

Court Services

Follow-up on VFM Section 3.07, 2008 Annual Report

Background

The Court Services Division (Division) of the Ministry of the Attorney General (Ministry) supports the operations of the province's court system, with over 260 courthouses and office facilities and approximately 3,000 support staff. The Division's expenditures for the 2009/10 fiscal year were \$403 million (\$405 million in 2007/08): \$148 million (\$156 million in 2007/08) to operate the offices of the Judiciary (judges and justices of the peace) and for salaries and benefits for provincially appointed judges and justices of the peace; and \$255 million (\$249 million in 2007/08) for staffing and other costs required to support court operations. In addition, the Ministry spent about \$70 million (\$77 million in 2007/08) on capital projects to improve court buildings. Revenues, primarily from fines and court fees, were approximately \$140 million (\$124 million in 2007/08).

In our 2008 audit, we noted that, to reduce the serious case backlog in the courts, the Ministry had undertaken a number of initiatives, worked collaboratively with the Judiciary, and increased operating funding for courts over the past five years. Despite these efforts, we noted, as we had in our previous audits in 1997 and 2003, that the backlogs had continued to grow; at the time of our audit in 2008, they were at their highest level in 15 years.

Our more significant observations in our 2008 Annual Report were as follows:

- For the five-year period from 2004 to 2008, the number of criminal charges pending grew by 17%, to over 275,000, while the number of charges pending for more than eight months increased by 16%. Ministry initiatives to address criminal case backlogs in certain courthouses were insufficient to handle the growth in new criminal charges. Backlogs for family cases, including those relating to child protection, also continued to grow.
- The Ontario Court of Justice might not have sufficient judicial resources to meet the increased demand for judicial decisions. To be comparable to other provinces, Ontario would have to hire significantly more judges and justices of the peace, as well as providing additional court facilities and support staff.
- The Ministry did not yet have adequate information on the reasons for an over 50% increase during the 10 years from 1997 to 2007 in the number of defendant court appearances before a case goes to trial, despite this being one of the main causes of the growing backlog.
- Qualifying low-income defendants experienced difficulties in obtaining funding from Legal Aid Ontario, leading to delays and more frequent court appearances.
- The Ministry had made little progress in implementing new technologies to improve

the efficiency of the courts, especially for handling criminal cases.

- The Ministry had not formally assessed the significant differences in court operating costs in the various regions of the province. For example, it cost up to 43% more to dispose of a case in the Toronto Region than elsewhere.
- There continued to be no minimum standard applied for security in court locations across the province.

Following our fieldwork, in June 2008, the Ministry for the first time announced publicly stated targets for reducing the provincial average of days and court appearances needed to complete criminal cases: it aimed to reduce these by 30% over the next four years.

We made a number of recommendations for improvement and received commitments from the Ministry that it would take action to address our concerns.

Status of Recommendations

According to information received from the Ministry, some progress is being made in addressing our recommendations. However, given the size of the backlog of charges pending and the need for better use of technology and information systems, and for co-operation from all participants in the justice system, additional time will be needed before the Ministry is able to substantially implement many of them. Overall, the backlog of criminal charges pending for more than eight months in the Ontario Court of Justice (the main criminal court) is about the same as it was at the time of our 2008 audit.

The status of the action taken on each of the recommendations is described in the following sections.

CASE BACKLOGS AND COURT EFFICIENCY

Recommendation 1

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

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

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

Status

The Ministry, along with its justice partners, has made some progress in addressing backlogs in its criminal, family, and civil courts, and action was continuing at the time of our follow-up. It advised us that it had implemented initiatives to identify causes of backlogs and improve procedures, although improvements to its information systems in collecting this type of information will not be completed until 2012. The Ministry was in the process of assessing the effects that the actions of the parties to a trial have on allocation of court resources. The Ministry indicated that, through the engagement of all justice-system participants in initiatives such as the Justice on Target (JOT) strategy, it would develop strategies to utilize the existing resources to increase the effectiveness of the justice system.

