

# Chapter 1

## Section 1.17

Ministry of the Attorney General

# Family Court Services

Follow-Up on VFM Volume 3 Chapter 4,  
*2019 Annual Report*

### RECOMMENDATION STATUS OVERVIEW

	# of Actions Recommended	Status of Actions Recommended				
		Fully Implemented	In the Process of Being Implemented	Little or No Progress	Will Not Be Implemented	No Longer Applicable
Recommendation 1	1			1		
Recommendation 2	1		1			
Recommendation 3	1		1			
Recommendation 4	1			1		
Recommendation 5	2			2		
Recommendation 6	2			2		
Recommendation 7	1			1		
Recommendation 8	3			3		
Recommendation 9	1		1			
Recommendation 10	3		2	1		
Recommendation 11	1			1		
Recommendation 12	1		1			
Recommendation 13	1			1		
Recommendation 14	2	1	1			
Recommendation 15	1	1				
Recommendation 16	2			2		
Recommendation 17	2		1		1	
<b>Total</b>	<b>26</b>	<b>2</b>	<b>8</b>	<b>15</b>	<b>1</b>	<b>0</b>
<b>%</b>	<b>100</b>	<b>8</b>	<b>31</b>	<b>57</b>	<b>4</b>	<b>0</b>

## Overall Conclusion

The Ministry of the Attorney General (Ministry), as of August 31, 2021, has fully implemented only 8% of the actions we recommended in our

*2019 Annual Report*. For 57% of our recommendations, it has made little or no progress. The Ministry has made some progress in implementing a further 31% of the recommendations and will not implement the remaining 4% of the recommendations.

Fully implemented recommendations include that the Ministry now collaborates with the Ministry of Finance to track and analyze reasons for unsuccessful applications from parents and caregivers who wanted to set up and update child support arrangements using the Child Support Service online tool. After our 2019 audit, the Ministry of Finance developed 26 reason codes to provide a breakdown on why the applications were not processed. Starting in January 2020, the Ministry of Finance has shared its summary reports that track the reasons for unsuccessful applications with the Ministry of the Attorney General on a monthly basis.

Progress had been made in implementing recommendations regarding the Ministry performing periodic reviews to verify mediation services billed by service providers. After our 2019 audit, the Ministry now requires service providers to submit supporting documents such as logs with dates worked, hours worked by their employees and, in some cases, notation of the duties that were performed by the service provider staff. However, due to the restrictions placed during the COVID-19 pandemic, the Ministry has been unable to conduct in-person visits at courthouses where the service providers are located to verify their billings to the source documents such as timesheets and mediation files. The Ministry indicated that once the COVID-related restrictions are lifted, it is planning to conduct the planned in-person audit processes at the service provider locations by September 2022.

The Ministry has made little or no progress on our recommendations that cover working with the judiciary to complete a review of child protection cases, and identifying areas where improved court systems and processes would result in earlier resolution of cases. At the time of our follow-up, we noted that the number of child protection cases that were unresolved has increased by 4% from 5,249 as of July 31, 2019, to 5,499 as of March 31, 2021. Of the 5,499 child protection cases, 1,070 had exceeded 30 months. Since our 2019 audit, the Ministry has engaged the Ontario Court and Superior Court to explore how to minimize the number of disruptions and potential unnecessary delays that may be caused when a judge

presiding in a child protection trial is transferred to another court before a trial is concluded or a final order is made. The Ministry indicated that any further work to identify additional areas for improvement or change of processes that would result in earlier resolution of child protection cases has been put on hold due to the competing priorities resulting from the COVID-19 pandemic. The Ministry plans to resume this work in September 2022 when the court operations and services are expected to have fully resumed after the pandemic.

Further, the Ministry indicated that it will not implement our recommendation to require staff at all court locations to perform data entry reviews regularly and consistently. The Ministry mentioned that it has already provided four existing FRANK data entry audit checklists for court management to use and expects court management to use the checklists and perform data quality reviews regularly (FRANK is an information system to manage family law case files). The Ministry has not maintained and does not plan to maintain a central repository to track, monitor and verify whether court locations are actually performing data entry reviews regularly and consistently, and that corrections are made as a result of their reviews.

The status of actions taken on each of our recommendations is described in this report.

## Background

Ontario's family courts—in both the Ontario Court of Justice (Ontario Court) and Superior Court of Justice (Superior Court)—deal most often with issues like divorce, including support, as well as child custody and access. They also hear child protection cases. In 2020/21, there were about 43,640 new family law cases filed in court (62,970 in 2018/19)—4,670, or 11% of these (7,410, or 12% in 2018/19) were child protection cases.

The *Child, Youth and Family Services Act, 2017* (Act) outlines statutory timelines courts must adhere to in certain steps in a case, and timelines relating

to the time a child is in the care and custody of a Children's Aid Society (society).

The Court Services Division (Division), under the Ministry of the Attorney General (Ministry), is responsible for the administration of courts in Ontario, including managing court staff and supporting facilities and information technology needs. The Division also oversees family mediation and information services.

