

Legislative  
Assembly  
of Ontario



Assemblée  
législative  
de l'Ontario

# STANDING COMMITTEE ON PUBLIC ACCOUNTS

## **CHAPTER 2: COURT OPERATIONS**

(Volume 3: 2019 ANNUAL REPORT OF THE OFFICE OF THE AUDITOR  
GENERAL OF ONTARIO)

1<sup>st</sup> Session, 43<sup>rd</sup> Parliament  
2 Charles III

ISBN 978-1-4868-7298-5 (Print)  
ISBN 978-1-4868-7286-2 [English] (PDF)  
ISBN 978-1-4868-7288-6 [French] (PDF)  
ISBN 978-1-4868-7287-9 [English] (HTML)  
ISBN 978-1-4868-7289-3 [French] (HTML)

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The Honourable Ted Arnott, MPP  
Speaker of the Legislative Assembly

Sir,

Your Standing Committee on Public Accounts has the honour to present its Report and commends it to the House.

A handwritten signature in black ink that reads "Tom Rakocevic".

Tom Rakocevic, MPP  
Chair of the Committee

Queen's Park  
September 2023



STANDING COMMITTEE ON PUBLIC ACCOUNTS  
MEMBERSHIP LIST

1<sup>st</sup> Session, 43<sup>rd</sup> Parliament

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KRISTYN WONG-TAM regularly served as a substitute member of the  
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## **INTRODUCTION**

On February 27, 2023, the Standing Committee on Public Accounts held public hearings on the value-for-money audit of Court Operations (*2019 Annual Report of the Auditor General of Ontario*), overseen by the Ministry of the Attorney General.

The Committee welcomes the Auditor's 2019 findings and recommendations and now presents its own findings, views, and recommendations in this report in view of the remarkable progress towards modernization utilizing digital technology following the onset of the COVID-19 pandemic in March 2020. The Committee requests that the Ministry provide the Clerk of the Committee with written responses to the recommendations within 120 calendar days of the tabling of this report with the Speaker of the Legislative Assembly, unless otherwise specified.

## **ACKNOWLEDGEMENTS**

The Committee extends its appreciation to officials from the Ministry of the Attorney General. The Committee also acknowledges the assistance provided by the Office of the Auditor General, the Clerk of the Committee, and Legislative Research. The Committee also extends its appreciation to the Chief Justices of the Superior Court of Justice, and the Ontario Court of Justice.

## **BACKGROUND**

Ontario's court system has two trial courts—the Ontario Court of Justice (Ontario Court) and the Superior Court of Justice (Superior Court)—as well as a Court of Appeal. The Ontario Court and the Superior Court both deal with criminal law and family law cases. The Superior Court deals with fewer, and usually the most serious, criminal cases as well as civil cases, including small claims.

The Ontario government appoints and compensates Ontario Court judges, while the federal government appoints and compensates Superior Court judges.

Under the *Courts of Justice Act*, regional senior judges and their delegates (under the direction and supervision of the Chief Justices) are responsible for preparing trial lists. They are also responsible for assigning cases and other judicial duties to individual judges, determining judges' workloads, determining sitting schedules and locations, and assigning courtrooms.

Each Chief Justice of the Ontario Court and of the Superior Court has signed a publicly-available memorandum of understanding (MOU) with the Attorney General setting out areas of financial, operational, and administrative responsibility and accountability between the Ministry and the courts.

## Oversight and Funding

Under the *Courts of Justice Act* (Act), the Court Services Division (Division) of the Ministry of the Attorney General is responsible for all matters relating to the administration of the courts, including providing facilities, court staff, information technology and other services such as court reporting. Other matters assigned to the judiciary by law are those related to the education, conduct and discipline of the judiciary; or matters assigned to the judiciary by a memorandum of understanding with the Attorney General.

As of March 31, 2019, the Division had 2,775 full-time equivalent staff (94% of whom are court support staff), costing \$258 million for the fiscal year. In 2018/19, the Ontario government paid about \$145 million in salaries and benefits to the Ontario Court for 642 Ontario Court judges and justices of the peace.

