

---

## MINISTRY OF THE ATTORNEY GENERAL

# Office of the Public Guardian and Trustee

---

The Office of the Public Guardian and Trustee (the Office) operates under the *Public Guardian and Trustee Act* and various other provincial statutes. Its primary responsibilities include providing services to mentally incapable persons by:

- acting as the guardian of property and/or personal care for mentally incompetent individuals;
- acting as the treatment decision-maker of last resort for persons who are not capable of making their own decisions and who have no one else to make these decisions for them; and
- screening and monitoring private applications to replace the Office as guardian.

Other primary responsibilities of the Office include:

- the administration of estates of persons who die in Ontario without a will and without known relatives;
- gathering assets on behalf of the Crown when there is no known owner of these assets or the owner is a corporation no longer in existence; and
- a general supervisory role over charities and charitable properties to protect the public's interest.

In addition, as a result of the 1997 *Government Process Simplification Act*, the duties of the Office were recently expanded to include those of the Accountant of the Ontario Court.

The Accountant of the Ontario Court is the depository for all monies, mortgages and securities paid into, or lodged with the court. These assets are received and disbursed pursuant to judgments and orders of the court. The Accountant of the Ontario Court also administers monies received by the court to the credit of minors until they reach the age of majority.

The Office charges fees for its services to incapable clients and for administering estates. Service fees vary in accordance with amounts permitted by legislation, based on the size of assets, income receipts and services required. Total service fees collected in the year ended March 31, 1999 amounted to \$12.6 million. No service fees are charged for deposits to the Accountant of the Ontario Court.

The Office's head office is located in Toronto with regional offices in Toronto, Hamilton, London, Ottawa and Sudbury. For the fiscal year ended March 31, 1999, the Office had approximately 250 staff, operating expenditures of over \$21 million and managed assets of approximately \$970 million.

---

## AUDIT OBJECTIVES AND SCOPE

Our audit objectives were to assess whether the Office had adequate systems and procedures in place:

- to measure and report on the effectiveness of the key services and programs delivered; and
- to ensure that such services and programs were delivered in compliance with legislative requirements and with due regard for economy and efficiency.

Our audit focused on three core programs of the Office: Services to Incapable Persons, Estate Administration and the Accountant of the Ontario Court. Prior to commencement of the audit, we identified audit criteria to address our audit objectives. These criteria were reviewed and accepted in September 1998 by senior ministry management.

The scope of our audit, which was substantially completed in February 1999, included interviews with staff at head office and three of the five regional offices as well as reviews of client files, the Office's policies and procedures, and relevant management reports. We also reviewed and, where warranted, relied on internal audit work performed by the Office's staff to reduce duplication of audit work. We did not rely on the work of the Ministry's Audit Services Branch because it had not issued any recent reports on the Office.

Our audit was performed in accordance with the standards for assurance engagements, encompassing value for money and compliance, established by the Canadian Institute of Chartered Accountants, and accordingly included such tests and other procedures as we considered necessary in the circumstances.

## OVERALL AUDIT CONCLUSIONS

We concluded that the Office had procedures in place to measure and report on the effectiveness of its key services and programs. However, for the most part, the performance results reported by the Office did not meet its performance targets.

The Office's systems and procedures were not adequate to ensure compliance with legislative requirements and due regard for economy and efficiency in the management of client assets and financial affairs. Specifically, we found a number of cases in which the Office, in providing services to incapable persons, had:

- acted on behalf of clients without the proper authority;
- failed to obtain income entitlements for clients;
- failed to identify and account for client assets in a timely manner; and
- failed to dispose of unused assets to maximize value to clients and avoid unnecessary expenses.

Management reported serious errors in 33% of guardianship files and a high number of negligence claims. We are especially concerned that procedures were not effective in ensuring corrective action, even when significant problems had been reported to the Office's senior management.

---

For the administration of estates for individuals who died without a will or next-of-kin, we noted a lack of adequate effort by the Office in locating potential heirs to the assets of estates that had files opened prior to 1996. Under the *Escheats Act*, if heirs cannot be located, the assets of an estate become payable to the province ten years after an individual's death. The lack of search efforts resulted in unnecessary compensation charges imposed by the Office over the ten-year period.

The Accountant of the Ontario Court is the custodian of assets paid into court, including monies to the credit of children until they reach the age of majority. However, the Accountant of the Ontario Court indicated that it did not have a legal obligation to locate account holders and notify them of their assets. We found 1,300 accounts for minors with a value of over \$13 million belonging to clients who were at least 25 years old. The Accountant of the Ontario Court had not attempted to obtain current information, such as addresses, for many of these clients.

