

# 3.01–Court Services

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## BACKGROUND

In Ontario the court system comprises three distinct courts: the Ontario Court of Justice, the Superior Court of Justice, and the Ontario Court of Appeal.

Approximately 97% of the 560,000 criminal charges tried annually are heard in the Ontario Court of Justice, which also tries certain family law cases. The Superior Court of Justice tries more serious criminal cases, family law matters, and civil matters including small claims. This court may also hear appeals of cases originating in the Ontario Court of Justice. The Ontario Court of Appeal hears both criminal and civil appeals. Judges in the Superior Court of Justice and the Ontario Court of Appeal are appointed and remunerated by the federal government; whereas judges and justices of the peace in the Ontario Court of Justice are appointed and paid by the province. We refer to the judges collectively as the Judiciary.

The Court Services Division (Division) of the Ministry of the Attorney General supports the operations of the court system through a network of approximately 250 courthouses and approximately 3,500 court support staff. Its primary functions include:

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

The Division's expenditures for the 2002/03 fiscal year were \$302 million: \$107 million for operating the offices of the Judiciary and for salaries and benefits for approximately 650 full- and part-time provincially appointed judges; and \$195 million for all administrative and court staffing costs and for other expenses required to support the operation of courts. In addition, the Ministry spent \$35 million on capital projects to modernize and improve court buildings. Revenues pertaining to court services, primarily from fines and court fees, were approximately \$100 million.

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## AUDIT OBJECTIVES AND SCOPE

Our audit objectives were 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 and capital projects for courts were acquired and managed with due regard for economy and efficiency; and
- measure and report on the effectiveness of the Division's contribution to providing a fair and accessible justice system.

We identified audit criteria that would be used to address our audit objectives. These were reviewed and accepted by ministry senior management.

Our audit was conducted in accordance with standards for assurance engagements, encompassing value for money and compliance, established by the Canadian Institute of Chartered Accountants, and accordingly included such tests and other procedures as we considered necessary in the circumstances.

The scope of our audit included interviews with ministry officials, as well as an examination of files and documentation at the Ministry's head office and visits to a number of regional offices and courthouses. We also followed up on the recommendations we made in our 1997 audit of court services.

We also contacted the Chief Justice of Ontario, on behalf of the Court of Appeal of Ontario; the Chief Justice of the Superior Court of Justice; and the Chief Justice of the Ontario Court of Justice (collectively referred to as the 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.

We did not rely on the Ministry's Internal Audit Services Branch to reduce the extent of our work because they had not recently completed work within the scope of our audit.

Our audit fieldwork was substantially completed in March 2003. However, for reasons discussed in the following section, it was not until July 2003 that we were able to gain access to all the key documents needed to complete our audit.

### **ACCESS TO INFORMATION**

The *Audit Act* requires the Provincial Auditor, in the annual report for each fiscal year, to report on whether the Auditor received all the information and explanations required to complete the necessary work. Section 10 of the *Audit Act* states that every ministry of the public service:

...shall furnish the Auditor with such information regarding its powers, duties, activities, organization, financial transactions and methods of business as the Auditor from time to time requires, and the Auditor shall be given access to all books, accounts, financial records, reports, files and all other papers, things or property belonging to or in use by the ministry... and necessary to the performance of the duties of the Auditor under this Act.

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On this audit, we experienced significant delays in receiving several key documents. The Ministry had used these documents to obtain approval from the Management Board of Cabinet and from the Cabinet Committee on Privatization and SuperBuild (CCOPS) for new capital and program initiatives over the previous five years. It took Management Board Secretariat and the Ministry from three to five months after our initial requests were made in November and December 2002 to provide us with the documents requested. This happened despite many subsequent requests on our part to senior management at the Ministry.

In addition, when we did receive the documents, we noted that a number of deletions had been made. Following our inquiries regarding these deletions, on May 1, 2003, the Ministry informed us that deletions had been made to eight documents as the Ministry had a legal question about our statutory right to access all information and documents required for audit purposes. After discussions with the Ministry regarding the deletions, this legal matter was resolved, and a protocol was developed for dealing with this legal question in the future. In July 2003, all documents were provided to us by the Ministry in their entirety.

## OVERALL AUDIT CONCLUSIONS

In our 1997 audit of what was then the Courts Administration Program, we noted that the successful implementation of a number of ongoing initiatives was needed to address the serious backlog of cases and deficiencies in the management of program resources. However, based on our current audit we concluded that little progress has been made since that time. The most significant concerns from our current audit were:

- At March 2002 the Ontario Court of Justice had the highest backlogs of criminal cases in 10 years.
- The Integrated Justice Project created to develop the required new information systems was terminated five years after its establishment, with virtually no improvement to the courts' antiquated computer and information systems.
- The lack of ministry efforts to collect millions of dollars of overdue fines continued.

We determined the current status of our 1997 concerns in this audit, and our conclusions are outlined in the following table.

### Current Status of 1997 Audit Concerns

1997 Audit Concern	Current Status
The effective administration of the courts was hampered by the lack of a clear division of authority and responsibility between the Ministry and the Judiciary in the management and delivery of court services. In 1997, negotiations between the Ministry and the Judiciary to develop a plan for reform were in progress.	The Ministry was unable to achieve consensus with the Judiciary, and negotiations were therefore terminated.
Serious backlogs of criminal cases existed. New information systems and approaches were needed to help reduce backlogs.	Efforts to reduce backlogs have not been effective. Caseloads and pending charges in the Ontario Court of Justice had increased significantly. At March 31, 2002, there were approximately 99,000 criminal charges that had been pending for more than eight months. This was 39,000 more than in 1998.
Courts' information systems are antiquated, largely paper driven, and in need of automation. The Integrated Justice Project was initiated in 1996 to develop technological solutions and allow exchange of data among the various users in the justice system.	After the Ministry spent approximately \$21 million on the Integrated Justice Project, the project was terminated. As a result, no substantial progress was made in introducing new information technology to the courts.
Adequate financial information systems to assess whether results were achieved at appropriate costs did not exist.	The Ministry still did not have any financial information systems, at either the corporate or regional level, that would allow management to monitor how cost effectively court services were delivered.
The Ministry, in conjunction with the Judiciary, needed to measure and report on its effectiveness in providing courts that are fair and accessible.	Performance measures were not established to measure and report to the public on the effectiveness and efficiency of courts, as demonstrated by, for example, waiting times for trials and court costs.
The Ministry did not ensure that the collection of overdue fines was vigorously pursued.	The Ministry made little effort to collect outstanding fines. At one point in 2002, more than two-and-a-half years had elapsed before the Ministry transferred outstanding fines to Management Board Secretariat's Collection Management Unit. The lack of collection efforts weakens the credibility of the justice system.

