections management to incarcerate the accused in facilities that are closer to the courthouse.

Efforts to Address Criminal Court Backlogs

As Figure 5 shows, over the last five years, total court operating expenditures have increased about 33%, from \$302 million to \$400 million, with over half of this increase occurring in the 2007/08 fiscal year. We were advised that approximately \$35 million of this increase in operating expenditures relates to a one-time expenditure incurred in the 2007/08 fiscal year associated with the retroactive payment for judicial remuneration. In addition to the further resources the increases in operating expenditures allow, we have seen evidence that the Ministry and the Judiciary are working together to address backlogs and to share best practices for improving court procedures.

Following our *2003 Annual Report*, the Standing Committee on Public Accounts recommended that the Ministry measure and report on the effectiveness of its various initiatives for reducing backlogs. We reviewed the status of a number of these initiatives and noted the following:

- In 2003, the Ministry launched the Justice Delay Reduction Initiative (JDRI) to address the 10 courthouses with the most critical backlogs of OCJ criminal cases in Ontario. In addition to \$28 million in one-time expenditures for capital improvements to these court facilities, in 2004/05 the Ministry received increased annual funding of about \$22 million to hire approximately 115 new court support staff, 15 new judges, 50 Assistant Crown Attorneys, 29 Case Administration Co-ordinators, and nine legal support staff. The JDRI also included a review of all procedures and bottlenecks at each courthouse to identify further efficiencies. At the time of this audit five years later, the Ministry had not yet prepared a formal assessment of the effectiveness of the JDRI. As Figure 6 shows, our assessment noted that from 2003 to 2007, the 10 JDRI court locations collectively disposed of charges at a significantly greater rate than the 50 courts that were not part of the JDRI. However, notwithstanding the progress being made, in 2007 the JDRI court locations were still unable to process the number of incoming charges received. The incoming charges had grown by 15% since 2003, and their backlogs continued to grow, although not nearly as much as in non-JDRI court locations. The JDRI court locations also experienced increases in the number of days it took to dispose of cases and the number of appearances needed to dispose of a case. The increase in the latter was greater than it was for non-JDRI court locations.
- In February 2002, the Ministry initiated a pilot project called Vertical File Management at the Kitchener courthouse to improve the way in which Crown prosecution files were managed, with the expectation that court efficiencies would be achieved by reduced

Figure 5: Summary of Annual Operating Costs for Court Services, 2002/03–2007/08

Source of data: Public Accounts

	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	5-year Increase (%)
court operating costs (\$ million)	194.9	202.1	210.0	217.2	226.9	243.6	25.0
judicial support and remuneration for provincially appointed Judiciary (\$ million)	106.8	98.2	130.7	116.0	119.9	156.2	46.3
Total Operating Costs (Excluding Bad Debt Expense) (\$ million)	301.7	300.3	340.7	333.2	346.8	399.8	32.5
change from previous year (\$ million)	10.8	-1.4	40.4	-7.5	13.6	53.0	
change from previous year (%)	3.7	-0.5	13.5	-2.2	4.1	15.3	

Figure 6: Results of Justice Delay Reduction Initiative (JDRI)

Source of data: Ministry of the Attorney General

	Combined Results of 10 JDRI Court Locations				50 Non-JDRI Court Locations
	2003 (pre-JDRI)	2007	Increase (#)	Increase (%)	Increase (%)
charges received	217,657	250,966	33,309	15.3	8.5
charges disposed	214,133	245,261	31,128	14.5	4.7
increase in backlog of annual charges pending	3,524	5,705	2,181	61.9	474.0
average number of days to disposition	207.9	210.7	2.8	1.3	4.9
average number of appearances to disposition	7.8	9.6	1.9	24.1	17.0

appearances, reduced case disposition times, and stronger cases being brought to trial. At the time of our audit, the Ministry had not conducted a formal review of this pilot, which was still in progress. However, our own assessment using information available to date found that, from 2001/02 to 2007/08, the average number of days taken to dispose of a case decreased from 160 to 138, and the trial collapse rate—or the number of charges disposed of on the trial date without a trial—decreased from 12% to 7%. Despite these improvements, the average number of court appearances increased from 6.2 to 8.2. In addition, the Kitchener courthouse was one of the 10 included in the JDRI. It could not be determined to what extent the JDRI contributed to the improvement at the Kitchener courthouse. At the time of our audit, the Ministry had established plans to extend this prosecution-file-management initiative to 17 large and medium-sized Crown offices by the end of 2008.

- In November 2005, the Ministry obtained funding approval for \$23.7 million to implement the Upfront Justice Project from May 2006 to March 2008 at certain courthouses. The project consisted of several separate but interrelated projects for reducing delays at the earlier stages of cases moving through the courts. These projects included establishing

a Bail and Early Justice Team to intervene in in-custody cases to ensure more productive court appearances and prevent unnecessary adjournments; a Community Justice Initiative to improve diversion programs as alternatives to processing cases through the courts; and measures to improve the quality of Crown briefs and disclosures. The Ministry also hired a consultant to evaluate the programs during the period. In a November 2007 status report—the latest available at the time of our audit—the consultant noted several positive results, such as increased caseload clearance rates, a reduced number of adjournments, increased percentages of guilty pleas before trial, more referrals to the diversion programs, and improvements to Crown briefs.

- Over the last five years, the Ministry has spent about \$5.3 million in total to fund “blitz courts”—that is, courts that are provided with additional or reallocated judicial and Crown resources for up to six months to help reduce the backlogs. The Ministry has used such blitz courts for courthouses with serious criminal backlogs. However, our discussions with the Ministry and the Judiciary noted that blitz courts typically only offer short-term relief to the courthouse, and backlogs increase when the additional resources are removed.

In our *2003 Annual Report*, we also recommended that the Ministry establish realistic targets

and timetables for eliminating backlogs. After we completed our fieldwork in our current audit, the Ministry announced in June 2008 the Justice on Target strategy, which, for the first time, sets public targets for reducing by 30% over the next four years the provincial average of days and court appearances needed to complete a case. Two initiatives were announced at that time to help accomplish these goals: improved access to Legal Aid support and changes to the manner in which Crown prosecutors manage cases. The Ministry indicated that it plans to announce other initiatives in the future.

Family Cases

In general, the Ontario Court of Justice hears family cases involving child protection as well as custody, access, support, and adoption, which fall under provincial jurisdiction, while the Superior Court of Justice deals with cases involving divorce or property claims. In 17 court locations, a Unified Family Court exists where all family cases are dealt with by the Superior Court of Justice. Child protection cases are governed by statutory time limitations for court appearances and hearings: in most circumstances, it is deemed to be in the child's interest for the case to be resolved within 120 days unless otherwise determined by the courts. In the 2007/08 fiscal year, both courts received a total of about 86,000 family proceedings, including 12,000, or 14%, for child protection cases.

For family cases and civil cases, the Ministry has recently started to capture additional statistics on case status using its case-tracking information system, which it calls "FRANK." FRANK was introduced to courthouses over a six-year period, with the process to be completed in fall 2008. At the time of our audit, the Ministry informed us that it was performing a quality-assurance review of the information in FRANK to ensure that it was accurate and reliable. However, on the basis of information available from FRANK, we noted that backlogs existed in resolving family cases, including child protection cases. For instance, of the 11,400 child protection

cases disposed of from March 2007 to February 2008, about 47% took over 120 days, and the number of cases pending over 120 days increased by 38% from 4,700 in March 2006 to 6,500 in February 2008.