Significant findings included the following:

- As of July 2019, there were 5,249 child protection cases pending disposition. Of these, 1,189 (or 23%) were unresolved for more than 18 months. In our original audit, we identified significant delays in some cases, but because we were refused access to complete information, we could not substantiate and confirm the reasons for the delays, or why timelines were exceeded.
- The Ontario Court published its *Guiding Principles and Best Practices for Family Court* to help judges to manage child protection cases. However, as we were not provided with access to key documents on court scheduling, we were unable to determine whether the Ontario Court is following its own guiding principles and best practices.
- The Superior Court had also established Best Practices for Child Protection Cases for scheduling, assignment and conduct of each step in a child protection case. This guide was not made publicly available and the Office of the Chief Justice of the Superior Court refused to provide our Office with a copy.
- Domestic family law cases, other than child protection cases, represented 89% or 38,976 of new family law cases received in 2020/21 (88%, or 55,560 in 2018/19). There were no legislated timelines for domestic family law cases except for first access and custody hearings, but we were provided with best practice guidelines. However, we were unable to verify any data about next available court hearing dates as we were not provided with access to court scheduling information.
- The number of family law cases captured in the FRANK system as pending disposition was found

to be inaccurate. Because of the inaccuracies identified, we could not rely on FRANK to perform accurate trend analyses of the time taken to dispose of cases and the aging of cases pending disposition.

- The Ministry paid for on-site mediators' availability at courthouses and not necessarily for mediation work performed. Between 2014/15 and 2018/19, only 20% of the time billed involved actual mediation or mediation-related work.

We made 17 recommendations, consisting of 26 action items, to address our audit findings.

We received commitment from the Ministry of the Attorney General that it would take action to address our recommendations.

## Status of Actions Taken on Recommendations

We conducted assurance work between April 2021 and August 2021. We obtained written representation from the Ministry of the Attorney General that effective November 15, 2021, it has provided us with a complete update of the status of the recommendations we made in the original audit two years ago.

## With Only Limited Access, We Managed to Confirm That There Are Delays in Resolving Child Protection Cases beyond Statutory Timelines

### Recommendation 1

*To support the protection of children in care and consistent compliance with statutory timelines required under the Child, Youth and Family Services Act, 2017, we recommend that the Ministry of the Attorney General work with the judiciary to complete a review of child protection cases, and identify areas where improved court systems and processes would result in earlier resolution of cases.*

**Status: Little or no progress.**

## Details

Our 2019 audit found that 23%, or 1,189, of the 5,249 child protection cases that were unresolved as of July 31, 2019, had exceeded 18 months. Of the 1,189 child protection cases, 762 had exceeded 30 months. Under the *Child, Youth and Family Services Act, 2017*, the court can make an order for interim society care for up to 18 months for children under six years old, and up to 30 months for children between ages six and 17. However, of the 1,189 pending child protection cases, the Ministry did not track and was unable to identify how many children were in the interim care of the society and in a temporary arrangement such as foster care. In fact, some cases were still unresolved after more than three years.

At the time of our follow-up, we noted that the number of child protection cases that were unresolved has increased by 4% from 5,249 as of July 31, 2019, to 5,449 as of March 31, 2021. Of the 5,449 child protection cases, 1,070 had exceeded 30 months.

Since our 2019 audit, the Ministry had engaged the Ontario Court and Superior Court to explore how to minimize the number of disruptions and potential unnecessary delays that may be caused when a judge presiding in a child protection trial is transferred to another court before a trial is concluded or a final order is made. However, as scheduling of judges is the sole responsibility of the two courts, the Ministry asserted that it is not involved in how judges are assigned and scheduled to hear child protection cases.

In addition, starting in February 2020, the Ministry developed a new function in FRANK that now automatically populates court endorsements used in child protection proceedings at the Ontario Court and Superior Court. In FRANK, the names and dates of birth for all subject children along with the length of the proceeding are listed, measured in the number of days, for all child protection cases. These changes enhance the ways that the presiding judge may consider how the legislative timelines for child protection cases apply to the age of the children and the length of the cases.

The Ministry indicated that any further work to identify additional areas for improvement or change

of processes that would result in earlier resolution of child protection cases has been put on hold due to the competing priorities resulting from the COVID-19 pandemic. The Ministry plans to resume this work in September 2022 when the court operations and services are expected to have fully resumed after the pandemic.

## Recommendation 2

*To support the protection of children in care, and to assist the courts in managing child protection cases subject to statutory timelines required under the Child, Youth and Family Services Act, 2017, we recommend that the Ministry of the Attorney General upgrade the FRANK system to monitor and track critical information, including whether a child is in temporary or interim society care such as foster care, and if so, how long the child had been in temporary or interim society care, and the age of the child involved.*

**Status: In the process of being implemented by 2026.**

## Details

Our 2019 audit noted that in order to monitor and identify child protection cases that are close to exceeding the statutory timelines, the courts need the following critical information: 1) whether a child is in temporary or interim society care, including foster care, and, if so 2) how long the child had been in temporary or interim society care, and 3) the age of the child involved. However, we found that the FRANK system does not have the capability to provide this critical information to the court to assist in monitoring for these cases proactively. Without this needed capability in FRANK, the only way for the court to monitor for these attributes would be to retrieve each physical case file and review court events, such as orders issued, and manually calculate the number of days in care.

During our follow-up, the Ministry confirmed that due to the limitation of the FRANK system, further improvements could not be made to track the amount of time that a child spends in the care of a child protection agency that would meet the specific and

complex rules prescribed under the *Child, Youth and Family Services Act, 2017*.

