Chapter 4

Ministry of the Attorney General

Family Court Services

1.0 Summary

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, when courts are needed to determine if a child who is experiencing or at risk of experiencing harm is in need of protection, and to make an order relating to the child's care and custody. In 2018/19, there were about 62,970 new family law cases filed in court—7,410, or 12%, of these were child protection cases.

The *Child, Youth and Family Services Act, 2017* (Act) outlines statutory timelines for certain steps in a case, and relating to the time a child is in the care and custody of a Children's Aid Society (society). The courts are required to adhere to these timelines when the society is seeking to place a child in its interim care and custody.

The Court Services Division (Division), under the Ministry of the Attorney General, is responsible for the administration of courts in Ontario. The Division's main responsibilities are managing court staff, and providing facilities and information technology. The Ministry's court staff work under the direction of the judiciary, when supporting the judiciary in matters assigned to the judiciary by law. The Division also oversees family mediation and information services, delivered by 17 service providers in 2018/19, to assist families going through court processes.

Family law cases are often characterized by fear, anxiety and despair. For married couples going through divorce, additional time spent navigating the family court system and attending different courts for multiple court dates can heighten both the distress and personal financial impacts. Child protection cases are guided by the purpose of promoting the best interests, protection and well-being of children. While courts can help to keep children from physical harm, court delays can result in extended temporary placements, which have the potential to cause psychological and developmental issues. Adults and children need timely access to family courts to lessen the harmful impacts that family law issues can have on their lives.

Overall, our audit found that effective and efficient processes were not in place in the family court system to adhere to the legislated timelines that are designed to promote the best interests, protection and well-being of children. As of July 2019, there were 5,249 child protection cases pending disposition. Of these, 23% had remained unresolved for more than 18 months—some for more than three years. Because the Ministry did not have accurate and complete information captured in its information system, neither the Ministry nor we were able to determine how many of these cases were subject to the statutory timelines required by the Act. Even with the restrictions placed by the Ministry on our access to complete child protection

case files, we identified significant delays in some cases. However, because we were refused complete information, we could not confirm the reasons for the delays, or why the statutory timelines were exceeded.

- **Restricted access to complete child protection case files and delays in receiving limited information impacted our work, and prevented our audit of the delays in resolving child protection cases.** Noting where lack of complete information affected our work, significant findings on child protection cases include:
  - Of the 5,249 child protection cases pending disposition as of July 31, 2019, 1,189 cases (or 23%) had been pending for longer than 18 months. Of these cases, 762 had exceeded 30 months pending. 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 the ages of six and 17. After our multiple requests to review the complete case files, only the redacted case histories, with listings of consequential court events, were provided by the Ministry for our sampled cases. After further requests, representatives from the Offices of the Chief Justices of the Ontario Court and the Superior Court released the redacted written directions of the judge at each appearance (called endorsements) from a small number of select cases for our review. However, these documents were not sufficient for us to examine details of the cases to determine whether the statutory timelines were applicable and/or reasons for the delays.
  - Representatives from both the Offices of the Chief Justices of the Ontario Court and the Superior Court cited section 87(8) in the *Child, Youth and Family Services Act, 2017*, which states: "No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding, or the child's parent or foster parent or a member of the child's family." This clause was used as the rationale for limiting our Office's access to complete child-protection files of the cases that we selected, although we informed the Offices of the Chief Justices that we had no intent to identify individuals in this report.
  - The Ontario Court published its *Guiding Principles and Best Practices for Family Court* to help judges to manage child protection cases. One of the guidelines states that "… child protection matters whose outcome would affect the well-being and day-to-day physical, emotional and/or mental health of children should be considered matters where time is of the essence. Scheduling of these matters should reflect this." Again, because we were not provided with key documents on court scheduling (also see Court Operations, **Chapter 2** of this volume), we were unable to determine if child protection matters were scheduled as early as possible, and whether the Ontario Court is following its own guiding principles and best practices.
  - The Superior Court also established Best Practices for Child Protection Cases, to address the scheduling, assignment and conduct of each step in a child protection case. Unlike the Ontario Court, the Superior Court's best practices guide is not publicly available. We requested a copy of it, but the representative from the Office of the Chief Justice of the Superior Court refused to provide a copy to us.

Domestic family law cases, other than child protection cases, represented 88% (or 55,560) of new family law cases received in 2018/19. There are no

legislated timelines for domestic family law cases, such as divorce, child custody and access, child and spousal support, and adoption, except for the first access and custody hearing for a child. There are best practice guidelines, which, in this case, we were provided. However, based on the information provided by the Offices of the Chief Justices of both the Superior Court and the Ontario Court, we noted the following:

- **Next available court hearing dates for case conferences at a few Superior Court locations exceeded Family Law Best Practices timelines for domestic family law cases.** In 2018/19, the Superior Court held a total of approximately 16,000 case conferences that are meant to help parties settle as many issues as possible without the need for a trial. We examined case conference wait times for five specific dates between April 2018 and April 2019, based on information provided by the Office of the Chief Justice of the Superior Court. We noted that 43 of the 50 Superior Court locations met the best practice guideline of six weeks on at least one of the five dates that we examined. At only seven Superior Court locations, if a new request for a case conference was received on the five dates we examined, the parties would have waited for as long as 10 to 12 weeks, exceeding the suggested best practice guideline. However, because we were not given access to court scheduling information, we were unable to verify the completeness and accuracy of the data provided by the Office of the Chief Justice of the Superior Court.
- **Most Ontario court locations reported a minimal wait for the next available first court appearance.** The Ontario Court also established *Guiding Principles and Best Practices for Family Court*, but unlike the Superior Court, the guiding principles do not specify targets for maximum timelines from filing a family law application to a first court appearance. We reviewed the data provided by the Office of the Chief Justice of the Ontario Court for its 36 family court locations for the calendar years 2016, 2017 and 2018. We noted that minimal waits of within a month were reported for 27 Ontario Court locations. However, data provided by six other court locations was either limited or missing altogether. Only three court locations reported delays where applicants waited two to three months for a first court appearance. Again, because we were not given access to court scheduling information, we were unable to verify the completeness and accuracy of the data provided by the Office of the Chief Justice of the Ontario Court.
- **Neither the Ontario Court nor the Superior Court publicly report their next available hearing dates for domestic family law cases.** The courts do not publish data or information on next available hearing dates for family court appearances. As a result, parties in domestic family law cases do not know the expected wait times for hearings at these courts. By comparison, the British Columbia Provincial Court posts a public report twice a year, which describes 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 audit also found that the data captured in the Ministry's case file information system, FRANK, was inaccurate. Therefore, it could not be relied on by the Ministry, or judges from either the Ontario Court or the Superior Court to monitor and manage their cases. In particular:

- **The number of family law cases captured in the FRANK system as pending disposition was not accurate.** In April 2019, a review led by the Office of the Chief Justice of the Superior Court found that of the 2,844 child protection cases in both the Superior and Ontario courts that had been pending for over 18 months as of March 31, 2019, 1,517 cases, or 53%, were incorrectly recorded in

FRANK as "pending." These cases, identified after updated numbers were provided as of July 31, 2019, should have been disposed. Further, based on our review of a sample of 70 domestic family law cases pending disposition for over a year as of March 31, 2019, we found that 56% were recorded incorrectly as pending, though they were either disposed, or had been inactive for over a year. Because of the inaccuracies identified, we could not rely on FRANK to perform accurate trend analyses of time taken to dispose of cases and the aging of cases pending disposition.

- **The Ministry lacks a formal policy on quality reviews of data captured in FRANK.** The Ministry has a data quality review process and guideline for managers and supervisors at each courthouse to review the accuracy and completeness of data in FRANK. However, we found that none of the seven courthouses we visited followed the Ministry's guideline consistently in 2018/19. As a result, the Ministry did not know which types of data entry errors were most common, or why they occurred. Therefore, it was unable to prevent the recurrence of these errors through training, or by adding system controls over data entry to the FRANK system. Most importantly, it did not know the extent of inaccurate data in the system.

The Ministry contracts third-party service providers to deliver a number of services, such as on-site and off-site mediation intake and mediation, and information and referral services for the family court process. Between 2014/15 and 2018/19, the Ministry's expenditures on contracts with 17 service providers ranged between $6.9 million and $7.2 million annually. Over the same time period, there was an average of about 4,500 mediation cases per year, involving family law cases both in court, and out of court. Almost 80% of these cases were fully or partially settled through mediation. Some of our significant findings on the Ministry's contract management are as follows:

- **The Ministry is paying for on-site mediators' availability at courthouses, not necessarily for mediation work performed.** Between 2014/15 and 2018/19, the Ministry paid an annual average of approximately $2.8 million for about 34,450 hours per year of on-site mediation, but only about 7,200 hours, or 20%, involved mediation or mediation-related work. The balance of about 27,250 hours, or 80%, was billed for on-site availability only. Under the existing contracts, service providers bill the Ministry for the number of hours a mediator is available at the courthouse, not for the number of hours of mediation work performed. The invoices submitted by the service providers did not indicate the type of work, if any, that mediators performed for 80% of the total hours billed for on-site availability.
- **The Ministry does not exercise proper oversight of payments made to service providers.** Service providers bill the Ministry each month, up to a pre-determined yearly maximum for services they provide. The Ministry relies on service providers to bill accurately for the services provided, but does not verify whether the service providers worked the hours billed.
- **The use of Ministry-funded mediation services has varied levels of uptake at different court locations.** Mediation, when used appropriately, can be more cost-effective for both the parties and the Ministry for resolving family law cases. We found that, for instance, at locations that had an average of fewer than 750 eligible cases, the percentages of cases directed to mediation ranged from an average low of 2% of cases to a high of 17% of cases between 2014/15 and 2018/19. However, the Ministry has not conducted an analysis to determine why some service providers had more cases directed to them than others.

Other significant findings include:

- **The Dispute Resolution Officer Program (Program) could increase cost savings if expanded.** Dispute resolution officers meet with parties who have filed a motion to change an existing court order before the parties meet with a judge. This Program involves senior family lawyers appointed by Superior Court regional senior judges to help parties resolve their outstanding issues on a consent basis. The Superior Court was operating the Program in nine of 50 Superior Court locations at the time of our audit. We estimated that the net savings realized at the nine participating courthouses totalled about $355,000 in 2018/19.
- **The Ministry did not have a firm plan to achieve its 2025 target for Unified Family Court expansion.** Ontario has had unified legal jurisdiction for all family law matters through Unified Family Courts in 17 locations since 1999. Twenty years later, in May 2019, the Ministry unified the family law jurisdictions in eight additional locations, bringing the total number of Unified Family Courts to 25. Parties in these locations need to attend only one court to resolve their family law–related issues. In contrast, families that live in the remaining 25 locations without these courts may need both the Ontario Court and the Superior Court to resolve their family law–related issues. In 2017, the Ministry, in conjunction with the Superior Court and Ontario Court, set a target to complete the province-wide expansion of Unified Family Courts by 2025. As of August 2019, the Ministry was still conducting a needs assessment at the remaining 25 court locations to accommodate the expansion.

This report contains 17 recommendations, consisting of 26 actions, to address our audit findings.

Overall Conclusion

Overall, we encountered a lack of transparency in obtaining access to information to be able to audit whether child protection cases were handled in accordance with the statutory timelines as required by the *Child, Youth and Family Services Act, 2017* in the best interest of the child. Representatives from 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 cited section 87(8) in the *Child, Youth and Family Services Act, 2017*, which states: "No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding, or the child's parent or foster parent or a member of the child's family." This clause was used as the rationale for limiting our Office's access by not providing us with complete child-protection files that we selected, although we informed the Offices of the Chief Justices that we had no intent to identify individuals in this report.

Because the Ministry did not have accurate and complete information captured in its information system, we were also unable to determine, nor could the Ministry, how many child protection cases were subject to the statutory timelines required by the *Child, Youth and Family Services Act, 2017*.

Our complete access to child protection files was initially refused. While partial access to the files was subsequently granted, information was then delayed, and limited to only part of what we requested. As a result, we were not able to determine the reasons for delays in child protection cases, or determine why the statutory timelines under the *Child, Youth and Family Services Act, 2017*, were exceeded, which could put children at unnecessary risk.

We also found that the Ministry did not have effective management and oversight of its contracts with service providers delivering family mediation and information services across the province.

OVERALL MINISTRY RESPONSE

The Ministry of the Attorney General (Ministry) appreciates the comprehensive audit on Family Court Services conducted by the Auditor General and welcomes her recommendations on how to improve services to Ontarians seeking access to justice on family law issues.

Access to justice in family law cases is of key importance to the Ministry, as it recognizes the impact these cases have on participants in the family court system. The Ministry has been moving forward with initiatives that will make a difference to Ontarians and support the efficient use of resources in administering the family court system.

Many of the recommendations in this report support the objectives of the Ministry's current transformation strategy, which focuses on modernizing the justice system, including increasing online services for the public and streamlining court processes to create efficiencies.

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 the Ministry of Finance, to ensure a broader-sector approach to addressing the audit's recommendations and to better serve the people of Ontario.