The *Family Law Rules* of the Courts provide that child protection hearings should be completed within 120 days of the start of the case, subject to the best interests of the child. The time period may be extended by the judge for dealing with the child's family circumstances and establishing a permanent plan for the child's care and upbringing. 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. The Ministry acknowledged that serious backlogs had arisen with respect to child protection cases and noted that government funding for children's aid societies had increased in recent years, which had led to a significant increase in child protection cases before the courts.

In 2005, six additional family law judges were appointed to the OCJ, and in July 2008, the federal government committed to add eight more SCJ judges, six of which will be assigned to family cases. Nevertheless, expenditures on judicial and court resources have not been keeping pace with the increase in child protection cases being brought before the courts.

We also noted growing backlogs for non-child-protection family cases. The number of cases pending over 200 days increased by 26% from 70,800 in March 2006 to 88,900 in February 2008.

The Chief Justice of the Superior Court of Justice provided us with these comments on the family proceedings: "Overall, the problem of backlog has remained static. However, in some specific areas of the court's business, and in some geographic locations, there have been acute challenges with respect to backlogs, particularly in civil and family proceedings. Within family proceedings, child protection

matters have been identified as a top priority of the court and continue to be an area of concern.”

The Chief Justice of the Ontario Court of Justice informed us that “reducing delays in child protection cases has been and will remain a major focus for the Court. The Ontario Court of Justice works closely with the Ministry of the Attorney General, the Ministry of Children and Youth Services, and justice partners on the child protection backlog through the Justice Summit and its Family Courts Steering Committee. Since the increase in the family judicial complement in 2005, the family law backlog has improved somewhat, especially in child protection matters.”

We did note that there have been several initiatives to improve the processing of child protection and family cases. These include the development of a child protection best-practices protocol and the establishment of working groups and committees as a result of the 2002 Justice Summit, and the investigation of the causes of backlogs at specific sites.

Civil Cases

The civil courts receive about 85,000 new proceedings annually, of which about 6,000 proceed to trial and the remaining are disposed of without the need for a trial, as a result of decisions by the parties involved, pre-trial mediation, or applying court procedural rules. The Ministry tracks the time it takes to dispose of almost 50,000 of these cases that have had activity after the initial filing. We noted that the Ministry has made some progress in dealing with civil cases. For example, from March 2006 to February 2008, the percentage of cases pending trial over 12 months decreased by 41%. However, civil cases continued to take lengthy periods of time to be disposed of. It took an average of 581 days to dispose of a civil case during the 2007/08 fiscal year, and as of February 2008, there were 6,670 civil cases awaiting trial for an average of 359 days.

The Ministry has undertaken a Civil Justice Reform Project to provide recommendations to make the civil justice system speedier, more stream-

lined, and more efficient. The project released a report in November 2007 with over 80 recommendations that the Ministry, the Judiciary, and other stakeholders are addressing.

RECOMMENDATION 1

The Ministry of the Attorney General should work with the Judiciary and other stakeholders to develop more successful and sustainable solutions for eliminating backlogs in criminal, family, and civil courts, including:

- creating better tools to identify the sources and specific reasons for delays and more frequent court appearances so that action can be taken to address potential problems in a more timely manner;
- assessing the resource implications of actions taken and decisions reached by the different parties to a trial so that resources allocated to courts can handle the increased caseloads; and
- establishing realistic targets and timetables for eliminating the current backlogs.

In addition, the Ministry should assess the impact, both quantitatively and qualitatively, that backlogs have on the courts, stakeholders, and the public and use this information to establish benchmarks for measuring improvements.

MINISTRY RESPONSE

The Ministry will continue to identify and address the need for enhanced management information, including collecting high-quality, meaningful adjournment data. Where possible, the Ministry will collect data to assist in assessing the resource implications of actions taken and decisions reached by the different parties to a trial so that resources allocated to courts can handle the increased caseloads.

The Ministry recognizes the adverse effects of the backlog of criminal cases in the courts on the public and other justice system participants.

The Ministry has therefore developed the Justice on Target Strategy, which is the first-ever results-based approach to criminal justice processes in Ontario. The Attorney General has set a target of achieving in four years 30% reductions in the provincial average of days and court appearances needed to complete a criminal case. As part of this strategy, the Ministry is working with the Judiciary and all other justice system participants to identify practices and processes that inhibit the effective functioning of our criminal courts and to develop solutions that will enable us to meet the targets. Once effective case-processing practices are in place, the Ministry will be able to accurately assess its resource needs.

It is important to note that most charges that have been before the courts for eight months or longer are not at risk of being stayed or dismissed for reasons of delay. The Supreme Court of Canada has stated that there must be an unreasonable delay, and the delay must be attributable to the Crown. Very few cases are stayed or dismissed for reasons of undue delay.

With respect to family and civil cases, the Ministry will continue to work with the Judiciary and justice partners to identify the reasons for delay, particularly in child protection cases, and move forward with the recommendations of the 2007 Civil Justice Reform Project to minimize delay in the civil justice system.

ADMINISTRATIVE STRUCTURE OF THE COURTS

In both our 1997 and 2003 Annual Reports, we recommended that the Ministry and the Judiciary establish greater co-operation and address some longstanding concerns related to the administration of the courts. We noted that improved administrative and management procedures were necessary for greater accountability and to deal with serious issues, most notably case backlogs. In our current

audit, we were pleased to note that both the Ministry and the Judiciary have made significant efforts to clarify their respective roles and responsibilities, and to consult each other and co-operate on all key administrative decisions. Notwithstanding this improved co-operation, there continue to be several areas where little or no progress has been made, including case backlogs, information technology, and court security. We discuss these issues in other sections of this report.

The relationship between the Ministry and the Judiciary is complex. The Judiciary is independent of the administrative and legislative arms of the government. As part of its adjudication function, the Judiciary has sole responsibility for the conduct of proceedings within its courtrooms. It directs the operation of courts, including determining the dates of court sittings, scheduling cases, and assigning courtrooms, cases, and duties to individual judges. While the Judiciary controls the use of court resources, the Ministry makes key decisions affecting the administration of the courts, such as court budgets, staffing decisions, courthouse capital projects, and the number of provincially appointed judges and justices of the peace.

It has long been acknowledged that this division of responsibilities can only be successful if there is a clearly defined accountability structure and a clear division of authority and responsibility between the Judiciary and the Ministry. This division of authority may mean that, in some instances, the Judiciary's involvement in areas of ministry responsibility is limited to simply being apprised of ongoing operations. In other instances, where the Judiciary considers it appropriate, it may consult directly with the Ministry.

Since our *2003 Annual Report*, the Ministry and the Judiciary have improved co-operation and better defined their respective roles and responsibilities in various ways:

- Representatives of the Ministry, Judiciary, Bar, and other justice partners and stakeholders have attended a “Justice Summit” held annually since 2002. These summits make

possible an improved discussion of key issues affecting the courts and have established several working groups and joint committees to respond to identified concerns. Outcomes of these efforts include the implementation in 2004 of a criminal case-management protocol and the identification of best practices for processing child protection cases.