Our current audit also identified the following additional concerns:

- Controls over the planning, contractor selection, and project management for capital projects were inadequate. For example, a contractor was originally hired for \$52,000 to remove mould at one large courthouse on an emergency basis. However, further examination of the courthouse also revealed the need to address significant building deficiencies on an urgent basis. This primary contractor eventually received payments of

almost \$24 million; but in spite of increases in the scope and extent of the work and significant cost escalations, competitive quotes were not obtained from other contractors. In another example, the estimated cost of \$30 million to construct a new courthouse was about \$9 million more than forecasted and 40% higher than for other similar projects. In yet another example, contrary to the Management Board of Cabinet directive requiring the use of the Ontario Realty Corporation and without seeking competitive tenders, the Ministry contracted directly with a project management company for construction work at a courthouse and paid this company \$187,000, even though the Ministry was aware the work had not been started.

- A consultant's review of security risks completed in January 2003 identified numerous significant deficiencies at courthouses across the province. We also noted significant inconsistencies in the level of security during our own visits to courthouses.

## DETAILED AUDIT OBSERVATIONS

### ***ADMINISTRATIVE STRUCTURE OF THE COURTS***

The Judiciary is independent of the administrative and legislative arms of the government. As part of its adjudication function, the Judiciary is responsible for the conduct of proceedings within its courtrooms. It directs the operation of courts, such as determining the dates of court sittings, the scheduling of cases, and the assigning of judges. While the Judiciary controls the use of court resources, the Ministry decides on court budgets, staffing decisions, courthouse capital projects, and the number of judges. 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. However, the need for such a structure and division of authority and responsibility has not been successfully dealt with over the years.

In 1995, a joint Ministry and Judiciary study, entitled *Civil Justice Review—First Report*, concluded: “The justice system can no longer function effectively in Ontario unless a single authority, with clear lines of responsibility and accountability, is established to deal with all administrative, financial and budgetary, and operational matters relating to court administration in the Province.”

In our *1997 Annual Report*, we recommended that in order for the justice system to function more effectively, the Ministry and the Judiciary needed to ensure that there be a reform of the management of court services that clearly established accountability and responsibility for achieving desired results. At that time, discussions were in progress to address this issue and a Framework Agreement was reached between the Ministry and the Judiciary to develop a plan for the reform of the management of court services in Ontario. Subsequently, however, the Ministry was unable to achieve consensus with the Judiciary, and the project was terminated.

During our current audit, the Ministry informed us that it was committed to “relationship building” with the Judiciary, in particular with respect to the management of operational issues. The aim was to encourage positive joint involvement in decision-making.

Although the Chief Justices considered the Court Services Division to be responsive to the needs of the Judiciary, they also cited areas where the Ministry’s support services were not meeting the needs of the courts. In particular, they cited the issues of staffing, training, and security. We also noted several long-standing concerns in the judicial system that have not been resolved and might be more effectively dealt with by an improved administrative and accountability arrangement between the Judiciary and the Ministry. These concerns included backlogs, performance standards and measures, information technology, and court security, and are discussed in the sections that follow.

### **Recommendation**

**To help ensure that the justice system functions effectively and to improve the stewardship of funds provided to the courts, the Ministry and Judiciary should improve their administrative and management procedures by establishing:**

- a process of greater co-operation in decision-making that addresses long-standing concerns;
- a better structure of courts administration with greater accountability for achieving desired results such as reducing case backlogs.

### ***Ministry Response***

*The Ministry has undertaken to work with the Judiciary to build good relationships at all levels and to explore joint management of, and decision-making about, existing institutional challenges and ongoing operational issues. Joint working groups have been established to include representatives of both courts, as well as the bar and relevant agencies, to support ongoing identification and implementation of measures to address long-standing challenges such as backlogs.*

*Efforts to bring about joint management with the Judiciary are occurring on a number of fronts. For example:*

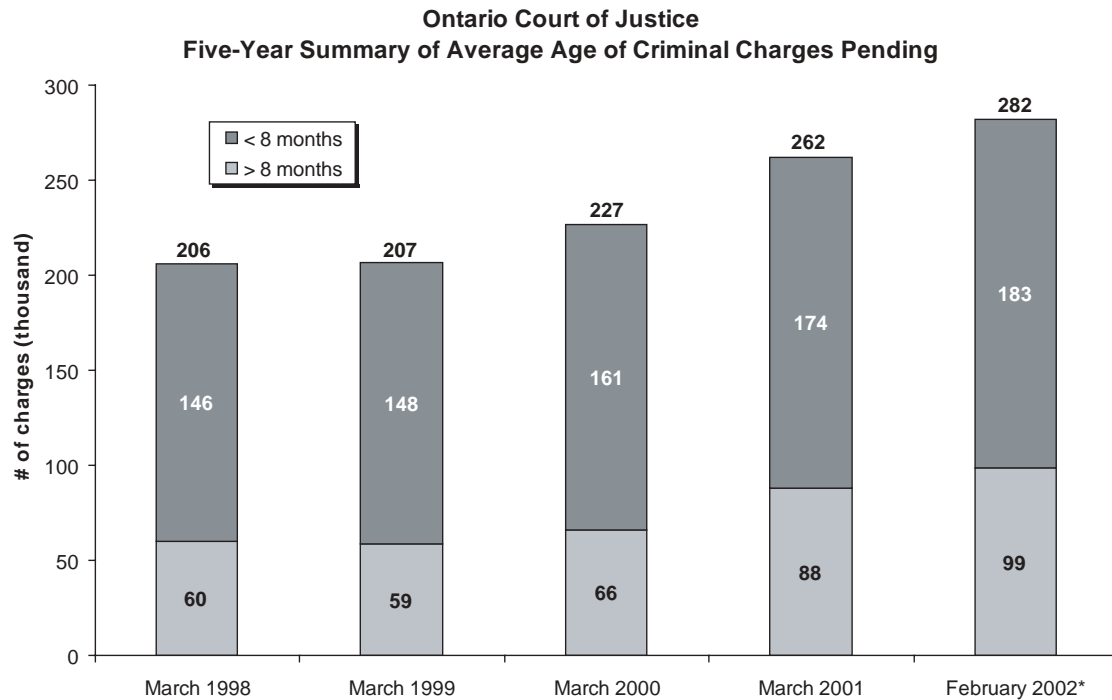
- *Members of the Judiciary have been involved since January 2002 in the Court Services Division’s development of service standards and a five-year business plan for the Division. Further consultation will be conducted annually to review and update the plan. The establishment of service standards as part of the planning process will support greater accountability for the Division’s delivery of court administration services.*
- *Written standards for judicial support have now been established for the Superior Court, and standards for the Ontario Court will be completed this fiscal year.*