At the time of the audit in March 2019, there were 74 courthouses in Ontario, with a total of 673 courtrooms for judges to hear cases.

## AUDIT OBJECTIVE AND SCOPE

According to the Auditor General, the objective of the audit 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 criminal and family law matters on a timely basis, with consistent delivery of court services across the province, in accordance 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.”

The audit was conducted between December 2018 and August 2019.

## ISSUES RAISED IN THE AUDIT AND BEFORE THE COMMITTEE

The Committee heard that while the audit occurred before the onset of the COVID-19 pandemic in March 2020, the pandemic catalyzed an acceleration of digitization and modernization initiatives in court operations.

The Ministry explained that it is working together with the Superior Court of Justice and the Ontario Court of Justice on a digital end-to-end criminal justice solution. The Ministry’s new Courts Digital Transformation Branch is leading the project with support from the Courts and the Division. In addition, the Ministry continues to work in partnership with the Ministry of the Solicitor General on the criminal justice digital design initiative to modernize criminal justice processes to enable digital sharing of information and evidence in criminal cases.

The Ministry outlined its significant progress on a number of digital and other strategies that are transforming the delivery of justice services:

- Criminal e-Intake allows police and other investigative agencies to electronically send and receive documents and data.
- Digital Evidence Management enables police and other investigative agencies to manage, store and share digital investigative or evidentiary files using a consistent set of tools and standards.
- The Courts Digital Transformation (CDT) project will replace outdated paper-based procedures with an online platform for case management, scheduling, e-filing, and document management. CDT is expected to be implemented by 2030.
- An expansion of the Justice Services Online portal has enabled electronic filing for more than 700 types of documents; and now includes an online court case search tool to facilitate the searching of court case information, including future court dates and appearance types, in criminal proceedings and in most civil proceedings.
- Critical investment in new technology is being made to support virtual and hybrid hearings, including a \$2.5 million investment in Starlink satellite technology to provide reliable, affordable, high-speed Internet access and videoconferencing equipment to enable virtual court proceedings in 29 fly-in communities.
- The Criminal Justice Video Strategy will increase the use of video for pre-trial in-custody court appearances and facilitate remote access to defence counsel for inmates.
- The multi-year Justice Accelerated Strategy was launched in 2021 to “move more services online and closer to Ontarians, no matter where they live, including rural, northern, and First Nation communities.” In 2022, an additional \$65 million was invested over five years to ensure that hearings are available in courthouses in every region of the province.
- The Criminal Case Backlog Reduction Strategy was launched in October 2021 with a \$72-million investment.

### **Courtroom utilization**

The Auditor reported that “the Ministry’s resources, such as courtrooms, were not being used efficiently and in a cost-effective way to support the timely disposition of cases.”

The Committee asked about the Auditor’s finding that Ontario courtrooms run only 2.8 hours on an average business day, well below the Ministry’s optimal average target of 4.5 hours. The Committee heard that the courtroom utilization tracking system currently in use only tracks when the judge is sitting on the dais, and does not reflect the judicial work that moves cases forward but may be undertaken outside of courtroom working hours. For this reason, the Ministry

suggested that the optimal average of 4.5 hours “is not a good proxy to find out whether” the courts are efficient.

The Ministry noted that system improvements are being made to both the FRANK case management system and the ICON Scheduling Courtroom Utilization Screen system that will, among other things, help to capture more detail regarding courtroom operating hours. Both systems are outdated and will be replaced by the new Court Digital Transformation (CDT) system.

When fully implemented, the CDT system for case management will allow for more efficient scheduling of cases and use of facilities, and enable more accurate performance measurement. The Ministry explained that while it was originally proposed that the Superior Courts and the Ontario Courts would each have their own case management systems, the Ministry decided it was better to have the two courts cooperate on a common system.

The Committee asked whether the use of remote practices such as hybrid and virtual hearings can be leveraged to alleviate pressure on some of the busier jurisdictions by sharing staff and resources regionally or province-wide. The Ministry agreed that the new technology being employed will allow sharing and more effective use of court resources and staff across jurisdictions. In addition, the new courthouse being opened in Toronto will allow for more efficient use of judges.