- In 2004, the Attorney General and the Chief Justice of the Ontario Court of Justice signed a renewed Memorandum of Understanding (MOU) setting out and clarifying the financial and administrative authorities and responsibilities of both parties in delivering court services. In May 2008, for the first time, an MOU was established between the Attorney General and the Chief Justice of the Superior Court of Justice.
- Both the Ministry's Court Service Division (Division) and the Ontario Court of Justice have commenced issuing annual reports, albeit somewhat tardily—at the time of our audit, the most recent reports were for the fiscal year ending March 31, 2005, and December 31, 2005, respectively. These reports act to further clarify the parties' roles and responsibilities and to identify issues affecting court administration and the accomplishments achieved in delivering court services more effectively.
- In 2006, the government made several amendments to the *Courts of Justice Act*, which governs the structure and administration of the courts. The amendments specify goals for the administration of the courts, clarify ministry and judiciary roles and responsibilities, legally recognize the MOUs between the Ministry and the Judiciary, and require the Ministry to publish an annual report on court administration.

During our audit, the Chief Justices indicated to us that they believe progress has been made in relationship building with the Ministry. The courts also shared with us specific concerns about issues

pertaining to staffing, security, and facilities that the Ministry will need to address. For instance, the Court of Appeal advised us in written correspondence, "The CAO is, and has been, generally satisfied with the administration of the courts in Ontario. The services provided by the Court Services Division are meeting the needs of the judiciary within the Court of Appeal for Ontario."

Similarly, the Chief Justice of the Superior Court of Ontario stated:

Many of the judicial efficiencies identified and developed in the last few years have resulted from the Auditor General's 2003 identification of continued ambiguity as between the respective roles and responsibilities of the judicial and executive branch of government. To address these ambiguities, the Office of the Chief Justice of the Superior Court and the Ministry of the Attorney General have worked collaboratively to develop an appropriate legislative framework, through amendments to the *Courts of Justice Act*, to approach the development of a common appreciation of the respective roles of each branch of government and, ultimately, to conclude a comprehensive Memorandum of Understanding between the Chief Justice of the Superior Court and Ontario's Attorney General, the first of its kind in breadth and scope in Canada.

The Ontario Court of Justice, which has had an MOU in place with the Ministry since 1993, also noted, "The MOU has resulted in a very significant improvement in the understanding between the Court and the Ministry of the complex relationship and responsibilities for administration. Further improvements to the MOU would be in the area of financial support for the library and IT, and a formal recognition of the court's ownership of its own statistical data."

However, the OCJ also cited several areas where the Ministry's support services were not meeting

the needs of the court, such as insufficient support staff in courtrooms and for justices of the peace, and gaps in service to the public in Ontario family courts—which require increasing the complement of judges and facilities to accommodate them.

RECOMMENDATION 2

To help ensure that the courts function effectively and to improve the stewardship of funds provided to the courts, the Ministry of the Attorney General and the Judiciary should maximize the benefits from their improved relationship to enhance their administrative and management procedures by establishing:

- a process whereby they regularly assess the administrative structure of the courts and the Ministry/Judiciary relationship against desired outcomes; and
- realistic goals, plans, and timetables for the timely and effective resolution of issues related to court operations, such as the reduction of case backlogs and improvements to technology, information systems, and security in courts.

MINISTRY RESPONSE

The Ministry's Court Services Division has memoranda of understanding with the Ontario Court of Justice and the Superior Court of Justice. These support continuing dialogue to ensure maximum co-operation in court administration while protecting the independence of the Judiciary. Division staff meet regularly with representatives of the Judiciary—both with the offices of the Chief Justices and at the local level—to identify and address new needs and priorities. The Division's Five-year Plan, which is part of its published annual report, sets out goals, plans, and timetables to address priority needs identified by the Ministry and the Judiciary.

The Justice on Target Strategy is a good example of the Ministry and the Judiciary working together to achieve concrete goals for effective court operations. The initiative is co-led by a judge of the Superior Court of Justice and the Ministry's Criminal Law Division. We will continue to consult with the Judiciary, through the Justice on Target initiative, to find ways to improve court operations and reduce backlogs.

INFORMATION SYSTEMS AND THE USE OF NEW TECHNOLOGIES

The Division uses two main computerized systems to provide information to the Judiciary and Crown attorneys and for tracking cases in courts.

The Integrated Court Offences Network (ICON), which has been in use since 1989, is an on-line mainframe system that accumulates information on all criminal cases. It maintains case data and produces court-docket and monthly statistical reports. ICON also tracks all offences, fines imposed, and payments made.

In 2003, the Ministry began implementing in stages a new information technology system—called “FRANK”—for case management, scheduling, and reporting of family and civil cases. FRANK replaced several manual and stand-alone computer systems in use at various court locations. We were informed that, owing to unexpected complexities, full implementation took three years longer than expected. The last courthouse is scheduled to be converted in fall 2008. FRANK also handles the case management of about 75% of the criminal proceedings in the Superior Court of Justice.

In 1996, the Ministry, along with other ministries and a consortium of private-sector partners, initiated the Integrated Justice Project (IJP), which was created with the intention of providing courts with new information systems that were integrated with other justice sector partners, such as the Crown, police, and correctional services. The goal

was to achieve a more modern, effective, and accessible administration of justice. However, because of significant cost increases and delays, the IJP was terminated in 2002.

As a result of the failure of the IJP, the Ministry's stated approach since 2002 to implementing new information technology in courts in the mid-term has been to move forward in modest, incremental steps to maintain and upgrade existing case-management systems. Over the longer term, the Ministry plans to link the civil and family case-management systems and the criminal case-management systems in a single case-management system.

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. The following sections discuss the Ministry's recent efforts to introduce information systems and new technologies.

Single Case-management System

In October 2004, the Ministry obtained approval from Management Board of Cabinet (MBC) to undertake the work required for critical support, maintenance, and essential upgrades to ICON and FRANK in order to support case processing and to position both systems favourably for future linkage with and planned integration into a Single Case-Management System (SCMS). The Ministry is at the detailed planning stage for the SCMS. The Ministry spent approximately \$3 million annually from 2004/05 to 2007/08 to perform critical support, maintenance, and essential upgrades to ICON and FRANK, as directed by MBC in October 2004.

In 2007, the Division conducted a needs assessment and research study to review and assess the technologies available to support the development of the SCMS. At the time of our audit, the report of the results of the needs assessment was still in draft stage, and the Division was in the process of preparing a business case outlining the project

goals, approach, and estimated cost. The Ministry told us that it expected to present a formal submission to Cabinet by the end of 2008 and that, if it is approved, the targeted date for a new SCMS common platform is 2009/10.

We noted that in 2001 British Columbia fully implemented a single integrated case-management system called JUSTIN at a total cost of about \$15 million. JUSTIN includes police reports to Crown counsel, police scheduling, Crown case assessment and approval, Crown victim and witness notifications, court scheduling, and judicial trial scheduling. The system is integrated, meaning that information about a case is entered only once and various justice stakeholders reuse the information as the case moves from initiation through to disposition. As was the intent of Ontario's IJP, the reuse of data throughout the system helps reduce staff time in recording and processing cases and minimizes the possibility of errors due to the re-entry of data. JUSTIN is also integrated with computer applications related to civil and family cases. In February 2008, the province of Quebec agreed to purchase British Columbia's suite of criminal and civil justice applications, which it plans to implement in its jurisdiction.

