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# Reflections

The contents of four of this year's value-for-money audits—Adult Correctional Institutions, Court Operations, Criminal Court System and Family Court Services—are intertwined, so it is fitting they be published together as *Volume 3* of our *2019 Annual Report*. The province spends about \$1.5 billion each year on these four areas combined.

Adult correctional institutions are the responsibility of the Ministry of the Solicitor General. While the issues facing these institutions are unique, the institutions are significantly impacted by the work of the Ministry of the Attorney General (Ministry) as it concerns court operations and the judiciary.

In fact, about 80% of the approximately 51,000 individuals admitted into Ontario adult correctional institutions in 2018/19 were accused persons on remand who were awaiting bail or trial. On a daily basis, remanded inmates represent 71% of the 7,400 inmates in custody. The remaining 29% of inmates are those that have been found guilty of a crime with a sentence of less than two years. The proportion of the remand population in institutions in Ontario has increased in the last 15 years, from 60% in 2004/05 to 71% in 2018/19. In 2017/18, the percentage of Ontario's inmates on remand was the second-highest of all jurisdictions in Canada. In essence, justice for these inmates is being delayed—justice delayed is justice denied.

Processing cases efficiently through the courts would significantly reduce the number of inmates on remand and potentially reduce the pressures on adult correctional institutions.

Timely justice is also important for the victims of crimes and their families. When justice is not obtained or obtained late, public confidence in the justice system can erode.

The government and Members of the Legislative Assembly must make difficult decisions on the allocation of taxpayer dollars to programs and services in Ontario. Frequently, government decision-makers direct funding primarily to the more visible programs, such as those providing health, education and social services. Funding correctional institutions and the justice system may have a perceived lower public priority because the average Ontarian may only have limited contact with the courts and the institutions. Yet substantial money is needed and is provided to the courts and adult correctional institutions. So, it is critical that funding decisions be based on timely and good information. The four chapters in this volume provide some of the information needed to help decision-makers fulfill their responsibilities, and highlight the need for improvement in the information collected by and available to the Ministry of the Solicitor General and the Ministry of the Attorney General.

## Chapter 1—Adult Correctional Institutions

In 2018/19, the Ministry of the Solicitor General managed 25 adult correctional institutions with an annual budget of \$817 million, admitting 51,000 individuals into the institutions as either convicted or remand inmates.

Overseeing and operating adult correctional institutions is complex and challenging. The issues faced include the timeliness of the court system, the services available to inmates both when they are in the correctional institutions and when they return to the community, the working conditions and training of correctional staff, the living conditions in the facilities, and the appropriate handling and treatment of inmates' behavioural and mental health issues. A correctional system focused on reducing both recidivism and reoffending must respond to these issues in an integrated manner.

Our report highlights that adult correctional institutions need to be better equipped to deal with the challenges resulting from the high proportion of inmates on remand and from inmates with both confirmed and possible mental health issues. There also needs to be a focus on creating more positive working conditions for staff that addresses their exposure to violence and the threat of violence from inmates, providing better training on how to handle inmates with mental health conditions, and improving the strained relationship between management and staff.

The Ministry of the Solicitor General fully co-operated with us throughout the audit and provided information on a timely basis.

## Chapter 2—Court Operations and Chapter 3—Criminal Court System

Ontario's court system has three courts. Both the Ontario Court of Justice (Ontario Court) and the Superior Court of Justice (Superior Court) deal with criminal law and family law cases. The Superior Court deals with fewer and more serious criminal offences, and is the only court that hears

civil cases, including small claims. The third trial court, the Ontario Court of Appeal, was not part of our audit. The Ministry of the Attorney General (Ministry) is responsible for all matters relating to the administration of the courts, such as providing facilities, court staff, information technology and other services such as court reporting. In the 2018/19 fiscal year, the Court Services Division had expenditures of \$258 million, and the Criminal Law Division's expenditures totalled \$277 million. The province also paid about \$145 million in judicial salaries, including benefits, to the Ontario Court in the same year. As of March 2019, there were 74 courthouses in Ontario, with a total of 673 courtrooms where judges hear cases.