Actions with regard to each of the three courts is outlined in the following.

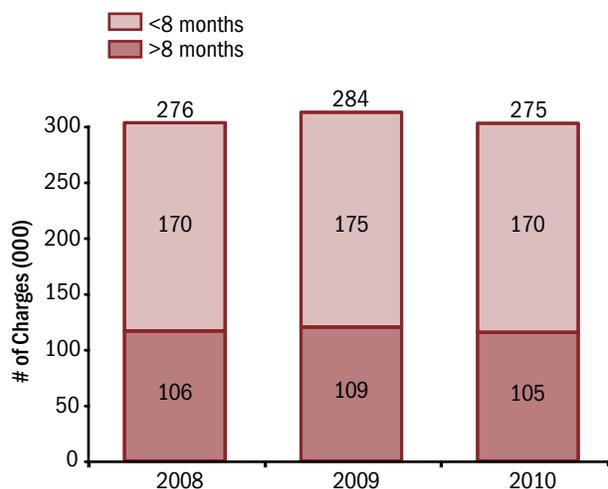
Criminal Cases

Figure 1 shows that the backlog of criminal charges pending for more than eight months in the Ontario Court of Justice (OCJ) as of March 31, 2010, was approximately 105,000, which was not significantly different from the number at the time of our 2008 audit. In addition, no significant progress has yet been made in reducing two key measures of court efficiency: in 2009, it took on average 9.1 court appearances to dispose of a criminal charge, compared to 9.2 in 2007, and the average number of days needed to dispose of a charge has slightly increased to 210 from 205 in 2007. Nevertheless, backlogs have experienced a small decrease from 2009 to 2010, reversing the trend over the last decade.

The JOT strategy, introduced in June 2008, is meant to reduce by 30% by 2012 the average number of days and court appearances required to dispose of a criminal charge. Under this strategy, all justice system participants work together to reduce delays. Local Leadership Teams were initially established at three courthouses to analyze all the steps

Figure 1: Ontario Court of Justice—Three-year Summary of Average Age of Criminal Charges Pending, March 2008–March 2010

Source of data: Ministry of the Attorney General



in the criminal process leading to a trial or other disposition of a charge. From these analyses, seven initiatives were implemented at these three courthouses in June 2009, including streamlining legal aid, clarifying expectations for court appearances, and encouraging plea hearings and earlier resolutions. According to information we received from the Ministry, some progress had been made under JOT. At the initial three participating courthouses, the average number of days needed to dispose of a charge declined by 7%, 13%, and 5% respectively from 2008 to 2009; the average number of appearances declined by 12% and 11% respectively in two courthouses, but increased by 3% at the third.

An additional eight criminal courthouses began participating in the JOT strategy in the last half of 2009. We were informed that all other criminal courthouses in Ontario were expected to be participating by fall 2010.

Family Cases

According to information we received from the Ministry, the number of child protection cases pending over 120 days decreased from 5,500 in February 2008 to about 5,000 in March 2010, or by about 9%. However, of the approximately 10,600 child protection cases disposed of in the 2009/10 fiscal year, almost 50% took over 120 days, the same percentage as two years earlier. The number of family cases pending over 200 days rose to over 105,000 from February 2008 to March 2010, an increase of 20%.

We noted that in December 2009, the Attorney General announced a strategy to improve the processing of family cases, including steps to support, streamline, and simplify cases. According to the Ministry, these changes are in place at two courthouses, with a plan to expand them to others in the future. The Ministry was also working with the Judiciary and justice partners to develop and implement measures to reduce unnecessary delays in child protection cases.

Civil Cases

According to information we received from the Ministry, some improvement had been made in reducing the time it takes to resolve civil cases. The average number of days needed to dispose of a civil case had fallen from 576 in the 2007/08 fiscal year to 527 in 2009/10, a decline of about 9%. However, the percentage of civil cases pending trial or resolution over 12 months remained at 41% over the same period.