The Ministry told us that it had informally looked into JUSTIN as a possible platform for establishing the SMCS in Ontario but had decided not to pursue this option mainly because the workflow in the B.C. justice system was different than in Ontario and that the potential cost might be greater than the current incremental approach. However, the Ministry was unable to provide us with a formal documented assessment of the B.C. system and its lack of applicability to Ontario.

Computers in Courtrooms

There would be substantial efficiencies and savings if Ontario's courts used a paperless, electronic document system. The volume of cases court staff handle each year require them to manage a large number of documents, yet to date, transactions

have generally been processed manually and have been paper-based. This requires significant clerical effort to schedule, enter, file, and track court proceedings and transactions. At the three regions we visited, we were informed that over three-quarters of their courthouses have used computers in at least one courtroom for administrative tasks, such as creating or updating information in either ICON or FRANK during court time. However, the use of computers in courtrooms is not common practice across the province: data entry and form processing are done outside of the courtroom. We noted that in order to expand the use of computers in courtrooms, the Ministry would need to deal with technical limitations in some courtrooms, changes to court clerk procedures and responsibilities, and, possibly, stakeholder resistance to changes to existing court processes and documentation requirements.

Electronic Document Filing

Until the SCMS is developed, there would be little benefit to the Ministry to have the public file certain court forms electronically because its existing systems could not process them. 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.

We noted that in British Columbia, the legislative rules facilitating e-filing came into effect in July 2005. Since then, B.C. has been offering electronic filing in seven of its courthouses and intends to introduce it incrementally across the province. B.C.'s electronic filing project has enabled law firms, registry agents, and self-represented litigants to submit documents electronically. In addition, the Ministry's own research indicates that electronic filing has been widely adopted in various jurisdictions in the United States, Europe, and southeast Asia. For example, in U.S. federal and state courts that

have the capacity to accept e-filing, 40% to 90% of documents are filed electronically.

Digital Audio Recording

Transcripts of court proceedings have traditionally been prepared manually by court reporters attending court, and audio recordings made with low-quality analogue recording devices. In recent years, the development of digital audio equipment allows for the efficient and high-quality recording of court dialogue, thus reducing court reporter costs. Alberta and British Columbia converted their courts to digital audio systems in 2001/02 and 2006/07, respectively. In Ontario, owing to technical and quality issues, the Ministry discontinued in 2004/05 a pilot project inherited from the former IJP that cost over \$17 million.

In June 2007, the Ministry entered into a new vendor agreement to test digital recording devices at six court locations. In July 2007, the Ministry conducted an evaluation of the pilot project and decided to retain the same vendor to introduce the digital recording devices in Ontario courts incrementally. As of March 2008, a total of 16 courthouses had successfully converted their recording systems from analogue to digital at a cost of \$750,000. The Ministry informed us that the conversion of the remaining 146 courthouses will be completed in the next two to three years. However, at the time of our audit, the Ministry had not established a formal plan specifying the scope and operational targets of the implementation, including cost projections, management approval, and plans to address computer compatibility and other technical issues.

Video Court Appearances

In our *2003 Annual Report*, we noted that the courts were starting to make good use of new video technology, which allows an accused person to appear in a courtroom by video conferencing from a correctional institution or police station. Most

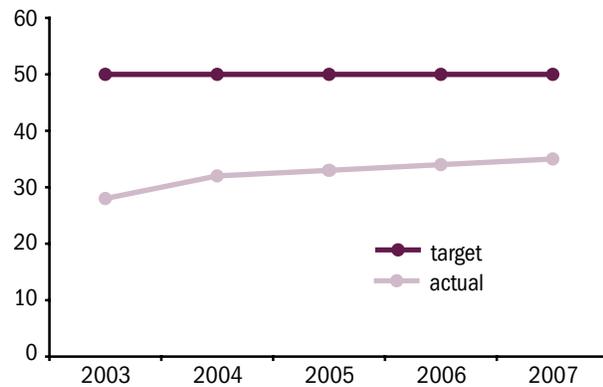
criminal court appearances are for preliminary or remand hearings, which may take a few minutes to complete, and after which the accused person is remanded or returned to custody to await trial. Using video technology eliminates the need and, therefore, the cost of transporting a prisoner to and from court. Since 2003, the number of locations in courts, correctional facilities, police stations, and legal aid offices with video technology has more than doubled to approximately 230. In addition, video technology has been used in other areas, such as for remote witness testimonies and high-security trials. However, on the basis of the information discussed below, we concluded that video technology in courtrooms is underutilized and that expansion of its use would have significant benefits.

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, as Figure 7 shows, growth in use of video technology has been slow and has essentially levelled off at 35%. In 2007, the Ministry retained an independent consultant to conduct a program review of the use of video technology in the justice sector. The review reported that a plateau in use had been reached as a result of a lack of appropriate funding, the absence of a supportive and accountable governance model, and a lack of strategic direction and planning with court stakeholders. The *Criminal Code* of Canada permits accused persons to appear by video in specific circumstances where ordered by the judiciary. Ontario courts have no requirement to increase the use of video equipment for court appearances, and, in some cases, consent of the Crown and defence is required. As previously stated in this report, we were informed that another major factor limiting video use was defence counsels' preference to have inmates brought to the courts for meetings instead of counsel going to the prisons to meet clients.

The consultant's report further estimated that if video usage for in-custody appearances in the 2006/07 fiscal year had met the 50% target, the justice sector would save about \$10 million annu-

Figure 7: Video Appearances as Percentage of Total In-custody Appearances, 2003–2007 (%)

Sources of data: Ministry of the Attorney General and Ministry of Community Safety and Correctional Services



ally. By reducing the number of prisoners transported between courts and correctional facilities, there would be fewer court delays owing to traffic, more effective use of the police resources that are assigned to transporting prisoners, improved safety to the public, and better access to justice, especially in remote areas.

The consultant's savings estimate may be understated. In a February 2008 study on court services provided by the Toronto Police Service—which provides and pays for court security and prisoner transportation for Toronto courts at an annual cost of about \$44 million—the Auditor General of the City of Toronto estimated that savings of \$5 million in Toronto alone would occur if the use of video technology increased to 40% from about 21% in 2006. At the correctional institutions we visited, we found that the greater use of video appearances would reduce their staffing requirements by having fewer prisoners discharged and admitted. Moreover, we were advised that it would reduce the opportunities for prisoners to bring contraband into the prisons.

Our research noted that greater use of video technology is possible and would be cost-effective with proper protocols that made such court appearances meaningful. For example, our research noted that Alberta uses video for more types of in-court

appearances by accused persons in custody than Ontario. Alberta has a judicial requirement for the mandatory use of video technology for several types of pre-trial appearances, unless the accused has a justifiable reason for video technology not to be used. Moreover, the percentage of in-custody pre-trial video court appearances achieved within the last year in the Edmonton and Calgary correctional centres was 65% and 80%, respectively. This was significantly higher than the average usage rate in Toronto.