- *The Chief Justice of the Ontario Court has asked the Division to participate in a process to develop a complement model for the Court.*

## CASE BACKLOGS

The success of the judicial system is measured by its ability to fairly resolve disputes in a timely manner. 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 going to trial. The Ministry maintains statistics to show how many outstanding charges are older than eight months.

In 1993 and 1997, we reported that serious backlogs existed for criminal cases. As illustrated in the following chart, backlogs of pending charges continued to grow in the Ontario Court of Justice, which handled the majority of criminal cases.



\*March 2002 data unavailable due to labour disruption.

Source of data: Ministry of the Attorney General

Over the five-year period from 1997/98 to 2001/02, the total number of pending charges at the Ontario Court of Justice grew by 37%, and the number of criminal charges in the courts with an average age of more than eight months increased by approximately 65% or 39,000. The problem was more serious at certain courthouses, particularly those in large urban centres such as Toronto, Ottawa, and Brampton. At some of these locations, it took up to 12 months to schedule cases requiring a full day of court time—these were typically the more serious cases.

The Superior Court of Justice was also experiencing significant backlogs in its criminal and family courts. Conversely, the Ontario Court of Appeal indicated it had been successful in

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eliminating its backlogs through better control over trial scheduling and screening and through termination of appeals with no merits. The average delay in hearings for civil appeals had been reduced from 30 months to five months; for criminal appeals, it had been reduced from six to 12 months to three to four months.

Many of the factors that contribute to delays in cases being heard are beyond the control of the Ministry and the Judiciary. Examples of these factors include the increasing complexity and length of criminal cases, the unreadiness of the parties, and the growing number of self-represented litigants in the courts, leading to more lengthy proceedings.

Furthermore, the actions and decisions of each party involved in a trial—including the police, Crown and defence attorneys, and the litigants—all have an impact on the number of court appearances and the length of a trial. This in turn affects the utilization of courtrooms and the ability of the Judiciary to dispose of cases on a timely basis.

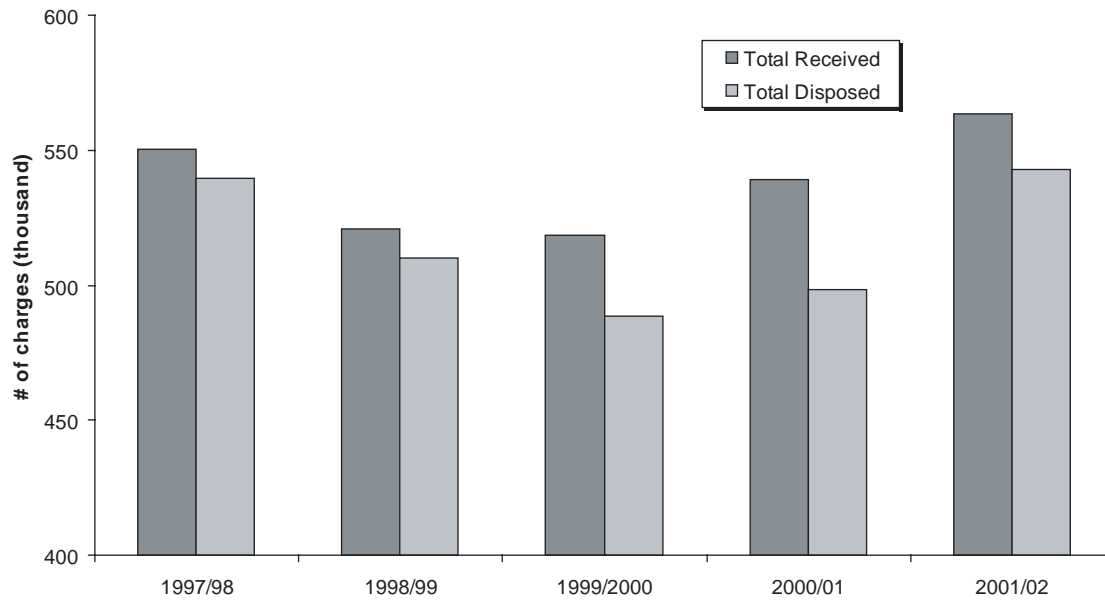
In this regard, we noted that the average number of court appearances for a case to be resolved in the Ontario Court of Justice increased more than 20%, from 5.89 appearances in 1996/97 to 7.24 appearances in 2001/02. The Ministry could not provide specific reasons for this increase, but it recognized that the increase placed additional demands on the resources of courts and judges.

Over the years, the Ministry and Judiciary have introduced a number of measures to address the issue of backlogs. For example, since our *1997 Annual Report*, the number of judges has increased by approximately 5%, case management procedures have been established for certain types of cases to monitor unreasonable delays, and mandatory mediation procedures have been used to encourage parties in civil cases to resolve disputes without costly and lengthy court hearings. For courts with serious backlogs, blitzes—through the appointment and reallocation of judges and Crown attorneys—have been used to deal with more cases.

However, the measures introduced have not been enough to address the problem, and backlogs have continued to increase. As depicted in the following chart, in each of the five years from 1997/98 to 2001/02, the number of charges disposed of by the Ontario Court of Justice did not keep pace with the number of charges received.



