

# Court Operations

## 1.0 Summary

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

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

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

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

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

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

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

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

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

Courtroom operating hours are those hours during which courtrooms themselves are in use. They do not measure the working hours of judicial officials or Ministry court staff. Outside the courtroom, judges do work that includes time spent in hearing certain pretrials, case conferences and settlement conferences; deciding motions and applications in writing; reviewing case materials before the scheduled hearing date; researching legal issues; writing decisions; travelling between courthouses and courts in remote areas; and attending training and

conferences. Ministry court staff also provide counter services and do other administrative office work, such as filing court documents and entering data.

- **Some Ontario courtrooms were sitting empty during our visits to a sample of courthouses.** We observed some courtrooms were not being used at any point during the day during our visits in April and May to seven courthouses located throughout all regions of the province. We could not determine whether any of these courtrooms were previously scheduled for hearings, as the Offices of the Chief Justices of the Ontario Court and the Superior Court limited our access to court scheduling information kept by trial co-ordinators (see **Section 3.0**). We performed our own sample review of 252 court days during which courtrooms were reported as “not used.” Based on other information provided to us, we verified that no cases were heard on 218, or 86%, of the 252 court days. The courtrooms were used on 24, or 10%, of the days, but Ministry court staff did not enter the actual court time in the Ministry’s time-reporting system. Ministry court staff indicated that the courtrooms were in use for the remaining 10 court days, or 4%, but could not provide any supporting documents for us to verify. We also noted that all seven courthouses had an increasing number of pending cases combined for all practice areas, with the increase ranging from 20% to 34% between 2014/15 and 2018/19.

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

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

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

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

- **Little progress had been made in replacing the Integrated Court Offences Network (ICON).** ICON tracks criminal cases handled by the Ontario Court, which accounted for more than 98% of all criminal cases in the province. Our past audits in this area repeatedly identified the need for the court system to modernize to become more efficient. The Ministry, while taking cautious and incremental steps toward modernization, had made limited progress in its efforts to introduce and use more effective technologies in the court

system since our last audit in 2008, more than 10 years ago. In January 2019, the Ministry submitted a project plan to the Treasury Board for replacing the system, which was pending approval as of August 2019. The business case submitted was part of an overall Criminal Justice Digital Design initiative, estimated to cost \$56.1 million between 2019/20 and 2023/24.

- **The implementation of Criminal E-intake had time delays and cost overruns with a reduced project scope.** Criminal E-Intake is an online system that allows police to submit criminal information packages, containing documents such as the offence(s) that the accused person is charged with, copies of police officers' notes and witness statements, electronically to the Ontario Court. The Ministry approved the business case for this system in July 2016, at an estimated cost of \$1.7 million, and the Ministry expected to complete the project by November 2017. The original business case included the integration of the two current record management systems used by police systems with the court's ICON system. However, the Ministry underestimated the project's timelines and costs. The Ministry's most recent completion date is November 2019; the estimated cost has increased to \$1.9 million, 11% more than originally budgeted. The increased costs are to cover only one of the two police record management systems. The integration plan and costs of the other police system have now been included as part of the Criminal Justice Digital Design initiative mentioned above.
- **FRANK needs significant updates to better support judges and court staff in tracking case file information.** The FRANK system tracks family cases heard in both the Ontario Court and the Superior Court, as well as criminal, civil and small claims cases received by the Superior Court. We found that FRANK is not a robust information system capable

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

Among other findings:

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

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

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

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

## Overall Conclusion

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

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

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

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

conducted by the Auditor General and welcomes the recommendations on how to improve its services to Ontarians seeking access to justice.

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

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

## 2.0 Background

### 2.1 The Court System in Ontario

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

## OVERALL MINISTRY RESPONSE

The Ministry of the Attorney General appreciates the comprehensive audit on Court Operations

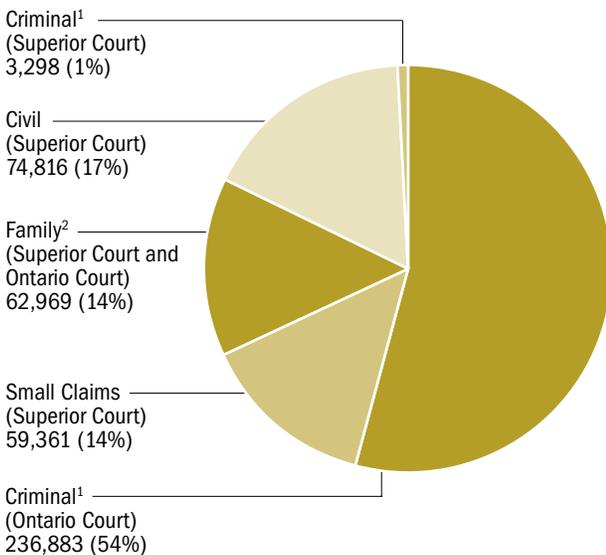
**Figure 1: Number of Cases Received and Disposed by the Ontario Court of Justice and Superior Court of Justice, 2014/15–2018/19**

Source of data: Ministry of the Attorney General

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

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

Source of data: Ministry of the Attorney General



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

## 2.2 Court Governance and Administrative Structure

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

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

### 2.2.1 Judicial Responsibility

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

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

### 2.2.2 Ministry Responsibility

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

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

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

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

### 2.2.3 Ministry Funding and Expenditures on Court Services

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

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

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

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

Source of data: Ministry of the Attorney General

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

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

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

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

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

- an average of about \$4 million per year in salaries and benefits for 16 case management masters who hear certain matters in civil cases; and

- an average of about \$7 million each year on a per diem basis for 350–370 deputy judges who hear small claims matters.

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

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

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

## 2.3 Case File Information Systems

The Ministry uses two major systems to track case information:

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

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

Source of data: Ministry of the Attorney General

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

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

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

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

## 2.4 Use of Technology

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

### 2.4.1 Criminal Justice Digital Design

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

- a criminal case management system;
- an online system to allow the police to electronically submit an application to charge an accused person with a criminal offence, along with supporting process documents, for

review and consideration by a justice of the peace;

- a cloud-based system to manage, store and share multimedia evidentiary files; and
- an online system to enable the use of electronic documents for all court and tribunal hearings.

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

### 2.4.2 Videoconferencing Technology

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

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

### 2.4.3 Electronic Scheduling Program

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

## 2.5 Scheduling and Reporting on Courtroom Utilization

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

- Courthouses, also called “base courthouses” by the Ministry, are permanent locations that provide for court appearances, consisting of 673 courtrooms in total, with document filing and administrative functions. They are typically located in larger population centres.

- Satellite courts may be located in permanent sites or temporary accommodations such as a local town hall or school; they provide for court appearances, with some locations offering document filing and administrative functions.
- Fly-in courts are similar to satellite courts but are located in remote communities accessible by flight only.

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

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

Source of data: Ministry of the Attorney General

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

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

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

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

## 2.6 Capital Planning and Facility Management

### 2.6.1 Ministry's Role and Responsibilities

The Ministry's Corporate Services Management Division has the lead responsibility for capital planning and strategic oversight of the Ministry's real

estate portfolio through its Facilities Management Branch (facilities branch).

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

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

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

### 2.6.2 Capital Planning and Approval Process

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

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

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

## 2.7 Court Interpretation Services

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

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

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

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

## 3.0 Audit Objective and Scope

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

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

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

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

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

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

We conducted the following additional work:

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

## Scope Limitation

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

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

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

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

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

*Provincial Auditor*

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

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

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

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

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

the Office of the Chief Justice of the Ontario Court stated that:

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

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

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

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

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

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

## Delays in Access to Information

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

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

## 4.0 Detailed Audit Observations

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

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

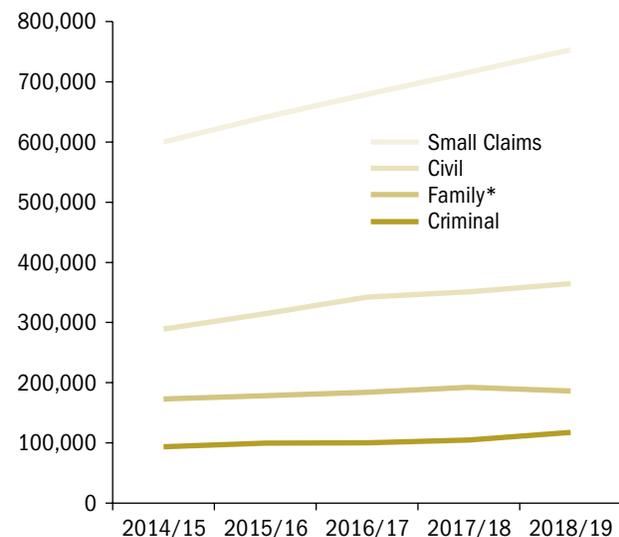
As of March 31, 2019, there were 673 courtrooms in Ontario's 74 courthouses available for hearing

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

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

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

Source of data: Ministry of the Attorney General



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

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

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

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

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

Among these 55 courthouses, we noted, for example:

- The Thunder Bay courthouse (North West region) operated its 15 courtrooms an average of 2.2 hours per business day in 2018/19, while it has seen 32% growth in pending cases for all practice areas combined over the last five years, from 8,950 to 11,782. In particular, this courthouse has experienced delays in disposing criminal cases as it took on average 165 days to dispose these cases,

which was higher than the provincial average of 145 days in 2018/19. The 165 days was also 47 days, or 40%, longer than the 118 days reported in 2013/14. We also noted that the Thunder Bay courthouse moved into a newly built building as of February 2014 with the required space and technology to meet the expected demand for the next 30 years. The Ministry's decision in 2005 to build this new courthouse was primarily based on the physical condition of the older courthouses—such as inadequate security, poor air quality and inadequate ventilation systems—and not on the need for more courtrooms. However, the total number of pending cases has only increased since then, as courtrooms have been in use only 2.3 hours, about half of the expected 4.5 hours average per business day, since 2013/14.