We also noted that a Memorandum of Understanding for the original Video Remand Project between the Ministry and the then Ministry of Public Safety and Security covering the project scope and the parties' roles and responsibilities expired in March 2003 and has not been renewed.

RECOMMENDATION 3

To modernize court operations, achieve cost savings and efficiencies for courts administration and other stakeholders—such as police and correctional services—and improve public safety, the Ministry of the Attorney General should expedite its efforts and establish plans and timetables to introduce various proven technologies and to upgrade information systems. In particular, it should:

- ensure that its analysis of the applicable technologies utilized in other provinces is sufficiently thorough; and
- use video technology for in-court appearances unless the accused can make a valid argument for the necessity of an in-person appearance.

MINISTRY RESPONSE

The Ministry will continue to work with the Judiciary and its partners to enhance the effectiveness of the justice system through the use of technology. Through our active membership in the Canadian Centre for Court Technology and

the Information Technology Committee of the Association of Canadian Court Administrators, we will continue to assess technologies available in other Canadian and U.S. jurisdictions and identify opportunities to import and adapt that technology to meet Ontario's needs.

While the Ministry recognizes the importance of exploring the maximum productive use of video technology, processes must be in place to ensure that video appearances contribute to effective case processing. To that end, the Ministry will continue to work with the Judiciary on the effective use of videoconferencing in Ontario's courts.

FINANCIAL INFORMATION

Appropriate and reliable financial information is needed to properly assess accountability for expenditures and to help determine whether court services are provided economically and efficiently.

In both our *1997* and *2003 Annual Reports*, we reported that the Ministry had made little effort to assess its costs, other than to compile information on actual expenditures compared with budgeted expenditures by region and court location. We also noted that it lacked regular management-reporting systems that would allow management to monitor how cost-effectively court services were being delivered. In our current audit, we still found that minimal operating-cost information is available.

Specifically, the Ministry's financial systems did not allow for comparing costs between regions and courthouses by court activities, such as by the type of court (civil, family, criminal) and by key activities, such as judicial support and case tracking. In our *2003 Annual Report*, we noted that in January 2002, the Ministry made preliminary attempts to compare court activities and costs by region and with other provinces. However, since then, it has made no further attempts to benchmark its costs. In addition, contrary to information we received in

our 2005 follow-up of action that the Ministry had taken to address our 2003 recommendations, the Division has not followed through with its intention of using what was—in October 2004—its new Integrated Financial Information System (IFIS) to record and report on costs by practice areas by the 2006/07 fiscal year.

However, we did note that, several years ago, the Division did start to monitor budget allocations for operating courts—excluding judicial salaries—among regions on the basis of two overall workload factors: the number of new proceedings received and court operating hours. This has since led to the Ministry's making two budget reallocations between regions. However, there continue to be fairly large differences between regions. For instance, as Figure 8 illustrates, our calculation of the average total court operating cost by region of disposing of a case in 2006/07 ranged from a low of \$389 in the East Region to a high of \$558 in the Toronto Region—a difference of 43%. As Figure 9 shows, we also calculate that the average hourly operating cost per court by region varied from \$302 in one region to \$582 in another—a difference of 93%. The Ministry informed us that it is substantially more expensive to operate certain courts in remote areas, but it had not formally analyzed or explained the variances.

Figure 8: Average Total Court Operating Cost per Case Disposed of (excluding Judicial Salaries), by Region, 2006/07 (\$)

Source of data: Ministry of the Attorney General

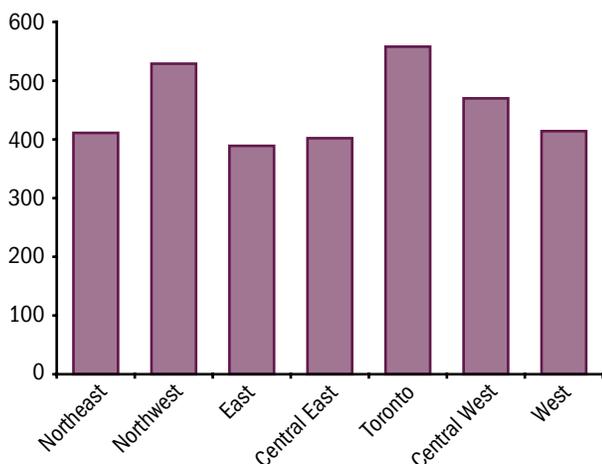
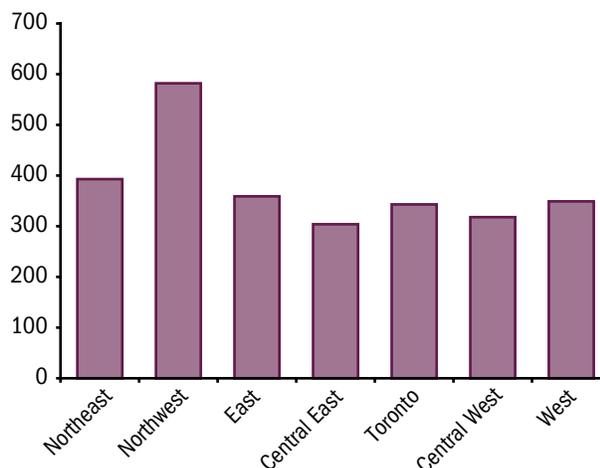


Figure 9: Average Hourly Operating Cost per Court (excluding Judicial Salaries), by Region, 2006/07 (\$)

Source of data: Ministry of the Attorney General



RECOMMENDATION 4

In order to manage court financial resources effectively, the Ministry of the Attorney General should:

- identify and collect information needed from its court operations and other provinces to allow for comparing and assessing the costs of delivering court services in the various regions in the province;
- establish benchmarks for appropriate costs for delivering court operations; and
- use the information gathered to ensure that financial resources are allocated to its courts on the basis of their relative needs.

MINISTRY RESPONSE

The Ministry's Court Services Division has successfully managed annual divisional costs within the approved allocation through monitoring of monthly expenditures.

Comparisons of year-over-year and region-to-region expenditures are conducted when determining new funding for salary awards, one-time funding requirements linked to workload pressures, and the realignment of funding between regions.

The Division recognizes the need to collect better information that will allow for comparing and assessing the costs of delivering court services in the various regions in the province. This work, which is now under way, will require a significant change in the way that salaries and wages are tracked at each court location. Once cost reporting has been overhauled, benchmarks will be established for appropriate costs for delivering the various court operations in Ontario as well as for comparison of similar court operating costs in other provinces.

CAPITAL PROJECTS

Over the past five years, the Ministry spent about \$116 million on major capital projects, of which two-thirds was spent in the 2007/08 fiscal year.

In our *2003 Annual Report*, we noted that controls over planning, contractor selection, and project management for capital projects were inadequate. In our 2005 follow-up report, we noted that the Ministry, in conjunction with the Ontario Realty Corporation (ORC)—its mandatory service provider for construction and management of capital projects—had made a number of improvements to its procedures, staff training, and reporting processes on capital projects to help ensure that projects are adequately planned and managed. During our current audit, we confirmed with ministry staff and by testing certain projects that these new controls were still in place.