### **Committee Recommendations**

The Standing Committee on Public Accounts recommends that:

1. The Ministry of the Attorney General report to the Committee on its progress in using digital technology such as hybrid and virtual hearings to make judges available to jurisdictions across the province, including information on judges’ jurisdiction of origin and jurisdictions served.
2. The Ministry of the Attorney General report to the Committee on the progress of its collaborations on the Court Digital Transformation project for case management.

### **Court system modernization**

The Committee asked about the Auditor’s finding that the Ministry’s overall pace in modernizing the court system remained slow, and the system is still heavily paper-based, making it inefficient and therefore keeping it from realizing potential cost savings.

The Ministry noted that the modernization of the court system means “rethinking common practices and longstanding traditions of how justice should be administered in Ontario.” The Committee heard that the onset of the pandemic accelerated plans to modernize the system “while underscoring the need for greater progress.”

The Committee asked the Ministry about the benefits of digital technology for modernizing various parts of the legal process, and for improving access to Ontarians in rural and other areas of the province. The Ministry noted tha

through the Criminal Justice Video Strategy it has increased the use of videoconferencing technology for criminal court matters as the Auditor recommended. The Committee learned that metrics are being developed for performance measures to enable tracking and evaluation of video conferenced court appearances.

The Ministry noted that the use of virtual and hybrid hearings not only enables people to participate in the justice system remotely but also allows the public to watch court proceedings remotely. These measures are a “massive benefit” that “opens up the access to justice.” (The Committee heard that both the Superior Court and the Ontario Court have issued presumptive guidelines on what types of proceedings must be conducted in person and what can be done virtually.)

Another area of modernization is that there are now more than 700 types of documents that can be filed electronically rather than requiring people to come to the courthouses in person. The implementation of the digital information repository will allow court staff and the judiciary to use information submitted through e-intake digitally.

### **Committee Recommendations**

The Standing Committee on Public Accounts recommends that:

3. The Ministry of the Attorney General ensure that necessary protections are in place (upon request) to ensure that some types of trials are not conducted virtually.
4. The Ministry of the Attorney General ensure that any party to a proceeding has the right to have an in-person hearing.
5. The Ministry of the Attorney General consider making in-person hearings the default option.
6. The Ministry of the Attorney General provide publicly accessible information on public access to view virtual and in-person proceedings, and ensure that modernization and digitization should never impede parties and members of the public from accessing courthouses and courtrooms in person.
7. The Ministry of the Attorney General ensure that necessary protections are implemented to prevent digital hacking of sealed evidence.
8. The Ministry of the Attorney General encourage the use of telephone and virtual platforms during the initial stages of cases as much as possible.
9. The Ministry of the Attorney General ensure that assistance is available to Ontarians who require assistance with digital access to court proceedings.

10. The Ministry of the Attorney General report to the Committee on the advantages and disadvantages of hybrid and virtual hearings versus in-person hearings; and track the number of requests for in-person hearings versus the number of these in-person hearings that take place.

### **Planning new courthouses**

At the time of the audit, the Ministry was building a new courthouse for Toronto to consolidate criminal matters from six existing Ontario Courthouses located throughout the city. (The Courthouse is now operational.)

The Auditor reported that key justice system partners including the Office of the Chief Justice of the Superior Court and the Toronto Police Service raised concerns with the Ministry's "level of consultation and communication on such a major infrastructure decision." The Auditor also noted that capital decisions did not address the most pressing needs at the time for Halton, Barrie, and Newmarket.

The Committee learned that there is now a Judicial Facilities Working Group with members from all three Courts, as well as senior Ministry staff. Working group members will work collaboratively to identify, prioritize and plan for judicial facilities' needs. In addition, after large-scale renovations and new courthouses are approved, police will be engaged in the planning process and thereafter.