- The Kitchener court location (West region) operated its 30 courtrooms an average of 2.4 hours per business day in 2018/19, while it has seen 34% growth in pending cases over the last five years, from 24,835 to 33,304. In particular, the number of civil cases pending disposition increased by 39% over the same period. The Kitchener courthouse added 10 additional courtrooms to anticipate the forecast population growth and meet the expected demand until 2043. The Ministry's decision in 2005 to build this new courthouse was also based on the poor physical conditions and lack of key security features of the older courthouses. The court moved into its new building in January 2013, and has since operated its courtrooms an average of only 2.2 hours daily.
- The Hamilton courthouse (Central West region) operated its 29 courtrooms an average of 2.4 hours per business day in 2018/19 (2.3 hours in 2014/15), while it has seen 23% growth in pending cases over the last five years, from 54,434 to 67,031. In particular,

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

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

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

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

## RECOMMENDATION 1

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

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

## RESPONSE FROM THE OFFICES OF THE CHIEF JUSTICES OF THE ONTARIO COURT OF JUSTICE AND SUPERIOR COURT OF JUSTICE

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

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

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

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

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

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

- Case volume in some locations may be low and, as a result, judicial officials are not scheduled to sit in these courthouses every day.
- There would be massive cost and inconvenience to parties, the public, police, and witnesses to move cases from busy courtrooms into empty courtrooms in another town or city. Further, there is a public interest in cases being heard in the community they arise.

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

### 4.1.2 Some Ontario Courtrooms Were Sitting Empty

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

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

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

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

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

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

## RECOMMENDATION 2

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

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

## MINISTRY RESPONSE

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

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

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

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

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

recording devices used for audio recordings of court hearings.

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

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

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

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

#### 4.1.4 Reporting of Court Times Was Inconsistent and Contained Errors

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

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

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

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

### RECOMMENDATION 3

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

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

## MINISTRY RESPONSE

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

## 4.2 Overall Pace of Court System Modernization Remains Slow

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

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

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

divorce application in Ontario. This replaced the previous paper and mail process.

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

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

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

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

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

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

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

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

#### RECOMMENDATION 4

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

#### MINISTRY RESPONSE

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

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

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

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

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

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

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

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

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

## RECOMMENDATION 5

To help increase the utilization of videoconferencing technology for criminal court matters, we recommend that the Ministry of the Attorney General (Ministry) work with the Ministry of

the Solicitor General to establish interim targets and monitor progression toward the 90% utilization rate the Ministry has targeted to achieve by 2020/21.

## MINISTRY RESPONSE

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

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

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

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

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

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

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

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

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

## RECOMMENDATION 6

To improve access to the courts for justice system participants in a cost-effective manner by making video appearances in court more readily available, we recommend that the Ministry of

the Attorney General establish a plan and timeline to re-evaluate the use of its videoconferencing service and then, if it confirms the service as cost-effective, further expand the use of the service, given its proven and confirmed success.

## MINISTRY RESPONSE

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

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

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

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

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

## RECOMMENDATION 7

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

## MINISTRY RESPONSE

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

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

## 4.3 Ontario Court System Remains Heavily Paper-Based

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

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

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

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

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

With respect to criminal courts, we reviewed three major technology-based initiatives—Criminal E-Intake, Electronic Scheduling Program and Criminal Electronic Order Production—that were

in place or in the process of being implemented to replace the legacy paper-based processes. However, we found that the Ministry was not properly planning and overseeing the implementation of these initiatives, resulting in significant delays and cost overruns. The full benefits of these initiatives were not yet realized at the time of our audit.

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

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

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

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

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

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

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

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

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

primary reasons for the delay and cost overrun included the following:

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

## RECOMMENDATION 8

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

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

## MINISTRY RESPONSE

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

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

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

### Benefits of Using Criminal Electronic Order Production Not Yet Fully Realized

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

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

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

## RECOMMENDATION 9

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

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

## MINISTRY RESPONSE

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

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

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

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

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

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

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

To determine the accuracy of the electronically filed divorce applications, we sampled about 580 of divorce applications (or 76%) filed electronically between April 2018 and March 2019, taken from six different court locations that had more than 25 electronically filed divorce applications as of March 2019. We identified that about 30% of the applications filed contained errors that took court staff on average about 50 days to correct. Staff from

two court locations could not process over 50% of the electronically filed divorce applications as filed. **Figure 7** summarizes the types of errors with electronically filed divorced applications we identified.

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

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

## RECOMMENDATION 10

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

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

## MINISTRY RESPONSE

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

**Figure 7: Summary of Errors in Electronically Filed Divorce Applications**

Prepared by the Office of the Auditor General of Ontario

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

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

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

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

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

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

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

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

In its May 2014 spring budget, the government first announced the New Toronto Courthouse pro-

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

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

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

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

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

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

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

The Office of the Chief Justice of the Superior Court also, at the time, expressed disagreement with the locations of four of the five new courthouses built between 2009 and 2014 at a contract price of about \$1.5 billion, as noted in **Section 2.6.2**. These are the Waterloo Region/Kitchener, Quinte/Belleville, Elgin County/St. Thomas and Thunder Bay courthouses. Representatives from the Office of the Chief Justice of the Superior Court, a justice partner, informed us that it had also not been consulted

before the decision was made to construct courthouses at these locations. From their Office’s point of view, the more pressing needs at the time were Milton (Halton), Newmarket and Barrie regions.

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

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

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

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

## RECOMMENDATION 11

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

## MINISTRY RESPONSE

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

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

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

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

11.35 days in 2018, and the Ontario Public Service average of 11 days in 2018.

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

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

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

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

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

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

**Figure 8: Sick Days Taken by Regular Full-Time Court Services Division Staff, 2015–2018**

Source of data: Ministry of the Attorney General

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

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

### RECOMMENDATION 12

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

### MINISTRY RESPONSE

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

## 4.6 Ministry Oversight of Court Interpreters Needs Improvement

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

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

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

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

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

### RECOMMENDATION 13

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

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

### MINISTRY RESPONSE

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

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

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

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

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

For example:

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

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

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

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

#### RECOMMENDATION 14

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

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

#### MINISTRY RESPONSE

The Ministry agrees and will explore remote interpretation options to minimize the costs associated with long-distance travel from one region to another. This will require consultation with the judiciary, as well as with court staff

to ensure that courthouses have the necessary technology and that staff are properly trained.

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

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

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

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

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

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

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

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

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

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

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

- In British Columbia, the provincial court publicly reports on operational standards to assess its ability to manage its caseload effectively. When standards are not met, the report explains the underlying causes and trends, and suggests steps to take, including reallocating resources. It sets targets for key performance measures such as:
  - 100% adult criminal case completion rate, such that every fiscal year the number of cases concluded should equal the number of cases received;
  - 90% of criminal cases concluded within 180 days; and
  - for cases estimated to last less than two days, times to trial of six months for criminal cases, four months for family cases and five months for small claims.
- The State of Minnesota court system publicly reports on its progress toward meeting its performance goals using key measures such as:
  - 1% or less of major criminal cases disposed beyond 12 months;

- 1% or less of major criminal cases pending beyond 12 months; and
- 99% of children given final decision on placement or permanency by 18 months, in child protection cases where the child has been removed from the home.
- The Ministry of Justice and Solicitor General in Alberta issue annual reports on performance targets such as:
  - limiting the median elapsed time from first to last appearance for a criminal case in Provincial Court and Court of Queen's Bench of Alberta to 122 days or less; and
  - limiting the lead time to trial for serious and violent crimes in Provincial Court to 22 weeks or less.

## RECOMMENDATION 15

To help measure the efficiency and effectiveness of court operations in contributing to a timely, fair and accessible justice system, we recommend that the Ministry of the Attorney General work with the judiciary to:

- review best practices from other jurisdictions and establish targets for key performance indicators such as timeliness in disposition of cases;
- monitor and measure actual performance against targets; and
- report publicly on the results periodically.