At the time of our audit, the Ministry's Facility Management Branch was continuing its work with the ORC to develop an asset management plan to help better manage court facilities, such as by identifying facility needs and establishing long-term strategic plans and priorities. The Ministry informed us that it expects the plan to be completed in about two years.

Need for Additional Courtrooms

The need for more courtrooms is particularly serious in the Ontario Court for Justice, which has been experiencing large backlogs. The Chief Justice of the Ontario Court of Justice replied to our questions on her views of the number of courtrooms available as follows:

There are no locations in the province with excess courtrooms. On the contrary, there are many locations in which there are barely enough courtrooms for the number of judges assigned to those locations. Courtrooms and the appropriate office facilities for judges in existing courthouses is foreseen as a major stumbling block to the need to increase judicial complement in those locations that suffer from chronic backlog. Moreover, the recent increase of 1000 police officers in the province, and the creation of the guns and gangs task forces of police and Crown resources, have and will continue to have a very predictable impact on the workload of the Court, particularly with major prosecutions that take a disproportionate amount of court time. Without a similarly significant increase in judicial resources and facilities there has been and will continue to be an unavoidable increase in the backlog of cases and longer times to trial in those locations affected.

While creation of additional courtrooms and judicial facilities is certainly not an easy task nor one that can be accomplished overnight, courtrooms and facilities must keep pace with the increasing caseloads or they will ultimately become the main cause of unacceptable backlogs.

In 2007, a consultant hired by the Ministry estimated that, on the basis of current use of the courts, the province had a significant shortfall of 98 courtrooms and will have a shortfall of 169 by

2017 and 210 by 2031 in light of projected usage. Judging by the Ministry's 2006 construction costs for building new courthouses, we estimate that this lack of necessary courtrooms will have significant capital funding implications for the Ministry. As much as \$430 million may be needed to construct new courthouse facilities to meet existing shortfalls, and a further \$500 million may be needed to address long-term needs. Since 2007, the Ministry had completed or had approvals to construct 38 new courtrooms and had further approvals to build 33 more courtrooms over the next three years. In addition, we were informed that it is working on a 25-year asset-management plan that will be completed within the next fiscal year.

RECOMMENDATION 5

In order to ensure that court facilities meet the immediate and long-term needs of the justice system and do not act as an impediment to resolving the chronic backlogs of cases, the Ministry of the Attorney General, in consultation with the Judiciary, should establish definitive plans and timetables for satisfying existing shortfalls and meeting forecasted demands for courtroom facilities.

MINISTRY RESPONSE

The Ministry will continue to address the shortfall in courtrooms through the infrastructure planning process. The Ministry will refresh the courtroom-forecasting model on an annual basis and complete the Ministry Asset Management plan within the next fiscal year. The Ministry will continue its current consultation processes with the Judiciary through the Ontario Courts Design Committee and the Superior Court Facilities Committee.

COURT SECURITY

Under the *Police Services Act*, local police services boards are responsible for determining the appropriate levels of security in courthouses to ensure the safety of judges and persons taking part in or attending court proceedings. The local police services contribute to court security primarily by providing and paying for trained officers to manage and implement security measures and to operate security devices. The Ministry has the responsibility for court-security-related capital costs but not staffing. Those costs include ensuring that courthouses are designed and maintained to appropriate levels of security, such as having secured corridors and holding cells, and for installing security devices, such as metal-scanning equipment at entrances and video surveillance cameras. In addition, police services may establish local security committees, with representatives from the Ministry, Judiciary, police, and Crown prosecutors, at each courthouse to provide advice on security-related matters.

The *Province of Ontario's Architectural Design Standards for Court Houses*, last revised in 1999, sets building standards for security. Such standards include the need for secure screened entries for the public, separate secure entries for the Judiciary, and the separation of corridors to be used by the Judiciary, the accused, and the public. The Ministry informed us that these standards have been applied for newly built court locations and for retrofit projects of existing courthouses, but that addressing security concerns within existing court locations can be problematic because of prohibitive costs or restrictions associated with the use of leased premises, heritage, and older buildings.

As was the case in our 2003 audit, there continues to be no minimum standard for security in court locations applied across the province. All three Chief Justices again expressed concern about this to us. They cited the patchwork and inconsistent application of security measures, practices, procedures, and staffing in courthouses throughout the

province, which may expose court users to unnecessary security risks. The Chief Justices offered suggestions for improvement, including the need for standardized courtroom and courthouse security standards and response protocols across the province, and a review of the statutory responsibility for court security.

Between 2004 and 2007, the Ministry's Facilities Management Branch (Branch) hired consultants who conducted courthouse assessment studies to evaluate all court facilities in the province, including security issues. The assessments identified common security risks, including the lack of separate and secure corridors; lack of secure parking for the Judiciary; lack of sufficient holding areas; no security checks at public entrances and/or entrances not monitored and lacking electronic access controls; lack of video camera surveillance; and lack of or too few panic buttons or no monitoring of panic buttons by local police or court staff. We noted that the Ministry had made some progress in addressing deficiencies during the last five years. Fourteen of the 21 courthouses the consultants had identified as having significant security deficiencies have been partially upgraded since the assessments or have been included in capital funding plans for in the

near future. However, there were no formal plans available to address the security deficiencies in the other seven.

In addition, we observed the security features of seven courthouses that were between five and over 100 years old. All included adult criminal courts, and most also included youth criminal, family, and civil courts. As Figure 10 shows, the security measures in the courthouses varied significantly and none had all the best practices in place. Even the courthouse that had been built only five years ago had security problems.

In some courthouses, security equipment was in place but local police had not provided the staffing to operate it. For example, two courthouses we visited had metal-scanning equipment at the public entrance, but it was unattended and not in use. For one of these courthouses, we had noted in our *2003 Annual Report* that this same equipment was not being used at that time either. At another two courthouses, video surveillance cameras were installed but no police staff were stationed to view the monitors and there was no video recording that would allow for subsequent viewing should an incident occur. At one courthouse we visited, the Ministry had announced in February 2007 funding of

Figure 10: Security Measures at Seven Criminal Courthouses

Prepared by the Office of the Auditor General of Ontario

	Courthouse						
	1	2	3	4	5	6	7
age of courthouse (years)	30	30	34	108	5	25	30
# of courtrooms	13	22	23	2	5	15	10
metal-scanning equipment installed and in use at public entrance	installed but not in use	yes	yes	no	installed but not in use	yes	yes
x-ray scanning machine for baggage at public entrance	no	yes	no	no	no	no	no
monitored video surveillance cameras in public corridors	no	no	no	no	yes	yes	yes
panic buttons in courtrooms and high-risk locations	no	yes	yes	no	yes	yes	yes
segregated secure corridors for the Judiciary, the accused, and the public	no	no	no	no	yes	no	no
secured parking for the Judiciary	no	yes	yes	no	yes	no	no

\$252,000 to consolidate multiple public entrances into one controlled entrance with police security checks to detect illegal items, such as weapons, entering the courthouse. However, at the time of our audit, no change had been made because the Ministry and local police services had not reached agreement on the need for the project and on the staffing and funding implications for the police.

