

Chapter 4

Ministry of the Attorney General

Section 4.01

Office of the Public Guardian and Trustee

Follow-up to VFM Section 3.01, *2004 Annual Report*

Background

The Office of the Public Guardian and Trustee's (Office) primary responsibilities include: acting as the guardian of property and/or ensuring the provision of personal care for mentally incompetent individuals and administering the estates of persons who die in Ontario without a will and without known relatives. The Office also has a general supervisory role over charities and charitable properties to protect the public's interest. As well, since 1997, its duties have expanded to include those of the Accountant of the Superior Court of Justice, which is the depository for all monies, mortgages, and securities paid into, or lodged with, the court.

For the 2005/06 fiscal year, the Office had approximately 320 staff (300 staff in 2003/04) and operating expenditures of \$28.8 million (\$27 million in 2003/04). The Office charges fees for its services in accordance with amounts permitted by legislation and based on the value of assets, income, and services required. These fees amounted to \$19.7 million in the 2005/06 fiscal year (\$16.5 million in 2003/04). For the fiscal year ended March 31, 2006, the Office was responsible for the investment and management of approximately \$1.2 billion (\$1 billion in 2003/04) in assets

as trustee for its incapable clients and for other clients from various programs.

In our *2004 Annual Report*, we noted that the Office had made a number of key operational improvements to enhance services to incapable clients since our last audit in 1999. However, our audit did identify areas where improvements were still required. Specifically:

- In the administration of estates, while some progress has been made in locating heirs for estates taken over, a significant backlog still exists.
- Although initial action had been taken to locate all minors who are entitled to assets being held by the Accountant of the Superior Court of Justice once they have become eligible for payment, in a number of cases there was a lack of follow-up action.

In addition, our audit identified the following concerns with respect to the management of the \$1 billion in assets entrusted to the Office at that time for investment under its various programs:

- In selecting fund managers, the Office selected one candidate as its top choice to manage two of its funds despite the fact that this candidate had consistently underperformed when compared to most of the other candidates and to market benchmarks for

the 10-year period preceding the candidate's selection. We were also concerned that, after being awarded the contract for one of the funds, the candidate was granted substantially higher management fees than the fees in its original quote, even though this candidate had been awarded the contract primarily because of its low fee quote.

- The Office did not adequately take into account the health and age of incapable and minor clients before investing a significant portion of the clients' funds in higher-risk stock markets through its diversified equities fund.
- Insufficient attention was paid to ensuring appropriate diversity of client investment portfolios. This resulted in some clients' incurring significant losses.

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

Current Status of Recommendations

According to information received from the Office of the Public Guardian and Trustee, substantial progress has been made in addressing the recommendations in our *2004 Annual Report*, especially those relating to our concerns with respect to the Office's management of its billion-dollar investment portfolio. The current status of action on each of our recommendations is as follows.

ESTATE ADMINISTRATION

Locating Heirs

Recommendation

To properly discharge its duty as estate trustees, the Office should increase its efforts to locate heirs and distribute assets on a more timely basis.

Current Status

According to the Office, many estate files had been closed since the 2004 audit, resulting in significantly fewer estates under administration. Specifically, in the period between December 31, 2003 and March 31, 2006, the Office opened 470 estate files and closed 991 files. Of the closed files, 409 were escheated, 466 were distributed to heirs, and 116 were otherwise closed, primarily because they were transferred to alternative estate trustees for the purpose of distribution to heirs. As of March 31, 2006, the Office had 1,264 outstanding estate files with assets valued at about \$85.7 million under its administration. This number of files outstanding had decreased by about 500, or 28%, since December 2003.

At the time of our follow-up, the Office indicated that it was adding functionalities to its recently developed information system to facilitate better case management, automate routine tasks, and provide better tools to assist with follow-up on estate files. As well, the Office's Business Re-engineering Review was looking at procedures in the estate unit, with a view to introducing efficiencies and improvements.

In order to better evaluate and report on the timeliness of file activities, the Office indicated that it was introducing an additional quality assurance process. The status of every estate file open beyond three years is to be reviewed by supervisors on a quarterly basis to monitor whether all the appropriate steps are being taken in a timely manner.