## MINISTRY RESPONSE

The Ministry agrees to raise the recommendations with the Offices of the Chief Justices to the extent possible while continuing to respect the independence of the judiciary.

Court activity reports and data constitute court information, and the Court Services Division collects and maintains this information at the direction of the judiciary.

## Appendix 1: Current Status of 2008 Select Audit Concerns

Prepared by the Office of the Auditor General of Ontario

2008 Select Audit Concerns or Observations	Similar or Related Concerns Noted During Our Current Audits*
<b>Access to Information</b>	
During our audit we experienced significant delays in obtaining key documents from the Ministry of the Attorney General (Ministry). Following our initial requests in December 2007, the Ministry took from three to six months to provide us with several key documents.	Scope limitation and delays in access to information ( <b>Section 3.0</b> ).
<b>Criminal Law Matters</b>	
Serious backlogs existed and were growing, particularly for criminal cases, and more successful solutions were needed for eliminating backlogs.	The backlog of criminal cases continues to grow. Refer to <b>Chapter 3</b> of this volume (Criminal Court System, <b>Section 4.1</b> ).
<b>Family Law Matters</b>	
Backlogs existed in resolving child protection cases.	With limited access we still found delays in resolving child protection cases. Refer to <b>Chapter 4</b> of this volume (Family Court Services, <b>Section 4.1</b> ).
We also noted growing backlogs for non-child protection family cases.	Some delay in obtaining hearings for domestic family law cases. Refer to <b>Chapter 4</b> of this volume (Family Court Services, <b>Section 4.2</b> ).
In 17 court locations, a Unified Family Court exists where all family cases are dealt with by the Superior Court of Justice.	As of May 2019, there were 25 Unified Family Courts across the province. However, the Ministry did not have a concrete plan to achieve its target to expand Unified Family Court in the remaining 25 family court locations by 2025. Refer to <b>Chapter 4</b> of this volume (Family Court Services, <b>Section 4.6</b> ).
<b>Information Systems and Use of New Technologies</b>	
We noted that, since our <i>2003 Annual Report</i> , there has been little progress in implementing new technologies to improve the efficiency of the courts, especially for handling criminal cases.	Overall pace of court system modernization remains slow ( <b>Section 4.2</b> ).
Electronic Document Filing—In 2004, the Ministry discontinued its pilot project on electronic document filing because its outdated equipment was prone to failure, its system lacked capacity, the forms were complex, and the necessary investment was deemed too large.	Ontario court system remains heavily paper-based ( <b>Section 4.3</b> ).
Video Court Appearances—In 2003, the Ministry set a target that video be used in 50% of all in-custody court appearances. The Ministry has not reached this target, and the growth in use of video technology has been slow and has essentially levelled off at 35%.	Lack of sector-wide strategy results in underutilization of videoconferencing technology for criminal matters ( <b>Section 4.2.2</b> ).
We noted that FRANK could not differentiate between cases that have exceeded statutory time limits, such as the requirement for a hearing within 120 days, and cases that courts had authorized to exceed these limits. This information would be useful for assessing the extent of backlogs.	FRANK needs significant updates to better support judges and court staff in tracking case file information ( <b>Section 4.2.4</b> ). The number of child protection cases pending disposition captured in the FRANK system was not accurate. Refer to <b>Chapter 4</b> of this volume, Family Court Services ( <b>Section 4.1.4</b> ).

2008 Select Audit Concerns or Observations	Similar or Related Concerns Noted During Our Current Audits*
<b>Capital Planning and Courtrooms Utilization</b>	
<p>The need for more courtrooms is particularly serious in the Ontario Court for Justice, which has been experiencing large backlogs.</p>	<p>Existing courtrooms have the capacity to hear and dispose more cases (<b>Section 4.1</b>).</p> <p>Key justice partners faulted the Ministry's consultation process in planning new courthouses (<b>Section 4.4</b>).</p>
<b>Performance Reporting</b>	
<p>In the Ministry's annual reports, neither the Ministry nor the Division has included case backlogs as a measure of the Ministry's performance and the annual reports do not provide information on the extent of backlogs.</p>	<p>Performance targets were not set to aim for timely disposition of cases (<b>Section 4.7</b>).</p>

\* Refer to the listed sections for details.

## Appendix 2: Courts of Ontario

Source of data: Ministry of the Attorney General

### Ontario Court of Justice (Ontario Court)

Provincially appointed and funded judges and justices of the peace.

#### Criminal Law

- A single judge presides over trials for offences under the *Controlled Drugs and Substances Act* and the *Cannabis Act*. The judge also presides over trials for offences under the Criminal Code, such as summary conviction offences, hybrid offences where the Crown attorney elects to proceed summarily as well as offences where a preliminary inquiry is held.
- Bail Court determines whether a person charged with an offence should be released or detained until their case is resolved.
- A single judge presides over appeals of *Provincial Offence Act* matters.

#### Family Law

- In areas where there is no Unified Family Court, the Ontario Court hears matters that fall under most provincial legislation such as child protection, adoption, enforcement and custody or support matters in cases where divorce is not being claimed.

### Superior Court of Justice (Superior Court)

Federally appointed and funded judges, except for case management masters and deputy judges who are provincially appointed and funded to hear civil and small claims matters.

#### Criminal Law

- A judge presides over appeals of summary conviction offences. A judge and jury, unless the parties consent to judge alone, presides over trials for indictable offences under the *Controlled Drugs and Substances Act*, the *Cannabis Act* and the Criminal Code. Criminal Code offences heard may include murder and other indictable offences, unless the accused has elected to be tried in the Ontario Court.

#### Family Law

- In areas where there is a Unified Family Court, this court, as a branch of the Superior Court, hears all family matters.
- In areas where there is no Unified Family Court, the Superior Court hears property issues and support and custody/access matters largely relating to divorce.

#### Appeals

- Hears appeals of summary offences and family matters from the Ontario Court.

#### Other Cases

- Hears civil and small claims cases as well as appeals and judicial review of administrative tribunals, government agencies and boards.

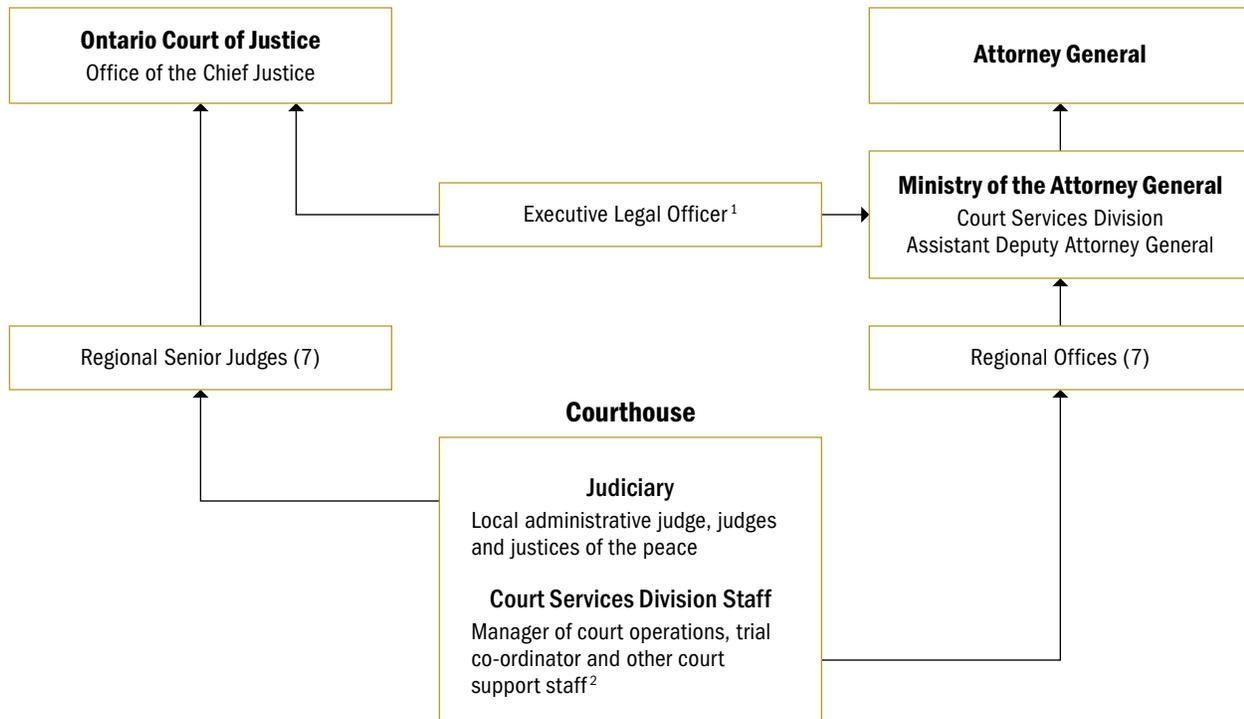
### Court of Appeal for Ontario

Federally appointed and funded judges.