In June 2020, the Ministry and the Superior Court engaged a consulting firm to conduct a technology and operational review of all existing case tracking systems including FRANK for the Superior Court. The consultant completed the review in January 2021 and recommended a digital transformation of the Superior Court to implement modern technologies to improve in-person and virtual court operations. The review identified 10 key initiatives that could be executed through three phases over the next five years. In the Spring of 2021, the Ministry engaged a consulting firm to complete an operational and technology review of the Ontario Court. The findings were similar to those found in the review of the Superior Court.

In June 2021, Treasury Board approved the Courts Digital Transformation Project for procurement of a new digital justice platform. In September 2021, the Treasury Board also approved a single digital justice solution that could be used by both courts. The single digital justice solution is going to replace the existing FRANK and ICON systems. Because the Ministry is exploring the case tracking and monitoring functionalities in the Courts Digital Transformation project, it expects the new single digital justice solution should address the shortcomings of FRANK (which will be replaced) when the project is completed by 2026.

### Recommendation 3

*To assist judges of the Ontario Court of Justice and the Superior Court of Justice manage and resolve child protection cases in a timely manner, we recommend that the Ministry of the Attorney General upgrade the FRANK system to provide useful information about court adjournments, such as the total number of adjournments granted per case and the time between adjournments.*

**Status:** In the process of being implemented by 2026.

#### Details

Our 2019 audit noted that while the FRANK system tracks individual dates of adjournments when granted by the courts, it does not have the capability

to calculate the total number of adjournments granted per case, or the time between the adjournments. This information would be useful for judges to assess the progression of child protection cases without manually counting the number of adjournments from case history reports.

During our follow-up, we noted that FRANK could generate a court case event list which shows the age of the child protection proceeding in “number of days.” A separate “Adjournment History” report could also be generated from FRANK that lists the court event dates, type of case, the date a case was adjourned and the reasons for the adjournments. However, these reports still do not provide the judiciary with “at a glance” information on the total number of adjournments granted per case, or the time between the adjournments that would be useful in managing the progress of child protection cases.

The Ministry is in the process of exploring report functionality on court adjournments as part of the Courts Digital Transformation project (mentioned in **Recommendation 2**) which is expected to be completed by 2026.

### Recommendation 4

*To support the well-being and best interests of the child and to help guide the timely disposition of child protection cases, we recommend that the Ministry of the Attorney General work with the judiciary to revisit the applicability of the 120-day statutory timelines and reinforce the circumstances in which this timeline should be followed and enforced.*

**Status:** Little or no progress.

#### Details

Our 2019 audit reported that the *Family Law Rules*, a regulation under the *Courts of Justice Act*, establishes five statutory timelines to help ensure child protection cases progress in a timely manner by reducing unjustified or unnecessary adjournments. One of these timelines states that a “hearing” must be held within 120 days from the date the application is filed with the court. In most circumstances, it is in the

child's best interest for the case to be resolved within 120 days, unless the courts determine otherwise.

Our 2019 audit found that of the 7,199 child protection cases that were disposed as of March 31, 2019, 4,103 (or 57%) exceeded the 120-day statutory timeline. However, information maintained in FRANK did not provide sufficient, detailed reasons why these cases were extended, considering the best interests of the children.

At the time of our follow-up, we noted the following trend:

- In 2019/20, of the 6,738 child protection cases disposed, 3,993 (or 59%) exceeded the 120-day statutory timeline; and
- In 2020/21, of the 4,358 child protection cases disposed, 3,118 (or 72%) exceeded the 120-day statutory timeline.

The Ministry indicated that its discussion with the courts and the Family Rules Committee to implement this recommendation has been put on hold due to the competing priority to restore court operations from the COVID-19 pandemic. The Ministry plans to resume the discussion next year, in September 2022, when court operations and services are expected to be restored after the pandemic.

### Recommendation 5

*So that the Ontario Court of Justice and the Superior Court of Justice can monitor the current status of child protection cases, we recommend that the Ministry of the Attorney General:*

- *review all child protection cases captured in FRANK as “pending” to confirm their status and make the necessary corrections; and*
- *conduct a regular review of cases pending disposition for over 18 months to confirm the accuracy of the information and make the necessary corrections.*

**Status: Little or no progress.**

### Details

Our 2019 audit found that the number of child protection cases pending disposition captured in the FRANK

system was not accurate. According to the FRANK system, there were a total of 6,417 child protection cases pending disposition as of March 31, 2019, and 2,844 (or 44%) of these cases were older than 18 months. A review led by the Office of the Chief Justice of the Superior Court with assistance from the Ministry found that cases were not updated or were incorrectly recorded by the Ministry's court staff in FRANK as “pending,” or still active, when they should have been closed. Therefore, the courthouse staff need to review all child protection cases captured in FRANK as pending to confirm their status and make any necessary corrections such as deleting the “closed” cases from the pending list. Our own review of the information captured in the FRANK system also revealed another 138 cases were mistakenly recorded as “pending disposition” that should have been recorded as “disposed.”

At the time of our follow-up, the Ministry's FRANK system reported that there were 5,449 child protection cases pending disposition as of March 31, 2021, and 1,919 (or 35%) of these were older than 18 months.