To better deploy its staff resources, the Office needed to establish workload standards and monitor time spent by staff on individual clients and tasks.

### **Overall Office Response**

***Office staff and management have worked, and continue to work, to implement vital changes in the organization. We believe that good progress has been made toward our objectives over the past few years. The Office's program for making treatment decisions for incapable people who have no alternative supports, the implementation of a new program to appoint private guardians, our procedures upon receiving initial guardianship appointments, a more aggressive program to search for heirs of estates administered by the Office and the implementation of internal audit functions received positive recognition during the audit.***

***There are many other achievements that we believe are notable. These include the establishment of much closer linkages with our clients' caregivers, implementation of procedures to ensure clients are aware of their legal rights, enhanced attention to the personal needs of clients, significant improvements in the accuracy and speed of bill paying on behalf of our guardianship clients, and appraisal and inspection of real estate.***

***Several other important initiatives that will impact directly on the issues identified by the Provincial Auditor—most specifically the issues of timeliness and consistency of follow-up on activities that are initiated by staff—have already been implemented, although too recently to have demonstrated measurable results in time for this audit. Of particular significance is the decision of this government, made pre-audit, to substantially enhance frontline staffing, allocate additional supervisory resources and explore process efficiencies through improved technology. Related improvements to processes for monitoring and prioritizing activities are in progress and are described in greater detail below in the Office's responses to specific recommendations. The Office is committed to staying the course toward its objective of excellent service in all aspects of its operation.***

---

# DETAILED AUDIT OBSERVATIONS

## SERVICES TO INCAPABLE PERSONS

Most of the Office's more than 12,000 clients are vulnerable adults incapable of making decisions about their financial affairs and/or personal care. These clients have no one willing and able to make decisions for them and guardianship is necessary to protect them from potential harm caused by abuse and/or neglect.

With the exception of about 30 personal care guardianship cases, almost all the 12,000 incapable clients are property guardianship cases requiring the Office to manage their financial affairs. Approximately 55% of these clients reside in nursing homes or other chronic care institutions and the rest are in the community. Guardianship mainly involves ensuring that clients receive all the income and/or benefits they are entitled to, determining clients' spending allowances and expense requirements, and setting up routine payments to meet those requirements.

For about 700 clients with real estate assets, proper guardianship requires additional staff effort. Staff are required to identify and account for all client assets on a timely basis, arrange for routine property maintenance and annual inspections, and dispose of assets when appropriate to maximize value for clients and avoid unnecessary maintenance and other expenses.

### EFFECTIVENESS MEASURES

In 1998, the Office developed effectiveness standards for providing services to incapable clients. The standards were based on reasonable criteria by referring to various sources, including the *Substitute Decisions Act*, judges' expectations, court decisions, standards expected of other protective service organizations such as Children's Aid Societies, private-sector trust companies and the Office's past experiences. According to the Office, trust industry standards require an error rate in the financial management of client needs of less than 5%. Management reported serious errors in 33% of the files and a high number of negligence claims.

Management advised us that many of its effectiveness standards were not achievable because of resource constraints. It had therefore established separate performance targets that were less stringent but that it considered more in line with the resources available.

Management further indicated that the performance targets measured mostly timeliness in performing various activities and not the quality of service provided by the Office. In our opinion, timeliness in meeting the needs of clients is an important aspect of the Office's activities and an integral feature of providing quality services. In addition, we noted that the Office had not developed other quality-of-service indicators to measure how well its clients are being served.

As the following sections illustrate, we found that in many cases the Office was not effective in meeting its performance targets in its services to incapable clients.

### INTAKE AND GUARDIANSHIP INVESTIGATION

On average, the Office receives about 1,000 inquiries and allegations per year from the public relating to incapable persons requiring its help. However, before the Office can take over

---

guardianship of an allegedly incapable person, it must establish that the person is indeed incapable. Timely follow-up of allegations, performance of risk investigations and obtaining guardianships are essential to protecting vulnerable persons from potential abuse.

Relatives who are willing and able to make decisions for incapable persons but who do not have the necessary power of attorney must apply to the Office for private guardianship. The Office must then determine whether the applicants are suitable as guardians.

We found that the Office had failed to meet its performance targets for:

- commencing and completing investigations in 15% of cases;
- commencing legal action in 20% of cases; and
- processing statutory guardianship applications in 60% of cases.