Accountant of the Superior Court of Justice and Distribution of Assets

Recommendation

To ensure that beneficiaries receive funds when they are legally entitled to them, the Office should initiate more rigorous and timely follow-up action to locate and distribute funds to intended beneficiaries.

Current Status

The Office's tracking system maintains a database of trust accounts for all minors who have money in court and logs searches that have been performed and their outcomes. According to the Office, as of December 2005 there were 1,495 accounts for which beneficiaries had not been located; 86% (1,288) of these had had follow-ups initiated during 2005. The Office indicated that a defect in the tracking software was the main reason there had been no follow-up for the remaining 14% (207) of the accounts. At the time of our follow-up, the software defect was being corrected and follow-up had begun on these accounts.

For beneficiaries who were difficult to locate, several sources were being used to search for them, including address/phone number lookups, the Ministry of Transportation, insurance companies, financial institutions, and Canadian Law List for lawyers.

Where these and other search methods had been unsuccessful, at the time of our follow-up the Office had been seeking access to information held by the Ministry of Health and Long-Term Care (Ministry). Arrangements for the sharing of information were initiated through legislative changes to the *Public Guardian and Trustee Act* to allow the Accountant to collect the information and through enactment of a new regulation under the *Health Insurance Act* to permit the Ministry to disclose the personal information to the Accountant. The Office has initiated steps to enter into a Memorandum of Understanding with the Ministry to obtain the names, addresses, and other non-health-related information of beneficiaries from the Ministry. In

June 2006, the Office indicated that it expects the Memorandum of Understanding to be implemented in the near future.

INVESTMENT OF TRUST ASSETS

Engagement of Investment Advisory Firm

Recommendation

To obtain better value and to avoid continuous reliance on a particular vendor, the Office should establish appropriate mechanisms for attracting more potential vendors for the provision of investment advisory services.

Current Status

A request for proposals was posted on MERX, an electronic tendering system used in the Canadian public sector, in 2005 for a new investment advisor. Ten firms with appropriate expertise were notified of the posting, and six proposals were received. A five-year contract was entered into with the successful bidder in June 2005. The functions of the investment advisor include monitoring the performance of the fund managers and assisting the Public Guardian and Trustee and her Investment Advisory Committee in periodic reviews of the Statements of Policies and Goals for each of the investment funds.

Selection of Diversified Fund Managers and Post-selection Performance—Diversified Fund

Recommendation

The Office should critically evaluate the performance of potential investment managers based on investment returns and ensure that its process for selection of investment managers eliminates candidates that consistently underperform.

Current Status

A request for proposals for the diversified fund was posted on MERX on March 6, 2006 and closed on

April 12, 2006. The Office received 14 proposals. The Office indicated that the investment advisor had outlined many selection criteria for investment management firms and that, with the advisor's assistance, the Office had critically evaluated the past performance of the firms based on annual and annualized returns relative to peer groups, appropriate benchmarks, and risks.

As of July 2006, the Office was in contract negotiations with the two fund managers that were selected following the request for proposals.

Selection of Fixed Income Funds' Managers and Post-selection Performance—Fixed Income Funds

Recommendation

To enhance returns for its clients, when selecting money market investment managers the Office should:

- *use an open, competitive tender process, such as posting requests for proposals for all significant contracts on the public electronic tendering system; and*
- *evaluate candidates based on a combination of performance and fees.*

In addition, the Office should not pay fees higher than those agreed to when the contract was awarded.

Furthermore, the Office should establish appropriate indicators to measure the performance of its fund managers against appropriate investment benchmarks.

Current Status

The Office indicated that a request for proposals for fixed income funds' managers is to be released and posted on MERX in 2006. Candidates are to be evaluated with the assistance of the Office's new investment advisor, and evaluation criteria will include performance and fees.

The Office, in consultation with the new investment advisor and the Investment Advisory Committee, reviewed the benchmarks to establish

appropriate indicators for measuring the performance of fund managers. For the Canadian money market fund, it was decided to retain the benchmark as the Scotia Capital 91-day T-bill Total Return Index. However, it set an objective for the manager to outperform that benchmark on an annualized basis by 10 basis points, recognizing the latitude that the manager has in purchasing corporate paper not included in the index. With respect to the laddered buy-and-hold bond fund, the new benchmark is based on continuous reinvestment of three-year Canada zero coupon bonds, laddered at six-month intervals as determined by the Bank of Canada. The objective set for the manager was to outperform this benchmark on an annualized basis by 20 basis points.