Since our last audit, the Ministry had provided one-on-one training to staff and managers at six selected court locations where a relatively high number of pending child protection cases were reported and the Ministry suspected that staff at these courthouses might not be updating their pending cases properly. The Ministry's training was to instruct staff on how to improve the accuracy of pending case information recorded in FRANK. However, the Ministry could not provide supporting information about the number of pending cases being corrected and therefore removed from the pending list, and cited that any follow-up training was put on hold due to the COVID-19 pandemic.

In addition, due to significant court process changes arising from the pandemic, the Ministry has issued 33 new directives between mid-March 2020 and June 30, 2021, along with other updated guidelines such as the FRANK Post Court Updating Reference Guide, FRANK Data Entry Audits Reference Guide for Managers, and FRANK User Reference Guide for

Family Cases, to assist court staff to better manage and record their pending cases.

The Ministry indicated it had intended to complete a follow-up review of child protection pending cases at the identified six court locations to confirm their accuracy; however, due to the pandemic, this review did not take place. At the time of our follow-up, the Ministry did not have any plans concerning the other court locations, or how it is going to conduct a regular review of cases pending disposition for over 18 months.

The Ministry plans to once again begin reviewing this recommendation and considering any next steps by September 2022.

## Some Delay in Obtaining Hearings for Domestic Family Law Cases

### Recommendation 6

*To provide timely access to justice specifically for family law cases other than child protection cases, we recommend that the Ministry of the Attorney General, in conjunction with the judiciary:*

- *establish reasonable timelines or best practices for key court events for resolving family law cases received by the Ontario Court of Justice;*

**Status: Little or no progress.**

### Details

There are no legislative timelines that domestic family law cases (that are family law cases other than child protection cases) are required to follow, except that the first hearing of a case concerning access and custody to a child is to be held within six months of the application being filed. How ready and willing the parties are to proceed is the main determinant of case progress, but the courts should be available when parties require their services.

At the time of our 2019 audit, we noted that the Ontario Court established *Guiding Principles and Best Practices for Family Court*, but it does not specify targets for maximum timelines from filing a family law application to a first court appearance.

Our follow-up found that the Ministry made little or no progress, in conjunction with the judiciary, to establish reasonable timelines or best practices for key court events for resolving family law cases.

The Ministry asserted that the courts have the exclusive responsibility and control over the scheduling of cases and assignment of judicial duties under the *Courts of Justice Act*; and any changes proposed by the Family Rules Committee, an independent body that has the authority to make the Family Law Rules (including any rules regarding case management and timelines), are subject to the Attorney General's approval.

The Ministry further indicated that the courts have prioritized urgent family matters. It will, in conjunction with the judiciary, reconsider implementing this recommendation in September 2022 when court operations have been restored after the COVID-19 pandemic.

- *monitor reasons for significant delays and take corrective action where warranted for both the Ontario Court of Justice and Superior Court of Justice.*

**Status: Little or no progress.**

### Details

Our 2019 audit found that for family law cases other than child protection cases, a few Superior Court locations were unable to offer timely court dates for various types of court appearances in accordance with its own Family Law Best Practices. For the Ontario courts that hear family cases, we noted that most court locations reported minimal wait times for the next available first court appearance, but there was missing or limited data reported for some other locations.

Our follow-up found that the Ministry has made little or no progress, in conjunction with the judiciary, to monitor reasons for significant delays and take corrective action where warranted for both courts.

Similar to the response provided by the Ministry for the first action under **Recommendation 6**, the Ministry reiterated its position on the exclusive

responsibility of the judiciary over case scheduling and assignment of judicial duties.

However, the Ministry indicated that it will, in conjunction with the judiciary, reconsider implementing this recommendation by September 2022 when court operations have been restored after the COVID-19 pandemic.

### Recommendation 7

*In order to allow the public to be more informed on wait times, we recommend that the Ministry of the Attorney General, in conjunction with the judiciary, improve the transparency of both the Ontario Court of Justice and Superior Court of Justice by publishing information such as targets and expected wait times for key family court events, by court location.*

**Status: Little or no progress.**

#### Details

Our 2019 audit found that neither the Superior Court nor the Ontario Court publishes data or information on wait times for various family court appearances. As a result, parties in family law cases will not know the expected wait times for family court appearances in the Superior Court, or the wait time for a first court appearance in the Ontario Court. By comparison, the British Columbia Provincial Court began posting public reports in 2005. Their reports, posted twice a year, detail the time from the date a request or order is made for a conference or trial, to the date when cases of that type can typically be scheduled.

Our follow-up found that the Ministry has made little or no progress, in conjunction with the judiciary, to improve the transparency of both courts by publishing information such as targets and expected wait times for key family court events, by court location.

The Ministry indicated that it could not proceed on implementing this recommendation independently as court activity reports and information related to wait times constitute court data and may only be collected, used and reported at the direction of the judiciary. Based on this ownership of the court wait time data, the Ministry stated that it would discuss this recommendation with the courts to the extent possible,

while continuing to respect the independence of the judiciary.

Due to the pandemic and competing priorities, the Ministry expects to discuss this recommendation with the courts only after court operations are restored from the COVID-19 pandemic, with a targeted date of September 2022.