The government has indicated that court security will be reviewed as part of the Provincial-Municipal Fiscal and Service Delivery Review that began in fall 2006 and is expected to make recommendations in 2008.

In April 2008, the Branch initiated a Court Security Study to develop guidelines for court perimeters and public spaces within a courthouse, a methodology for undertaking threat risk assessments, and an overview of the technology for use in courthouses. The Ministry also informed us that the 25-year capital plan it was working on will also address security issues in courthouses.

RECOMMENDATION 6

To ensure the safety of the Judiciary and persons involved in court proceedings, the Ministry of the Attorney General should prioritize and set timetables for addressing safety deficiencies in the design of existing courthouses and evaluate and resolve any barriers that exist with its municipal partners for achieving an appropriate and consistent level of security in all court locations.

MINISTRY RESPONSE

The Ministry will continue to work with key partner ministries, including Community Safety and Correctional Services and Municipal Affairs and Housing, to address security concerns through the Provincial-Municipal Fiscal and Service Delivery Review. This review is expected to release a final report before the end of 2008.

The Ministry will continue to work collaboratively with local police services boards to address site-specific security issues. The Ministry will also continue to invest capital funding in security-related projects in Ontario's courthouses through the annual infrastructure planning process.

The Ministry will complete threat risk assessments and building physical security plans in accordance with the government's physical security directive.

COLLECTION OF FINES

Enforcing the payment of fines is necessary to ensure the integrity of the justice system and to deter offenders from re-offending in the future. As of February 2002, the government had transferred to municipalities responsibility for the administration and prosecution of most charges that fall under the *Provincial Offences Act*, including *Highway Traffic Act* offences. The Ministry still retains responsibility for collecting fines for violations primarily under the *Criminal Code*. With respect to these violations, the Ministry imposes about \$16.6 million in fines annually, of which about 70% is paid either voluntarily or as the result of collection efforts. As of March 2008, the Ministry had outstanding fines of approximately \$35.9 million.

The Ministry uses the Collection Management Unit (CMU) of the Ministry of Government Services for collection of outstanding fines. The CMU contracts with private collection agencies for their services. In our *2003 Annual Report*, we reported that the Ministry needed to improve its efforts to collect fines. In this regard, the Ministry now transfers outstanding fines daily to the CMU. This helps to ensure that collection efforts are more timely. The CMU prepares regular reports tracking collection efforts.

With respect to other recommendations we made in 2003 and areas for further improvement, we noted the following:

- During 2007, the CMU collected an average of 43% of the total fines that were in default. However, in 2004, 2006, and 2007, the Ministry wrote off in total about \$57 million in fines that were in default and considered uncollectable. The Ministry has not established any performance targets or benchmarks, such as collection rates in other provinces, to evaluate the CMU's performance, and it relies solely on comparative results from previous years.
- According to the Ministry's agreement with the CMU, the Ministry is required to authorize the various types of enforcement measures to be used by private collection agencies. The Ministry's enforcement measures for the collection of criminal fines are considerably weaker than those used by other ministries and some provinces. Since our *2003 Annual Report*, the Ministry has introduced no new vigorous enforcement measures to pursue outstanding fines, such as possibly suspending driver's licences, charging interest and collection charges, and investigating withholding income tax refunds. We noted that most provinces, including Ontario, have agreements with the Canada Revenue Agency to withhold federal income tax and GST payments from people with overdue Crown debt, which we believe should also be considered to collect outstanding judicially imposed fines.

RECOMMENDATION 7

To improve collection of outstanding fines and better ensure that fines act as an effective deterrent to re-offending, the Ministry of the Attorney General should:

- conduct a formal assessment of more vigorous enforcement measures and implement those that can help to enforce the payment of court-levied fines; and

- establish benchmarks for comparing its collection rate of fines with other similar jurisdictions.

MINISTRY RESPONSE

The Ministry has conducted inter-jurisdictional research into best practices in fine enforcement in order to support its discussions with municipal partners and other ministries about streamlining enforcement of the *Provincial Offences Act*. The Ministry will continue to explore the feasibility of these and other fine-enforcement mechanisms, some of which may also be appropriate for *Criminal Code* fine enforcement. The *Provincial Offences Act* Streamlining Working Group is expected to finalize its recommendations to the Attorney General after stakeholder consultations planned for fall 2008.

With respect to benchmarks, the Ministry will establish them for comparing the collection rate of *Criminal Code* fines with other similar jurisdictions.

OVERSIGHT OF MUNICIPALLY ADMINISTERED COURTS

As mentioned above, in 1999 the government started to transfer to 52 participating municipalities the responsibility for the administration and prosecution of most charges that fall under the *Provincial Offences Act* (POA), including the collection and retention of fines for these charges. Most of the fines transferred were for offences committed under the *Highway Traffic Act*, which falls under the POA. Since the responsibility was transferred, municipalities have been required to pay the costs for administering courts, prosecutions, and the collection of fines, and to reimburse the province for its associated costs, including the cost of justices of the peace who preside over municipally administered courts, and the cost of the municipalities' use of the ICON system for tracking offences and payments.

Under transfer agreements established with these municipalities, the Ministry sets performance standards for the conduct of prosecutions, for the administration of the courts, and for the provision of court support services.

In general, we found that the Ministry had established adequate procedures and standards for municipal delivery of court services and for monitoring municipalities' compliance with these standards. Controls included ministry audits and regular reporting by municipalities. For instance, over the last four years, the Ministry conducted audits of financial and operational practices at about 70% of the municipalities that administer courts.

In late 2004, the Ministry established a committee with provincial, municipal, and judicial representatives to discuss issues related to municipally administered courts. We noted that the committee had discussed several issues related to improving support for the municipalities' court operations, as follows:

- In 2002, the province transferred to municipalities the right to collect \$485 million in fines that were uncollected by the Ministry at that time, most of which had been outstanding for several years. Since then, the amount of uncollected fines has grown: for example, in 2007, municipalities imposed fines totalling \$289 million and collected approximately \$215 million. By December 2007, the total fines owed to municipalities had grown to more than \$900 million.

Municipal courts can only apply enforcement measures authorized by the Ministry. These measures include the use of collection agencies and, in the case of unpaid *Highway Traffic Act* fines—which represent about 75% of all unpaid fines—driver's licence suspensions or the denial of vehicle plate renewals. Municipalities complain that stronger enforcement measures are needed to collect fines that are in default. We understand that for the Ministry to authorize further measures, it may require legislative changes and co-operation

with other ministries, such as the Ministry of Transportation.

- Backlogs at municipally administered courts have resulted from the increase in the number of charges laid by municipalities and the lack of enough justices of the peace available to handle the increase. From 2005 to the end of 2007, pending charges grew by 34%—to over 380,000. In 2007, the Ministry increased the number of justices of the peace by 45 full-time and 28 part-time positions and converted 19 non-presiding justices of the peace to full-time presiding positions. This has subsequently helped to reduce the backlog. However, municipalities informed us that the Ministry's failure to address the problem earlier has had significant ramifications. Municipal representatives told us that they had to close courtrooms and dismiss charges because of insufficient judicial resources to handle cases within a timely period. For example, one municipality indicated that close to 40% of available trial time was lost in 2007, primarily because there were not enough justices of the peace. Another municipality estimated that it dropped about 10,000 charges in 2006 and another 2,900 in 2007, with potential lost revenue of almost \$700,000.