2.0 Background

2.1 Family Court System in Ontario

In Ontario, three courts handle family law cases—the Ontario Court of Justice (Ontario Court), the Superior Court of Justice (Superior Court), and the Family Branch of the Superior Court, often referred to as the Unified Family Court.

Due to the division of powers and responsibilities of the federal and provincial governments in the *Constitution Act*, family law in Canada is an area of law of shared jurisdiction between the two levels of governments. The Superior Court deals with primarily federally legislated family law matters, and the Ontario Court deals with provincially legislated family law matters. **Figure 1** illustrates the legal jurisdiction of the three courts for common family law issues.

2.1.1 Unified Family Court

Unified Family Courts allow parties to handle all of their family law–related matters in one court. This eliminates the stress and confusion for parties, especially those who may need to decide which court has jurisdiction to resolve their issues first. For example, a couple going through a divorce with an ongoing child protection matter, living in a municipality with a Unified Family Court would be able to deal with only one court for all of their legal issues. In contrast, families that live in a jurisdiction without a Unified Family Court would have the child protection case heard by one judge in the Ontario Court, while the divorce would be heard by another judge in the Superior Court. Further, family law issues are often dynamic, and evolve with time. The court that fits the parties' needs at the beginning of the process may not be able to deal with future issues. A new case in another court may be required, causing additional delay and frustration. Unified Family Courts would benefit especially parties who are not represented by lawyers. In 2018/19, more than 50% of parties were unrepresented at the time they filed applications or motions to change an existing court order.

Ontario has had unified legal jurisdiction for all family law matters through Unified Family Courts in 17 locations since 1999. Effective May 13, 2019, Ontario unified an additional eight locations, bringing the total number of Unified Family Courts to 25. At these locations, the Ontario Court effectively loses jurisdiction to hear family law cases; these

Figure 1: Family Law Jurisdiction in Ontario for Common Family Law Issues

Source of data: Ministry of the Attorney General

Family Law Issues	Unified Family Court[1]	Superior Court of Justice	Ontario Court of Justice
Adoption	✓		✓
Child and spousal support	✓	✓	✓[2]
Child custody and access	✓	✓	✓[2]
Child protection	✓		✓
Division of property	✓	✓	
Divorce	✓	✓	
Domestic violence	✓	✓	✓
Enforcement	✓		✓

1. The Family Branch of the Superior Court of Justice.
2. Not related to a divorce.

cases are transferred to the Unified Family Court under the Superior Court. In the remaining 25 family court locations, both the Superior Court and Ontario Court handle family law cases according to the prescribed legal jurisdictions, listed in **Figure 1**.

Figure 2 shows the breakdown of family law cases received by type and court in 2018/19. The percentage breakdown of cases received by each court has been relatively stable between 2014/15 and 2018/19.

2.2 Family Law Cases

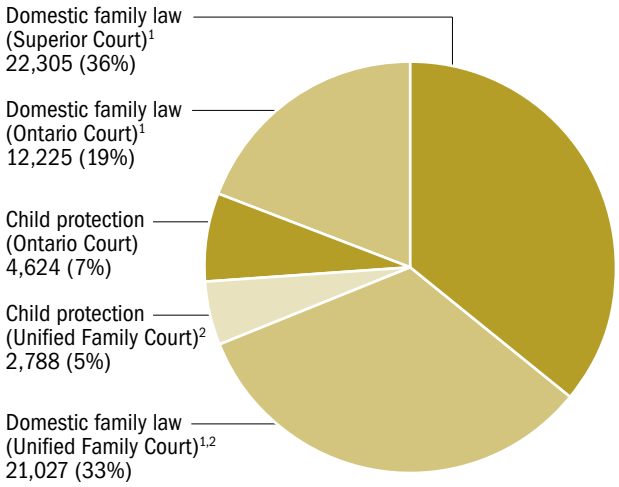
Family law is about the rights and responsibilities of people in family relationships—children, spouses and parents. People who are married or in common-law relationships have certain rights and responsibilities to each other under family law. People who have children have additional legal rights, and responsibilities, in relation to their children.

The federally legislated *Divorce Act*, as well as the provincial *Family Law Act*, the *Children's Law Reform Act* and the *Child, Youth and Family Services Act, 2017*, apply to families and children. The most common issues dealt with in family court include:

- divorce—for married couples, a divorce must be granted by the court to end the marriage, and a spouse must be divorced to remarry;

Figure 2: Family Law Cases Received, the Ontario Court of Justice (Ontario Court), Superior Court of Justice (Superior Court), and the Unified Family Court, 2018/19

Source of data: Ministry of the Attorney General



1. Domestic family law cases include family law cases other than child protection cases such as divorce, child custody and access, child and spousal support and adoption.
2. The Unified Family Court is a branch of the Superior Court.

- child custody and access—parents who are separating must determine where the children will live and how much time they will spend with each parent, and which parent will make major decisions about the children's care;

- child and spousal support including enforcement—all parents are responsible for financially supporting their dependent children, and spouses may be responsible for financially supporting each other;
- division of family property—when married couples separate, they must divide any increase in money or property they acquired while married;
- child protection—the courts can help children and youth who have been, or are at risk of being, abused or neglected; and
- domestic violence—family courts can issue restraining orders, or make orders for exclusive possession of the matrimonial home in cases of domestic violence.

In 2018/19, there were about 62,970 family law cases received by family courts. About 7,410, or 12%, of these were child protection cases. See **Appendix 1** for information about participants in the family court process.

2.2.1 Child Protection Cases

In family law, there are statutory timelines for certain steps in a child protection case, including the time a child is in the interim care and custody of a society. If parents are not able to care for their children appropriately, plans are made for their permanent care in a timely manner.

The *Child, Youth and Family Services Act, 2017* (Act), outlines the powers and responsibilities of children's aid societies, which protect children and youth who may be experiencing or are at risk of experiencing harm, such as abuse or neglect.

If the society suspects a child is at risk of harm, a children's aid society (society) can seek a court order to supervise the parent(s) and the child, or remove the child from an unsafe environment, if the risk of harm is too serious. In the latter case, the society may place the child in the care of another person, such as a relative or foster parent(s). See **Appendix 2** for an overview of the process of a child protection case.

While the case proceeds in court, the court can order the child in the society's temporary custody and care to live with another person, such as a foster parent, until the court case is resolved—at which time the court makes a final determination of where the child should live.

If the court finds the child is in need of protection, and the court is satisfied that a court order is necessary to protect the child in the future, the court can issue a final order that may include, among others:

- Supervision order—the child is placed in the care and custody of a parent or another person, subject to the supervision of the society.
- Interim society care—the child is placed in the care and custody of a society. The society can place the child, for example, in foster care, for a maximum of 18 months or 30 months, depending on the age of the child.
- Extended society care—the child is placed in the care of a society until the child turns 18. The society places the child, for example, in foster care or in a group home, and the child may be adopted.

When a child is placed in interim society care, the Act lays out different statutory requirements for two age groups:

- For a child younger than six—the Act permits children younger than six to be in the interim care of a society for up to a year before a final decision is made on their placement. The period of time permitted for a child to be in interim society care is subject to a maximum six-month extension, if it is in the best interests of the child. When a child is in interim care, by the end of 12 months or 18 months, with an extension, the court must make an order to either permanently place the child in extended society care, or remove them from the society's custody and care by returning them to the parent(s) or placing the child with another person such as a relative, though that placement may still be subject to the society's supervision.

- For children between the ages of six and 17—the Act permits children between the ages of six and 17 to be in the interim care of a society for up to two years. The order for interim care is subject to a maximum six-month extension, if it is in the best interests of the child. By the end of two years, or 30 months, with an extension, the court must make an order to either permanently place the child in extended society care, or remove them from the society's custody and care by returning them to the parent(s) or placing the child with another person such as a relative, though that placement may still be subject to the society's supervision.

When making decisions in child protection cases where an order is being made to place the child in interim care with a society, the court is required to adhere to these legislative timelines. The Act calculates these time limits from the first day the child has been in the care and custody of a society. The court is responsible to ensure the child does not remain in an uncertain, temporary care arrangement beyond statutory timelines.

Further, the *Family Law Rules*, a regulation under the *Courts of Justice Act* established 20 years ago, specifies timelines that child protection cases must follow to ensure cases are advancing through the system in a timely fashion. **Appendix 3** shows the events in a child protection case, a description of each event, and the respective statutory timelines.

2.2.2 Family Law Cases Other Than Child Protection Cases (Domestic Family Law)

The *Family Law Act* and the *Divorce Act* provide the legislative framework and procedures to settle the affairs of a marriage after a relationship breakdown. These issues include spousal and child support, division of property, and possession of the matrimonial home. The *Children's Law Reform Act* deals with matters such as custody of and access to children. **Appendix 4** explains the key steps for these types of family law cases.

The Ontario family law system encourages parties involved in a domestic family law case to settle disputes without a trial. In 2018/19, only 8% to 10% of all appearances scheduled in family court were part of a trial. Most of a family court judge's time is spent facilitating dispute resolutions through case conferences and settlement conferences.

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

As shown in **Figure 1**, both the Superior Court and Ontario Court hear domestic family law cases.

The Superior Court established the *Family Law Best Practices* for scheduling and conducting family law cases to guide each case to resolution without undue court delay. The Superior Court provided us with its *Family Law Best Practices*, which sets the maximum time frames for scheduling events once requested by the parties, as follows:

- case conferences—within four to six weeks;
- settlement conferences—within eight weeks;
- short motions—within four weeks;
- long motions—within eight to 12 weeks; and
- short trials—within eight to 12 weeks.

The Ontario Court established and published *Guiding Principles* and *Best Practices for Family Court*, but it does not specify the maximum timeframes for scheduling events once requested by parties. It only collects information on the length of time it takes to schedule a first court appearance after a court application is filed.

2.3 Services Aimed at Helping Parties to Streamline and Resolve Their Family Law Cases More Quickly

Going to court to resolve family issues can be expensive for the parties. It involves paying legal fees, taking time off work, and paying for childcare while attending court. It is also a stressful and emotionally draining process. The Canadian Forum on Civil Justice reported in 2016 that "over half (51%) of people who reported having a [civil or family] legal problem experienced stress or emotional difficulty as a direct consequence of having that problem." To ease stress, services should be available, where appropriate, to allow parties involved in family court matters to mediate or settle the issues more quickly, and to support attempts to facilitate early resolution, rather than going through a lengthy and expensive court process.

2.3.1 Family Mediation and Information Services

Since 2011, the Ministry of the Attorney General (Ministry) has offered family mediation and information services at all courthouses that handle family law cases. These courthouses are called "base courthouses" by the Ministry. They have facilities for court appearances, and also provide document filing and other administrative services and functions.

The Ministry contracts third-party service providers to deliver a range of services associated with the family court process. See **Appendix 5** for the key entry points to these services and the process for mediating a case:

- On-site mediation intake and mediation sessions—free to the parties and intended to resolve narrow issues at the courthouse on the day of the court appearance. Each on-site mediation session typically takes two to three hours, which includes initial screening of the parties and mediation, if appropriate.
- Off-site mediation intake and mediation sessions—offered at a subsidized rate of $5/hour to $105/hour for each party, depending on their income and number of dependents. This typically takes place at the service provider's or mediator's place of business.
- Information and referral—performed by the Information and Referral Co-ordinator located in the Family Law Information Centre at family court locations, free of charge and available to anyone. The co-ordinator learns the individual's family law–related issues and matches them with appropriate services, such as shelter and legal services.
- Information sessions—free of charge for those involved in certain types of family law cases, and for the public to provide information on topics such as the effects of separation and divorce on parties and children, the court process, and alternative dispute resolution options like mediation. These sessions are typically delivered at courthouses, either during the day or after hours.

When effective, alternatives like mediation can divert less complicated matters away from the court, helping to maximize the use of court resources. Between 2014/15 and 2018/19, there was an average of about 4,500 mediation cases per year, involving family law cases that were both in and out of court. Almost 80% of these cases were fully or partially settled through mediation.

The Ministry has historically procured service providers for three-year terms, with two one-year extensions, at the discretion of the Ministry. The last contracts signed with 17 service providers expired on March 31, 2019; the new contracts were effective April 1, 2019, signed with 16 of mostly the same service providers. Providers bill the Ministry monthly for their services based on hourly rates up to a pre-determined, annual maximum amount. Between 2014/15 and 2018/19, the Ministry's expenditures on these contracts increased by about 5% from $6.9 million to $7.2 million annually. The maximum annual amount was $7.5 million per

Figure 3: Breakdown of Expenditure by Type of Service, 2014/15–2018/19 ($ million)

Source of data: Ministry of the Attorney General

Service	2014/15	2015/16	2016/17	2017/18	2018/19	5-Year Change (%)
On-site mediation	2.53	2.55	2.81	2.96	2.99	18.18
Information and referral co-ordinator services	3.00	2.91	2.89	2.88	2.92	(2.67)
Off-site mediation	0.74	0.72	0.69	0.67	0.74	–
Off-site mediation – intake	0.42	0.40	0.39	0.38	0.39	(7.14)
Information session	0.21	0.20	0.20	0.20	0.20	(4.76)
Total	**6.90**	**6.78**	**6.98**	**7.09**	**7.24**	**4.93**

Note: The Ministry entered into 46 contracts with 17 service providers for the 2014/15 to 2018/19 term to provide services at the 50 family court locations. Some contracts included more than one location.

year. See **Figure 3** for a breakdown of the annual amount paid by type of service in the last contract term. **Appendix 6** lists the 17 service providers and the amounts paid by the Ministry in 2018/19.