**Ontario Court of Justice  
Five-Year Summary of Criminal Charges Received and Disposed**



*Source of data: Ministry of the Attorney General*

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 their needs; defendants can take advantage of delays to argue that their cases be withdrawn; and witnesses' memories can fade over long periods. Also, long delays caused by backlogs are unfair to accused persons who want criminal charges outstanding against them resolved as soon as possible.

The Chief Justices for the Ontario Court of Justice and the Superior Court of Justice recently indicated that they have been concerned for some time over the growing backlog of cases both in criminal and in family matters, particularly in the larger urban court locations. Both of these Chief Justices have informed the Attorney General that additional judicial appointments are necessary to reduce backlogs.

Despite the Ministry's efforts, the number of backlogged cases in 2002 was at its highest level in 10 years. There is a risk that a situation similar to 1992 may be developing, when long delays resulted in more than 50,000 charges being withdrawn from prosecution.

**Recommendation**

**The Ministry should work with the Judiciary and other stakeholders to develop more successful solutions for eliminating backlogs, including:**

- **creating better tools to identify the sources and specific reasons for delays 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 backlogs.

### ***Ministry Response***

*The Court Services Division has undertaken a project to improve the collection and analysis of management information to monitor case processing, to identify and diagnose processing delays, and to disseminate management information to the field, other divisions, the Judiciary, and others, in order to support prevention and resolution of delays.*

*Options for enhancing the scope of management information available from the Division's data system are being explored. The new case-tracking system for civil and family proceedings will provide the Division, for the first time, with data about the length of those proceedings. In the short term, the criminal operational system will be upgraded to, for example, allow the collection of information about the reasons for adjournments. Once preliminary improvements have been made to the criminal operational system, options for collecting data about the length of criminal proceedings and other valuable diagnostic data will be explored.*

*The Division is also developing a staff resourcing model and will assist the Ontario Court of Justice to develop a judicial complement model to ensure appropriate and effective resource allocation.*

*The government will invest \$15.8 million in new funding this year to ensure that the justice system operates more efficiently and more effectively. This investment enables the Attorney General to appoint 15 new judges to the Ontario Court of Justice and hire a prosecution team, including at least 36 new Crown attorneys and other staff needed to support court operations.*

*More resources and better information will allow for the establishment of realistic targets and timelines for eliminating 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. The Integrated Court Offences Network (ICON) is an on-line mainframe system that accumulates information by courthouse in the Ontario Court of Justice. It maintains case data and produces court docket and monthly statistical reports. In the Superior Court of Justice, monthly statistical reports are produced by the Court Input Statistics System (CISS) through information collected from individual courts using manual

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or stand-alone computer systems. In addition, several courthouses use a variety of local systems to schedule civil cases.

## Integrated Justice Project

In 1997, we reported that the ICON system, which was established in 1989, was outdated and did not capture all the necessary information or produce the reports needed by both the Judiciary and the Ministry. There were concerns with these systems over inconsistencies in the classification of data, data accuracy, and timeliness of information.

In 1996, the Ministry along with other justice ministries and a consortium of private-sector partners, initiated the Integrated Justice Project (IJP), which was created with the intention of facilitating a more modern, effective, and accessible administration of justice. New integrated information systems were expected to be developed for police, Crown attorneys, courts, and corrections. The courts component of IJP was the largest and most complex. It was expected to introduce new or improved systems for case management, court scheduling, electronic document filing, and digital audio recording of official court records.

Because of significant cost increases and delays, however, the IJP project was terminated in October 2002. No new systems were delivered to courts, except for a few test projects. The Ministry has now assumed responsibility for any new court information systems and, where possible, continues any development carried over from the IJP project.

During the period from 1996/97 to 2002/03, the Ministry invested approximately \$21 million in IJP and made minimal enhancements to existing court information systems, since the expectation was that these systems would be replaced. As a result, both the Judiciary and Ministry informed us, although the IJP has had some benefits in improving information sharing and communications, on the whole, the project has actually delayed any real progress in introducing new information technology to the courts.

We reported on the IJP in our *2001 Annual Report*, which was followed by a number of Standing Committee on Public Accounts hearings in 2002. During the hearings, the Committee considered the IJP's financial and qualitative benefits to users of the justice system and concluded that the IJP was essential to the modernization of the justice system in Ontario. The Committee indicated these benefits might not be realized if the project were terminated; therefore, it encouraged the ministries involved to proceed with the IJP either under new arrangements with the Consortium or through alternative approaches.

With the termination of the IJP, we reiterate the concern from our prior audit that the courts' information systems were in critical need of modernization to reduce inefficiencies and reduce delays in the administration of justice.

## New Technologies

Over the past few years, several new technologies have been introduced to certain courts. However, most new technology initiatives were conducted on a test basis and have yet to improve the efficiency of the courts. Two of these initiatives were as follows:

- The volume of cases being handled each year requires court staff to manage a large number of documents as they are processed through the courts. The savings and efficiencies of moving to a paperless, electronic court document system would be substantial. Since 1996/97, as part of an IJP test project, the Ministry has accepted certain electronic forms filings from lawyers, primarily for civil and small claims court documents. To date, however, the use of this service has been relatively low, and only three courthouses accept electronic filing.

In addition, there were few benefits to the Ministry from this initiative because the Ministry's existing systems did not have the capability for processing the electronically filed forms. Instead, the forms had to be printed out by court staff and the information entered manually into the local systems.

- Court transcripts are recorded manually by court reporters. This often delays court proceedings because long periods of time are often taken to produce lengthy court transcripts. The IJP tested digital audio recording systems in three locations with the intention of moving all courts to an automated court reporting system, both to improve the timeliness of obtaining transcripts and to reduce court reporter costs. However, the Ministry determined that the software did not meet Ontario's functional requirements for courtroom recordings, nor would it realize the goal of reducing staffing costs.

On the other hand, one area where the courts made good use of technology was with video appearances. Most criminal court appearances are for preliminary or remand hearings, which may take a few minutes to complete, and after which the accused is remanded or returned to custody to await trial. The Video Remand Project allows an accused person to appear in a courtroom by video conferencing from a correctional institution or police station. This eliminates the cost and need to transport the prisoner to court. As of March 31, 2003, approximately 100 courts and detention locations have installed equipment that allows for video remand appearances.