### Recommendation 8

*To report the statistics on pending cases accurately so that case files that should be closed are removed from active-case files at courthouses, we recommend that the Ministry of the Attorney General, specifically for family law cases other than child protection cases:*

- *review existing pending case files to determine their current status;*
- *follow up on cases that have been inactive for over a year to confirm their status; and*
- *update the FRANK case file tracking system accordingly.*

**Status: Little or no progress.**

#### Details

At the time of our 2019 audit, there were 183,997 domestic family law cases recorded as “pending” as of March 31, 2019, in the FRANK case file tracking system. Of these, 30,691, or 17%, were less than a year old; 43,102, or 23%, ranged from one to five years old; and 110,204, or 60%, were over five years old. Based on our review of a sample of domestic family law cases pending disposition for over a year as of March 31, 2019, we found that 56% were either disposed or had been inactive for over a year. Therefore, the number of pending cases recorded in FRANK was overstated.

During our follow-up, we noted that there were 199,202 domestic family law cases recorded as “pending” as of March 31, 2021, in the FRANK case file tracking system. Of these, 27,038, or 14%, were less than a year old; 50,397, or 25%, ranged from one to five years old; and 121,767, or 61%, were over five years old.



However, our follow-up found that little or no progress has been made to ensure the statistics on pending cases are reported accurately, including review of existing pending case files to determine their current status; follow up on cases that have been inactive for over a year to confirm their status; and make appropriate updates to the FRANK case file tracking system.

In late 2019, the Ministry made two system enhancements to FRANK in an attempt to reduce the number of domestic family law cases on the pending lists that should have been identified as closed:

- FRANK can now generate case-specific information such as a timeline of case events.
- FRANK can now issue and update a range of pending notices of approaching dismissal or dismissal orders electronically.

With these enhancements to FRANK, it is more efficient for the Division's staff to follow up on cases that have been inactive for over a year and issue dismissal orders for appropriate cases without preparing the orders manually. These enhancements are supposed to allow the Division's staff to delete the pending cases from FRANK that are no longer active.

However, since the start of the COVID-19 pandemic in March 2020, the Ministry has put on hold the issuance of any notices of approaching dismissal or dismissal orders in family law cases, initially pursuant to the order issued under the *Emergency Management and Civil Protection Act* and subsequently upon the direction from the courts. The Ministry indicated that it intends to consult with the judiciary and reconsider resuming the work on issuing notices of approaching dismissal or dismissal orders by September 2022 when court operations have been restored after the COVID-19 pandemic.

## Poor Contract Management and Oversight of Family Mediation and Information Services

### Recommendation 9

*To increase the value for money paid for on-site mediation services, we recommend that the Ministry of the Attorney General work with the Family Mediation and Information Service providers to establish an activity-based payment structure in their contracts.*

**Status:** In the process of being implemented by March 2024.

### Details

Our 2019 audit found that the Ministry lacked proper contract management and oversight of family mediation, and information and referral coordinator services provided by third-parties across the province. In particular, the Ministry's contracts with service providers for family mediation services do not reconcile payments made to the mediation work performed in the courthouses or include an activity-based payment structure. The Ministry paid service providers the same hourly rate regardless of the services performed, whether the time was spent on actual mediation, which utilized their professional skills, as opposed to other administrative duties, or simply being "available." As such, service providers could still provide the minimum number of hours required without engaging in any mediation work that would help divert cases away from the court system.

Since our 2019 audit, the Ministry conducted preliminary research related to activity-based payment structures that are used by other provinces (such as Alberta) and countries (such as the United States, United Kingdom, France and Denmark) and publicly funded service delivery organizations.

At the time of our follow-up, the Ministry is conducting further research and looking into options for the future delivery of family mediation and information services. It is also assessing the impacts of COVID-19 on delivery of family mediation and information services and considering how the program

needs could have been changed due to virtual versus in-person service delivery.

Based on its research and further study, the Ministry is preparing a plan to finalize a new payment structure and service delivery model for the service providers of the family mediation and information services program by the end of 2021. However, due to the service provider contracts are not being scheduled for possible extension until March 2022, and as the next competitive procurement cycle for selecting service providers is not scheduled until March 2024, the Ministry expects it would not fully implement this recommendation until then.

### Recommendation 10

*To promote the use of Ministry-funded mediation services that can help to divert less complicated matters away from the courts, we recommend that the Ministry of the Attorney General:*

- *determine the desired long-term plan for mediation services;*

**Status: Little or no progress.**

### Details

The family justice system is complex and there are many participants involved. Parties may find out about mediation themselves or be directed to try mediation by, for example, judges, their lawyers, or duty counsel from Legal Aid Ontario. Mediation, when used appropriately, can be more cost-effective for both the parties and the Ministry for resolving family law cases. Parties can benefit from the use of more mediation services, instead of going through the court system for resolving their family law matters.

However, our 2019 audit found that the Ministry had not been a strong promoter of the mediation services it funds. The Ministry delegated the responsibility to promote mediation services to the individual service providers through their service provider contracts. This delegation has contributed to differences in the uptake of mediation at various court locations.