2.3.2 Dispute Resolution Officer Program

Dispute resolution officers meet with parties who have filed a motion to change an existing court order, such as a child custody order, before the parties meet with a judge. The program was developed to help parties resolve their outstanding issues on a consent basis early in their court proceeding, with the assistance of a dispute resolution officer instead of a judge. Dispute resolution officers are senior family lawyers appointed by a Superior Court regional senior judge. Unlike a judge, however, they cannot make orders on their own, or award costs to parties. If no resolution is reached, they make the case "judge-ready" by organizing the issues, and if required, obtaining a signed order from a judge for information disclosure.

The program was launched in 1996 by the Superior Court at one Toronto court location. It expanded to eight additional court sites between 2012 and 2015. At the time of our audit, the program was in place at nine court locations. It is usually scheduled to run one to four sessions each week, depending on the court location. Dispute resolution officers are paid $250 per session, for each day they are scheduled to run the program—significantly less than a judge's daily salary. The total expenditure for the program in 2018/19 was $169,000.

2.3.3 Child Support Service Online Tool

Effective April 4, 2016, eligible parents and caregivers in Ontario have been able to set up and update child support arrangements, without going to family court, by using the Child Support Service online tool. One parent can apply to use the tool to set up or update child support arrangements; the other parent can accept or decline to use the tool. The tool costs $80 per person per use.

Users provide consent and information required through the online tool. Staff at the Ministry of Finance then calculate the support amount, using income information provided by the parents or this Ministry's direct access to income information from the Canada Revenue Agency, and issue a notice. This child support amount is enforceable, like a court order. People who use the tool successfully do not need family court to set up or update child support, saving legal fees, and the time and cost of appearing in court. When more people use this system successfully, court resources can be used for more complex cases.

The Ministry of the Attorney General led the development of the tool. It was jointly funded by the Ministry of the Attorney General, the Ministry

Figure 4: Child Support Service Online Tool–Implementation and Operating Cost, and Revenue Collected, 2014/15–2018/19 ($ million)

Source of data: Ministry of the Attorney General

	2014/15–2015/16	2016/17	2017/18	2018/19	Total
Implementation cost[1]	5.70	–	–	–	**5.70**
Operating cost[2]	–	0.40	0.41	0.35	**1.16**
Total cost	**5.70**	**0.40**	**0.41**	**0.35**	**6.86**
Revenue collected[3]	–	0.01	0.02	0.03	**0.06**
Net cost	**5.70**	**0.39**	**0.39**	**0.32**	**6.80**

1. Funded over two fiscal years (2014/15 to 2015/16) by ServiceOntario ($4.1 million), Ministry of Finance ($0.8 million), the Family Responsibility Office ($0.5 million), and Ministry of the Attorney General ($0.3 million).
2. Solely paid by the Ministry of the Attorney General.
3. The fee to use the service may be waived if the individuals using the tool meet the conditions set out in the respective regulation under the *Administration of Justice Act*.

of Finance, the Family Responsibility Office (which collects, distributes and enforces court-ordered support payments) and ServiceOntario. The total implementation cost was $5.7 million. The Ministry of the Attorney General pays ongoing operating costs of approximately $350,000 to $410,000 per year. **Figure 4** shows the implementation cost, operating cost, and revenue collected between 2014/15 and 2018/19.

2.4 Ministry's Administration Support for Family Courts

The Ministry provides support services to all courts, including those that hear family law matters. In particular, the Ministry's Court Services Division (Division) staff:

- provide judicial support inside and outside of courtrooms; the staff act at the direction of the judicial official when assisting the judiciary in matters assigned to the judiciary by law;
- assist the public at court counters processing applications and documents; and
- maintain court records, and perform data entry in the family law case file tracking system, FRANK.

Family Law Case File Tracking System

The Division uses FRANK, an information system, to track family law case files. The Division is responsible for the collection and quality of the court's data. The Ministry stores, maintains, archives, releases and uses this data under the direction of the judiciary. It tracks information such as the names of parties, types of cases, dates and locations where applications are filed, dates and types of document submissions, and dates of court events.

Court staff are required to enter data in the FRANK system when parties submit documents. After each court event, staff must retrieve the physical files including the judge's endorsements, and enter adjournment dates or orders issued, if any.

3.0 Audit Objective and Scope

Our audit objective 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 family law matters on a timely basis, with consistent delivery of court services across the province, in accord-

ance 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.

Before starting our work, we identified the audit criteria we would use to address our audit objective. These criteria were established based on a review of applicable legislation, policies and procedures, and internal and external studies. Senior management at the Ministry reviewed and agreed with our objective and associated criteria as listed in **Appendix 7**.

Our audit work was conducted primarily at the Ministry, and the seven court locations, covering all seven regions that we visited from January to August 2019. The seven courthouses were Newmarket, Ottawa, Sault Ste. Marie, Thunder Bay, Milton, Windsor and 311 Jarvis Street, Toronto. We based our selection of courthouses on factors including number of cases received and the trend in the number received, average days needed to dispose of a family law case, number of cases waiting to be disposed, and other observations we made in our audit that prompted further examination.

We obtained written representation from the Ministry, effective November 14, 2019, that it has provided us with all the information it is aware of that could significantly affect the findings of this report, except for the effect of the matters described in the scope limitation section.

The majority of our audit work covered information going back three to five years, with trend analysis from the past five years. We also reviewed relevant information from other Canadian provinces.

We conducted the following work:

- Interviewed senior management and appropriate staff, and examined related data, domestic family law case files and other documentation at the Ministry's head office and the seven courthouses.
- Spoke to senior management at the Office of the Chief Justice of the Ontario Court of Justice (Ontario Court) and the Office of the Chief Justice of the Superior Court of Justice (Superior Court).
- Spoke to representatives from Legal Aid Ontario, the Office of the Children's Lawyer, the Family Responsibility Office, the Association of Children's Aid Societies, the Association of Native Child and Family Service Agencies of Ontario, selected children's aid societies, selected service providers of family mediation and information services, and the Ontario Association for Family Mediation to gain their perspectives on family court services in particular.
- Engaged an expert advisor within Ontario with an extensive family law background and expertise.
- Considered the relevant issues reported in our 2008 audit "Court Services."
- 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

The *Auditor General Act* requires the Auditor General, in the annual report for each year, to report on whether the Auditor received all the information and explanations required to complete the necessary work. 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."

In addition, the memorandum of understanding signed between the Attorney General and the Chief Justice of the Ontario Court of Justice in 2016 states, in Section 3.4, "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."

Although Ministry staff were co-operative in meeting with us during our court visits, we experienced significant scope limitations in our access to key information and documents that would be required to complete the necessary audit work, mainly related to court scheduling and child-protection case files. We discuss our restricted access to matters related to court scheduling in **Chapter 2**, Court Operations, in this volume.

With respect to child protection cases, we requested access to review a sample of child-protection case files to assess whether effective and efficient court services processes are in place for these cases as required by applicable legislation, such as the statutory timelines stipulated under the *Child Youth and Family Services Act, 2017*, and the F*amily Law Rules* under the *Courts of Justice Act*. However, our Office was refused complete access to the documents we needed to complete our work in this area.

Representatives from 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 cited section 87(8) in the *Child, Youth and Family Services Act, 2017*, that:

> *No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding, or the child's parent or foster parent or a member of the child's family.*

This clause was used as the rationale for limiting our Office's access by not providing us with complete child protection files that we selected, although we informed the Offices of the Chief Justices that we had no intent to identify individuals in this report. Our objective was to determine why there were delays in the courts in meeting statutory timelines in child protection cases.

Subsequent to our ongoing audit requests and after considerable time had passed, the Ministry, with the approval of both Offices of the Chief Justices, provided only a limited portion of the case documents we had requested, as follows:

- For the 85 cases selected, we were provided case history reports with the child's and parties' names redacted. A case history report provides dates and types of events scheduled and/or occurred, as well as orders issued. However, it does not explain, for example, why multiple adjournments were granted, even when it appeared that the cases had already passed the statutory timelines.
- For 15 of 85 cases selected, we were provided with the judges' endorsements made in each case (mostly handwritten) and orders with the child's and parties' names redacted. These handwritten endorsements were made by judges to document key facts and timelines of a case and are considered a part of judicial orders. However, because these endorsements were handwritten and redacted, some of them were not legible enough to read and fully understand the details of each case.

Because we were refused complete access to the case files, we were unable to identify whether the amount of time the subject children had been in care exceeded the timelines in the Act, and the reasons for any delays there might have been. We inquired further, but the Court Services Division refused to allow its staff to assist us with questions about why some cases were delayed, why some cases remained unresolved and why some adjournments were granted, as well as other questions about the final decisions made by the courts. The Division's management responded that Ministry staff were not able to comment about the decisions made by the Courts.

We then requested both the Offices of the Chief Justices to provide reasons for some of these case delays. A representative from the Office of the Chief Justice of the Ontario Court of Justice responded that our audit questions related to judicial case

management, which was not within the scope of the audit mandate. A representative from the Office of the Chief Justice of the Superior Court of Justice stated that judges' endorsements speak for themselves, and it was not appropriate for their office to try to interpret them.

Appendix 8 outlines the restriction in access to information that we encountered during our audit. **Appendix 9** lists some of the information related to child protection cases and domestic family law cases that was publicly available. For the case-related information that was not publicly available, we listed the specific information that we requested and received access to, versus what we requested but were refused access to during our audit. For information we were refused, we provided an explanation of why we needed the information for our audit purposes, and the impact on our audit.

4.0 Detailed Audit Observations

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

4.1.1 Unresolved Child Protection Cases Pending Longer than the Statutory Timelines Required by the *Child, Youth and Family Services Act, 2017*

We 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 therefore was unable to identify how many children were in the interim care of the society, or in a temporary arrangement such as foster care. In fact, some cases were still unresolved after more than three years (**Figure 5**). Research and studies found that children in foster care have disproportionately high rates of physical, developmental and mental health problems. Therefore, the earlier these cases can be resolved, the better for each child's well-being. This is especially true for younger children.

During our audit, we were refused full access to review child protection cases (details in **Section 3.0** and **Appendix 8**). Of the 85 child protection case files requested, we received only the redacted case history reports, which contain listings of scheduled court events and orders issued. Upon further requests, we obtained redacted judicial hand-written endorsements for only 15 of the cases. These documents were insufficient for us to determine if or how many of these cases were even subject to the statutory timelines allowed under the Act. As well, we could not confirm reasons why some cases exceeded the timelines considering the best interests of the children.

Based on the delayed and limited information provided to us, we noted that some cases involved children who had been in foster care for far longer than the statutory timelines. For example:

- In 2013, the Ontario Court ordered two children, aged six and eight, into temporary foster care after a children's aid society (society) had removed them out of concern for the children's well-being. In 2017, four years after the case was filed, the court ruled that the children were in need of protection, and determined that a trial was required to decide if the children should remain in the society's care. In late 2018, the court heard a motion brought by the society seeking an order that the children be placed in their extended care. Four months later, in early 2019, the court granted the society's motion, establishing permanency for the two children—five years after the case was filed.

Figure 5: Number of Child Protection Cases Pending Disposition, by Length of Case, as of July 31, 2019

Source of data: Ministry of the Attorney General

	# of Child Protection Cases Pending Disposition, as of July 31, 2019	% of Total
Less than six months	2,507	
Six to less than 18 months	1,553	
Subtotal (less than 18 months)	**4,060**	**77**
18 to less than 30 months	427	
30 months to 3+ years	762	
Subtotal (18 months and over)	**1,189***	**23**
Total	**5,249**	**100**

* This number incorporated the correction made as a result of the errors (1,517 cases and 138 cases) identified by the Office of the Chief Justice of the Superior Court of Justice and based on our audit, as mentioned in **Section 4.1.4**.

- In 2014, five children ranging in age from three to 14 were placed in temporary foster care. After a series of court dates over almost four years, the court held a five-day trial in early 2018. The court ruled, after about two months, that that the children were in need of protection, and that the trial would continue. Eight months later, the trial resumed for only one day in late 2018. In early 2019, the court set two, one-day trial dates later in 2019. At the time of our audit, no final court decision had been rendered, although the children had already been in temporary foster care since the case was filed nearly six years earlier.
- In fall 2017, a society removed a newborn at birth. At the time, the Superior Court ordered that the child be placed in temporary foster care. In early 2019, 15 months after the society filed the case, a judge issued a summary judgment motion based on facts evident to the case, determining the child was in need of protection, and made a final order for the child to be placed in extended society care until adopted. This case was especially time sensitive because babies form strong attachments to early caregivers.
- Two children, aged one and six, were placed in temporary foster care in 2016. The trial was not held until two years later in 2018. The Ontario Court ruled the children should be placed in the extended care of the society. However, this decision was not issued by the court until late 2018, almost two and half years after the case was filed with the court.