Since the 1996 amendments to the *Substitute Decisions Act*, the Office had investigated approximately 200 guardianship applications per year and, in total, obtained personal care guardianship for about 30 cases. We noted lengthy delays in a number of personal care cases where it took from three to nine months to complete investigations; the performance target was 35 days.

In one case where an investigation had concluded that an individual's situation was urgent, application to commence legal action was not made for approximately two and a half months. We found no documentation providing reasons for the delay. The performance target for commencing legal action in such cases is not more than two days.

We found that once investigations were completed, the Office's procedures for receiving documents, setting up files for new clients and obtaining initial guardianships of clients' properties to be generally satisfactory and in compliance with legislative requirements. We also reviewed the system of reviewing private guardianship applications and noted that it was generally satisfactory.

### **Recommendation**

**To protect incapable persons from financial loss and/or physical harm or abuse, the Office should conduct investigations of allegations of abuse and, where necessary, commence legal action on a more timely basis.**

### **Office Response**

***The Office is in the process of making improvements that will enable it to improve its targets for completing guardianship investigations within specified timelines. In 1998, we implemented a practice of weekly status reviews by the Manager of Intake of all cases plus monthly reviews by senior management of any case which staff recommend remain open 45 days or more. At that time, we also implemented a practice of assigning priorities to cases when they are opened to ensure that the most high-risk ones are dealt with first. A weekly printout of a status report on all guardianship investigations is now distributed to the manager and to all the investigators.***

## 3.02

***Additional frontline investigative staff are in the process of being recruited. Once they are trained, caseloads per investigator can be reduced, allowing files to be processed more quickly.***

***The Office is making improvements which will enable it to commence the legal work and process statutory guardianship applications on a more timely basis. For example:***

- ***The Office started (pre-audit in the spring of 1998) to track legal referrals in Intake and has been following up on the status of work in progress and ensuring that timelines for this function are met. The timelines of legal work improved for the last two quarters of the 1998/99 fiscal year due to the secondment of an additional lawyer to this program area.***
- ***A revised screening manual, with procedural efficiencies and clarifications was in development during 1997/98 and completed in January 1999. As a result of these developments, timelines for processing statutory guardianship applications are improving.***

### ONGOING GUARDIANSHIP

Most of the Office's clients are vulnerable individuals who rely solely on the Office for timely monitoring and guardianship of their financial, personal or legal situations. Proper guardianship can help prevent personal injury, health risks, and the financial and personal exploitation of these clients.

The Office has established performance targets relating to: frequency of visits; the timeliness of legal actions; field investigation of property; redirection of income; and securing and disposing of assets. Our audit found that the Office frequently did not meet these targets. For example:

- Performance targets require each new client file to be reviewed within 90 days of being opened to ensure assets were identified, secured and recorded, and legal issues identified. For 40% of cases, actual performances did not meet the targets.
- One performance target requires at least one visit to the client per year. However, the Office indicated that over 75% of the clients had not been visited as required.

We found that not only were clients not visited on a timely basis as required, but that, in some cases, the clients had never been visited at all. In addition, when visits were made, staff often did not document the details of the visits.

We reviewed work performed by the Office's internal audit staff and selected additional files based on various risk factors to assess the adequacy of the Office's procedures in ensuring proper guardianship for incapable clients.

Our audit indicated that adequate procedures were not in place to monitor client situations and, even where significant problems had been identified, to ensure timely corrective action was taken. Below are the significant problems we noted during our audit.

---

## AUTHORITY TO ACT AS GUARDIAN

Prior to becoming the guardian of property on behalf of an incapable person, the Office must obtain legal jurisdiction to manage the individual's finances. The Office can obtain jurisdiction as guardian of a client through:

- a Certificate of Incapacity issued by the doctor of a client residing in a hospital;
- a Notice of Continuance extending the Certificate of Incapacity, also issued by the individual's doctor upon discharge from the hospital;
- a finding of incapacity based on the results of a Capacity Assessment given by a capacity assessor; or
- a court order.

If jurisdiction is not established, or if it lapses and is not properly reinstated, the Office does not have legal authority to act as an incapable person's guardian.