Our follow-up found that the Ministry has made little progress toward any desired long-term plan for mediation services. Since our 2019 audit, the Ministry started initial discussions on long-term program objectives for the family mediation and information service as part of the activity-based payment initiative mentioned in **Recommendation 9**. The Ministry contacted other Canadian provinces, including Alberta, to obtain their existing policy and program models regarding family mediation services, including virtual and other types of service delivery options. The impacts of COVID-19 on the delivery of family mediation and information services and how program needs have changed as more services are being provided virtually is another major consideration for any future program delivery.

The Ministry also held discussions with its inter-provincial counterparts to determine if Ontario can adopt any components for a future model of family mediation and information services.

At the time of our follow-up, the Ministry is still planning to develop a new program logic model and strategy in advance of the next competitive procurement cycle which is planned for March 2024. The Ministry expects the plan will also consider the move to virtual service delivery, performance targets and payment structure. However, the Ministry indicated that any program delivery changes would require consultation with the judiciary and stakeholders that provide family mediation and information services.

- *monitor the uptake of mediation services to determine the effectiveness of the outreach programs;*

**Status: In the process of being implemented by March 2024.**

### Details

Starting in 2020, the Ministry requires all service providers to submit outreach statistics reports to the Ministry on a quarterly basis. The Ministry uses these quarterly reports to monitor the uptake and the trend of mediation services by each service provider. This comparison has permitted the Ministry to start to

monitor the performance of each service provider's performance in fiscal year 2020/21 compared to the previous fiscal year 2019/20, with an understanding that the year-to-year comparison to date might not be comparable given the restrictions under the pandemic.

The Ministry also held informal quarterly meetings with service providers and courthouse management teams regarding the uptake of mediation services and promotion services at courthouse locations across the province. At the time of our follow-up, the most recent informal meeting was held in February 2021.

The Ministry is planning to conduct data analysis of uptake statistics of existing mediation services by region and by courthouse to identify if there are any lessons learned from certain service providers. It is also planning to obtain feedback from service providers on the impact of COVID-19 on mediation service outreach efforts. The implementation target date for this work is March 2024. The Ministry is planning to continue to hold the quarterly meetings with all service providers and courthouse management teams.

- *collaborate with justice system partners to create a province-wide communication strategy to increase the use of family mediation services and communicate this to the family court system's participants.*

**Status:** In the process of being implemented by March 2022.

### Details

Since our 2019 audit, the Ministry has collaborated with justice system partners on attempts to promote and increase the use of family mediation services.

For example:

- The service providers have increased their efforts to promote the availability of virtual mediation services through a variety of print and online services such as websites and social media.
- The service providers have reached out to the judiciary, local Bar, Legal Aid Ontario, and other community organizations to inform them of the availability of family mediation and information services.

- The Ministry worked with both the Superior Court and Ontario Court to include information about family mediation and information services in the directives that are posted on the courts' websites.
- The Ministry worked with the Superior Court to distribute information to their regional judges on the types and scope of mediation services that are available and how to contact the service providers.
- The Ministry prepared a social media campaign to tweet information about mediation services.
- The Ministry worked with the association of service providers to host several virtual communication events for the Members of Provincial Parliament to provide information about mediation and information services for people who are involved in family court process during the pandemic.
- The Ministry will continue its promotion of mediation and information services through its website and Twitter.

At the time of our follow-up, the Ministry is creating a province-wide communication strategy to be approved by management in late 2021. Should this province-wide communication strategy be approved, the Ministry expects to fully implement the recommendation by March 2022.

### Recommendation 11

*To maximize the benefits of using mediation services when appropriate, we recommend that the Ministry of the Attorney General work with family mediation and information service providers to set a target for the percentage of eligible family law cases to be mediated each year, and include the agreed-upon targets in the contracts between them.*

**Status:** Little or no progress.

### Details

Our 2019 audit reported that the Ministry required service providers to report the number of mediation intakes they performed under their service agreements. However, the contracts did not set Ministry targets for mediation intake at each court

location. Such targets would encourage service providers to promote the use of mediation for appropriate family law cases.

Our follow-up found that the Ministry has made little or no progress working with family mediation and information service providers to set a target for the percentage of eligible family law cases to be mediated each year, and to include the agreed-upon targets in the contracts between them.

The Ministry indicated that the COVID-19 pandemic has delayed its efforts to address this recommendation. It plans to establish the appropriate baseline targets before the next competitive procurement cycle for family mediation and information services in March 2024.

### Recommendation 12

*To improve the financial controls in place to validate monthly billings of service providers and confirm services have been rendered, we recommend that the Ministry of the Attorney General perform periodic reviews to verify services billed against source documentation.*

**Status:** In the process of being implemented by September 2022.

### Details

At the time of our 2019 audit, we noted that service providers billed the Ministry each month, up to a pre-determined yearly maximum for services they provided. The Ministry relied on the service providers to bill accurately for the services provided. Our 2019 audit reviewed the Ministry's existing billing verification process. We found that while the Ministry checked for mathematical errors and for basic reasonableness of the billings, such as identifying unusually long days billed by a certain mediator, it did not verify whether the hours of services billed were actually worked.

After our 2019 audit, the Ministry now requires service providers to submit supporting documents such as logs with dates worked, hours worked by their employees and, in some cases, notation of the duties that were performed by the service provider staff. This supporting documentation accompanies and

supports the monthly invoice submitted to the Ministry for review.