As we noted in our *2008 Annual Report*, in June 2006 the Ministry established the Civil Justice Reform Project to review potential areas for reform and make recommendations for a more accessible and affordable civil justice system. As a result of the recommendations released in 2007, a number of amendments were made to the civil court rules, and the Small Claims Court monetary limit was increased. These changes came into effect on January 1, 2010. We were advised that the Ministry would be monitoring and evaluating the impact of the new rules and monetary limits, including their impact on the time needed to dispose of cases.

ADMINISTRATIVE STRUCTURE OF THE COURTS

Recommendation 2

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

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

Status

The Ministry informed us that it continues to work with the Judiciary to maximize co-operation in court administration while respecting the independence of the Judiciary. The 2006 amendments to the *Courts of Justice Act* specify goals for the administration of the courts, clarify ministry and judiciary roles and responsibilities, legally recognize the memoranda of understanding established between the Ministry and the Judiciary, and require the Ministry to publish an annual report on court administration. Separate memoranda of understanding have been established between the Attorney General and the Chief Justices of the Ontario Court of Justice and Superior Court of Justice that further set out their roles, responsibilities, undertakings, and expectations, as well as a process for regularly assessing and discussing their collaborative relationship. We were informed that the Chief Justice of the Court of Appeal will soon sign that court's first memorandum of understanding with the Attorney General.

Ministry staff meet regularly and participate on several committees with representatives of the offices of the Chief Justices and local levels of the Judiciary to identify and address needs and priorities, and to participate in initiatives such as JOT, and others, to improve information and video technology and court security.

The Court Services Division Five-year Plan, contained in its published annual report, sets out goals, plans, and timetables to address priority needs identified by the Ministry and the Judiciary. As discussed elsewhere in this follow-up report, we also noted progress in establishing plans and, in some cases, targets, with judicial involvement, for addressing longstanding issues in court administration and security.

INFORMATION SYSTEMS AND THE USE OF NEW TECHNOLOGIES

Recommendation 3

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

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

Status

The Ministry informed us that it was making progress in a number of initiatives to introduce new technologies and upgrade information systems for court administration. We were informed that the Ministry had conducted studies of mature and proven IT technologies already in use in other court systems. For instance, in May 2008, it conducted research on in-courtroom technologies used by other jurisdictions, such as videoconferencing and electronic evidence display. However, further adoption of these technologies was taking longer than the Ministry had targeted in 2008.

In summer 2008, the Ministry assessed technologies offered by vendors, or used in other jurisdictions, for its project to develop and introduce a new, unified Court Information Management System (CIMS) to perform all the functions of the Ministry's current criminal, family, civil, small claims, and estate legacy applications. The Ministry determined that no one vendor offered a court information management system that could replace its existing legacy systems and that the costs and risks of migrating to a new system using several vendors would be high.

Instead, the Ministry decided to develop an information system that integrates its existing systems with enhanced functionality. In November 2009, Treasury Board approved almost \$10 million in funding for the CIMS project. According to the Ministry, a first version of CIMS is expected in spring 2012.

At the time of our follow-up, the Ministry was also in the process of converting its court recording systems from analog to digital for 146 courthouses. A vendor had been selected using a tender process, and the conversion is expected to be completed by the end of the 2011/12 fiscal year.

The Ministry indicated that dialogue was continuing with the Judiciary and justice partners on the use of video technology for courtroom appearances, and it was still in the process of developing strategies to increase its use and establishing regular reporting on its use in courtrooms, which we considered necessary for the Ministry to address our recommendation. Additional information we received from Justice Technology Services, which provides videoconferencing services to both courts and correctional facilities, indicated that video appearances in courts as a percentage of total in-custody appearances averaged 36% in 2009, a small increase over the 2007 percentage of 35%.