Our reports on court operations and the criminal court system provide current insights into the justice system and include recommendations for improvements, many of which are dependent on increased availability and use of technology.

We encountered many difficulties in obtaining information while conducting both these two audits and our audit of family court services (see **Chapter 4**). As a result, we were unable to assess whether administrative courtroom scheduling is being done efficiently and cost effectively, nor could we independently confirm why courtroom utilization is not meeting Ministry targets for optimal usage. We also were not able to independently confirm the reasons for delays in disposition of criminal cases where the files are maintained by Crown attorneys. We were not provided with the necessary access to information to do our work to report to the Legislature on these key areas.

Government decision-makers, legislators and the public are obliged to respect the independence of the Ontario judiciary. However, they still have the right to information that will allow them to understand and assess the performance of our courts system; whether court facilities need to be expanded and why; whether correctional institutions need to be expanded and why; and whether the justice system is being managed as cost effectively and efficiently as possible.

On average, Ontario's courtrooms are used 2.8 hours per day, which is considerably less time than the Ministry's optimal average use of 4.5 hours per day. Twenty-seven of the 32 courthouses where we noted above-average delays in disposing criminal cases also operated fewer hours than the Ministry's optimal average of 4.5 hours per day. We also noted during our audit that, with the exception of a few courthouses that were operating at overcapacity, courtrooms in many other courthouses were underutilized or were empty at various times. As highlighted in our report on Court Operations, we were only provided with commentary as to why this happens, but our access to the information we needed to be able to fully analyze and confirm what we were told was denied by the Offices of the Chief Justices of the Ontario Court and the Superior Court.

The judiciary believes that any decision it makes is outside the purview of the *Auditor General Act*, which states the following: "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" [*emphasis added*]. As well, under the *Auditor General Act*, a disclosure to the Auditor General does not constitute a waiver of solicitor-client privilege, litigation privilege or settlement privilege.

We concur with the judiciary that, notwithstanding these provisions of our Act, its judicial rulings relating to cases before the courts are not to be questioned by our Office. However, with respect to its decisions regarding the administration of the court system, including the scheduling of courtrooms, we believe we do have the right to access any and all information we need for our audit. After all, taxpayers fund the administration of the court system and the building of courthouses. And Ministry employees can readily access the information that we were denied access to. In not permitting us

information on courtroom scheduling, our audit was considerably hampered. In previous health-care audits, we have audited the scheduling of operating rooms and nurses, and this enabled us to make recommendations for improvement.

Compounding the denial of access to administrative courtroom-scheduling information were the delays and limitations we encountered in obtaining other information from the Ministry. This is consistent with the delays we encountered in our previous Court Services audits in 2003 and 2008. For example:

- We were refused full access to a sample of 175 criminal and mental health case files that are maintained by Crown attorneys. We asked to review these files to determine the reasons why some of these cases were delayed. Instead, the Ministry of the Attorney General's Criminal Law Division summarized some details from the files and provided those to us. Although reasons for delays were provided, we could not substantiate and confirm the reasons by independently and objectively reviewing the complete files in a timely manner.
- We were also refused access to about 115 of a sample of 240 digital audio recorded notes from court hearings. We asked to review these notes to confirm how long courts were in session. We were able to review only 125 of these notes from our sample.

A main takeaway from the access-to-information issues we experienced was that Ontario's court operations need to be more transparent and accountable to the taxpayers who fund it.

Transparency, accountability and effectiveness are also significantly hindered by the fact that the overall pace of court system modernization in Ontario remains slow. Unlike other jurisdictions, the court system in Ontario is still heavily paper-based, making it inefficient. In 2018/19, almost 2.5 million documents—over 96% of them paper documents—were filed in Ontario's court system,

ranging from the cases' initiating documents to evidence and court orders made by a judge.

In addition to the increase in remand inmates and the statistics showing lower-than-targeted courtroom utilization, we found that the backlog of criminal cases we noted in our previous audits of Court Services in 2003 and 2008 continues to grow. Between 2014/15 and 2018/19, the number of criminal cases waiting to be disposed increased by 27%, to about 114,000 cases. One result of this backlog is the increasing age of the cases pending disposition: cases pending disposition for more than eight months increased by 19%, from about 31,000 cases in 2014/15 to about 37,000 cases in 2018/19.

