



## Volume 3, Chapter 3—Criminal Court System

### 2019 Value-for-Money Audit

#### Why We Did This Audit

- In July 2016, a ruling by the Supreme Court of Canada in *R. v. Jordan* implemented a new framework that if a case is not disposed within specific timelines (18 months or 30 months), it is presumed that the delay is unreasonable and Crown attorneys have to contest the presumption and prove otherwise or the charge will be stayed.
- The judiciary and public expressed their concerns regarding backlogs of criminal cases.

#### Why It Matters

- The backlog and systemic delay in resolving criminal cases jeopardizes the right of accused persons to be tried within a reasonable time. The proportion of remand population in Ontario adult correctional institutions increased from 60% in 2004/05 to 71% in 2018/19.
- Delays also have a significant impact on victims of crime and their families, who may feel they are denied timely justice, and on public confidence in the justice system.

#### What We Found

- The backlog of criminal cases we noted in our previous audits of Court Services in 2003 and 2008 continues to grow. Between 2014/15 and 2018/19, the number of criminal cases pending disposition increased by 27% to about 114,000 cases. Over the same period, the average number of days needed to dispose of a criminal case increased by 9% (from 133 to 145 days); the average appearances in court increased by 17% (from 6.5 to 7.6 appearances).
- The limitations placed on the scope of our audit left us unable to determine and confirm the specific reasons for the under-utilization of 27 courthouses where we noted above-average delays in disposing criminal cases.
- Since the *Jordan* decision in July 2016, 191 cases were stayed at the request of the defence by judges who ruled that the prosecution and/or the court system had been responsible for unreasonable delay. In these cases, the accused walked free and justice was denied for the victims.
- Similar to our 2008 audit, our Office experienced significant delays in obtaining information. As well, we were not given full access to 175 sampled case files maintained by Crown attorneys. Instead, the Ministry of the Attorney General's Criminal Law Division (Division) chose to summarize the reasons for delays from the selected case files. From their summaries, we noted that delays in disposing criminal cases were attributed to lack of timely disclosure of evidence, difficulty in obtaining court dates and/or unavailability of Crown attorneys.
- Court backlogs resulted in accused persons who did not seek or were not granted bail to remain detained in remand for long periods. About 70% of inmates in adult correctional institutions, amounting to a daily average of over 5,000 inmates in 2018/19, are in remand and have not yet been convicted of the current charges filed against them.
- In 2018/19, about 85% of bed days (number of days each inmate occupies a bed) are used by inmates who remained in an adult correctional institution for more than one month, and some for over a year. We found that besides the delays in the court system, the main reasons for why inmates were in remand included: the inmates' own choice; dealing with other charges; and that they could not produce a surety (guarantor) to supervise them while out on bail.
- Between 2014/15 and 2018/19, the average number of days needed to reach a bail resolution increased, which resulted in about 13,400 additional bed days (meaning the number of days each inmate occupies a bed) in remand over the same period. In contrast to British Columbia and Alberta, hours of court operation for bail hearings in Ontario were limited.
- Twenty-nine of Ontario's specialized courts that hear cases for accused persons with mental health conditions lack proper data on their operations. The benefits of these courts are unknown, procedures are not clearly outlined and definitions of their objectives and intended outcomes are imprecise.
- The Division lacks appropriate benchmarks for key performance indicators such as workloads and average time taken to dispose of cases by Crown attorneys, and complete information in determining case complexity, for assigning equitable caseloads to its Crown attorneys.
- Since November 2016, the Division began to engage in a voluntary memorandum of understanding (MOU) with police services to standardize the evidence disclosure process. However, the Division did not have an efficient way to measure if the police services that have signed the MOU are meeting the agreed-upon timelines nor to monitor the impact of the new agreement on an ongoing basis.

## **Conclusions**

- The Ministry of the Attorney General (Ministry) does not have effective systems and procedures in place to determine if its taxpayer-funded resources are being used or allocated efficiently and in a cost-effective way to support the timely disposition of criminal cases.
- The Ministry lacks the key data it needs to measure and publicly report on the results and effectiveness of the operations of mental health courts in Ontario.
- Our Office experienced delays in receiving information and was not given full access to case files to determine why there are delays in the criminal court system.

Read the audit report at [www.auditor.on.ca](http://www.auditor.on.ca)