FINANCIAL INFORMATION

Recommendation 4

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

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

Status

Some limited progress has been made in identifying and collecting information across the province that would allow for the comparison of costs by key activities, such as judicial support and case tracking. We were informed that the Ministry was in the process of assessing court operating costs by practice area (criminal, family, civil, and small claims) but that this assessment had not been completed.

In February 2010, the Ministry took the initiative in issuing a survey through the Association of Canadian Court Administrators to obtain information on how other Canadian jurisdictions report and manage court costs. We were informed that only two provinces and one territory responded to the survey and that the Ministry was considering follow-up discussions to determine the usefulness of comparative information. The Ministry expected the survey analysis to be completed by fall 2010.

The Ministry indicated that it continues to gather information that allows for the comparison of costs between regions and courthouses by total court activities. The Ministry uses key workload indicators, such as overall court hours, new proceedings, and the anticipated occurrence of major trials, to determine annual adjustments to regional and local court funding.

CAPITAL PROJECTS

Recommendation 5

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

Status

The Ministry has indicated that as part of the Court Construction Program, one new consolidated courthouse was fully operational as of the end of

February 2010, approvals had been received for five others, and planning studies had been undertaken or were in progress for nine others. The Ministry stated that it is currently prioritizing the capital projects to be undertaken in the 2010/11 fiscal year.

We were informed that the Ministry addresses the shortfall in courtrooms through its annual infrastructure planning process. According to the Ministry, this process is supported through regional accommodation workshops, annual revisions to the courtroom forecasting model, and consultations with the Judiciary and other stakeholders through various accommodations and planning committees.

The Ministry updated its courtroom forecasting model in January 2010. Using a base year of 2008 for which it noted a shortfall of 140 courtrooms, it forecast the need for 88 additional courtrooms by 2031, for a total of 228 more courtrooms.

COURT SECURITY

Recommendation 6

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

Status

In October 2008, the province announced its acceptance of the final recommendations of the Provincial-Municipal Fiscal and Service Delivery review, which was established to examine and update provincial-municipal arrangements. The Review will result in removing court security and prisoner transportation costs from municipal budgets by 2018, to a maximum of \$125 million per year, and phasing in the upload of these costs equally over seven years starting in 2012. In addition, the Ministry will work with the Ministry of Community Safety and Correctional Services, the

Association of Municipalities of Ontario, and the City of Toronto to collect current data on court security costs and other matters, and to develop court security standards. We were informed that the Ministry had established several working groups to implement the changes and had undertaken research to identify court security standards used in other parts of Canada and internationally. The Ministry plans on having developed a framework for court security standards by 2012 to coincide with the fiscal upload.

The Ministry stated that it had completed, or by 2012 it would complete, major security projects as well as perimeter and judicial security enhancements, in a number of locations around the province. In addition, we were informed that threat risks assessments for 99 courthouses and 33 offices across the province and building physical security plans would be finalized by fall 2010.

COLLECTION OF FINES

Recommendation 7

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

- *conduct a formal assessment of more vigorous enforcement measures and implement those that can help to enforce the payment of court-levied fines; and*
- *establish benchmarks for comparing its collection rate of fines with other similar jurisdictions.*

Status

The Ministry indicated that a review by the *Provincial Offences Act* Streamlining Working Group involving provincial and municipal participation was completed in September 2009. As a result of this review, the Ministry implemented a number of recommendations related to *Provincial Offences Act* fine collection in the *Good Government Act, 2009*, which came into force in December 2009. The *Good Government Act, 2009* expanded the enforcement

measures available to municipalities by granting them the authority to add unpaid fines under the *Provincial Offences Act* to property tax bills, allowing municipalities to recover the cost of using collection agencies along with defaulted fines, and repealing the two-year limitation period for initiating civil enforcement of defaulted fines.

We were informed that the findings of the Working Group were being reviewed for their applicability to the Ministry's collection of *Criminal Code* fines. At the time of our review, the Ministry had introduced no new enforcement measures.