In addition, we found that the Ministry's oversight role with respect to municipally administered courts was limited to municipal delivery of court services and related financial and operational matters. However, the Ministry's oversight did not include consideration of overall policy implications, such as what the impact of allowing municipalities to retain fines levied under the *Highway Traffic Act* and other POA offences had been. We found, for instance, that charges issued by most municipalities had increased significantly after municipalities assumed responsibility for the administration and prosecution of most charges that fall under the POA. In particular, we compared the number of POA charges imposed by each participating municipality, both before and after the transfer

agreements were established, with the number of charges issued by the Ontario Provincial Police (OPP) to determine if the introduction of new revenue-generating powers might have influenced municipalities' charging practices.

As Figure 11 shows, there were significant increases in the charging practices of certain municipalities. Some municipalities increased charges by over 100% whereas others had virtually no increase. Overall, municipal charges under the POA increased by 57%. By way of comparison, OPP charges under the POA increased by only 20% during the same period. Overall fines imposed by municipalities across the province increased 32%, from \$219 million in 1999 to \$289 million in 2007. At the time of our audit, the Ministry had not formally analyzed whether its policy decision had resulted in significant changes to municipal charging practices.

RECOMMENDATION 8

To support municipalities in their operation of courts and collection of *Provincial Offences Act* fines, the Ministry of the Attorney General should ensure that an adequate number of justices of the peace are appointed in a timely manner and consider providing municipalities with stronger enforcement measures. As part of its oversight role, the Ministry should also monitor the impact on municipal charging practices of its policy decision to allow municipalities to keep any related fine revenue resulting from charges under the *Provincial Offences Act* and the *Highway Traffic Act*.

MINISTRY RESPONSE

As noted by the Auditor General, the Ministry has responded to municipal needs for significantly more justices of the peace. To help relieve pressures on *Provincial Offences Act* courts, in 2007, municipalities were also given the authority to establish administrative monetary-penalty systems for parking infractions.

Since the transfer of *Provincial Offences Act* responsibilities to municipal partners was completed in 2002, the Ministry has implemented numerous initiatives to help municipalities collect *Provincial Offences Act* fines, including assisting in the development of municipal on-line fine-payment systems and allowing municipalities to recover collection agency costs. The Ministry will continue to explore the feasibility of other fine-enforcement mechanisms, and will continue to collect and analyze *Provincial Offences Act* court-activity data, including data about the number of charges received.

The Ministry monitors volumes of *Provincial Offences Act* charges filed in municipal courts across Ontario on a monthly basis. The decision to lay a charge is within the sole discretion of an enforcement officer, and charging volumes are influenced by a wide variety of factors, including population growth, commuter patterns, and the creation of new offences.

PERFORMANCE REPORTING

Good performance reporting includes these attributes: clear goals and objectives; complete and relevant performance measures; appropriate standards and targets for measuring results; reliable systems to gather the necessary information; and a reporting mechanism for regularly communicating accomplishments and areas requiring corrective action. Because responsibility for the courts is shared between the Division and the Judiciary, both parties have to participate in establishing effective performance reporting.

Since our *2003 Annual Report*, the Division has made substantial progress in providing more meaningful and comprehensive information to the public on courts. The Ministry's annual report includes details of court resources, activities, and initiatives; multi-year statistics on court volumes and trends with respect to incoming and disposed-of cases or

Figure 11: Comparison of Charges Laid by Municipalities* and the OPP under the *Provincial Offences Act*, 1999 and 2007

Source of data: Ministry of the Attorney General

Location	1999	2007	% Increase
City of Toronto	381,756	680,297	78
Regional Municipality of York	71,360	138,922	95
City of Ottawa	49,715	126,794	155
City of Brampton	53,038	73,022	38
City of Mississauga	60,870	61,788	2
City of Hamilton	39,711	56,460	42
Regional Municipality of Durham	36,211	54,166	50
Regional Municipality of Waterloo	40,889	51,596	26
all other municipalities	282,855	357,526	26
Total - Municipalities*	1,016,405	1,600,571	57
OPP - Province-wide	428,182	515,940	20

* 52 municipalities that administer POA courts

charges and court sitting hours; and specifics of its five-year plan for making courts more effective, efficient, and accessible. The plan, which is updated annually, establishes business goals and key initiatives for achieving each goal.

The Ministry also provides further information on its website regarding court activities and initiatives. For instance, as part of its recent Justice on Target strategy to reduce criminal case backlogs, it published information on trends in the number of court appearances and time required to dispose of cases in OCJ courthouses.

In addition, the OCJ published in December 2006 its first annual report for the year ending December 31, 2005. The annual report provides extensive details on the composition, operations, and volume of activities of the court.

Our comparison of the annual reports of Ontario courts with those of other provinces indicated that the Ontario reports are among the most comprehensive of all the provinces. However, certain areas can be improved to ensure that more timely and relevant information is made public on the efficiency and effectiveness of courts:

- Amendments to the *Courts of Justice Act* (Act), effective January 2007, require the Ministry

to publish an annual report on courts within six months after the end of every fiscal year. We noted the most recent annual report published by the Division was for the 2004/05 fiscal year, which ended March 31, 2005. We received a draft annual report covering both 2005/06 and 2006/07, but as of March 31, 2008, it had still not been published. The draft report included information that was consistent with the most recent published report.

- The amendments to the Act included five specific legislated goals for the administration of the courts. The Division had in place since 2002/03 five internally developed business goals, but only three of them were similar to the legislated goals. The Division should realign its goals with the legislated ones in order to comply with the Act.
- As mentioned earlier, in June 2008 the Ministry, through its Justice on Target strategy, set for the first time public targets to reduce backlogs in Ontario's criminal courts. In the Ministry's annual reports, neither the Ministry nor the Division has included case backlogs as a measure of the Ministry's performance with respect to either its stated business goal

of “timely and efficient case processing” or of “accessible services,” and the annual reports do not provide information on the extent of backlogs. The 2005 annual report of the Ontario Court of Justice addressed backlogs in criminal courts by including a description and assessment of the growth trend and average age of criminal charges pending. Our research indicated that several U.S. states also provided public information on backlogs in their courts.

RECOMMENDATION 9

In order to meet its legislated requirements and to build on its progress to date in providing the public with meaningful and timely reporting on the success of its courts administration program, the Ministry of the Attorney General should:

- develop performance indicators for all of its legislated and internally established goals and operational standards, such as time to trial, court backlogs, and operational costs; and

- publish its annual report to the public within six months of its year-end as required by legislation.

MINISTRY RESPONSE

The Division is considering the performance measures established by the National Center for State Courts, a U.S. organization with extensive expertise in court administration. The Center has developed 10 “CourTools” for use by state courts, including measures for time to trial and operational costs. The Division is reviewing these “CourTools” to determine whether they would be feasible and meaningful in Ontario’s courts.

The Ministry will continue to work with the Judiciary to develop indicators of delay in child protection cases.

As required in the amendments to the *Courts of Justice Act, 2007*, the Division will meet its commitment to publish its annual report within six months after the end of every fiscal year.