We also noted two publicly available court decisions where children were in foster care for longer than allowed by the statutory timelines:

- A 2015, Ontario Court of Appeal decision, *C.M. v. Children's Aid Society of the Regional Municipality of Waterloo*, found that the children involved in the case had been in care for more than five years by the time of the appeal. The court decision reiterated that none of the legislated time limits under the then *Child and Family Services Act* were even remotely adhered to in this case.
- A 2017 decision by the Superior Court of Justice in the case of *Children's Aid Society of Ottawa v. B.H.* involved a 22-month-old child who had been in the interim care of the society since birth. The Superior Court stated the "legislature has directed that a child this age should not be in care longer than 12 months. This time limit is clearly meant to minimize the negative effects on a child of the instability and disruption inherent in an application like this one. The boy's bond with his interim caregiver is now deeper than it ought to have been

allowed to get. Delays in the court proceedings unfolded as it did at least in part because of a lack of judicial resources as the Court was not available to hear the matter earlier."

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. For example, FRANK could not identify how many of the 1,189 cases pending disposition for more than 18 months as of July 31, 2019, involved children placed in interim society care, such as foster care—the criteria used to determine whether statutory timelines required under the *Child, Youth and Family Services Act, 2017*, apply. 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. This is why we requested the age of the child and whether the child was placed in temporary or interim society care from individual files, so that we could calculate the number of days in care in accordance with statutory timelines. However, our request for this information was denied (**Section 3.0** discussed our scope limitation).

We noted the State of Minnesota court publicly reports on the length of time it takes for children who are removed from their custodial parents to find permanent homes. The court sets a goal to have 99% of these child protection cases concluded within 18 months from the time of removal. However, Ontario sets no such target for managing child protection cases.

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.

MINISTRY RESPONSE

The Ministry agrees to continue to work with the Offices of the Chief Justice for the Ontario Court of Justice and the Superior Court of Justice, as well as with other justice partners to identify the reasons for delays in child protection cases that lie within the Ministry's mandate to address. To this end, the Ministry will continue to address areas for improved court systems and processes that could contribute to earlier resolution of child protection cases.

For example, the Ministry has recently, in June 2019, implemented changes to the information displayed on daily court dockets so that the child protection files listed include each child's date of birth. Placing this information within the daily court docket (previously only included within court file itself), together with existing case-specific information about the age of the case, permits the presiding judge to more easily assess the relevant requirements and timelines that may apply.

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.

MINISTRY RESPONSE

The Ministry agrees to work with Justice Technology Services to upgrade the FRANK system to capture the metrics recommended to assist courts in managing child protection cases.

4.1.2 Restrictions Placed on Our Audit Prevented Us from Concluding Whether Child Protection Cases Were Managed According to the Ontario Court of Justice's Best Practices Guidelines

Both the Ontario Court and the Superior Court have responsibilities to manage child protection cases. The Ontario Court published its *Guiding Principles and Best Practices for Family Court* that state:

- "… child protection matters whose outcome would affect the well-being and day-to-day physical, emotional and/or mental health of children should be considered matters where time is of the essence. Scheduling of these matters should reflect this."
- "Judicial time should be made available so these matters will be completed in a timely fashion."
- "Child Protection adjournments must be judicially managed and reasons should be provided to ensure that unnecessary adjournments are not made."
- "When a Child Protection trial is set, it should be set for continuous days."
- "If the dates set for Child Protection trials are insufficient, dates for continuation must be given priority."

The Superior Court also established *Best Practices for Child Protection Cases*, which address the scheduling, assignment and conduct of each step in a child protection case. This best practices guide is not publicly available, so we requested a copy of it. However, a representative from Office of the Chief Justice of the Superior Court refused to provide a copy for our audit purposes.

Once again, we were unable to determine if child protection matters were scheduled as early as possible, or why they were adjourned multiple times. However, based on the limited information that we were able to obtain, we noted the following examples where multiple adjournments occurred that prolonged the cases:

- The Ontario Court issued a temporary supervision order in 2015 placing a child in the care of a parent after a motion was filed by a children's aid society (society). In early 2016, the court ruled that a nine-day trial was needed to decide the final custody of the child. The case was then adjourned for six months to schedule a trial date. The trial did not take place, however, as the parties filed a motion to continue their case discussions. In about six months, between late 2016 and early 2017, several court dates were scheduled but did not proceed because a judge was not available, and there was insufficient court time available on the days the events were scheduled. In mid-2019, four years after the case was filed, the court decided the final custody of the child.
- In one of the cases described in **Section 4.1.1**, we noted that 19 adjournments were granted by the Ontario Court. The court's decision noted that the society requested the adjournments between 2013 and 2017. We noted 14 of the adjournments resulted in more than 30 days between scheduled court events.
- In another case mentioned in **Section 4.1.1**, we noted that the Ontario Court scheduled three trial days over a one year period—one day in 2018, and two days in 2019 that were three months apart, contradicting the Ontario Court's best practice guide, which states that

a child protection trial should be scheduled for continuous days.

We also 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.

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.

MINISTRY RESPONSE

The Ministry agrees to work with representatives from the Offices of the Chief Justice for the Ontario Court of Justice and the Superior Court of Justice to explore ways in which more "at-a-glance" information can be provided to support the judiciary, in addition to the information within the court file itself, and which may otherwise be obtained through the parties and the evidence filed on their behalf.

4.1.3 Non-compliance with the 120-Day Statutory Timeline as Required under the *Family Law Rules*

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

Of the 7,199 child protection cases that were disposed of 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.

Representatives from the Offices of the Chief Justices of the Ontario Court and the Superior Court indicated that the 120-day timeline was not always practical or applicable in all child protection cases.

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.

MINISTRY RESPONSE

The Ministry agrees to share this recommendation with the Offices of the Chief Justice for the Ontario Court of Justice and the Superior Court of Justice, and with the Family Rules Committee, an independent body that has the jurisdiction to make the Family Law Rules (including any rules regarding case management and timelines), subject to the Attorney General's approval, under the *Courts of Justice Act*.

4.1.4 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 incorrectly recorded by the Ministry's court staff in FRANK as "pending," or still active, when they should have been closed.

In July 2019, after the Superior Court's review, an update from the FRANK system found that of the 2,844 cases that were recorded in March 2019 as pending disposition for over 18 months, 1,517 cases had been closed. The Ministry provided an update confirming that 1,327 cases were pending as of July 31, 2019. We used this number to arrive at **Figure 5** in **Section 4.1.1**. After receiving the updated information on cases pending, we noted significant revisions at some court locations. The pending numbers from one courthouse declined from 393 cases to only 10 cases, and the number from another courthouse declined from 277 cases to 37 cases.

During our audit, we also found that information in the FRANK system showed another courthouse where 138 cases had been pending disposition for three years or more. This is considered abnormal, based on the number of cases received by this courthouse. After our inquiries, the court staff verified and confirmed that all 138 cases had been inactive since 2004 and therefore should be recorded as "disposed" in FRANK, rather than "pending disposition." We deducted these 138 cases for **Figure 5** in **Section 4.1.1**.

Accurate and timely information about the number of child protection cases pending disposition is critical. Both the courts and the Division need this information to monitor and manage cases according to the statutory timelines under the *Child, Youth and Family Services Act, 2017* and the *Family Law Rules* under the *Courts of Justice Act*.

Because of the inaccuracies identified, we could not rely on FRANK to perform an accurate trend analysis of time taken to dispose of cases and the aging of pending cases. For example, we noted that in 2016/17 the Ministry conducted a clean-up exercise and identified over 2,000 cases that were incorrectly recorded as pending in FRANK. Despite the clean-up exercise, we found further discrepancies in FRANK that were not reconciled by Ministry staff, as shown in **Figure 6**.

Figure 6: Number of Child Protection Cases Received, Disposed and Pending Disposition, as Reported in FRANK and Data Discrepancy, 2014/15–2018/19

Source of data: Ministry of the Attorney General

	2014/15	2015/16	2016/17*	2017/18	2018/19	Source of Data
# of cases pending disposition, beginning of year **(A)**	7,632	8,137	8,423	6,108	5,722	FRANK Information System
# of cases received, during year **(B)**	9,343	8,824	8,759	8,509	7,412	FRANK Information System
# of cases disposed, during year **(C)**	8,838	8,440	10,862	8,890	7,199	FRANK Information System
# of cases pending disposition, end of year (D)=(A)+(B)–(C)	**8,137**	**8,521**	**6,320**	**5,727**	**5,935**	**Subtotal**
# of cases pending disposition, end of year **(E)**	8,096	8,423	6,108	5,722	6,417	FRANK Information System
Discrepancy (D)–(E)	**41**	**98**	**212**	**5**	**(482)**	

* The Ministry conducted a data clean up exercise in February 2017 and identified over 2,000 cases that were wrongly recorded as "pending" in FRANK. The 10,862 resolved cases and 6,108 cases pending disposition were adjusted with the error corrected.

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.

MINISTRY RESPONSE

The Ministry agrees, in consultation with the Offices of the Chief Justice for the Ontario Court of Justice and the Superior Court of Justice, to take the steps identified in the recommendation.

4.2 Some Delay in Obtaining Hearings for Domestic Family Law Cases

4.2.1 Delay in Obtaining Next Available Court Date at a Few Superior Court Locations

For family law cases other than child protection cases, we found that a few Superior Court locations were unable to offer timely court dates for various types of court appearances in accordance with its *Family Law Best Practices*, provided to us and discussed in **Section 2.2.2**.

Our review was based on the records provided by the Office of the Chief Justice of the Superior Court for its 50 family law court locations. The records showed the number of weeks to the next available hearing date that the courts could offer for various types of hearings on five specific dates between April 2018 and April 2019. However, because we were refused access to court scheduling information, we were unable to verify the completeness and accuracy of the data provided by the Office of the Chief Justice of the Superior Court.

To assist in resolving a family law case, the most common court events are case conferences, and settlement conferences. The goal of a case conference is to determine if some or all outstanding issues could be settled, and to ensure all documents have been exchanged between the parties involved. The goal of a settlement conference is to settle all or some issues permanently without proceeding through a full court process. These conferences involve the parties meeting with a judge, and are usually scheduled for 45 minutes to an hour.

In 2018/19, the Superior Court held approximately 16,000 case conferences and 14,000 settlement conferences. Our review of the records, provided by the Office of the Chief Justice, noted the next available hearing date at a few court locations were longer than the Superior Court's best practice timeline. In particular:

- for case conferences, seven of the 50 court locations did not meet the suggested best practice timelines on all five dates. At four of seven court locations, the parties waited as long as 10 to 12 weeks, compared to the best practice of six weeks; and
- for settlement conferences, six of the 50 court locations did not meet the suggested timeline of eight weeks on all five dates; some parties waited up to 16 weeks.

The Superior Court also tracks the next available hearing dates for both short and long motions. A short motion is defined as requiring less than one hour in court, and a long motion requires over one hour, up to a full day in court. Motions allow the parties to ask the court to make temporary decisions on the matters they have asked the court to decide. Either party can make motions before the court. For example, one party could ask a judge for a temporary order determining where the children will live, and how much time they will spend with each parent. This temporary decision would be in place until the court makes final decisions about custody and access. In 2018/19, the Superior Court heard approximately 35,000 family law motions. Based on the same records provided by the Office

of the Chief Justice the Superior Court for its 50 family law court locations, on five specific dates, between April 2018 and April 2019, we found:

- for short motions, two of the 50 court locations were unable to meet the best practice timeline of four weeks on all five dates. Instead some parties waited up to nine weeks.
- for long motions, four of the 50 court locations did not meet the best practice timeline; some parties waited up to 36 weeks for all five dates, compared to the best practice of 12 weeks.

For family law cases where the parties were unable to resolve all issues, a trial is usually required. In 2018/19, the Superior Court heard approximately 2,000 trials. Short trials are defined as trials up to 10 days in length. We reviewed the same records provided by the Office of the Chief Justice of the Superior Court for its 50 family law court locations, on five specific dates, between April 2018 and April 2019. The next available court dates for short trials at four of the 50 court locations did not meet the best practice timeline of 12 weeks on all five dates. Some parties waited up to 34 weeks.

The *Family Law Rules*, under the *Courts of Justice Act*, require family law trials and other court events to be held at courthouses in the municipality where the parties reside. Therefore, parties living in municipalities experiencing high wait times are unable to move their cases to jurisdictions with shorter wait times unless special approvals are obtained from the judiciary.

Although the Courts attempt to resolve family law cases as soon as possible, a representative from the Office of the Chief Justice of the Superior Court indicated that it has been difficult to meet the court's own best practice timelines due to insufficient judicial resources and/or lack of courtrooms. Our Office was unable to validate this, as our Office was denied access to court scheduling by the judiciary.

We reviewed courtroom usage data for courts province-wide. We noted the average number of courtroom operating hours per day in 2018/19 for the Brampton, Milton, Ottawa and Newmarket courts was significantly higher than the provincial average. Therefore, the lack of court facilities could be impacting the wait times for various family law court events at these specific courthouses.