- Hears appeals from the Superior Court of Justice and Divisional Court (a branch of the Superior Court).
- Appeals from the Court of Appeal are heard by the Supreme Court of Canada.

## Appendix 3: Reporting and Accountability Structure of the Ontario Court of Justice and Ministry of the Attorney General

Prepared by the Office of the Auditor General



1. The Executive Legal Officer (Officer) is responsible for the financial, human resources and related administrative responsibilities of the Office of the Chief Justice. The Officer acts as a liaison between the Office of the Chief Justice and the Ministry of the Attorney General (Ministry) through the Assistant Deputy Attorney General of Court Services Division. The Officer works under the direction of the Chief Justice but is paid salary and benefits by the Ministry.
2. Trial co-ordinators and other court staff work under direction of the judiciary but are hired and paid by the Ministry.

## Appendix 4: Excerpt of Memorandum of Understanding (Memorandum) between the Attorney General of Ontario (Attorney General) and the Chief Justice of the Ontario Court of Justice (Chief Justice)

Prepared by the Office of the Auditor General of Ontario

Section	Excerpt
Preamble	The Attorney General and the Chief Justice are both committed ... to providing the people of Ontario with an open, fair, and modern justice system.
Preamble	The Attorney General and the Chief Justice operate under the principle of financial accountability, and recognize that the Attorney General is accountable to the Legislative Assembly of Ontario for the proper use of public funds allocated for the administration of justice in the Province.
2.1 – Role of the Attorney General	<p>The Attorney General is responsible for the following:</p> <ol style="list-style-type: none"> <li>Presenting the budget of the Office of the Chief Justice as part of the estimates of the [Ministry of the Attorney General];</li> <li>Reporting to the Legislature;</li> <li>Ensuring that the Office of the Chief Justice is informed of Ministry and Government of Ontario financial and administrative policies that apply to the operations of the Office of the Chief Justice;</li> <li>Administering all matters connected with the operation of the [Ontario Court] and all matters connected with judicial officers, other than matters assigned by law to the judiciary and matters assigned to the judiciary by the Memorandum;</li> <li>Promoting fair, accessible and timely criminal, provincial offence and family justice services; and</li> <li>Promoting fair and timely appointments by the Government of Ontario of new judiciary and senior judicial administrative positions within the [Ontario Court].</li> </ol>
2.2.1 – Role of the Chief Justice and the Office of the Chief Justice	<p>The Chief Justice is responsible for the following:</p> <ol style="list-style-type: none"> <li>Supervising and directing the sittings of the [Ontario Court] and the assignment of judicial duties pursuant to the <i>Courts of Justice Act</i>;</li> <li>Recommending names to the Attorney General regarding the appointment and re-appointment of Associate Chief Justices, Regional Senior Judges and Regional Senior Justices of the Peace;</li> <li>Appointing other judicial administrative positions;</li> <li>Determining the nature and scope of representation by judiciary and [Ontario Court] employees (including the Executive Legal Officer) on Ministry or related committees, working groups or initiatives; and</li> <li>Promoting fair, accessible and timely criminal, provincial offence and family justice services.</li> </ol>
2.3 – Role of the Ministry of the Attorney General (Ministry)	<p>The Ministry is responsible for:</p> <ol style="list-style-type: none"> <li>Providing modern and professional court services that support accessible, fair, and timely justice services;</li> <li>Storing, maintaining and archiving Court Information and Judicial Information and releasing and providing access to such information ...</li> <li>[...]</li> </ol>
3.1 – Funding	The operations of the Office of the Chief Justice are funded out of the Consolidated Revenue Fund through the annual Estimates process.

Section	Excerpt
3.4 – Provincial Auditor	The financial and administrative affairs of the Ontario Court of Justice, including the Office of the Chief Justice, may be audited by the Provincial Auditor as part of any audit conducted with respect to the Ministry. Correspondence with the [Office of the Auditor General of Ontario] pertaining to the [audit report] will be forwarded to the Chief Justice by the Attorney General, and any response made by the Attorney General to the Provincial Auditor shall be subject to prior consultation with the Chief Justice.
3.7 – Public Information, Outreach and Openness	The Attorney General and the Chief Justice are committed to improving the level of public understanding about the role played by the courts and judiciary in Ontario’s justice system. To this end, they will continue to foster a productive dialogue between courts administration, the judiciary, the legal community, the media and the public.
4.0 – Judicial Information and Court Information	<p><b>Definitions:</b></p> <p>Judicial Information means information the release of which would impair judicial independence and includes: personal judicial information, information relating to judicial assignments, court policies and programs ... relating to the judiciary, and information and material in any form generated by, or at the request of, the [Ontario Court], its judiciary or employees.</p> <p>Court Information means information other than Judicial Information that relates to proceedings before the Court, and includes: court records relating to individual cases; court calendars and dockets; court activity reports whether in paper or electronic format; and all related reports, data and statistics.</p> <p>Judicial Information and Court Information also include all such information contained in any electronic or other case tracking or recording systems managed by or on behalf of the [Ontario Court].</p>
4.4 – Release of, and Access to, Judicial Information	The Court Services Division and [Judicial Information Technology Office] shall not release, or provide access to, Judicial Information to any person or organization (including any person within the Ministry or Government of Ontario) without the prior consent of the Office of the Chief Justice.
4.5 – Release of, and Access to, Court Information	<p>a) Policies and procedures governing the release of, or access to, Court Information will be in accordance with relevant legislation, case law, and judicial orders, and based on the principles of openness, judicial independence, data accuracy, proper administration of justice, proper purpose, compliance with the law and effective use of public resources.</p> <p>b) [...]</p> <p>c) ... Where the Office of the Chief Justice withholds consent to the release of or access to Court Information to the Ministry, the Office of the Chief Justice will provide a reason to the Ministry for doing so.</p>
6.2 – Trial Coordination	<p>While trial coordinators and designates are within the Court Services Division in terms of Government of Ontario reporting requirements, the trial coordinator or designate, when performing duties as trial coordinator, has the function and responsibility of providing support and assistance to the Office of the Chief Justice and the Regional Senior Judges.</p> <p>a) Day-to-day direction of trial coordinators:</p> <p>The day-to-day direction of a trial coordinator, as it pertains to the execution of duties as a trial coordinator, is a function and responsibility of the Offices of the Regional Senior Judges, subject to managerial supervision by the Court Services Division. All decisions related to the staffing of the office of trial coordinators, including all performance management, are made by Court Services Divisions in consultation with the Offices of the Regional Senior Judges.</p> <p>b) Trial coordinators and providing access to Court Information and Judicial Information:</p> <p>Trial coordinators and designates shall not provide access to Court Information or Judicial Information except in accordance with Section 4. Trial coordinators must refer all requests for Court Information or Judicial Information from individuals inside or outside the Ministry to the Regional Senior Judge or the Office of the Chief Justice.</p>

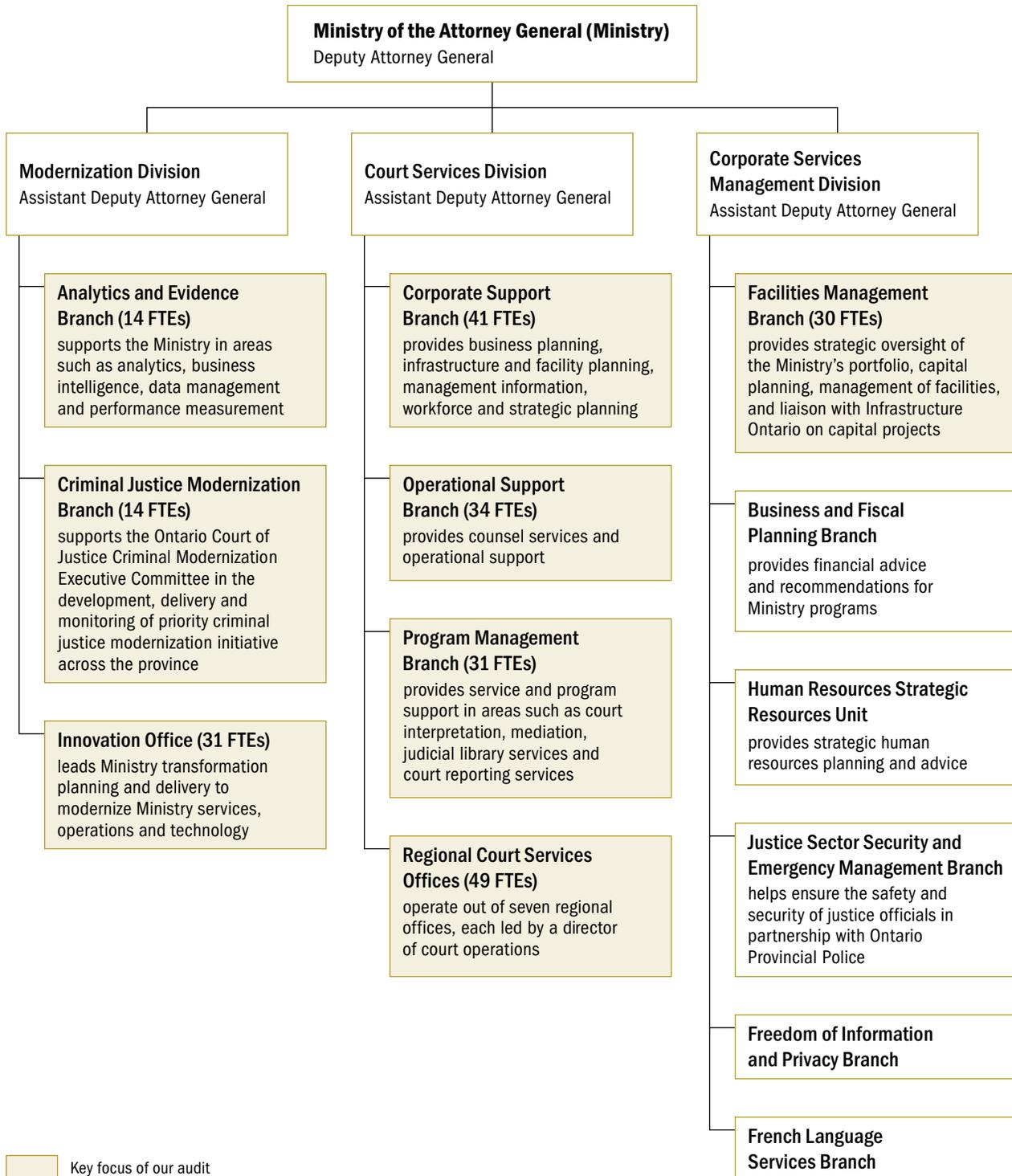
## Appendix 5: Excerpt of Memorandum of Understanding (Memorandum) between the Attorney General of Ontario (Attorney General) and the Chief Justice of the Superior Court of Justice (Chief Justice)