We found that the Office's initial obtaining of guardianship generally complied with legislative requirements. However, due to the lack of timely monitoring of client situations, in a number of cases the Office had continued to act as guardian long after its authority had expired. Furthermore, when the Office became aware that proper authority was lacking, it often did not take action to rectify the problem. For example:

- At the time of our audit, the Office was still managing a client's finances four and a half years after jurisdiction had been lost, even though two years earlier, its own internal audit staff had identified the absence of jurisdiction.
- The Office was not able to initiate the sale of another client's house for over three and a half years because it did not have proper authority. We found an incomplete court application for appointment of the Office as guardian in the client's file. However, management was not able to tell us when the application had been prepared or whether it had ever been filed in court.
- The Office was aware that it had been acting as guardian of a client without proper authority since August 1996 due to an administrative error. However, it was not until our audit identified and informed the Office of the problem that action was taken to obtain a valid Certificate of Incapacity.

Amendments to the *Substitute Decisions Act* in 1996 alleviated part of the problem relating to acting without authority. When a client is discharged from a hospital with a Notice of Continuance extending the Certificate of Incapacity, the new legislation allows the Office to regard the condition of incapacity as permanent.

However, the majority of clients came under guardianship of the Office before introduction of the new legislation. Obtaining appropriate authority for these clients, such as the ones cited in the examples above, is necessary for the proper discharge of the Office's guardianship responsibilities.

---

## ***REDIRECTION OF INCOME AND APPLICATION FOR BENEFIT ENTITLEMENTS***

An important function of the Office is to identify the income sources and potential benefit entitlements of its clients. Timely redirection of existing income to the Office and application for entitled benefits are essential for meeting the day-to-day financial needs of clients. Late application for benefits, such as insurance or old age security, and spousal and disability pensions could result not only in financial hardship for clients for the period during which they have not received the income, but also in permanent loss of that income because many benefit entitlements have limits on retroactive payments.

Our audit revealed that income redirection and benefit entitlement application on behalf of clients were sometimes missing or were not done on a timely basis. These oversights included benefits under the Canada Pension Plan (CPP), Old Age Security (OAS) and Guaranteed Income Supplements (GIS), foreign pensions, disability insurance benefits and other insurance claims. Frequently, even when management became aware of problems relating to income and benefit entitlements, adequate procedures were not in place to ensure timely corrective action. For example:

### **3.02**

---

- Management was informed in April 1996 that the Office had not applied for CPP survivor's benefit for a client whose husband, a former client, had been receiving CPP before his death in 1992. We noted that an application for the survivor's benefit was only in the process of being completed in December 1998, a week after our request to see the file.
- The Office had been aware since 1995 that another client was entitled to CPP disability benefits. No follow-up action was taken for over one year and an application was submitted to CPP only in December 1997. At the time of our audit, the client was still not receiving the benefits.

Subsequent to our audit, the Office informed us that all retroactive payments were received from CPP in March 1999. However, we noted that due to the delay in submitting the application, the payments were retroactive only to January 1997, even though the client had been entitled to the benefits since 1995.

- OAS and/or GIS are available to seniors if they meet eligibility requirements and file an annual application providing a breakdown of their income. The Office had been informed that GIS payments would start for a low-income client in June 1998. At the time of our audit, the client had not yet received any GIS payments. We found no explanation on file of why the client was not receiving GIS benefits and no indication that the matter had been followed up since July 1998. Subsequent to our audit, the Office informed us that all the GIS payments due to the client were received in May 1999.
- A foreign pension authority informed the Office in October 1997 that benefit payments would be forwarded to the Office. We noted during our audit that the Office was still not receiving any payments. Subsequent to our fieldwork, the Office informed us that it had followed up on the pension arrears and was starting to receive pension payments.
- In another case, the Office had received foreign pension payments totalling \$34,000 since March 1995 but had not credited the client's account until August 1998. In the meantime, the client was receiving income supplements from government social assistance programs for low-income individuals.



- 
- Another foreign pension authority informed the Office in 1995 that the pension for a client would be forwarded upon receipt of documentation that showed the Office had authority over the administration of the client's assets. However, no follow-up action was taken and the client died in 1997 without receiving any pension payments.
  - The Office was informed in 1997 that a client had a paid-up annuity issued by an insurance company and was entitled to monthly pension annuity payments upon his retirement. Our audit indicated that the Office had not been in receipt of the annuity payments. As a result of our audit, the Office sent out a redirection letter to the insurance company in February 1999.