4.2.2 Most Ontario Court Locations Reported Minimal Waits for the Next Available First Court Appearance; Missing or Limited Data Reported for Some Other Locations

The Ontario Court also established *Guiding Principles and Best Practices for Family Court*, but it does not specify targets for maximum timelines from filing family law application to a first court appearance. The Ontario Court's 37 family court locations only report data on the next available date for a first court appearance. At a first appearance, the parties usually meet with a court clerk to ensure all relevant documents are filed with the court and served on the other party; the clerk can then schedule a case conference.

We reviewed the data for first court appearances provided by the Office of the Chief Justice of the Ontario Court for its 36 family court locations for the calendar years 2016, 2017 and 2018, and noted that:

- six court locations either did not submit any data or provided very limited data on first court appearances;
- minimal waits, within a month, were reported for 27 court locations; and
- only three court locations reported delays where the applicants waited two to three months for a first court appearance.

Unlike the Superior Court, the Ontario Court does not gather wait time information for other court events involved in a family law cases, such as case and settlement conferences, motions and trials. Therefore, the amount of time parties wait for these family law events in Ontario Court is unknown. **Appendix 4** shows the steps of a typical domestic family law case.

Again, because we were refused access to court scheduling information, we were unable to verify the completeness and accuracy of the data provided by the Office of the Chief Justice of the Ontario Court.

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

MINISTRY RESPONSE

The Ministry agrees to share the recommendation with:

- the Ontario Court of Justice and Superior Court of Justice, who have the exclusive responsibility and control over the scheduling of cases and assignment of judicial duties under the *Courts of Justice Act*; and
- the Family Rules Committee, an independent body that has the jurisdiction to make the Family Law Rules (including any rules regarding case management and timelines), subject to the Attorney General's approval, under the *Courts of Justice Act*.

4.2.3 Family Courts Do Not Publicly Report on Next Available Court Dates in Domestic Family Law Cases

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. The 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. It is an estimate, or expected wait time, of when court time would be available for a particular event. Based on the publicly reported statistics, parties accessing the British Columbia Provincial Court system can determine the overall wait time for family law case conferences, motions and trials based on length and wait times at any family court location across the province.

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.

MINISTRY RESPONSE

The Ministry agrees to raise the recommendation with the Offices of the Chief Justice for the Ontario Court of Justice and the Superior Court of Justice to the extent possible while continuing to respect the independence of the judiciary.

Court activity reports and information with respect to wait times constitute court data/information, and the Court Services Division collects and maintains this information at the direction of the judiciary.

4.2.4 Pending Numbers of Domestic Family Law Cases Captured in FRANK Are Inaccurate

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 is overstated. In the sample of 70 cases we reviewed:

- 25% were actually disposed in court but recorded as pending in FRANK because these cases were not updated by court staff properly, or in a timely manner.
- 31% did not show any court activity for a year after the last event on file. These cases, which range in age from one to 10 years, appeared to have been abandoned by the parties. The court staff had not followed up to confirm the status of these cases.
- 44% were active cases. These cases either had a court date coming up, or some court activity in the year leading up to our review. In these cases, we noted that delays were due to issues with the parties' readiness.

Therefore, our audit found that a minimum of one quarter of the pending cases we reviewed were not updated in FRANK properly, and as such, the statistics for these cases in FRANK were not reliable. As a result, neither the Ministry nor the courts effectively monitored how cases were progressing through the family court system.

The status of case files (received, disposed, or pending disposition) is important to monitor to understand where there is demand for family court services, and to plan for the future allocation of resources across the province.

Further, we observed that these inaccuracies cause inefficiencies in other courthouse operations. For example, we saw that storage space and office hallways in almost all seven courthouses we visited were overflowing with boxes of case files.

Courthouses are required to keep files on-site for an average of three years after cases are closed. However, we noted that staff are unable to easily identify files that are old enough to be archived to make space for new files. As a result, court staff continue to store and maintain unnecessary case files on-site, contributing to overflowing case files at courthouses.

The courthouses we visited indicated that staff would have to go through physical case files to review the status of each pending case to update the FRANK system. One courthouse had approximately 28,000 cases pending for five years or more as of March 31, 2019, the largest number in the province. Staff from this courthouse said that they were only able to dispose 92 of these cases in FRANK, and could not confirm whether the remaining pending cases were still active or not. They also indicated that they could not review all of these long-standing pending cases due to other priorities for staff resources.

Figure 7 shows the number of domestic family law cases received, disposed and pending disposition between 2014/15 and 2018/19 as reported in FRANK, as well as the discrepancy in cases that we calculated that had not been reconciled by Ministry staff.

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;

Figure 7: Number of Domestic Family Law Cases Received, Disposed and Pending Disposition, as Reported in FRANK and Data Discrepancy, 2014/15–2018/19

Source of data: Ministry of the Attorney General

	2014/15	2015/16	2016/17	2017/18	2018/19	Source of Data
# of cases pending disposition, beginning of year **(A)**	160,622	164,921	169,927	178,292	186,701	FRANK Information System
# of cases received, during year **(B)**	62,437	60,686	60,042	56,918	55,557	FRANK Information System
# of cases disposed, during year **(C)**	57,857	55,484	51,489	50,491	59,462	FRANK Information System
# of cases pending disposition, end of year (D)=(A)+(B)−(C)	**165,202**	**170,123**	**178,480**	**184,719**	**182,796**	**Subtotal**
# of cases pending disposition, end of year **(E)**	164,921	169,927	178,292	186,701	183,997	FRANK Information System
Discrepancy (D)−(E)	**281**	**196**	**188**	**(1,982)**	**(1,201)**	

- 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.

MINISTRY RESPONSE

The Ministry agrees, in consultation with the Offices of the Chief Justice for the Ontario Court of Justice and the Superior Court of Justice, to take the steps identified in the recommendation.

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

4.3.1 The Ministry Paid an Average of $2.8 Million per Year for On-site Mediation Services but Only about One-Fifth of These Hours Were for Mediation

Our audit found that the Ministry lacked proper contract management and oversight of family mediation, and information and referral co-ordinator services provided by third-parties across the province. In particular, the Ministry's contracts with service providers for family mediation services do not tie pay to the mediation work performed in the courthouses.

For on-site mediation, service providers bill the Ministry for the number of hours a mediator was available at the courthouse, not for the actual number of hours of mediation services provided. Between 2014/15 and 2018/19, service providers billed about $2.8 million per year, on average, for 34,450 hours of availability for on-site mediation services. However, based on the number of on-site mediation intakes, and the number of mediation sessions completed, we estimated that on-site mediators engaged in mediation work for only about 7,200 hours, or just over 20% of the total hours billed. The invoices submitted by service providers did not indicate the type of work, if any, the mediators engaged in for the remaining time billed—almost 80% of the hours spent on-site.

We found that the Ministry contracts with the service providers neither focus on the activity of providing on-site mediation services, nor appropriately incentivize service providers to promote these services, as discussed in **Section 4.3.3**. For the contracts ended March 31, 2019, and the new contracts effective April 1, 2019, the only performance requirement for on-site mediation was a minimum number of hours the service provider was required

Figure 8: Ministry Payments for On-Site Mediation Services versus Hours of Mediation Services Performed, Select Examples, 2018/19

Source of data: Ministry of the Attorney General

Court Location	Ministry Payment for On-site Mediation Services ($)	# of Family Law Cases Received[1] By Court Location	Minimum # of Hours Required by the Contract	# of Hours Billed by the Service Provider (A)	Estimated Hours of Mediation Services Performed[2] (B)	On-site Mediation Service Utilization Rate (%) (B/A)
A	108,700	1,500	1,092	1,087	98	9
B	98,900	3,000	1,560	1,648	81	5
C	83,100	700	780	923	32	3

1. Number of divorce, child and spousal support, and child custody and access cases received by court location.
2. The sum of all on-site mediation intakes, assuming half an hour per intake, and all on-site mediation sessions completed, assuming two hours per mediation sessions.

to be available. However, the Ministry paid service providers the same hourly rate regardless of the services performed, whether the time was spent on actual mediation, which use 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 the mediation work that helps divert cases away from the court system.

Figure 8 shows examples of service providers that met, or were close to meeting the performance requirement, but were not actively engaged in mediation services. For example, in 2018/19, the Ministry paid $108,700 to a service provider at court location "A" based on 1,087 hours billed—almost the minimum of 1,092 hours stipulated in the contract. We found, however, that this service provider only provided the equivalent of about 98 hours of mediation. This means that most of this payment was for availability, and not necessarily mediation-related work.

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.

MINISTRY RESPONSE

The Ministry agrees to review the service delivery model for Family Mediation and Information Services and consider options for an activity-based payment structure for the next procurement cycle.

4.3.2 Use of Ministry-Funded Mediation Services Has Varied Uptake at Court Locations

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 more use of mediation services, instead of going through the court system for resolving their family law matters.

However, the Ministry has 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 uptake of mediation at different court locations. Between 2014/15 and 2018/19, an average of about 3,700 family law cases per year were directed

Figure 9: Lowest and Highest Percentage of Domestic Family Law Cases Directed to Ministry-Funded Mediation Intake Services, Average between 2014/15 and 2018/19

Source of data: Ministry of the Attorney General

Average Level of Family Law Cases Received[1]	# of Contract Locations[2]	Lowest (%)	Highest (%)
>3,000	3	2	6
1,501–3,000	9	4	14
751–1,500	7	3	12
<750	27	2	17

1. Five-year annual average number of divorce, child and spousal support, and child custody and access cases received by court location.
2. Some contracts consist of services to more than one court location; however, service providers were not required to separately report on services delivered by location.

to service providers for screening to determine if the case was appropriate for mediation. This represented only about 6.5% of all family law cases that were potentially eligible for Ministry-funded mediation. While the percentage of cases that were eligible for funding remained relatively stable over the five-year contract term, the average percentage of eligible cases sent for mediation screening varied significantly as shown in **Figure 9**. For example, for locations receiving an average of fewer than 750 eligible cases, the percentage of cases directed to mediation ranged from a low of 2% to a high of 17%. This variation means that some court locations use more mediation services than others.

We also noted that the main source of referral to mediation varied between locations. While some locations saw the most referrals from lawyers, others saw the most referrals from judges and the parties themselves. However, other than informal discussion between the Ministry and the service providers, the Ministry had not conducted an analysis to determine why some service providers had more cases directed to them than others.

For the new service provider contracts effective April 1, 2019, the Ministry requires each service provider to promote mediation with local justice partners, such as the family law bar and the local judiciary, and provide quarterly reports on the results of their efforts. It is unclear whether this is an effective strategy, as the contracts do not provide any incentives to service providers to invest in promotion.

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

MINISTRY RESPONSE

The Ministry agrees to determine the long-term plan for mediation services and monitor uptake of these services. It will explore opportunities to collaborate with justice partners on a province-wide communication strategy to promote Family Mediation and Information Services. The Ministry will continue to meet quarterly with managers of the court and service providers to discuss uptake of family justice services, contract management and outreach activities. Service providers are currently contractually required to develop the schedule of on-site mediation services in consultation with the manager of the court and the judiciary.

In the next procurement cycle, the Ministry will consider additional performance targets related to outreach and uptake.

4.3.3 Ministry Did Not Set Targets for Percentage of Family Law Cases Directed to Mediation Intake Service

The Ministry offers on-site and off-site mediation (see **Appendix 5** for a description of these services) to parties with ongoing court cases to try to resolve their family law–related issues outside the courtroom. One of the primary goals of these services is to divert appropriate cases away from the court to free up courtroom resources for more complex cases. While mediation is a voluntary process, and not all cases can be mediated, parties should have the opportunity to try it. Therefore, the number of cases directed to mediation for intake is an important measure for monitoring these Ministry-funded services. The Ministry requires service providers to report the number of mediation intakes they perform under their service agreements. However, the contracts do not set Ministry targets for mediation intake at each court location. Targets would encourage service providers to promote the use of mediation for appropriate family law cases.

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.

MINISTRY RESPONSE

The Ministry agrees to review the service delivery model and consider additional performance targets related to uptake of services in the next procurement cycle.

4.3.4 Ministry Lacked Proper Oversight of the Bills Submitted by Service Providers

As explained in **Section 2.3.1**, service providers bill the Ministry each month, up to a pre-determined yearly maximum for services they provide. The Ministry relies on the service providers to bill accurately for the services provided. Our audit reviewed the Ministry's existing billing verification process. We found that while the Ministry checks for mathematical errors and for basic reasonableness of the billings, such as identifying unusually long days billed by a certain mediator, it does not verify whether the hours of services billed were actually worked.

The Ministry's Internal Audit raised the same concern in its January 2017 report. The report noted that the Ministry had no process in place to validate the hours invoiced by the service providers. Internal Audit recommended that the Ministry perform periodic, random reviews of a sample of reported hours against source documents, such as timesheets and mediation files.

Although Internal Audit made this recommendation in 2017, the Ministry has not completed any reviews of billing and source documentation. In November 2017, the Ministry informed Internal Audit that it had developed a schedule for conducting visits to review the operations of all service providers on a regular basis. However, no visits were actually performed.

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.