Prepared by the Office of the Auditor General of Ontario

Section	Excerpt
Preamble	The Attorney General and the Chief Justice are committed to the importance of the principle of judicial independence and to supporting the core functions of the judiciary associated with adjudication, including judicial dispute-resolution, and assignment and scheduling.
Preamble	The Attorney General and the Chief Justice recognize the dynamic and changing nature of the [Superior Court] and the administration of justice in the Province, and the need for an accessible, modern, effective and efficient justice system that serves the needs and interests of the public.
Preamble	The Attorney General and the Chief Justice operate under the principle of financial accountability and recognize that the Attorney General is accountable to the Legislative Assembly of Ontario for the proper use of public funds allocated to the administration of justice in the Province.
1 - Legislative Authority	<p>a. Courts Administration</p> <p>The Chief Justice or Regional Senior Judges ... are responsible for directing and supervising the sittings of the [Superior Court] and assigning of judicial duties in accordance with section 75 of the [<i>Courts of Justice Act</i> (Act)]</p> <p>In matters that are assigned by law to the judiciary, court staff act at the direction of the Chief Justice, in accordance with section 76 of the [Act].</p>
3 - Roles and Responsibilities under the [Memorandum]	<p>a. The Attorney General [acknowledges the responsibility]</p> <ul style="list-style-type: none"> <li>i) to include the budget of the Office of the Chief Justice as part of the overall Judicial Services allocation and reporting the budget ... within the overall Ministry Estimates submission ...;</li> <li>ii) to ensure that the staff of the Office of the Chief Justice is informed of Ministry and Government financial and administration policies that apply to the operations of the Office of the Chief Justice;</li> <li>iii) to provide the staff of the Office of the Chief Justice with the opportunity to participate on the Division Management Committee of the Ministry's Court Services Division and to provide input into the Division's Five-Year Plan on behalf of the judiciary.</li> </ul>
7 - Access to and Confidentiality of Information and Documents	<p>The Attorney General and the Chief Justice agree to develop a protocol that will outline, on a principled basis, when public access is appropriate to court-derived statistical information and documents.</p> <p>Subject to applicable laws, information held by the Attorney General or the Ministry and its officials pertaining to the judiciary shall be held in confidence if the release of that information could impair judicial independence.</p>

## Appendix 6: Key Divisions, Branches and Offices of the Ministry of the Attorney General That Support Court Operations

Source of data: Ministry of the Attorney General



## Appendix 7: Provincial Judges Remuneration Commission

Source of data: Treasury Board Secretariat

Key Areas	Details
Function	Under the <i>Courts of Justice Act</i> , the function of the Provincial Judges Remuneration Commission (Commission) is to inquire into and make recommendations relating to salaries, pensions and benefits for Ontario provincial judges. After receiving written and oral submissions, the Commission provides a report to the Chair of Management Board of Cabinet. The Commission's recommendations on salaries and benefits are binding on the government, but the recommendations on pensions are not binding. The Commission reports to the Chair, Management Board of Cabinet. The Ministry of the Attorney General is responsible for the funding.
Membership	The Commission is composed of three members. One member is appointed by the associations representing provincial judges, one member is appointed by the Lieutenant Governor in Council, and the chair is appointed jointly by the judges' associations and the Lieutenant Governor in Council.
Term	The term of office for members of the Commission begins on July 1 in the year the inquiry is conducted. Commission members serve for four years and are eligible for reappointment. When a vacancy occurs, a new member is appointed to serve for the remainder of the unexpired term.
Remuneration	Appointees to the Commission have their remuneration fixed by Management Board of Cabinet.

Note: The Justices of the Peace Remuneration Commission, similar in structure to the Commission, inquires into and makes recommendations relating to the salaries, pension and benefits of Ontario's justices of the peace.

## Appendix 8: Courtroom Utilization by Region and Location, 2018/19

Source of data: Ministry of the Attorney General of Ontario

Region	Location	Ontario Court of Justice Practice Areas (Criminal, Family)	Superior Court of Justice Practice Areas (Criminal, Family, Civil, Small Claims)	# of Courthouses	# of Courtrooms <sup>1</sup>	Average Daily Operating Hours per Courtroom <sup>2</sup>
Central East	Barrie <sup>3</sup>	Criminal only <sup>7</sup>	All	1	14	5.2
	Newmarket <sup>3</sup>	Criminal only <sup>7</sup>	All	1	25	5.0
	Peterborough	Criminal only <sup>7</sup>	All	2	7	3.7
	Durham	Criminal only <sup>7</sup>	All	1	33	3.7
	Cobourg <sup>3</sup>	Criminal only <sup>7</sup>	All	1	4	2.6
	Lindsay	Criminal only <sup>7</sup>	All	1	6	2.4
	Bracebridge	Criminal only <sup>7</sup>	All	1	4	2.1
	<b>Total</b>			<b>8</b>	<b>93</b>	<b>3.5</b>
Central West	Milton <sup>3</sup>	All	All	1	12	5.0
	Brampton <sup>3,4</sup>	All	All	2	47	4.2
	Brantford	All	All	2	8	3.2
	Orangeville	All	All	1	6	2.8
	St. Catharines	Criminal only <sup>7</sup>	All	1	14	2.8
	Hamilton	Criminal only <sup>7</sup>	All	2	29	2.4
	Welland	All <sup>8</sup>	All	1	6	2.3
	Cayuga	All <sup>8</sup>	All	1	3	1.2
	Simcoe	All <sup>8</sup>	All	1	5	1.1
	<b>Total</b>			<b>12</b>	<b>130</b>	<b>2.8</b>
East	Ottawa <sup>3</sup>	Criminal only <sup>7</sup>	All	1	29	4.7
	Cornwall <sup>9</sup>	Criminal only <sup>7</sup>	All	1	10	2.9
	L'Orignal	Criminal only <sup>7</sup>	All	2	4	2.8
	Brockville	Criminal only <sup>7</sup>	All	1	5	2.7
	Kingston	Criminal only <sup>7</sup>	All	3	9	2.4
	Pembroke	All <sup>8</sup>	All	1	6	2.4
	Perth	Criminal only <sup>7</sup>	All	1	3	2.3
	Napanee	Criminal only <sup>7</sup>	All	2	3	1.8
	Belleville	All <sup>8</sup>	All	1	11	1.8
	Picton	All <sup>8</sup>	All	1	2	0.9
	<b>Total</b>			<b>14</b>	<b>83</b>	<b>2.5</b>
North East	Cochrane	All	All	1	2	3.6
	Sudbury <sup>3</sup>	All	All	2	12	3.0
	Sault Ste. Marie <sup>3</sup>	All	All	1	9	2.7
	Haileybury	All	All	1	2	2.4
	Parry Sound	All	All	1	3	2.2
	Timmins	All	All	2	5	2.1
	North Bay	All	All	1	8	2.1
	Gore Bay	All	All	1	2	2.0
<b>Total</b>			<b>10</b>	<b>43</b>	<b>2.5</b>	