### **Court services staff absenteeism**

The Auditor reported that court services regular staff absenteeism increased by 19% between 2014 and 2018, while the number of staff declined by 10%. The Ministry reported that the total cost of lost time due to absenteeism was \$7 million in 2017 and \$8.6 million in 2018. The Auditor concluded that the Ministry "could do more to manage the increasing number of sick days taken by Division staff and oversee the travel claims submitted by court interpreters."

The Committee asked what steps the Ministry has taken to reduce staff absenteeism. The Ministry noted that some absenteeism is due to the high stress environment of courtrooms, and there are a number of new mental health and other supports in place to assist these staff members.

In addition, the Ministry explained that nearly 250 more full-time employees have been hired in an effort to reduce staff workload and the stress that contributes to absenteeism. The Ministry is also now using the Ontario Public Service's attendance management system to enable a Ministry-wide approach to monitoring staff absenteeism.

### **Committee Recommendation**

The Standing Committee on Public Accounts recommends that:

11. The Ministry of the Attorney General investigate the causes of staff absenteeism and on this basis, report to the Committee on a costed plan with timelines to reduce levels of absenteeism.

## **Ministry oversight of court interpreters**

The Auditor reported that although there were 676 pre-accredited interpreters on the Ministry's registry, the Ministry paid about 140 interpreters and 37 third-party agencies a total of approximately \$898,290 in 2018/19 to provide courtroom interpretation services despite not being on the Ministry's registry. Outside interpreters are only supposed to be used in situations of extreme urgency. The Auditor concluded that, among other things, the justification for interpreters' travel and travel expenses was not consistently documented. "Over one-third of travel claims were uneconomical" and expenses would have been lower had interpreters been booked locally.

The Ministry has taken a number of steps to implement the Auditor's recommendations with regard to court interpreters, including requiring the use of Ministry-accredited interpreters, monitoring compliance with this requirement, and documenting the use of interpreters booked outside of the Ministry's central registry. The Committee also heard that a significant benefit of the move to virtual and hybrid hearings is that court interpreters are now able to interpret hearings remotely, in about 100 languages.

## **Performance targets for timely disposition of cases**

The Committee asked about the Auditor's finding that Ontario has no performance targets to assess the efficiency and effectiveness of court operations, especially those relating to the timely disposition of cases. They also asked whether the Ministry has reviewed best practices from other jurisdictions, such as British Columbia, on public reporting of performance measurement.

The Ministry responded that "there are performance standards as set down by the Supreme Court of Canada [for the disposition of criminal cases] —18 months in the Ontario Court, 30 months in the Superior Court," and these targets are met "almost all the time."

The Ministry explained that the current case management systems in use do not allow for public reporting of performance against targets but that the new systems that are expected to be implemented will be better able to capture and report such data.

The Committee asked whether progress has been made in tackling the ongoing case backlog. The Ministry noted that the backlog existed before—and was exacerbated by—pandemic-related shutdowns and delays. Also, when the courts first reopened after the initial pandemic-related shutdown, they lacked the technology to conduct hearings virtually.

The Ministry agreed with the Committee's observation that another factor underlying the backlog is an increase in the number of serious criminal cases, which take many more weeks to dispose.

The Ministry explained that the Criminal Case Backlog Reduction Strategy and other strategies include upgrading case management courts, judicial pre-trials, trial scheduling, and expanding the use of remote court proceedings. Some 340 new court employees have been hired, including crown prosecutors, court services staff, victim and witness support staff and bail vettors (i.e., experienced

crowns attorneys who facilitate faster bail decisions and resolutions when appropriate). The strategy also includes an updated COVID-19 Recovery

Directive for prosecutors and new legal aid help for self-represented accused persons.

### **Committee Recommendations**

The Standing Committee on Public Accounts recommends that:

12. The Ministry of the Attorney General review and evaluate best practices in public reporting of performance management in British Columbia and other relevant jurisdictions.
13. The Ministry of the Attorney General provide updated data to the Committee annually on the disposition of cases, including how many cases are disposed of and which types of cases.

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## CONSOLIDATED LIST OF COMMITTEE RECOMMENDATIONS

The Standing Committee on Public Accounts recommends that:

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