MINISTRY RESPONSE

The Ministry agrees to monitor monthly invoices submitted by service providers and explore options to create an enhanced invoice with more

Figure 10: Child Support Service Online Tool—Number of Applications Initial Set-up and Recalculation of Child Support, 2016/17–2018/19

Source of data: Ministry of the Attorney General

Fiscal Year	# of Applications Received (A)	# of Applications Processed Successfully[1] (B)	Applications Processed Successfully (%) (B/A)
Child Support Initial Set-up[2]			
2016/17	145	11	8
2017/18	176	16	9
2018/19	382	25	7
Subtotal	**703**	**52**	**7**
Child Support Recalculation[2]			
2016/17	85	31	36
2017/18	143	52	36
2018/19	260	76	29
Subtotal	**488**	**159**	**33**
All Applications			
2016/17	230	42	18
2017/18	319	68	21
2018/19	642	101	16
Total	**1,191**	**211**	**18**

1. Final notices were issued for applications that were processed successfully.
2. Applicants can apply to use either the initial set-up or the recalculation function of the tool.

details to address the Auditor's concerns. The Ministry agrees to perform periodic reviews in person at service provider offices/court locations.

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

4.4.1 The Province Spent $6 Million on the Tool but Usage Was Only 3.2% of Its Initial Projection

As discussed in **Section 2.3.3**, 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. In its 2013/14 business case, the Ministry of the Attorney General projected that the Child Support Service online tool (online tool) would receive 10,000 applications in 2017/18. However, in 2017/18, it only received about 320 applications—about 3.2% of the projection. 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 (see **Figure 10**). The Ministry has not done an evaluation of the tool to determine why the uptake has been low. We identified the following reasons contributing to the low uptake:

- The online tool is a voluntary service that both parents must consent to use, which may limit some potential use.
- Similar to other Canadian jurisdictions, the eligibility to use the tool is restricted. For example, the child support payor cannot earn more than 20% of their annual income from self-employment.

- In Ontario, an $80 non-refundable fee is charged to the applicant at the time of applying, regardless of whether the other party agrees to use the tool, which may be a barrier for some. We noted that Alberta's Child Support Recalculation Program would perform the recalculation and invoice the parties only if the recalculation was successful.

As well, the Ministry has not done a cost/benefit analysis to assess whether this tool should be maintained or if any other modification should be made.

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.

MINISTRY RESPONSE

The Ministry agrees to perform a cost/benefit analysis to assess whether the Child Support Service online tool should be maintained or modified and/or promoted more.

The Ministry is currently in discussions with the Family Responsibility Office about potentially developing targeted communication to their clients.

4.4.2 Only 18% of Applications Processed Successfully Since the Online Tool Was Implemented in 2016/17

As shown in **Figure 10**, 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 reasons for the high rejection rates.

Staff at the Ministry of Finance process applications submitted through the online tool, using income information provided by the parents, or using this Ministry's direct access to income information from the Canada Revenue Agency, and provides the Ministry of the Attorney General high-level statistics, such as the number of applications received, the number of applications successfully processed, and the number of applications rejected. However, the Ministry of the Attorney General did not request that the Ministry of Finance provide reasons for the significant number of applications that could not be processed, and therefore, was unable to identify the root causes to address them.

During our audit, we requested and reviewed about one-third of the rejection letters issued by the Ministry of Finance in 2018/19. Because the Ministry of Finance's system, called "ONT-TAXS," did not track the reasons in the rejection letters sent to applicants, the Ministry of Finance's staff regenerated the letters for our review. Since our audit request in August 2019, the Ministry of Finance has been working on a new report for the tool to provide a list of rejection letters, and the reason for each rejection, as part of its monthly reporting to the Ministry of the Attorney General.

Through our review of a sample of rejection letters, we identified that staff at the Ministry of Finance had rejected a majority of the applications because the payors did not submit the information required for them to perform the calculation. However, the rejection letters did not include enough detail for further analysis of the root causes of the high rejection rate.

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; and
- 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.

MINISTRY RESPONSE

The Ministry agrees to work with the Ministry of Finance on a change request that will update reporting requirements to include enhanced tracking of reasons for unsuccessful applications. Ministry representatives participate in regularly scheduled meetings with provincial and territorial partners to discuss their respective administrative recalculation services, share best practices and identify areas for improvement. This engagement will be continued in order to explore ways to increase uptake and success rates of Ontario's online child support service.

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

As explained in **Section 2.3.2**, 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 audit. As a result, not all parties have the same access to the Program across the province.

In January 2019, the Ministry and the Office of the Chief Justice of the Superior Court evaluated the Program to assess whether it delivered meaningful progress in family law cases. The Ministry's goal was to achieve any one of the following, in 50% of its cases: full resolution of the matter, partial resolution of the matter, an order for disclosure order, or a withdrawal of the motion. The evaluation indicated that overall, six out of nine courthouses exceeded the 50% benchmark on average, each year, from 2013/14 to 2016/17. However, at the time of our audit, the Ministry and the Superior Court had not yet finalized the evaluation, and had not concluded whether the Program should remain in the nine courthouses currently served, be expanded to additional courthouses or be eliminated entirely.

We obtained the most current data available and noted that, in 2018/19, of the 1,486 cases heard by dispute resolution officers:

- 17% (259) reached a full settlement; 19% (274) reached partial settlement; 64% (953) did not achieve any settlement; and
- 15% (216) generated disclosure orders.

The Ministry could not determine the number of motion withdrawals that might have been made following the meeting with a dispute resolution officer.

Based on this data, we performed a preliminary financial assessment of the Program to determine whether it could result in cost savings if expanded, considering that when the Program was used, there was no resolution 64% of the time. We 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 courthouses 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.

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.

MINISTRY RESPONSE

The Ministry agrees to extend the Dispute Resolution Officer Program pilot for another year to build in additional key performance indicators and complete a further evaluation.

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

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 audit, the Ministry was unlikely to achieve this target as it had not completed a plan to do it.

As discussed in **Section 2.1** and **Figure 1**, there is a split of legal jurisdiction between the Ontario Court and the Superior Court. It is not efficient or simple for parties to resolve their family issues. For instance, often, the parties must attend both the Superior Court and the Ontario Court to resolve their family law–related issues because no one court can deal with all related issues. The Ministry estimated that there were approximately 4,000 instances per year where parties were required to attend both courts. Unifying the legal jurisdiction under one court means parties need to attend only one court to resolve their family law–related issues.

Ontario has had unified legal jurisdiction for all family law matters through Unified Family Courts in 17 locations since 1999. The Unified Family Court is a branch of the Superior Court; judges are appointed and paid by the federal government. As such, Ontario must have the support of the federal government to expand the number of Unified Family Court locations. **Appendix 10** shows the timeline of key events since the Unified Family Court was first established in Ontario.

In 2017, the Ministry, in conjunction with the Superior Court and Ontario Court, proposed to complete a province-wide expansion of the Unified Family Court by 2025. On May 13, 2019, the Ministry completed the first phase of this expansion by unifying an additional eight court locations, bringing the number of Unified Family Court locations in Ontario to 25 out of a total of 50 locations.

The Ministry expected that significant facilities improvements would be needed for the remaining locations. As of August 2019, the Ministry was still conducting a needs assessment on the existing facilities to accommodate the unification at the remaining 25 locations. Brampton, Milton and Toronto—three of the busiest family court locations in the province—are among the locations the Ministry expected would pose the most significant facility challenges.

All three of these locations were undergoing significant planning for improvements, or construction was underway at the time of the audit. The Ministry was consulting with the judiciary and stakeholders to identify options for accommodating Unified Family Courts in Brampton and Milton, but it had not yet confirmed the plans for these two locations at the time of the audit. The facility needed to accommodate a Unified Family Court in Toronto is significant, as family law matters are heard in three courthouses—393 University Avenue (Superior Court, and matters being relocated to 361 University Avenue), 311 Jarvis Street (Ontario Court), and 47 Sheppard Avenue (Ontario Court). There were no plans yet to consolidate all family matters in Toronto at the time of the audit. While in 2009, the Ministry had envisioned consolidating the Superior Court and Ontario Court family law cases in the New Toronto Courthouse, the Ministry reassigned the new courthouse for hearing the Ontario Court's criminal matters only in 2014.

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; and

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

MINISTRY RESPONSE

The Ministry agrees to work in partnership with the Offices of the Chief Justice of the Superior Court of Justice and the Ontario Court of Justice to finalize a plan to expand the Unified Family Court across the remainder of the province. A local needs assessment is under way.

The Ministry agrees to seek a commitment from the federal government for the additional judicial positions necessary.

4.7 Ministry Lacks Formal Policy on Quality Reviews of Data Entry

As discussed in Section 4.1.4 and Section 4.2.4, we 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. The guideline states that the manager or supervisor at each courthouse should select a minimum of three to five different court files each week. Where data entry errors are identified, the reviewers should make any corrections and educate staff as required. However, there is no requirement for the managers and supervisors to follow the Ministry's review process and guideline.

Based on our visits at the seven court locations where we conducted detailed audit work, we found that none followed the Ministry's guideline for data entry review in 2018/19, as follows:

- Two court locations did not perform any reviews, although one of the locations developed and followed its own quality review process.
- The other five court locations performed reviews on 23 to 144 files, below the minimum total of between 156 and 260 files per year, as three to five files per week are recommended by the Ministry.

As well, we 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.

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; and
- 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.

MINISTRY RESPONSE

The Ministry agrees and will take the steps identified in the recommendation to ensure staff are performing data entry reviews on a regular basis and to use the results of the reviews to further strengthen mechanisms to identify and address any common errors, and make system improvements to FRANK where feasible.

Appendix 1: Participants in Family Court Process

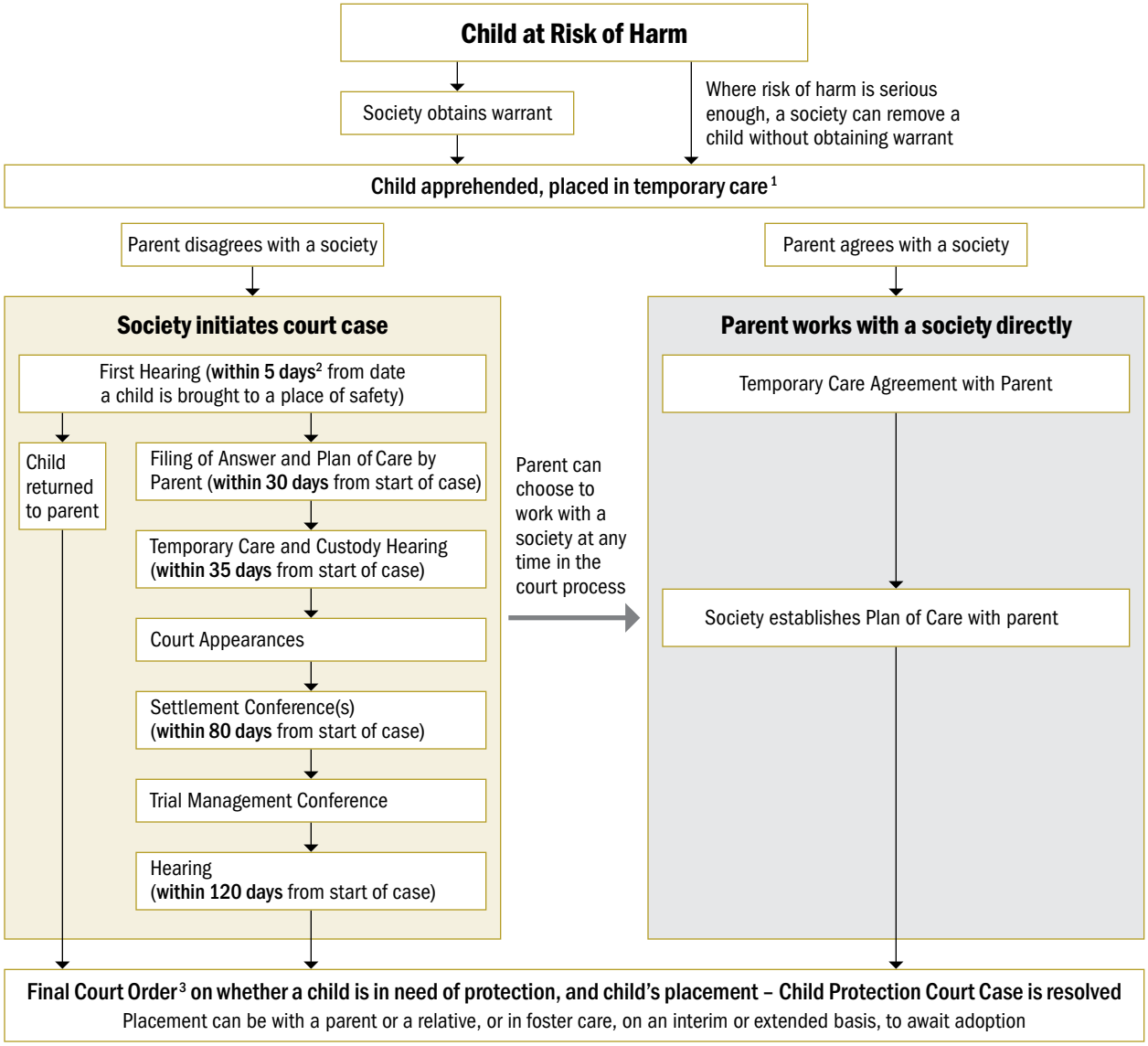
Prepared by the Office of the Auditor General