In addition, a review of the investment strategies and mandates surrounding the Office's common funds had been completed with the assistance of the new investment advisor and the Office's Investment Advisory Committee. All investment policies and benchmarks for all funds were reviewed and amended as necessary.

The review also identified the need for a new fund that would provide a mid-term investment horizon that offers higher income than the bond and money market funds with less volatility than the diversified fund. The development of an investment policy statement and benchmark for this new Canadian dividend and income fund has been completed. A request for proposals for the new fund was posted and closed on MERX in June 2006. The Office received 15 proposals and at the time of our follow-up was in the process of evaluating them with the assistance of the investment advisor.

Investing in the Diversified Fund for Individual Clients

Review and Approval Process to Select Clients for Investment

Recommendation

To ensure major investment decisions made for individual clients are appropriate and prudent, a proper process of consultation, review, and approval should be followed.

Suitability of Investing in the Diversified Fund

Recommendation

To minimize the risk of financial losses to clients because of short-term market fluctuations, the Office should improve its review, oversight, and approval processes and ensure that its current investment guidelines are being adhered to.

Asset Allocation

Recommendation

To ensure clients' assets are not exposed to undue risk, the Office should regularly review client portfolios and act on a timely basis on recommendations from financial planners with respect to such portfolios.

Current Status

In July 2005, the Office completed a review of policies and procedures in the financial planning and investment area. Based on the results of the review, the Office indicated that it had implemented significant changes to the system of consultation, review, and approval to ensure that investments in the diversified fund are appropriate to the age, health, and financial circumstances of the individual clients. For example, senior client representatives were required to obtain more thorough and accurate information about the client's health status before deciding whether the client is a suitable candidate for investment in the diversified fund, and they are required to properly document their assessment.

According to the Office, the documentation used in the preparation of the financial plans had also been extensively revised. Several levels of oversight had been put in place to ensure that investment decisions are prudent. Financial planning recommendations were subject to review and approval by supervisors in both the Financial Planning and Client Services departments.

In addition, the Office had developed new criteria for investment in the diversified fund relating to age. No guardianship client aged 75 or over or minor aged 13 or over who has less than five years until payout is eligible for initial investment in the diversified fund. Plans for clients were to be automatically reviewed when the client reached age 80 unless a change in circumstances precipitated divestment at an earlier date. A divestment plan, based on the client's health and financial needs, was to be developed in conjunction with the front-line staff, with the maximum age for total divestment in all cases being 85.

According to the Office, a recent internal review confirmed that the new policies and procedures were being followed, proper documentation was being completed, and all required approvals were being obtained. However, there were not enough financial planners on staff to ensure timely completion and implementation of financial plans. Therefore, management was working to reallocate resources to this area.

CHARITABLE PROPERTIES PROGRAM

Recommendation

To ensure charitable assets are distributed to intended beneficiaries or successor charities, the Office should review the Canada Revenue Agency's reasons for deregistering charities on a timely basis and immediately follow up on any organizations that may represent a higher risk of misusing or misappropriating their charitable donations.

Current Status

In response to our recommendation, the Office entered into discussions with the Charities Directorate of Canada Revenue Agency to determine if it would provide information concerning charities deregistered for cause—that is, for reasons other than administrative breaches. In December 2004, the Charities Directorate agreed to provide the Office with copies of letters sent to Ontario-registered charities whose charitable status had been revoked for cause. The Office did receive some of these letters; however, legislated privacy restrictions imposed on the Canada Revenue Agency meant that limited information could be disclosed.

As a result, the effectiveness of the Office's follow-up action was also limited.

In any case, the Office informed us that a change in practice by the Charities Directorate should address our concern. According to the Office, this change in practice would ensure that charities distribute their remaining property to other qualified charities or that the revocation tax—a tax equal to 100% of the charities' assets—would be levied. The Office indicated that its role in ensuring that the assets of registered charities are properly distributed will be limited given that the Charities Directorate is now taking steps to ensure that this is done.