In February 2010, the Ministry sent a survey to all Canadian jurisdictions through the Association of Canadian Court Administrators asking about the jurisdictions' effectiveness in collecting *Criminal Code* fines and about the enforcement tools they used. Four provinces and one territory responded. The Ministry's review of those responses found that only one province reported details on fine collection and performance indicators. However, this province's reports pertain to all types of fines, which made them incomparable to Ontario's separate reports on *Criminal Code* fines. Therefore, the Ministry concluded it was unable to establish benchmarks with other provinces for the rate of fine collection.

We noted that the amount of fines imposed annually remained constant over the last three years at approximately \$17 million each year, of which \$12 million, or about 70%, was paid either voluntarily or as the result of collection efforts. Nevertheless, the total value of outstanding fines as of March 2010 had decreased by 22%, from about \$36 million in March 2008 to about \$28 million, largely because the Ministry wrote off almost \$16 million in fines in the 2008/09 fiscal year. Also, during 2009, the Collection Management Unit of the Ministry of Government Services collected an average of 52% of the total defaulted fines, an increase from 43% in 2007.

OVERSIGHT OF MUNICIPALLY ADMINISTERED COURTS

Recommendation 8

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

Status

We were informed by the Ministry that the Justices of the Peace Appointments Advisory Committee, established in 2007, advertises openings, and screens and evaluates justice of the peace candidates. The committee then forwards a list of candidates to the Attorney General for consideration in filling vacancies that are identified by the Office of the Chief Justice (OCJ). The OCJ provides reports to the Ministry identifying justice of the peace vacancies.

We were informed by the Ministry that since our 2008 audit, the Attorney General has appointed 17 justices of the peace across the province. As of March 2010, there was the equivalent of 345 justices of the peace in the OCJ. The Ministry advised us that there were no outstanding requests to increase this complement.

As noted earlier, the *Good Government Act, 2009* expanded municipalities' enforcement abilities, authorizing them to add unpaid fines under the *Provincial Offences Act* to property tax bills.

With respect to the Ministry's oversight role, the Ministry has indicated that it continued to collect and analyze *Provincial Offences Act* court-activity data on a monthly basis; however, the Ministry maintains that it has no plans to assess municipal charging practices, as the decision to lay a charge is within the sole discretion of an enforcement officer.

PERFORMANCE REPORTING

Recommendation 9

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

- develop performance indicators for all of its legislated and internally established goals and operational standards, such as time to trial, court backlogs, and operational costs; and
- publish its annual report to the public within six months of its year-end as required by legislation.

Status

The Ministry has indicated that it was in the process of developing performance indicators for all of its legislated and internally established goals and operational standards. According to the Ministry, the performance measures are to include both internal and external measures, and consideration was given during the development process to the performance measures recommended by the National Center for State Courts, a U.S. non-profit organization with expertise in court administration. According to the Ministry, the proposed measures were in the approval process and would be finalized by the end of the 2010/11 fiscal year.

As required by the Ministry of Government Services' OPS Service Directive, the Court Services Division developed five public-service standards effective January 1, 2010. We were informed that the five standards were posted in court locations across the province and would be measured in the 2010 Client Satisfaction Survey. The Ministry indicated that the results of the Survey are to be reported in the Court Services Division 2010/11 Annual Report.

The Ministry advised us that the Division continues to publish a comprehensive annual report, which now links the Division's legislative goals and published business goals with key initiatives for each goal. Until the new performance indicators are finalized, the Division is continuing to report on

activities for each goal, without performance measures. The annual report for the 2008/09 fiscal year was released within the statutory time period and includes multi-year trends of court activity, such as charges or proceedings received, disposed of, and pending for the various courts. However, it does not yet contain information that would allow an assessment of the courts' operational cost efficiency.

The Ministry's website reports on criminal offence statistics for each year by court location and region, and on the Justice on Target Strategy for reducing the average number of court appearances and average length of time needed to dispose of a charge.