Participants	Roles	
Court Support Staff	Part of Court Services Division, a division of the Ministry of the Attorney General (Ministry). Court staff schedule court cases at the direction of the judiciary, maintain court records and files, collect filing fees, provide administrative support to the judiciary, and provide legal information to the public, where needed.	
Judiciary	Judges that preside over family court events. Where appropriate, they work with family law case participants to resolve their cases without proceeding to a trial.	
Duty Counsel	Lawyers paid by Legal Aid Ontario (a provincial agency reporting to the Ministry) to help individuals who cannot afford counsel. They do not represent an individual for their entire case until resolution, but assist those who meet Legal Aid Ontario's financial eligibility threshold and are in court on a given day. They perform tasks such as negotiating settlement terms with the opposing party or the opposing party's legal counsel.	
	Child Protection Cases	**Domestic Family Law Cases**
Applicant	The party that starts the child protection case in court. A children's aid society is typically the applicant of a child protection case.	The party that files the application or motion to change an existing court order to start the family law case in court. The Family Responsibility Office can also bring court action against child and spousal support payors who are in arrears.
Respondent	The party that the case is filed against. A parent or custodian, who is believed to be putting a child in danger, is typically the respondent to a child protection case.	The other party in the relationship, which the applicant filed claims against. There is no respondent in a divorce case where the spouses jointly apply for divorce.
The Office of the Children's Lawyer (Children's Lawyer)	The Children's Lawyer may be directed by the court to assign a lawyer to represent a child who is the subject of a child protection proceeding; this could include parents of a minor child (younger than 18 years old).	Where necessary, the Children's Lawyer helps to provide independent information about the child's needs, wishes and interests by assigning a lawyer to represent the child, a clinician to write a report for the court, or both.
Other interested party	Parties other than the applicant or respondent of a case who have an interest in the placement of the child in need of protection, such as grandparents.	Parties other than the applicant or respondent of a case who have an interest in the case, such as extended family members.
Family Court Streamlining Services (see **Section 2.3**)	Not Applicable.	Services such as Family Mediation and Information Services and the Dispute Resolution Officer Program that help to divert less complicated family law cases away from court, or attempt to settle the cases more quickly.

Appendix 2: Key Steps in a Child Protection Case in the Ontario Court of Justice or the Unified Family Court

Prepared by the Office of the Auditor General

A child protection case involves a children's aid society (society) removing a child from an unsafe environment and bringing them to a place of safety, or supervising parental care of the child. If a society finds that a child is at risk of harm, such as abuse or neglect, and the society is unable to work with the parents to create a safe environment for the child, the society will initiate the removal of the child, placing the child in another environment, such as foster care. The society will then file a court application outlining the reasons for removing the child, to which the parents can respond. If the society determines that removal of the child is not necessary, the society will seek a court order to supervise the parents and the child. Once a child protection case is initiated, there are a number of statutory time limits to complete steps in the case to ensure timely resolution, as outlined below. These statutory timelines are applicable to all child protection cases, regardless of whether the child is removed or not, except for the first hearing, which is applicable only to cases involving removal of the child from an unsafe environment.



1. When a society removes a child from the care of the parent(s), the society can establish temporary care in a foster home, or in a relative's home that it has assessed to be safe.
2. Excluding weekends and holidays.
3. The decision can be reached on consent by all parties involved, or if parties cannot come to an agreement, it is determined by a judge either at trial or in a summary judgment motion. In a summary judgment motion, when appropriate, a judge may issue a decision without the consent of all parties based on the facts evident in the case.

Appendix 3: Key Steps of a Child Protection Case in the Ontario Court of Justice or Unified Family Court

Source of data: Ministry of the Attorney General

Step in the Case	Description	Maximum Time for Completion, from the Date the Case is Filed
First Child Protection Application		
First hearing	Where a child has been removed form an unsafe environment, the children's aid society (society) must proceed to court within five days for a first hearing. The first hearing usually results in the society obtaining the judge's order deciding where the child will be placed temporarily, and the conditions of the placement, such as foster care or in a relative's home. A future date for a temporary care and custody hearing may also be set. Alternatively, a judge can decide to return the child to the parent with or without the supervision of the society.	5 days*
Service and filing of answers and plans of care	The parent must submit an Answer and Plan of Care within 30 days to respond to the concerns raised by the society. The society must also submit a Plan of Care within 30 days to support its application. The plan must address where the child will live, who will take care of the child, and why each party believes this plan is in the best interests of the child.	30 days
Temporary care and custody hearing	A temporary care and custody hearing is supposed to take place within 35 days. The purpose of the hearing is to decide what happens to the child while the case is ongoing. The hearing provides the first chance for the parent to present their side of the case, and what they want. A judge listens to what each party involved in the case has to say, reviews the evidence presented and issues a temporary order.	35 days
Court appearances	Court appearances are scheduled to discuss the case with a judge and to try to reach an agreement between the parent and the society without a hearing or a trial. It usually focuses on what has to be done to reach a final placement decision. This might include the parties updating the court on the child's status and what has occurred, as well as setting deadlines for filing and discussion about issues that remain outstanding.	n/a
Settlement conference(s)	Settlement conferences usually focus on discussing the issues to see if the parent and the society can agree on any of them. The judge may state a potential decision in the case, to help the parties understand what the court might order if the case goes to trial. A settlement conference is supposed to take place within 80 days after the society starts a child protection application. The court may delay a settlement conference if the parent is (or the parents are) working on the issues and not ready to proceed to settlement yet.	80 days
Hearing	A hearing is held to determine whether the child is in need of protection.	120 days
Status Review Application		
A status review application starts a new court application. A party can ask that the court reviews the child's placement that was ordered by the court in the previous child protection case, a minimum of six months after. A status review is not an appeal or a review of the last order, but a review of the child's situation since the last order.		Same timelines as above are applicable

* Excluding weekends and holidays.

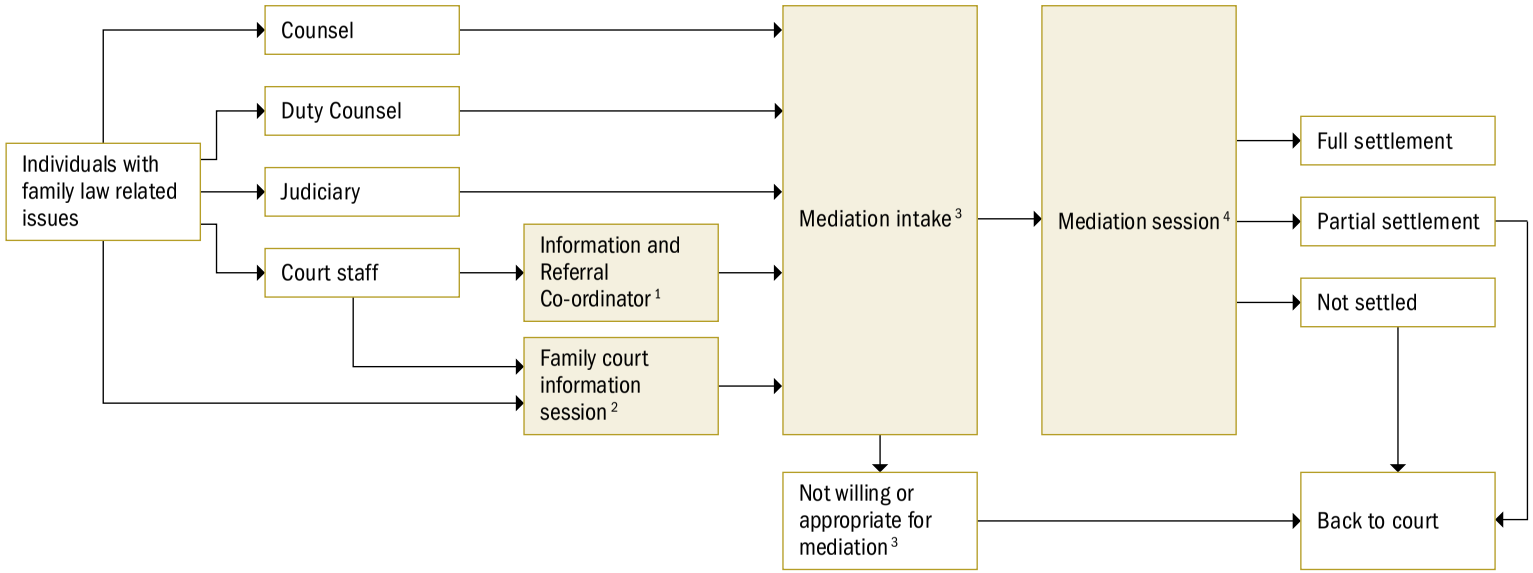
Appendix 4: Key Steps of a Typical Domestic Family Law Case

Source of data: Community Legal Education Ontario

Steps in the Case	Description
Application	• The applicant submits the appropriate forms and documents at the appropriate court location, which starts the case, then receives a court file number from the court staff. • The applicant serves the court-issued application on the other party (the respondent). • The respondent fills out forms in response to the claims outlined in the application, indicating if they agree or disagree with the applicant's claims, and/or make claims of their own.
Family Court Information Session	• An information session separately attended by the applicant and respondent. The session provides the parties with basic information on family law, the court process and the alternatives to court such as mediation.
First Appearance	• The First Appearance (if one is scheduled) is an administrative court appearance. The majority of First Appearances are in front of a court clerk (Ministry staff) but could also be in front of a judge in some court locations. The court clerk or judge meets with the parties to check that all documents are complete and have been properly served.
Case Conference	• Case conferences are held either in a courtroom or a conference room at the court location; they are meetings between a judge and the parties, including any lawyers. • The discussions include identifying any issues that need to be solved, ways to solve those issues without going to a trial, information that needs to be shared, and next steps to resolve the issues. If the parties agree on any issue during a case conference, the judge can make an order to resolve that issue.
Motion	• After a case conference, the parties can ask the court to make a temporary order about any issues with a motion. • Motions can be short or long. At most family court locations, short motions are scheduled for up to an hour and long motions are scheduled for more than one hour.
Settlement Conference	• If the parties have not sorted out the issues after one or more case conference, the judge may schedule a settlement conference to help settle the issues. • In a settlement conference, the judge plays a more active role in trying to get the parties to agree on the issues. They focus on hearing attempts that the parties have made at settling the issues, and are more likely to provide an opinion on how the parties should settle.
Trial Management Conference	• If the parties have not settled the issues, the judge sets a date for a trial management conference where he or she will discuss how the trial will proceed, how long the trial will take, a trial date, and can provide a last chance to resolve the parties' issues.
Trial	• Trials are typically a set number of days where the lawyers, or parties themselves if self-represented, present evidence to the judge, and call and cross-examine witnesses. At the end of the trial, the judge makes a decision on all issues tried. • The judge administering the trial must be a different judge from the case conference and settlement conferences judge. • There are no jury trials in family law. • Trials can be short or long. In the Ontario Court of Justice, short domestic family law trial generally is defined as matters requiring two days or less while a long trial is generally defined as three or more days. In the Superior Court of Justice, the definition for a short trial varies from less than three days to 15 days, depending on the court location. The definition for a long trial varies between over three days and 15 days.

Appendix 5: Key Entry Points and the Typical Process for Ministry-Funded Mediation Services

Prepared by the Office of the Auditor General of Ontario



1. The Information and Referral Co-ordinator is located in the Family Law Information Centre at family court locations. It is free of charge and available to anyone. A service provider staff learns and understands individuals' family law-related issues and matches them with services appropriate to their needs, such as shelter services, legal services, and social assistance programs.
2. A family court information session, free of charge, is for those involved in certain types of family law cases, and the public. It provides the parties with information on the effects of separation and divorce on parties and children, the court process, and alternative dispute resolution options like mediation.
3. Mediation intake is performed by accredited mediators and assesses the parties' appropriateness for mediation. Parties may not be willing to mediate, or the case may not be appropriate for mediation due to the presence of power imbalance in a relationship or domestic violence, which does not enable the parties to mediate in a safe and constructive way.
4. Mediation sessions are performed by accredited mediators. On-site mediation is free to the parties and intend to resolve narrowly scoped issues on the day of the court appearance at the courthouse, typically taking two to three hours per session, including intake. Off-site mediation typically occurs at the service provider's or mediator's own office involving more complex issues. It is offered at a subsidized rate of $5/hour to $105/hour for each party depending on their income and number of dependents.

Appendix 6: Family Mediation and Information Services Contracts, 2018/19

Source of data: Ministry of the Attorney General

Service Provider	2018/19 ($ 000)	# of Contracts
AXIS Family Mediation Inc.	937	4
Blue Hills Child and Family Centre	276	1
Bridging Family Conflict Inc.	226	1
Coppola and Associates Inc.	206	2
Daniel Francis Lanoue	88	1
Durham Mediation Centre Inc.	358	1
Kawartha Family Court Assessment Service	269	3
Keith Fraser	130	2
Limestone Mediation Ltd.	254	2
mediate393 Inc.	1,260	2
Mediation North Inc.	773	9
Michael J. Kushnir	357	3
Peel Family Mediation Services	591	2
The Mediation Centre Inc.	781	9
The Mediation Centre of Hamilton-Wentworth	155	1
The Mediation Centre of Simcoe County Inc.	415	2
Vicky Visca & Associates	163	1
Total	**7,239**	**46**

Note: Some contracts include services provided for more than one court location.