However, due to the restrictions placed during the COVID-19 pandemic, the Ministry has been unable to conduct in-person visits at courthouses where the service providers are located so as to verify their billings to the source documents such as timesheets and mediation files. The Ministry indicated once the COVID-related restrictions are lifted, it is planning to conduct the planned in-person audit processes at the service provider locations by September 2022. The Ministry also indicated it will require additional resources and costs associated with any in-person reviews.

## Usage of the Child Support Service Online Tool Fell Far Short of Initial Projection

### Recommendation 13

*To help informed decision-making about the Child Support Service online tool, we recommend that the Ministry of the Attorney General perform a cost/benefit analysis to assess whether this tool should be maintained or modified and/or promoted more.*

**Status:** Little or no progress.

### Details

The Child Support Service online tool allows eligible parents and caregivers to set up and update child support arrangements without going through the family court process. At the time of our 2019 audit, the Ministry and other partner ministries spent \$5.7 million on implementing the online tool, but as of March 2019, the total number of applications received since its launch in 2016/17 was only 1,191. Our audit found that the Ministry had not done an evaluation of the tool to determine why this uptake had been low. As well, the Ministry had not done a cost/benefit analysis to assess whether this tool should be maintained or if any other needed modifications should be made.

At the time of our follow-up, the Ministry has made little or no progress in performing a cost/benefit analysis of the Child Support Service online tool. Since

our 2019 audit, the Ministry conducted a preliminary review of web analytical data, the collection and review of usage statistics, and establishing costs for alternative in-court mechanisms of establishing or recalculating child support. However, the review was based on pre-pandemic data from 2019 and does not reflect the service's current uptake in the new digital court environment. The Ministry indicated that it will reassess the preliminary review and consider any next steps by September 2022.

#### Recommendation 14

*To potentially increase the use of the Child Support Service online tool, we recommend that the Ministry of the Attorney General:*

- *collaborate with Ministry of Finance to track and analyze reasons for unsuccessful applications;*  
**Status: Fully implemented.**

#### Details

Our 2019 audit reported that, as of March 2019, the Ministry had processed very few applications successfully. The percentage has fluctuated and remained quite low since 2016/17, at between 16% and 23% per year. However, the Ministry did not have the information it needed to analyze the reasons for the high rejection rates.

After our 2019 audit, the Ministry of Finance developed a reporting mechanism to track and analyze reasons for unsuccessful applications from individuals who were attempting to use the Child Support Service online tool. In particular, the Ministry of Finance has developed 26 reason codes to provide a breakdown on why the applications were not processed. Based on our review of these monthly reports for the 2020 calendar year, the most common reason for the unsuccessful applications was that the payor failed to provide all required information.

Since January 2020, the Ministry of the Attorney General has received these reports from the Ministry of Finance on a monthly basis to track the reasons for unsuccessful applications.

- *review the online application and approval processes in other jurisdictions to identify areas that could help Ontario increase the success rate of using the tool, and implement improvements identified.*

**Status: In the process of being implemented by September 2022.**

After our 2019 audit, the Ministry has done some work to review the online application and approval process in Alberta to identify areas that could help Ontario increase the success rate of using the Child Support Service online tool.

The Ministry is planning to incorporate the results of interjurisdictional research on the application and approvals processes as part of its cost/benefit analysis discussed in **Recommendation 13**. The Ministry will then decide what changes are needed to improve the success rate of using the online tool.

However, due to the pandemic, the Ministry has put on hold further engagement with other jurisdictions to identify ways to increase the service's success rate. As a result, the Ministry expects that it will not fully implement this recommendation until September 2022.

### Dispute Resolution Officer Program Could Be Expanded to Increase Potential Cost Savings

#### Recommendation 15

*In order to free up more judicial and courtroom time, and increase potential cost savings, we recommend that the Ministry of the Attorney General, together with the judiciary complete their assessment of the costs and benefits of expanding the Dispute Resolution Officer Program across the province, where appropriate.*

**Status: Fully implemented.**

#### Details

In 1996 in Toronto, the Superior Court launched the Dispute Resolution Officer Program (Program) for hearing cases where a party files a motion to change

an existing court order. It had expanded it to only nine out of 50 Superior Court locations by the time of our 2019 audit. As a result, not all parties have the same access to the Program across the province.

Our 2019 audit compared the cost of the Program to the additional costs to the courts if all matters were sent directly to a judge. We estimated that the net savings realized for the nine participating court-houses totalled about \$355,000 in 2018/19. If the Program expands to other Superior Court locations and possibly Ontario Court locations, the province could benefit from further potential savings, while freeing up more judicial time and courtrooms to hear other types of cases.

After our audit, the Ministry, in cooperation with the Superior Court, completed the evaluation of the Program in late 2019. The evaluation concluded that the Program is meeting the performance goal of meaningful progress in family law cases in the majority of Dispute Resolution Officer locations. The evaluation recognized that there are many benefits to the Program such as creating efficiencies by providing opportunities for early case resolution. The evaluation recommended the Program's continuation in all its existing nine court locations. The evaluation also recommended building in additional key performance indicators and conducting further evaluation of the Program.

As a result, the Ministry and the Superior Court extended the Program delivered at all nine existing sites for an additional three years to September 2022.

As well, the Attorney General is working with the Superior Court to expand the Program to three additional court locations—Kitchener, Welland and Kingston—in 2021.