### Recommendation

**To help ensure the timely disposition of cases and improve efficiencies, the Ministry should take the necessary steps to upgrade the information technologies used in courts. In addition, the Ministry should establish a comprehensive plan for the timely implementation of new information technologies.**

### **Ministry Response**

*The Ministry is committed to modernizing the justice system to increase public safety, improve service, and increase access to justice. Any new development of system enhancement by the Ministry are to be based on business cases that are affordable, staged, and cost effective and that set realistic time frames. As part of its five-year plan, the Ministry has committed to a court-case-tracking system named “Frank” and other upgrades and plans.*

*Frank is a court-case-tracking system for civil, family, small claims, divisional, and superior court criminal cases that will operate in all Ontario courthouses. It has been piloted at courthouses in Brantford, Oshawa, Sudbury, and Whitby. It helps staff ensure that cases are managed within prescribed timelines and eliminates time-consuming manual processes. To further improve courthouse efficiency, Frank generates regulated notices and orders, allows court staff to make case-specific inquiries without having to retrieve paper case files, and prevents duplication of efforts with a system that requires data to be entered only once.*

*In addition, the Ministry has committed to:*

- make upgrades to the operational system for criminal proceedings in the short term to provide more data to identify opportunities to increase efficiency, while, in the longer term, options for an improved criminal-case-management system will be developed;*
- develop a multi-year strategic information management/information technology plan to define the information technology priorities and identify resource requirements; and*
- continue with the model electronic courtroom, which was introduced to pilot the use of multimedia presentations and evidence, remote appearances, and digital audio recording and which is operated and managed by the Toronto region.*

## **FINANCIAL INFORMATION**

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

We reported in 1997 that the Ministry made little effort to assess its costs, other than to compile information on actual compared with budgeted expenditures by region and court location. In 2003, the Ministry still did not have any regular management reporting systems in use, at either the corporate or regional level, that would allow management to monitor how cost effectively court services were being delivered. For example, none of the regions we visited reported their costs by activities or compared their costs with any benchmarks or costs in prior years or against costs for similar services at other regions; nor were costs reported in standardized reports that would allow for meaningful comparisons.

The Ministry provided us with reports produced at the corporate level that contained better financial and management information on program costs. For example, a draft report for January 2002 was prepared that compared various court activities and costs by region and with other provinces. The report was not complete or verified, and the Ministry acknowledged the need for additional data. As of March 2003, no final or subsequent reports had been produced.

### **Recommendation**

To manage the cost of court operations effectively, the Ministry should:

- identify and collect the information needed to assess whether court services are being provided economically and efficiently; and
- determine how information technology can best be utilized to facilitate this process.

### **Ministry Response**

*In its five-year plan, the Ministry has established the following measurable service standard: Divisional finances are managed according to Management Board standards and policies and are tracked monthly to ensure the [Court Services] Division operates within its allocation.*

*Effective April 2004, the Division will implement an expenditure account structure that will allow for the capture of costs by practice area. A review of the Division's expenditure account structure is currently underway to determine how best to implement this new structure. This review will also include capturing staffing costs through Corpay coding.*

*The implementation of the Integrated Financial Information System (IFIS) is planned for fall 2004. The revised coding structure will be incorporated into IFIS. IFIS will provide improved expenditure-commitment reporting to assist in forecasting.*

*A review of regional expenditures is currently underway. Particular attention is being given to costs related to caseload.*

*Court costs will be linked with the improvements planned for the collection of workload statistics. It is expected this will allow for the determination of costs based on case type.*

## **EXPENDITURE CONTROLS**

Our audit identified several instances where the Ministry did not comply with the applicable Management Board of Cabinet directives that require that goods and services, including consultants, be acquired economically and competitively, and that payments be properly controlled. For example:

- The directives set out operating procedures for the use and control of purchasing cards, which are credit cards issued to government employees, allowing them to make minor purchases more cost effectively. We noted that controls over local purchasing cards were often not followed by staff at courthouses and regional offices. About half of the monthly statements we examined were not reviewed and approved by the cardholders' manager, and receipts were often missing.
- We noted two occasions where the Ministry hired contractors to make repairs at courthouses without signing an agreement that set out the terms and conditions of the assignment or the terms for payment. In addition, the Ministry could not produce any documentation regarding the competitive selection of these contractors. One contractor was paid more than \$100,000 from January to March 2002, while the other contractor was paid more than \$400,000 over the same time period.

The Ministry also engaged several consultants to perform managerial or operational work on an ongoing basis, contrary to the Management Board of Cabinet requirements. For example, the Ministry has hired one consultant since 1989 to provide varying degrees of modifications and support to a court office system. Over the last three years, this consultant was paid approximately \$565 per day for a total of \$253,600. This practice is contrary to the Management Board of Cabinet directive on consulting services that stipulates that, where appropriate, a transfer of knowledge must occur from consultant to staff to avoid a continuous reliance on consultants.

#### **Recommendation**

**The Ministry should ensure that adequate controls are in place over expenditures so that goods and services, including consultants, are acquired competitively and in compliance with Management Board of Cabinet directives.**

#### ***Ministry Response***

***The Ministry is committed to ensuring that adequate controls are in place over expenditures.***

***Communications pertaining to proper procurement procedures and payment processing will be sent to all Division management for distribution as appropriate. Links to Shared Services Bureau sites will be made available to managers.***

***The topic of adequate controls over expenditures will be addressed on a periodic basis at managers' meetings to reinforce adherence to proper practices.***

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## **CAPITAL PROJECTS**

Over the past six years, the Ministry spent approximately \$275 million on capital projects to modernize and improve courts. This included renovations to existing courthouses or consolidation of several local court locations into a new courthouse. A Management Board of Cabinet directive requires the Ministry to arrange for construction and management of capital projects by the Ontario Realty Corporation (ORC), or its private company agent.

Our audit of the acquisition and management of capital projects for courts identified the following deficiencies:

**Leasehold improvements at new courthouse—2201 Finch Avenue West, Toronto.** As of March 2003, construction was substantially completed at the Ministry's new 73,000 ft<sup>2</sup> courthouse at a leased accommodation at 2201 Finch Avenue West. Total costs to complete the project were expected to be \$30 million. The new court location replaced an existing leased courthouse that was discovered in November 2000 to contain toxic mould and therefore to present health concerns for its occupants.