According to information provided by the Ministry, 191 provincially prosecuted cases have been stayed at the request of the defence since July 2016 because the prosecution or the court system had been responsible for unreasonable delays. In these cases, the guilt or innocence of the accused person is not determined.

As well, the average number of days needed to reach a bail decision has increased over the past five years, which we estimated resulted in about 13,400 additional bed days in adult correctional institutions for remand inmates. We also noted that videoconferencing technology in the criminal-justice sector continues to be underutilized.

The province funds mental health courts, which have been in operation in Ontario since 1997; however, the benefits arising from the use of these courts are unknown. Procedures are not clearly outlined, there is a lack of proper data on their operations, and definitions of mental health courts' objectives and intended outcomes are imprecise. In contrast, Nova Scotia has set key objectives for its mental health court, has evaluated the court's success in reducing recidivism relative to the regular criminal justice system and provides a wide range of information to promote public awareness.

The Office of the Chief Justice of the Ontario Court of Justice refused to confirm whether or not it has performed such a review of mental health

courts in Ontario. Therefore, we cannot confirm to the Legislature whether a review has been performed. In 2018/19, 33% of about 51,000 inmates admitted to provincial adult correctional institutions had a mental health alert on their file indicating possible mental health concerns, compared to 7% of inmates admitted in 1998/99.

## Chapter 4—Family Court Services

Despite limitations placed on our audit work by the Offices of the Chief Justices of the Ontario Court and the Superior Court and the Ministry, we were able to determine that effective and efficient processes were not in place in the family court system to enable its consistent monitoring of and adherence to the legislated timelines for interim Children's Aid Society care orders, which 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, and some for more than three years. Because the Ministry of the Attorney General's information system did not capture accurate and complete information, neither the Ministry nor we were able to determine how many of these cases were subject to the statutory timelines in the *Child, Youth and Family Services Act, 2017*, in order to confirm that the statutory deadlines were being met. These timelines require that when an order of interim Children's Aid Society care is issued by the courts, the length of the interim care should not exceed 18 months for children under the age of six, and 30 months for children between the ages of six and 17.

We identified significant delays in some cases. But because the Offices of the Chief Justices and the Ministry denied us access to the complete child protection case files we needed to complete our work, we could not confirm the reasons for those delays, nor confirm why the statutory timelines were exceeded. Such delays can put children at unnecessary risk.

We believe that under the *Auditor General Act* we are entitled to access complete child protection case files, which are accessible to Ministry employees. In denying our access, the Ministry and the Offices of the Chief Justices cited the following clause in the *Child, Youth and Family Services Act, 2017*: “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.” Although we assured the Ministry and the Offices of the Chief Justices that we would not publish the names of such individuals in our Report, we were still not provided access.

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 information we had requested, with many parts redacted, making it again difficult to complete our work. The Court Services Division of the Ministry also refused to allow its staff to answer our questions about why some cases were delayed.

The Ontario Court publishes its *Guiding Principles and Best Practices for Family Court*, and we were able to obtain this document. However, the Superior Court would not provide us with a copy of its Best Practices for Child Protection Cases.

## In Conclusion

When our Office is refused access to information to conduct our work on behalf of the Members of the Legislature, our responsibility is to inform the Legislature of this fact. Notwithstanding the incompleteness of the information available to us for our audits on court operations, criminal courts and family courts, we were still able to provide a number of recommendations encouraging transparency and accountability in the court system in Ontario. Our recommendations highlight the significant need to quicken the modernization of the justice system, so that the information in its systems is readily available to decision-makers to make timelier decisions and to provide for timelier access to justice for the victims of crimes, those charged with crimes, children who are the subject of child protection cases, and the families of all of these people.

The correctional system also has challenges to address. There needs to be a focus on reducing the high remand inmate population and addressing the rising inmate population with either suspected or confirmed mental health issues. Equally critical is providing correctional officers with extensive training in techniques for working with the 33% of inmates with mental health alerts on their files, and improving working conditions for staff in adult correctional institutions.

Sincerely,



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