Region	Location	Ontario Court of Justice Practice Areas (Criminal, Family)	Superior Court of Justice Practice Areas (Criminal, Family, Civil, Small Claims)	# of Courthouses	# of Courtrooms <sup>1</sup>	Average Daily Operating Hours per Courtroom <sup>2</sup>
North West	Kenora	All	All	1	4	2.7
	Dryden <sup>5</sup>	All	All	1	1	2.6
	Thunder Bay <sup>3</sup>	All	All	1	15	2.2
	Fort Frances <sup>3</sup>	All	All	1	3	1.3
	<b>Total</b>			<b>4</b>	<b>23</b>	<b>2.2</b>
Toronto	College Park <sup>3</sup>	Criminal only	None	1	10	5.0
	1000 Finch Avenue West	Criminal only	None	1	10	4.6
	Old City Hall <sup>3</sup>	Criminal only	None	1	23	4.2
	47 Sheppard <sup>3</sup>	Family only	Small claims only	1	12	4.1
	2201 Finch Avenue West	Criminal only	None	1	12	4.0
	1911 Eglinton	Criminal only	None	1	15	3.6
	393 University <sup>3,6</sup> 330 University <sup>6</sup> Osgoode Hall <sup>6</sup>	None	Family and civil only	3	54	2.6
	311 Jarvis <sup>3</sup>	All <sup>10</sup>	None	1	10	2.5
	361 University	None	Criminal Only	1	32	1.9
	<b>Total</b>			<b>11</b>	<b>178</b>	<b>3.6</b>
West	Goderich	Family only	All	1	3	3.5
	London	Criminal only <sup>7</sup>	All	1	23	3.2
	Windsor <sup>3</sup>	All	All	2	21	3.1
	Guelph	All	All	2	7	3.1
	Walkerton	All	All	1	3	3.0
	Woodstock	All	All	1	5	2.6
	Stratford	All	All	2	4	2.6
	Sarnia	All	All	1	7	2.5
	Kitchener <sup>3</sup>	All <sup>8,9</sup>	All	1	30	2.4
	Chatham	All	All	1	7	2.2
	Owen Sound	All	All	1	6	2.2
	St. Thomas	All <sup>8,9</sup>	All	1	8	1.6
<b>Total</b>			<b>15</b>	<b>124</b>	<b>2.7</b>	
<b>Provincial Total</b>				<b>74</b>	<b>673</b>	
<b>Average Courtroom Operating Hours by Courthouse Location<sup>11</sup></b>						<b>2.8</b>

- Number of courtrooms does not include local satellite or fly-in courtrooms, as these are intended to operate as substitute courtrooms for the base courthouse.
- Courtroom operating hours reflect the number of hours that courtrooms were in use only. They do not include courtroom time that was scheduled but unused when cases collapsed and other court business was not brought in to replace the collapsed cases.
- Courthouses that we visited during our audit.
- Brampton courtroom operating hours do not include Brampton proceedings moved to other court locations. Brampton proceedings are regularly moved to Kitchener, Guelph, Orangeville, Milton and Toronto for hearings.

5. Dryden is a base courthouse consisting of one courtroom. Cases can also be heard in two satellite courts (two courtrooms total) and four fly-in courts within the Dryden region. In 2018/19, Dryden courtrooms were in use for a total of 1,911 hours (most of them at the three courtrooms of the base courthouse and the two satellites), resulting in an average of approximately 2.6 hours per day.
6. The Ministry's data is not reported separately for the three courthouses. Osgoode Hall houses the Court of Appeal.
7. The Ontario Court of Justice does not hear family cases in this courthouse location because it is a Unified Family Site, whereby the Unified Family Court Branch of the Superior Court of Justice hears all family cases.
8. As of May 31, 2019, the Ontario Court of Justice no longer hears family cases in this courthouse location, as the Unified Family Court Branch of the Superior Court of Justice hears all family cases.
9. Courthouse location does not hear criminal youth cases.
10. The 311 Jarvis courthouse does not hear criminal adult cases. It hears criminal youth and family cases only.
11. The 2.8 average daily courtroom operating hours are calculated as follows:
  - A. For each of the 59 courthouse locations, we calculated the average daily courtroom operating hours, as follows:
    - (i) We obtained the total number of courtroom operating hours, including all base, satellite and fly-in courthouses in the location.
    - (ii) We determined the total number of courtrooms, excluding satellite and fly-in courtrooms because they are substitute courtrooms for the base courthouse(s) in remote areas and not used as regularly as courtrooms in base courthouses.
    - (iii) We divided the total number of courtroom operating hours from (i) by the total number of courtrooms from (ii).
    - (iv) We divided the result from (iii) by 249 business days in 2018/19.
  - B. We added up the average daily courtroom operating hours of all 59 courthouse locations from step A.
  - C. We divided the result from step B by 59 courthouse locations.

## Appendix 9: Audit Criteria

Prepared by the Office of the Auditor General of Ontario

1. Effective governance and administrative structures are in place to oversee and manage court services and operations, including the use of Ministry resources and courtrooms in a timely and cost-effective way.
2. Effective court services processes are in place to ensure that the Ministry's court staffing resources are analyzed periodically, best allocated and managed efficiently and in a cost-effective manner.
3. Effective court services processes are in place to ensure that capital and other facility needs for courts are identified, prioritized and managed efficiently and in a cost-effective manner.

## Appendix 10: Summary of the Office of the Chief Justice of the Ontario Court of Justice's Response to Our Audit Request to Access Case Scheduling

Source of data: Ontario Court of Justice (Ontario Court)

- The Supreme Court of Canada recognized the independence of judicial administration as a constitutional principle in *Reference re Remuneration of Judges of the Provincial Court (P.E.I.)*. This constitutional principle of the independence of judicial administration is reflected in Ontario's *Courts of Justice Act*:
  - Section 36(1) gives the Chief Justice of the Ontario Court of Justice exclusive responsibility for judicial assignment and scheduling.
  - Section 72 gives the Attorney General responsibility to superintend all matters connected with the administration of the courts, other than judicial scheduling and assignment, judicial education, conduct and discipline, and matters assigned to the judiciary by a memorandum of understanding.
  - Section 73 provides for appointments pursuant to the *Public Service of Ontario Act, 2006* of court staff necessary for the administration of courts.
- The memorandum of understanding signed between the Ministry [of the Attorney General] and the Chief Justice of the Ontario Court of Justice in 2016, states the following:
  - Section 2 reflects the legislative separation between the judiciary's exclusive responsibility over scheduling and assignment, and the ministry's general responsibility for court administration, as set out in the *Courts of Justice Act*.
  - Further, the essence of judicial administrative independence is that the judiciary have control over administrative functions that bear directly on the judicial function, including the direction of the administrative staff engaged in carrying out those functions.
  - Subsection 6.2(a) makes it clear that trial coordinator duties are at the sole direction of the judiciary, consistent with scheduling falling within the sole purview of the judiciary.

## Appendix 11: Summary of Publicly Available Information, Information Our Office Obtained During the Audit, and Information Where Our Access Was Denied

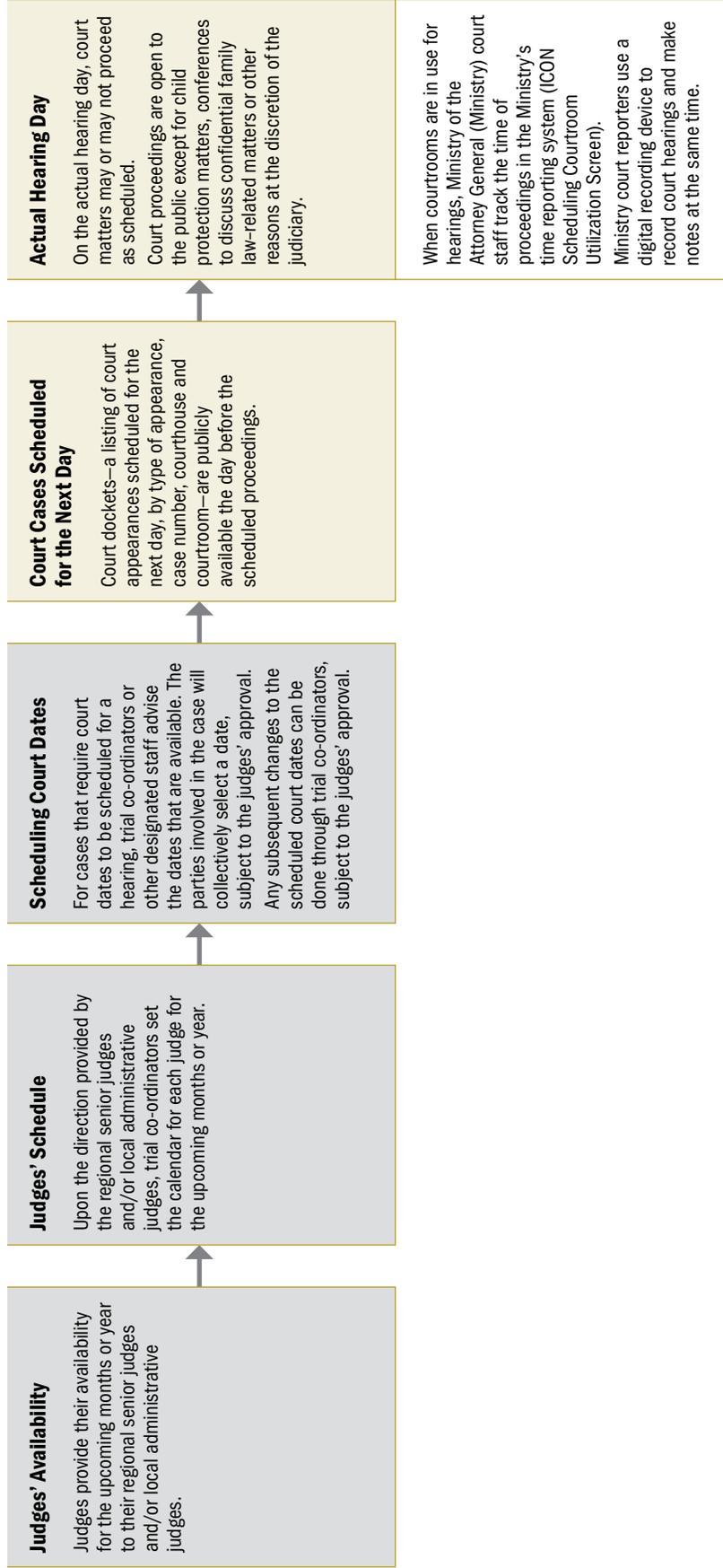
Prepared by the Office of the Auditor General of Ontario