In May 2001, the Ministry initially leased approximately 40,000 ft<sup>2</sup> at the new location as an interim courthouse, while remediation and refurbishing were expected to take place at the existing leased courthouse. We were informed that the project at the interim site was managed by ORC's agent on an expedited basis, with expected occupancy by September 1, 2001. Therefore, the lease for the interim site was not selected through a call for tenders. Rather, we were advised that ORC considered several locations using an independent realty broker.

The renovation project to convert the interim location to a temporary courthouse was not awarded using a call for tenders either. Instead, the Ministry informed us that the ORC's agent managed the project using a contractor selected from a list of unit-priced suppliers who provided their services at rates that were agreed to beforehand. While the rates quoted by these suppliers were obtained through a pre-qualification process, the suppliers on the list were meant to be used on assignments costing less than \$100,000. The project, then estimated to cost approximately \$8 million, was therefore carried out without a fixed-price contract and without a proper competitive acquisition process for a project of this size. In addition, the Ministry did not obtain ministerial or Management Board of Cabinet approval for not following competitive selection procedures before awarding a contract of this magnitude.

In September 2001, the Ministry sought and obtained approval from the Management Board of Cabinet and the Cabinet Committee on Privatization and SuperBuild (CCOPS) to change its plans and establish a new courthouse at the Finch Avenue leased location. The Ministry stated that the change was needed after a more detailed building condition assessment found extensive renovations were necessary at the existing courthouse. The revised total cost of renovations for the new courthouse at the Finch Avenue location was then estimated at \$21 million, with additional space requirements of 33,000 ft<sup>2</sup>. In



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addition, the expected occupancy date was changed from September 2001 to January 2002 for court operations, and to May 2002 for the construction of holding cells.

By March 2003, the cost of the project had increased to \$30 million, about \$9 million more than forecast in September 2001. Only \$6 million of the total cost of the project was awarded competitively. In addition, we noted that other courthouse projects had significantly lower construction costs. Costs for these other projects ranged from approximately \$200 to \$280 per ft<sup>2</sup> (in 2001 dollars) when using contractors selected through calls for competitive tenders and fixed-price contracts. The Finch Avenue project incurred costs of approximately \$390 per ft<sup>2</sup>, which were 40% higher than the costs for other similar projects.

The Ministry relocated all of its operations out of the existing leased courthouse as of July 29, 2002, or six months after the expected occupancy date, with the holding cells not completed until March 2003, requiring other courthouses to be used for an extended period.

In addition, the Ministry informed the Management Board of Cabinet and CCOPS when seeking approval for its new courthouse that the primary cause of the toxic mould problem was the inadequate building maintenance provided by the former building owners over many years. However, according to the Ministry and ORC, after obtaining legal advice, a decision was made to continue to pay rent on the vacated courthouse until the lease expires on April 30, 2004. This rent will total more than \$1 million from the time the building was vacated.

Notwithstanding the Ministry's and ORC's efforts to deal as quickly as possible with the health concerns at the former courthouse, during the period of more than two years taken to complete the project, large contracts were awarded without following competitive selection procedures, and approvals to deviate from required Management Board of Cabinet directives were not obtained from either ministry senior management or Cabinet.

**Mould remediation work—Newmarket courthouse.** In March 2000, toxic mould was discovered in the Newmarket courthouse. The building was closed on June 30, 2000, because of escalating concerns for the occupants' health and to allow for the necessary remedial repairs and related updates to the building's systems. The courthouse was reopened in July 2001, after approximately \$23 million had been spent on remedial work. The Ministry also spent an additional \$20 million for temporary accommodations to maintain court operations during the period.

The costs and scope of the remedial work were significantly underestimated throughout the life of this project. On April 20, 2000, the total project costs were originally estimated at approximately \$250,000, and there was no expectation that court operations would need to be temporarily relocated during the repairs. One month later, when substantially more serious mould damage than had previously been determined was found to exist, ORC's agent estimated the total costs of the remedial work, in a "worst-case scenario," to be \$3.5 million. However, the estimated costs were revised upwards as follows: \$8.3 million (in

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August 2000); \$11.4 million (in October 2000); \$14.9 million (in December 2000); and \$18.4 million (in March 2001). As noted earlier, the final costs for the remedial work were approximately \$23 million.

We noted that the majority of contracts for both the remedial work and the relocation to temporary accommodations were awarded without following competitive selection procedures. For example, on May 12, 2000, as part of the original project, a contractor was selected through a competitive process to do remedial work at a cost of \$52,000. In spite of the increase in the scope and extent of the work and the significantly higher estimates of project costs that followed, no competitive quotes were subsequently obtained from other contractors. Eventually, the primary contractor received \$23.8 million, of which \$13.4 million was for the mould remediation work. The contractor was also awarded contracts without competition, totalling \$10.4 million, for work pertaining to the construction of temporary accommodations.

When the building was closed on June 30, 2000, the remediation project was expedited to minimize the time required for the Ministry to maintain court operations from temporary accommodations. However, the significant difference between the original estimate and final project costs demonstrates that, even when projects are expedited, adequate upfront planning is imperative. Such planning would allow for better and more predictable decision-making prior to commencing capital projects and during the entire life of the projects and would ensure that appropriate competitive procurement practices are followed.

**New victim witness facilities and Crown attorney offices—Milton courthouse.** As noted above, a directive from the Management Board of Cabinet requires the Ministry to use the ORC for construction of capital projects. Contrary to this directive and without seeking competitive tenders, in February 2001 the Ministry contracted directly with a private project management company to construct victim witness facilities and Crown attorney offices at the Milton courthouse. The Branch expected the project management company to hire contractors on a competitive basis to perform the construction. The project was estimated to cost \$200,000.

More than one year later, the project management company provided the Ministry with an invoice indicating the work had been completed, even though no contractors had been hired and no work had been started on this project at the time. In March 2002, the Ministry paid the company's invoice for \$187,000, even though it was aware no work had been done. We were informed that the payment was made because the funds were committed for that fiscal year and may not be available at a later date.