## Ministry Did Not Have a Firm Plan to Achieve Its Target to Expand Unified Family Court across the Province by 2025

### Recommendation 16

*To complete the expansion of Unified Family Court across the province by the target date of 2025, we recommend that the Ministry of the Attorney General:*

- *finalize a plan to execute the expansion of Unified Family Courts in the remaining 25 family court locations, including completing the location needs assessment;*

**Status: Little or no progress.**

### Details

Our 2019 audit reported that there is a need to streamline the process for parties seeking resolution to their family law issues in court. The expansion of Unified Family Court was identified as a means to achieve this. The Ministry set a target in 2017 to complete a province-wide expansion of Unified Family Court in Ontario by 2025 but, at the time of our 2019 audit, the Ministry was unlikely to achieve this target as it had still not finalized a plan.

At the time of our follow-up, we found that little or no progress has been made to finalize the plan to execute the expansion of Unified Family Courts in the remaining 25 family court locations, including completing the location needs assessment. This is primarily because both courts have been focused on other more urgent pandemic-related priorities.

In late June 2021, the Unified Family Court Steering Committee, consisting of representatives from both courts and the Ministry, met and decided to re-focus their efforts on Unified Family Court expansion and discussed how best to move forward with the Phase 2 planning of the expansion. The Ministry indicated that it is committed to finalizing a plan with both courts, for a province-wide expansion of Unified Family Court in Ontario. Following the committee meeting, it is expected that the following work

will be in progress or to be completed by fall 2021/winter 2022:

- identify assumptions or impacts for facilities planning for the Committee's consideration;
- receive feedback from the Committee on the draft plan to consult with Indigenous communities;
- re-establish the project team to govern Phase 2 planning and implementation of the expansion. Other longer-term deliverables will include:
  - completing the facilities' needs assessment once both courts provide the required data;
  - beginning consultations with Indigenous communities once appropriate;
  - developing Phase 2 recommendations for consideration by the Judicial Facilities Working Group;
  - drafting a funding submission to Treasury Board; and
  - drafting a proposal for expansion for submission to the federal government.

The Ministry indicated that the federal government has not committed to provide the required judicial appointments necessary for Unified Family Court expansion. Without these additional federal judicial appointments, the Unified Family Court expansion cannot take place as planned as discussed in the next recommended action.

- *confirm commitment from the federal government for additional judicial appointments necessary.*

**Status:** Little or no progress.

Since our 2019 audit, we noted that the Attorney General has continued to have conversations with his federal counterpart, the Minister of Justice, in which the Attorney General has emphasized Ontario's commitment to Unified Family Court expansion and the Ministry's interest in receiving the necessary judicial appointments from the Federal government as soon as possible.

The issue of Unified Family Court expansion was last tabled by Ontario at the meeting of Federal/Provincial/Territorial Ministers of Justice in March 2021.

Despite the Ministry seeking a commitment for Unified Family Court expansion from the federal government for the necessary additional judicial positions, the federal government has declined to formally make such a commitment. The most recent Federal Budget 2021 did not allocate funding to support Unified Family Court expansion. Ontario cannot take any next steps in its expansion plans without these additional judicial appointments needed to expand the Unified Family Court. Therefore, the Ministry is uncertain of the target date to fully implement this recommendation.

### Recommendation 17

*To correctly capture and maintain accurate information in the FRANK case file tracking system, we recommend that the Ministry of the Attorney General:*

- *require staff at all court locations to perform data entry reviews regularly and consistently;*

**Status:** Will not be implemented. The Office of the Auditor General continues to believe that although the Ministry has quality review checklists in place, it should confirm whether court staff are performing data entry reviews regularly and consistently, and that the data in the FRANK system is accurate.

### Details

Our 2019 audit identified that the data in FRANK was not always reliable. Regular quality reviews are important to help improve this and avoid its recurrence. The Ministry has a data quality review process and guideline that recommends a manager or supervisor review the physical case files against data entered in the FRANK system for completeness and accuracy, using a review checklist developed by the Ministry. However, there was no requirement for the managers and supervisors to follow the Ministry's review process and guideline.

During our follow-up, the Ministry indicated that it will not implement this recommended action as it has already provided four existing FRANK data entry audit checklists for court management to use. The Ministry expects court management to use the

checklists and perform data quality reviews regularly. However, the Ministry has not maintained and does not plan to maintain a central repository to track, monitor and verify whether court locations are actually performing data entry reviews regularly and consistently, and that corrections are made as a result of their reviews.

- *collect, review and monitor results of data entry reviews performed at all court locations to identify and address common errors, to incorporate them in future FRANK training and/or identify needed system improvements.*

**Status:** In the process of being implemented by 2026.

Our 2019 audit also noted that the Ministry did not track performance or collect the results of courthouse reviews. Consequently, the Ministry did not know what types of data entry errors were most common, or why they occurred. Therefore, the Ministry was unable to prevent recurrences of these errors through training, or by adding system controls over data entry to the FRANK system.

At the time of our follow-up, the Ministry indicated that it is currently exploring the recommended functionality that does not exist in FRANK as part of the Courts Digital Transformation project (mentioned in **Recommendation 2**). The Ministry plans to complete the Courts Digital Transformation project by 2026.