		Information That Is Publicly Available	
Court Operations	Ministry of the Attorney General (Ministry)	Ontario Court of Justice (Ontario Court)	Superior Court of Justice (Superior Court)
<p>Role and responsibilities of the Ministry of the Attorney General and the Ontario Court of Justice and the Superior Court of Justice</p>	<p>The government's website lists the Ministry's roles and responsibilities, including those support services provided by its Court Services Division, Corporate Service Management Division and Modernization Division.</p>	<p>The memorandum of understanding between the Chief Justice and the Attorney General. (See <b>Appendix 4</b> for excerpts.)</p>	<p>The memorandum of understanding between the Chief Justice and the Attorney General. (See <b>Appendix 5</b> for excerpts.)</p>
<p>Court resources and case statistics</p>	<p>Court Services Division (Division) annual report provides information such as the following:</p> <ul style="list-style-type: none"> <li>the Division's mission, strategic plan, goals and core services;</li> <li>expenditures paid by the province for court operations and staffing (see <b>Figure 3</b>);</li> <li>judicial complements paid by the province and those paid by the federal government (<b>Figure 4</b>); and</li> <li>modernization initiatives.</li> </ul> <p>The Ministry's website provides a list of courthouses by location and types of cases handled at the courthouses.</p>	<p>The Ontario Court's website provides annual statistics for each court location and region, and for the province, such as:</p> <p><b>Criminal law matters</b></p> <ul style="list-style-type: none"> <li>number of cases received, disposed and awaiting disposition, and types of disposition;</li> <li>average number of days needed to dispose cases and number of court appearances made before disposition;</li> <li>bail outcomes; and</li> <li>disposition rates of cases, collapse rates of cases and aging of pending cases.</li> </ul> <p>(See <b>Chapter 3</b> of this volume, Criminal Court System.)</p> <p><b>Family law matters</b></p> <ul style="list-style-type: none"> <li>number of cases received, disposed and pending disposition, reported by month, courthouse, region and at the provincial level; and</li> <li>number of appearances heard by type of appearance, month, courthouse, region and at the provincial level</li> </ul> <p>(See <b>Chapter 4</b> of this volume, Family Court Services.)</p>	<p>The Superior Court publishes case statistics in its annual report, such as the number of new criminal, family, civil and small claims proceedings, by region.</p>

Court Operations	Information That Is Not Publicly Available		Impact of Not Getting Access on Completion of Audit
	We Were Given Access	We Were Denied Access	
<p><b>Ontario Court of Justice (Ontario Court) and Superior Court of Justice (Superior Court)</b></p> <p>Court scheduling</p> <ul style="list-style-type: none"> <li>Daily court dockets (listing of court appearances scheduled for the next day, by type of appearance, case number, courthouse and courtroom)</li> <li>Court proceedings are open to the public except for child protection matters, any conferences to discuss confidential family law-related matters or other reasons, at the discretion of the judiciary.</li> </ul>	<ul style="list-style-type: none"> <li>An overview of the court scheduling process for cases by trial co-ordinators, regional senior judges and/or local administrative judges. See <b>Appendix 12</b>.</li> <li>Number of courtrooms by courthouse in the province.</li> <li>The Ministry's ISCUS (ICON Scheduling Courtroom Utilization Screen) report contains the number of court operating hours reported by courthouse and year.</li> <li>Digital recording report maintained by Ministry staff during court hearings. We requested full notes of digital audio recordings for approximately 240 court dates and were inadvertently given 125 of the sample selected. For about 115 remaining dates, we received time stamps only without annotations maintained by the court reporters.</li> <li>Ministry policy for reporting time in ISCUS.</li> </ul>	<ul style="list-style-type: none"> <li>Court scheduling information, such as court dates historically scheduled and upcoming court dates that were scheduled, maintained by trial co-ordinators who work under the direction of the judiciary.</li> <li>We were denied access to full annotation for about 115 court dates out of the 240 court dates selected.</li> </ul>	<p>We were unable to determine:</p> <ul style="list-style-type: none"> <li>whether the courtrooms were scheduled for use optimally to address the backlogs of cases identified; and</li> <li>possible reasons that may have contributed to the lower-than-optimal utilization of courtrooms.</li> </ul>
		<p>To identify the reasons why:</p> <ul style="list-style-type: none"> <li>the 55 courthouses (out of a total of 74) that reported above-average delays in disposing cases also operated fewer hours than the Ministry's optimal average of 4.5 hours per day (<b>Section 4.1.1</b>);</li> <li>23% of our sampled courtrooms were sitting empty during our visits (<b>Section 4.1.2</b>); and</li> <li>multiple breaks and interruptions occurred during court sessions (<b>Section 4.1.3</b>).</li> </ul>	

## Appendix 12: An Overview of the Court Scheduling Process

Prepared by the Office of the Auditor General of Ontario



Information not publicly available. We requested access to the complete information but our access was refused. See **Section 3.0** for details.

Information publicly available

Information not publicly available. We requested access to both the Ministry's time reports and full notes made by court reporters in their digital recordings for a sample of court hearings selected. We received the Ministry's time reports but not the notes made by court reporters in their entirety. **Section 4.1.3** discusses the details.

## Appendix 13: Courthouses with Reported Above-Average Backlog of Court Cases, Combined for All Practice Areas, 2018/19

Source of data: Ministry of the Attorney General

Region	Location	# of Courthouses	# of Cases Pending Disposition at the Beginning of the Year + # of Cases Received During the Year, 2018/19 (A)	# of Cases Pending Disposition at End of the Year, 2018/19 (B)	% of Cases Pending Disposition at the End of the Year, 2018/19 (B) ÷ (A)	% Change in # of Cases Pending Disposition, 2014/15 – 2018/19	Average Daily Operating Hours per Courtroom <sup>1</sup>
<b>Provincial Average</b>			<b>65</b>	<b>65</b>	<b>23</b>		
<b>Courthouses operated less than 4.5 hours per day with above-average backlog of court cases</b>							
East	Picton	1	1,393	967	69	13	0.9
Central West	Simcoe	1	7,242	5,616	78	15	1.1
Central West	Cayuga	1	4,115	3,212	78	11	1.2
North West	Fort Frances	1	2,502	1,273	51	75	1.3
West	St. Thomas	1	7,443	5,097	68	30	1.6
East	Belleville	1	12,590	8,299	66	35	1.8
East	Napanee	2	3,086	1,666	54	33	1.8
North East	North Bay	1	10,190	6,440	63	24	2.1
North East	Timmins	2	7,843	4,446	57	38	2.1
Central East	Bracebridge	1	7,460	5,855	78	38	2.1
West	Owen Sound	1	8,010	5,631	70	23	2.2
North East	Parry Sound	1	3,827	2,299	60	34	2.2
West	Chatham	1	11,312	7,832	69	27	2.2
North West	Thunder Bay	1	17,763	11,782	66	32	2.2
Central West	Welland	1	18,311	14,951	82	19	2.3
East	Pembroke	1	7,756	5,071	65	29	2.4
West	Kitchener	1	48,584	33,304	69	34	2.4
East	Kingston	3	12,769	8,241	65	31	2.4
Central West	Hamilton	2	82,989	67,031	81	23	2.4