Following our inquiries into this project, the Ministry terminated its contract with the project management company in January 2003. The Ministry then re-assigned management of the project to the ORC. At that time, the project management company still had not completed any substantial work on the project. In January 2003, the Ministry requested and received a refund from the project management company of \$166,000.

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In summary, better planning, better project management, the use of competitive tenders, and compliance with corporate policies could have resulted in lower costs to complete capital projects at courthouses.

### **Recommendation**

To ensure that courthouse construction and renovation projects are acquired competitively, on budget, and in accordance with Management Board of Cabinet policies, the Ministry, in conjunction with the Ontario Realty Corporation, should adequately plan and manage its capital projects. In addition, the Ministry should ensure that appropriate controls are in place so that contractors are only paid for completed work.

### **Ministry Response**

*Mould presents a number of possible health risks. The Health Promotion and Protection Act requires a building manager to provide a safe environment for occupants of the building. The Occupational Health and Safety Act details the responsibility of the employer to ensure a healthy and safe workplace for its employees.*

*At the courthouse at the previous location (80 The East Mall), which is the fourth-largest courthouse in Ontario and which deals with criminal and young offender violations, the Ministry of Labour issued six orders (from late fall 2000 to summer 2001) relating to serious mould, structural, heating, ventilating, and air-conditioning issues. To address these issues, some court operations were transferred to different locations on an emergency basis until the new courthouse at 2201 Finch Avenue West could be completed.*

*In Newmarket, 27 Ministry of Labour orders were issued during the spring of 2000 and resulted in work refusals. The Ministry undertook the difficult decision to shut down the courthouse to remediate the mould. A temporary portable facility was employed at the site, and some court operations were moved to nearby locations to ensure access to justice services continued without interruption.*

*In both cases, the nature of the mould constituted an emergency, which the Ministry was obligated to address in the most expedient manner possible. To help ensure that the Ministry was receiving value for money, an independent cost consultant and quantity surveyor was engaged by the Ontario Realty Corporation and was responsible for certifying the accuracy and the validity of all payments made. Without the emergency measures being taken, there would have been a breakdown in the administration of justice and criminal cases may have been lost. The actions of the Ministry were in the best interest of the public and the staff who work in the two courthouses.*

*The Ministry does acknowledge the benefits of economy of costs related to the tendering process and will continue to work in partnership with its mandatory*

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*service providers to ensure construction and renovation projects are acquired competitively, on budget, and in accordance with Management Board of Cabinet policies.*

*As part of the capital planning cycle, the Ministry will continue to consult with the Ontario Realty Corporation as its mandatory service provider to ensure proper planning of capital projects is conducted.*

*The Ministry has instituted additional processes and procedures to further strengthen the controls in place on its capital allocation.*

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## **COURT SECURITY**

Under the *Police Services Act*, local police services boards are responsible for ensuring the security 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 costs that are not related to staffing. These include ensuring that courthouses are designed and maintained in an appropriate manner, such as having secured corridors and holding cells. Other costs are for purchasing and maintaining security devices, such as scanners at entrances and security cameras.

In March 2001, the Division initiated a court security project. An internal committee consisting of senior management was given the mandate to address facility-related security risks and to help in the decisions needed to prioritize the short- and long-term capital expenditures for court security. As part of the project, the committee engaged an outside security consulting company at a cost of approximately \$148,000 to review the security risks at 90 larger court sites.

Based on the consultant's findings, in January 2003 the committee reported numerous gaps in security measures at courthouses surveyed. More than 150 types of security deficiencies were noted. For example, some courthouses had:

- no monitoring of panic buttons by local police or court staff;
- no secure cabinets in judges' chambers;
- no guards at the main entrances of court facilities;
- no parking for judges that was segregated from the public; and
- no security inspections of courtrooms before proceedings.

The key risks identified in the committee's report included: unauthorized weapons; verbal abuse and threats; vandalism and sabotage; theft; and assault and altercations.

During our visits to courthouses, we most often noted significant inconsistencies in the level of security at the public entrances to courthouses dealing with criminal cases. While police

at many of these courthouses required people entering to be scanned for metal devices and to have their baggage checked, police at other courthouses did not impose these requirements. At two courthouses we visited, the local police were not operating metal scanning devices at entrances even though the Ministry had provided the equipment at a cost of approximately \$15,000 per courthouse. At another courthouse we visited, where these checks were conducted, the local police indicated that their searches resulted in more than 100 persons being charged annually for various violations.

Two of the Chief Justices expressed concerns to us about the level of security in courthouses. One of them wrote:

The issue of security is a significant concern to the court.... While local security committees may be in place, there exists across the province a patchwork of security measures, largely dictated either by the occurrence of a significant event leading to enhanced levels of security at a particular court location or, more commonly, by budget constraints leading to reduced security. The present state of security with respect to courthouses in the province of Ontario is such that the public and court users may be exposed to unnecessary security risks because of the lack of a consistent approach to security issues....

It is the Court's position that what is required to improve courthouse and courtroom security is a province-wide review of existing security measures combined with the creation of specific security standards for courthouses and courtrooms.

At the time of our audit, the Ministry was in the process of considering how to address the security issues that had been raised.

### **Recommendation**

**To ensure the safety of judges and persons involved in court proceedings, the Ministry should act quickly in co-operation with stakeholders to establish and maintain an appropriate level of security in all courthouses.**

### ***Ministry Response***

***The Court Services Division, in co-operation with stakeholders, is considering the steps necessary to ensure the availability and consistent application of security devices at all courthouses across the province.***

***Building on the court-security-project report findings, the Ministry's Facilities Branch has been requested to undertake efforts towards determination of facility standards, including standards for security equipment, for consideration in various types of court facilities (for example, older versus newer facilities and large versus medium versus small sites).***

## **COLLECTION OF FINES**

As part of the Local Services Realignment initiative, in January 1997 the Government of Ontario decided to transfer to municipalities the administration and prosecution functions

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for most charges that fall under the *Provincial Offences Act*, including the collection of fines for these charges. Most of the fines transferred were for offences committed under the *Highway Traffic Act*. This transfer of responsibility to municipalities commenced in March 1999 and concluded in February 2002. Afterwards, the Ministry only retained responsibility for collecting fines for violations under other provincial statutes and the *Criminal Code*. As of February 2003, the Ministry had the responsibility for collecting approximately \$60 million in outstanding fines, about half of which were at least five years old and considered by the Ministry to be uncollectible.