Appendix 7: Audit Criteria

Prepared by the Office of the Auditor General of Ontario

1.	Effective and efficient court services processes are in place for child protection cases in accordance with applicable legislation.
2.	For family law matters other than child protection cases, effective court services processes are in place to support timely court appearances as needed.
3.	Technology is used to its full advantage to improve efficiency and effectiveness of the family court system and reduce costs.
4.	Effective processes are in place to procure and manage service providers in delivery of family court services, including the Family Mediation and Information Services, in accordance with applicable government directives and best practices. Performance of service providers are monitored and evaluated on a timely basis.
5.	Appropriate financial, operational and case file management data are collected to provide accurate, reliable, complete and timely information to help guide decision-making and assist with performance management and public reporting in the delivery of court services. In addition, reasonable targets are established to allow evaluation of performance and periodic public reporting. Corrective actions are taken on a timely basis when issues are identified.

Appendix 8: Difficulties Encountered During our Audit

Prepared by the Auditor General of Ontario

Date	Events
Mid-March	• We first indicated to the Ministry of the Attorney General (Ministry) that we needed to review both child protection and domestic family law case files during our court visits. • Staff from the Court Services Division flagged that information pertaining to child protection cases could not be released without judicial approval according to section 87(8) of *Children, Youth and Family Services Act, 2017* (Act) which states "No person shall publish or make public information that has the effect of identifying a child who is witness at or a participant in a hearing or the subject of a proceeding, or the child's parent or foster parent or a member of the child's family."
End of March	• We requested a listing of pending cases for child protection, and domestic family law cases. • We received the listing of pending domestic family law cases shortly after our request. We did not receive the list of pending child protection cases.
April	• Staff from the Court Services Division responded to us that "the OCJ [Ontario Court of Justice] is not authorizing release of the child protection pending list. An order is required for access to adoption and child protection matters unless the Auditor General can point to an exemption to legislative restrictions..."
May	• The Auditor General met with the Chief Justice of the Ontario Court of Justice (Ontario Court) to discuss the concurrent audits, including our Office's access to child protection files. • Representative from the Office of the Chief Justice of the Ontario Court indicated that "Sections 87(4) and 87(8) of the (Act) preclude public attendance at hearings and preclude making public identifying information available." According to the Office of the Chief Justice, this legislation restricted our Office's access to child protection case files. • Representative from the Office of the Chief Justice of the Ontario Court later agreed to release a listing of child protection cases (both disposed and pending disposition) for us to select a sample of cases for review. • Representative from the Office of the Chief Justice of the Ontario court also agreed that, once we selected a sample from various courthouses, it would authorize the Ministry to release the case history reports to us, with personal information redacted. Representative from the Office of the Chief Justice of the Ontario court did not authorize the Ministry to release the complete and more detailed case files to us.

End of May	• We obtained the child protection case listings and selected a total of 85 cases (about 10 from each of the seven courthouses[1] we visited, and 15 additional cases from one courthouse that had an unusually high number of cases pending disposition) for our sample.
	• We received all 85 case history reports within two weeks of our request. Personal information was redacted from the case history reports.
	• Because the redacted case history reports did not contain key information, such as the children's ages and whether they were in interim care such as foster care, these reports alone could not be used to determine whether the statutory timelines required under the Act were applicable in the selected cases.
	• When we asked for further information, staff from the Court Services Division indicated that "Court staff must not provide the audit team:
	  • Any materials in the child protection files (including the endorsement[2] records)
	  • Any identifying information about the parties, related individuals (e.g. foster parents) and/or children named in the files; or
	  • Information about the reasons for delay, why the case remains on the pending list, why any adjournments have been granted, or details about the final disposition made."

Date	Events
June	• Our office contacted the Office of the Chief Justice of the Ontario Court and the Office of the Chief Justice of the Superior Court, and asked for further access to child protection cases. Both Offices of the Chief Justices agreed to release judges' endorsements[2] for the sample cases. • The selected judicial endorsements required redaction of personal information, and review by the Ministry and the Offices of the Chief Justices before they would be released to the audit team. • We first requested eight child protection cases, and received the related redacted endorsement within two weeks, by the end of June. • The Ministry indicated that, for the first sample of eight, "Court staff have done a lot of work to assemble the requested documents for our review, but there has also been a need for a lot of back and forth between ourselves and the courts to make sure that the packages are complete and properly redacted."

July	• The Auditor General sent a letter to the Deputy Attorney General expressing her concerns about the audits, including our limited access to child-protection case files.
	• The Deputy Attorney General acknowledged our requests and indicated that the Ministry was working with the Courts to "develop a balanced approach that permits Court Services Division to release redacted parts of the child protection files to your office, while complying with its statutory obligations."
	• We selected an additional seven cases (for a total of 15) to review. Again, we were provided the related redacted endorsements,[2] but not the actual case files. We received the endorsements by the end of July.
	• We reviewed all of the redacted endorsements and had many questions about adjournments and delays. We submitted our questions to both the Offices of the Chief Justices of the Ontario Court and Superior Court.
	  • Representative from the Office of the Chief Justice of the Ontario Court responded that "The questions you have forwarded, however, relate to specific judicial case management or judicial decision-making in specific child protection files, which is not within the scope of the audit team's mandate."
	  • Representative from the Office of the Chief Justice of the Superior Court responded that "Judges' endorsements speak for themselves. It is not for us to interpret them."

Mid-July to August	• We approached the Ontario Association of Children's Aid Societies and other children aid societies to ask for their perspectives about court delays in resolving child protection cases. • Two of the children's aid societies provided us with two cases as examples of how children were affected by lengthy court processes.

1. The seven courthouses were Newmarket, Ottawa, Sault Ste. Marie, Thunder Bay, Milton, Windsor, and 311 Jarvis Street, Toronto.
2. Endorsements or endorsement records are written directions of the judge at each appearance.

Appendix 9: 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

Family Court Services	Information That Is Publicly Available	Information That Is Not Publicly Available		Why We Need Access to the Information	Impact of Not Getting Access On Completion of Audit
		We Were Given Access	We Were Denied Access		
Ontario Court of Justice (Ontario Court)					
Scheduling of child protection cases	*Guiding Principles and Best Practices for Family Court* to help judges to manage and make rulings in child protection cases. One of the guidelines states "...child protection matters whose outcome would affect the well-being and day-to-day physical, emotional and/or mental health of children should be considered matters where time is of the essence. Scheduling of these matters should reflect this."	An overview of the court scheduling for child protection cases with trial co-ordinators, regional senior judges and/or local administrative judges.	Court scheduling information, such as past court dates and upcoming court dates that were scheduled, maintained by trial co-ordinators who work under the direction of the judicial officials.	To determine if child protection cases were scheduled according to the Ontario Court's *Guiding Principles and Best Practices for Family Court* (**Section 4.1.2**).	Unable to determine if child protection matters were scheduled as early as possible to avoid unnecessary delays.
Superior Court of Justice (Superior Court)					
Scheduling of child protection cases	The Superior Court's annual report (for 2015 and 2016) mentioned that "In 2015, the Superior Court of Justice implemented new Best Practices for Child Protection Cases, which address the scheduling, assignment and conduct of each step in a child protection case."	• An overview of the court scheduling for child protection cases with trial co-ordinators, regional senior judges and/or local administrative judges. • The next available trial dates for child protection cases, by courthouse, between October 2017 and April 2019.	• A copy of the complete version of the *Best Practices for Child Protection Cases*. • Court scheduling information, such as past court dates and upcoming court dates that were scheduled, maintained by trial co-ordinators.	To review the *Best Practices for Child Protection Cases* established by the Superior Court and examine compliance against its own best practices. (**Section 4.1.2**)	Unable to determine if child protection matters were scheduled as early as possible to avoid unnecessary delays.

Family Court Services	Information That Is Publicly Available	Information That Is Not Publicly Available		Why We Need Access to the Information	Impact of Not Getting Access On Completion of Audit
		We Were Given Access	We Were Denied Access		
Ministry of the Attorney General, Ontario Court of Justice and Superior Court of Justice					
Child protection cases	**Ontario Court of Justice** • # of cases received, disposed and pending disposition, reported by month, by courthouse, by region and province-wide. • # of appearances heard by type of appearance, by month, by courthouse, by region, and province-wide. **Superior Court of Justice** • Aggregated number of family law cases received by region, but not separated into child protection cases and domestic family law cases.	• Case statistics from FRANK, separately reported for child protection cases. • Of the 85 child protection case files requested, we received a redacted listing of court events (called the case history report) for all 85 cases, and redacted endorsements (mostly hand-written) made by judges for only 15 of the 85 selected cases, given the amount of time Ministry staff spent redacting these endorsements.	• Complete child protection cases files for all 85 selected samples. • Answers to our inquiries directed to the Ministry's court staff about the sampled cases, such as information about the reasons for delays, why the case remains on the pending list, and why any adjournments have been granted. • Answers to our inquiries directed to representatives from the Ontario Court and the Superior Court regarding the redacted information.	To determine 1. whether a child is in interim society care, such as foster care, and 2. the age of the child involved. This information is critical to determine whether the cases are subject to the statutory timelines under the *Child, Youth and Family Services Act* (Act). If the cases are subject to the statutory timelines, we need to determine how long the child has been in interim society care, and whether the cases exceeded the statutory timelines as well as the reasons for the delays.	Unable to examine details of the selected cases to determine whether they were subject to the statutory timelines under the Act and/or the reasons for delays. Cases not resolved within the statutory timelines may leave the child in uncertainty for longer than necessary (Discussed in **Section 4.1**).

Family Court Services	Information That Is Publicly Available	Information That Is Not Publicly Available		Why We Need Access to the Information	Impact of Not Getting Access On Completion of Audit
		We Were Given Access	We Were Denied Access		
Ontario Court of Justice and Superior Court of Justice					
Scheduling of domestic family law cases	**Ontario Court of Justice** • *Guiding Principles and Best Practices for Family Court* to help judges manage and make rulings in domestic family law cases. **Superior Court of Ontario** • The Superior Court's annual report mentions it developed and implemented new practices for family cases, but its *Family Law Best Practices* is not publicly available.	**Ontario Court of Justice** • Wait time data for first court appearances at 37 family court locations for the calendar years 2016 to 2018. **Superior Court of Ontario** • We were provided the *Family Law Best Practices*, which sets the maximum timelines for scheduling domestic family law events, such as case conferences and settlement conferences. • Wait time data for various court events between October 2017 and April 2019.	Court scheduling information, such as past court dates and upcoming court dates that were scheduled, maintained by trial co-ordinators.	To determine the following in **Section 4.2.1**: 1. if the wait time data provided to us were complete and accurate; and 2. to validate the reasons for delays in obtaining court hearing dates.	Unable to determine the completeness and accuracy of the wait time data provided to us, and confirm the reasons for delays. Delays in obtaining court dates for domestic family law cases prolong the time that a family must spend in resolving their issues, leaving them in distress and uncertainty.
Ministry of the Attorney General, Ontario Court of Justice and Superior Court of Justice					
Domestic family law case	**Ontario Court of Justice** • # of cases received, disposed and pending disposition, reported by month, by courthouse, by region and province-wide. • # of appearances heard by type of appearance, by month, by courthouse, by region, and province-wide. **Superior Court of Justice** • Aggregated number of family law cases received by region, but not separated into child protection cases and domestic family law cases.	• Case statistics from FRANK, separately reported for domestic family law cases. • We received and reviewed 70 domestic family law case files in their entirety.	None	Not applicable	Not applicable

Appendix 10: Key Events of the Unified Family Court Expansion

Source of data: Ministry of the Attorney General (Ministry)

Date	Key Events
1977	Hamilton becomes the first Unified Family Court in Ontario.
1995	The Ministry unifies the family law jurisdiction in an additional four locations.
1999	The Ministry unifies the family law jurisdiction in another 12 locations, bringing the total to 17.
2002, 2012	The Ministry attempts to expand the number of Unified Family Court locations again in these two years but does not receive the necessary support from the federal government for judicial appointments to complete the expansions.
Jun 2017	The federal government formally releases a call for proposals for Unified Family Court expansion from interested Canadian jurisdictions.
Sep 2017	The Ministry in collaboration with the judiciary, finalizes the response to the request, recommending Ontario expand Unified Family Court locations in phases. The Ministry also proposes to complete the province-wide expansion by 2025.
May 2019	The Ministry completes the first phase of the expansion, unifying the family law jurisdiction in eight locations, bringing the total number of Unified Family Court locations in Ontario to 25, serving approximately 50% of the province's population. This phase involves court locations that require minimal changes to facilities. For example, one location requires one additional courtroom, and another requires minor refurbishment to judicial chambers.
Jun–Aug 2019	The Ministry begins to conduct a needs assessment on the existing facilities of the remaining 25 locations to accommodate the unification. For instance, the Ministry estimated it would need approximately 50 new federal judicial appointments to serve these locations. The Ministry would need to find space for these newly appointed judges, as well as office space for the additional support staff. The assessment had not been completed as of August 2019.