Region	Location	# of Courthouses	# of Cases Pending Beginning of the Year + # of Cases Received During the Year, 2018/19 (A)	# of Cases Pending Disposition at End of the Year, 2018/19 (B)	% of Cases Pending Disposition of the Year, 2018/19 (B) ÷ (A)	% Change in # of Cases Pending Disposition, 2014/15 – 2018/19	Average Daily Operating Hours per Courtroom <sup>1</sup>
Central East	Lindsay	1	7,817	5,218	67	35	2.4
North East	Haileybury	1	4,180	2,650	63	27	2.4
West	Sarnia	1	11,335	7,218	64	25	2.5
Toronto	393 University Avenue <sup>2</sup> Osgoode Hall <sup>2</sup> 330 University Avenue <sup>2</sup>	3	416,241	397,125	95	20	2.6
North West	Dryden	1	3,886	1,504	39	59	2.6
West	Woodstock	1	8,623	5,849	68	23	2.6
North East	Sault Ste Marie	1	12,464	7,481	60	32	2.7
East	Brockville	1	9,155	6,038	66	34	2.7
Central West	St. Catharines	1	35,467	27,408	77	16	2.8
East	L'Orignal	2	5,207	3,014	58	32	2.8
Central West	Orangeville	1	8,878	6,594	74	21	2.8
North East	Sudbury	2	34,867	25,560	73	20	3.0
West	Guelph	2	17,114	11,226	66	33	3.1
West	Windsor	2	68,755	57,506	84	9	3.1
West	London	1	83,084	66,723	80	19	3.2
Central West	Brantford	2	26,106	20,691	79	16	3.2
West	Goderich	1	4,154	2,744	66	28	3.5
North East	Cochrane	1	6,446	4,408	68	14	3.6
Central East	Durham	1	72,357	54,058	75	35	3.7
Central East	Peterborough	2	13,929	9,377	67	27	3.7
Toronto	47 Sheppard	1	97,414	84,292	87	26	4.1
Central West	Brampton <sup>3</sup>	2	136,091	105,741	78	31	4.2
<b>Subtotal</b>			<b>55</b>				

Region	Location	# of Courtrooms	# of Cases Pending Beginning of the Year + # of Cases Received During the Year, 2018/19 (A)	# of Cases Pending Disposition at End of the Year, 2018/19 (B)	% of Cases Pending Disposition at the End of the Year, 2018/19 (B) ÷ (A)	% Change in # of Cases Pending Disposition, 2014/15 – 2018/19	Average Daily Operating Hours per Courtroom <sup>1</sup>
<b>Courthouses operated less than 4.5 hours per day</b>							
Toronto	361 University	1	1,745	808	46	(13)	1.9
North East	Gore Bay	1	2,034	1,280	63	10	2.0
East	Perth	1	4,637	2,847	61	11	2.3
Toronto	311 Jarvis	1	6,233	3,578	57	(25)	2.5
West	Stratford	2	6,077	3,897	64	17	2.6
Central East	Cobourg	1	6,008	3,778	63	19	2.6
North West	Kenora	1	6,389	3,210	50	17	2.7
East	Cornwall	1	10,882	6,306	58	3	2.9
West	Walkerton	1	6,295	4,073	65	16	3.0
Toronto	1911 Eglinton	1	12,226	4,441	36	19	3.6
Toronto	2201 Finch Avenue West	1	9,239	3,520	38	6	4.0
Toronto	Old City Hall	1	18,261	6,359	35	(1)	4.2
<b>Subtotal</b>		<b>13</b>					
<b>Courthouses operated over 4.5 hours per day</b>							
Toronto	1000 Finch Avenue West	1	9,744	3,397	35	23	4.6
East	Ottawa	1	106,701	81,209	76	25	4.7
Central West	Milton	1	75,442	65,139	86	24	5.0
Toronto	College Park	1	9,722	3,403	35	17	5.0
Central East	Newmarket	1	94,772	73,958	78	30	5.0
Central East	Barrie	1	56,070	38,596	69	26	5.2
<b>Subtotal</b>		<b>6</b>					

□ Above the provincial average backlog in cases pending disposition.

1. Reflects the average number of hours during which courtrooms are in use; these hours do not include the working hours of judicial officials and court staff outside of the courtroom. Calculated as the total number of operating hours reported in ISCUS (the ICON Scheduling Courtroom Utilization Screen) divided by the number of courtrooms in individual base courthouses, divided by 249 (the number of business days in a year).
2. Ministry's data is not reported separately for the three courthouses. This location includes three base courthouses.
3. Brampton courtroom operating hours do not reflect Brampton proceedings moved to other court locations. Brampton proceedings are regularly moved to Kitchener, Guelph, Orangeville, Milton and Toronto for hearings.

## Appendix 14: The Ministry of the Attorney General's Capital Plan for Selected Courthouses, as of August 2019

Source of data: Ministry of the Attorney General

Base Courthouse	Capital Plan
Milton in the Central West region operated its 12 courtrooms an average of 5.0 hours per business day in 2018/19.	<ul style="list-style-type: none"> <li>The Halton Region Consolidated Courthouse, which will consolidate the Milton and Burlington courthouses, is expected to be completed by 2023.</li> <li>The new courthouse is projected to have 21 courtrooms, five more than the existing 16 courtrooms in both courthouses.</li> </ul>
Ottawa in the East region operated its 29 courtrooms an average of 4.7 hours per business day in 2018/19.	<ul style="list-style-type: none"> <li>The Ministry initiated a space utilization study in 2015/16 and completed it in 2018 following stakeholder consultation. The study identified opportunities to meet future needs through a reconfiguration, an addition or a combination of both.</li> </ul>
1000 Finch and College Park in the Toronto region operated a total of 20 courtrooms on average between 4.6 hours and 5.0 hours per business day in 2018/19.	<ul style="list-style-type: none"> <li>The New Toronto Courthouse with 63 courtrooms, which will hear criminal matters from six Ontario Court criminal courthouses in Toronto (1911 Eglinton, Old City Hall, College Park, 1000 Finch, 2201 Finch and part of 311 Jarvis), is expected to be completed by spring 2022.</li> <li>The 63 courtrooms are two more than the existing 61 courtrooms dealing with criminal matters that are being replaced for five of the six courthouses. The 12 courtrooms at 2201 Finch will remain open as the Toronto Region Bail Centre.</li> </ul>
Brampton in the Central West region operates its 47 courtrooms in its two courthouses. Brampton courtroom operating hours of an average of 4.2 hours per business day in 2018/19 do not include proceedings moved to other court locations.	<ul style="list-style-type: none"> <li>A six-storey Brampton addition to the existing courthouse is being constructed. The first two floors, with eight additional courtrooms, were scheduled to be completed by the late fall of 2019.</li> </ul>

## Appendix 15: Timeline for New Courthouse Build in Toronto

Source of data: Ministry of the Attorney General and the Office of the Chief Justice of the Superior Court of Justice

Timeline	Events
2009	The Ministry of the Attorney General's (Ministry) master plan for Toronto was to build four separate courthouses around the city to handle Ontario Court criminal matters, and a fifth downtown courthouse for Superior Court criminal and family matters and Ontario Court family matters. The Toronto West Courthouse in Etobicoke was the only new build from this plan approved by Treasury Board.
2011	The Province cancelled the plan for the Toronto West Courthouse due to budget constraints. The Ministry continued its work with Infrastructure Ontario to develop a plan to deliver court services in the Toronto region.
January 2014	The Ministry made a new Treasury Board submission for building a new downtown Toronto Courthouse for all Ontario Court criminal matters, now excluding the originally planned courthouse for criminal and family matters handled by Superior Court of Justice (Superior Court). The plan in this submission was significantly different than the plan in 2009.
May 1, 2014	The Province first announced the New Toronto Courthouse project in the 2014 spring budget. A day before the budget was released, a senior Ministry official communicated the decision to the Office of the Chief Justice of the Superior Court for the first time. The then-Chief Justice of the Superior Court wrote to the Ministry's senior management that her Office "was not consulted once on this major capital project."
February 2015	The Ministry indicated to the Office of the Chief Justice of the Superior Court that it was prepared to go back to the Treasury Board to submit a revised business case to include Superior Court family law cases in the new courthouse.
July 15, 2015	After conducting further study, the Ministry confirmed that it could not accommodate the change and informed the Office of the Chief Justice of the Superior Court accordingly.
July 27, 2015	The then-Chief Justice again expressed concern regarding this "truly surprising development," as it was not the outcome her Office had been "led to believe."
June 2017	The Toronto Police Service considered actions it could take to mitigate the anticipated security risks associated with consolidating all criminal matters in the downtown core. The report stated that the Ministry made a "unilateral decision" and the Toronto Police "was not consulted by the Ministry in its decision on court [consolidation]."
March 2018	The Office of the Chief Justice of the Superior Court shared the June 2017 police report with the Ministry.