The Integrated Court Offences Network (ICON) is used to keep track of the fines, and it produces a monthly report on the amounts imposed and collected and on the age of outstanding fines. Approximately \$15 million in fines are imposed annually, and the majority of these fines require collection efforts. The Ministry has an agreement with Management Board Secretariat's Collection Management Unit (Unit), which requires that outstanding fines be transferred to the Unit at least every three months for collection by private collection agencies. Timely transfer to collection agencies is imperative because the longer a fine is outstanding, the more difficult it is to ultimately collect.

In 1997, we reported that the Ministry needed to improve its efforts to collect fines. However, we found there had been little progress made in implementing our recommendations. Specifically:

- Over the last five years, the Ministry made transfers to the Unit on only four occasions. The last transfer was made on October 1, 2002, which was two-and-a-half years since the previous transfer. Also, the Ministry was not reconciling its records to those kept by the Unit to ensure that all fines in default had been transferred and accounted for. As of February 28, 2003, the Unit reported only \$33 million in fines outstanding for longer than three months. We noted that at the same time the Ministry's records showed approximately \$57 million in fines that were in arrears for longer than three months.
- The Ministry receives monthly activity reports from the Unit on fines collected and outstanding. However, the Ministry did not monitor collection rates to determine the success of collection efforts.
- According to its agreement with the Unit, the Ministry is required to authorize the various types of enforcement measures to be used by private collection agencies. We noted that the enforcement measures authorized by the Ministry were among the weakest in use when compared with those utilized by other ministries. For example, the Ministry does not permit: reporting defaulters to a credit bureau; accumulating interest and collection charges; suspending a driver's licence or denying vehicle plate renewal; seizing income tax refunds; garnishing wages; or taking legal action.

Enforcing the collection of fines is necessary to ensure the integrity of the justice system and to deter offenders from re-offending in the future.

### Recommendation

To better ensure that offenders pay their fines, the Ministry should:

- forward all outstanding fines to the Collection Management Unit for collection on a timely basis;
- authorize more vigorous enforcement measures to pursue outstanding fines; and
- improve its system for tracking fines.

### Ministry Response

*Of the total fines imposed annually, historically about two-thirds are eventually collected. The remaining one-third of the fines is difficult to collect.*

*To ensure that offenders pay their fines, the Ministry will:*

- *ensure regular (quarterly) transmission of defaulted fines data to the Collection Management Unit (Unit);*
- *arrange for a dedicated resource to liaise with the Unit on collection activity and develop a funding proposal for the 2004/05 fiscal year; and*
- *investigate and implement improved tracking of fines and more vigorous enforcement measures.*

## PERFORMANCE REPORTING

Good performance reporting should include the following 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 Court Services Division and the Judiciary, both parties have to participate in establishing appropriate performance measures.

In 1997, the Ministry informed us that it was in the process of developing performance measures for the administration of courts, including standards and targets, for inclusion in the Ministry's business plans. The Ministry intended to develop more specific performance indicators, targets, and benchmarks against which achievement of results could be measured. In our 1999 follow-up, we noted that these plans were still in progress. Our current audit found that the Ministry had still not made any significant improvements to measure and report on its performance.

As at March 31, 2003, the Ministry had only two performance measures in its annual business plan on courts. These consisted of the results of surveys of public satisfaction with services in small claims court and in family law information centres, and a record of the

percentage of civil cases settled through mediation. These areas represent only a small fraction of the services provided by courts. No outcome or activity measures were available on the core businesses of criminal courts and judicial services. In addition, we noted that the Ministry had not established any indicators to measure and report on efficiency, such as the costs of providing court services or a comparison of Ontario's costs with those of other jurisdictions.

We noted that the Ministry had some information that was available internally to its management. This information consisted of data on backlogs, the number of court sitting hours, and the average time to trial in the Ontario Court of Justice. The information could have been reported on publicly in the Ministry's business plan or Web sites. Other jurisdictions also have relevant indicators that they reported, such as court workloads, administrative duties completed within targeted time, the collection of fines, and waiting times for trials. This information was already available within the Ministry but had not been published.

The Ministry acknowledged the need for improvements in performance information that could help establish service standards and that could support its business goals and resource needs in an environment of limited financial resources. The Ministry indicated that the necessary financial and management information would be gathered as part of its recent efforts to establish a five-year strategic plan.

#### **Recommendation**

**The Ministry should measure and report on its cost-effectiveness, efficiency, and outcomes in providing court services by:**

- **working with the Judiciary to develop appropriate performance indicators and targets against which it can measure the achievement of its business goals and operational standards;**
- **ensuring its information systems gather and report the information needed for management to monitor performance on an ongoing basis; and**
- **reporting regularly to the public on its performance.**

#### ***Ministry Response***

***A five-year plan has now been developed for the Court Services Division identifying five business goals and 42 measurable service standards for compliance with business goals, including both overarching standards for the Division and standards for each practice area. The goals, standards, and initiatives established in the five-year plan will be reflected in the Division's Business Plan and will be published in the Division's new Annual Report this summer. All aspects of the plan, including the service standards, will be reviewed and updated annually in consultation with the Judiciary and court users. As a part of this process, measures to gauge the Division's cost-***



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*effectiveness, efficiency, and outcomes in providing court services will be explored.*

*Performance measuring will also be supported through the evaluation of all Division programs on a four-year cycle. The evaluations will determine the relevance of the program to the core business of the Ministry and assess the efficiency, effectiveness, and sustainability of the program. Program evaluations for enforcement activity and judicial support services will be completed this December, for criminal and head-office operations in 2004/05, and for civil and family operations in 2005/06.*

*The Division has a number of initiatives underway to provide enhanced management information to support management decision-making and performance reporting. These measures will improve the scope and accuracy of, and access to, management information. For example:*

- A new case-tracking system named “Frank,” for civil, family, Small Claims, Divisional Court, and Superior Court of Justice criminal proceedings, will provide more, and more accurate, data about those proceedings.*
- A project plan has now been developed to improve the quality of data collection in the Integrated Court Offences Network and to expand the scope of data available.*