## **ACCOUNTING FOR CLIENT ASSETS**

The Office has a legal responsibility to safeguard and manage a client's assets from the date that its authority as guardian is established. The Office obtains information about clients' assets through discussions with family members, personal friends and neighbours, caregivers, business associates, lawyers of the clients and the clients themselves. It also obtains such information through reading clients' mail that has been redirected to the Office, bank confirmations and examinations of past income tax returns.

When clients have assets located in the community such as real estate, automobiles, apartment contents, safety deposit boxes, securities and other assets that need to be secured or retrieved, the Office must send field investigators to visit the clients' residences and any other real properties the clients own. There are cases where mandatory field investigations are not required. However, staff are advised that it is usually more effective and efficient to request a field investigation if clients' funds are or eventually will be available to cover the costs of such a visit.

Field investigators are required to prepare an asset survey report listing all the assets and liabilities of clients as determined by the field visits. The investigators are also required to collect any documents (such as bank statements, utility bills and so on) providing additional information on the financial position of the clients and to note any issues for follow-up. Timely field investigation is important to ensure all assets of clients are accounted for, to prevent subsequent misappropriations and to secure valuable assets for proper safeguarding.

We found a number of cases where client assets were not being properly accounted for. For example:

- A field investigator reported the existence of a bank account in an asset survey of a client in 1996. However, at the time of our audit, the Office still had not taken possession of the account from the bank. As a result of our audit, the Office requested transfer of the account and received \$49,000 from the bank in February 1999.
- For two cases we reviewed, field investigations were not performed even though the clients had significant assets located in the community.

In one case where a field investigation was not performed, two years elapsed before the Office became aware that a relative had misappropriated over \$100,000.

## 3.02

---

In the other case, no field investigation was requested for a client with cash assets of over \$300,000 and who, at the time of our audit, had never been visited as required by policy. According to the external capacity assessor's report, the client had a metal box which contained a number of his financial documents, such as income tax documents, and current and former bank passbooks. The report indicated that the client "apparently had a will in a safety deposit box but the whereabouts of the box is unknown."

The Office was able to request the transfer of over \$300,000 from just one bank for this client with a number of bank accounts. However, it had not requested a field investigator to review the financial documents in the metal box and prepare an asset survey report listing the belongings of the client that were reported to be in the garage of the retirement home he moved to.

- The request for a field investigation was eight months late for one client. Three years later, after the client had died, a relative informed the Office that she had taken possession of the client's assets before the investigation was done and that she had collected an additional \$21,000 in bonds and stale-dated cheques.
- The Office was reminded by internal audit staff in 1996 to confirm with a law firm regarding a prepaid funeral that cost \$3,380 and a cemetery plot that had been purchased for a client. Our review of the client's file in December 1998 indicated that the client died in September 1998. The Office subsequently paid at least \$8,000 for funeral-related expenses from the client's account. There was no information on file to indicate that the Office had followed up on either the prepaid funeral or the purchased cemetery plot.

### *DISPOSING OF CLIENT ASSETS*

As part of its responsibility for managing client finances, the Office often disposes of client assets, primarily cars and real property, if the client is unlikely to use the assets again. For example, a car will be sold if it is determined that a client will never drive again, and a house will be sold if a client is to remain permanently in a nursing home. The prompt sale of assets in these circumstances is to ensure the client receives the maximum value for them and to avoid unnecessary expenses.

Unoccupied houses are exposed to break-ins, vandalism and deterioration and are expensive to maintain given the costs of property taxes, utilities, insurance premiums and other maintenance expenses. Depending on the financial situation of a client, the Office also disposes of other assets such as securities and chattels if funds are needed to support the client's daily needs.

Our review indicated that assets were often not promptly disposed of even when it was apparent that the clients would have no further use for them or that funds were needed to meet the clients' financial requirements. For example:

- In 1996, management was informed by internal audit that the net income from a rental property was insufficient to support the client's needs and that the property should be sold. The property was not well maintained and, by early 1999, had lost its last tenant. Our audit indicated that the Office had not been making property tax payments, which resulted in tax arrears and significant interest charges for the client. At the completion of our fieldwork, the property had still not been placed on the market for sale.

- 
- The Office had failed to sell the house of another client who had been confined to a nursing home since 1994 despite repeated requests for sale of the property from the client's out-of-town children. When the client's daughter complained in 1996 about the house not yet having been sold, the Office's management assured her that the matter would "be given immediate attention." At the time of our audit in early 1999, we noted that the house had still not been placed on the market. The cost of maintaining the house since 1994 was over \$23,000, which included the cost of repairing damage caused by a break-in to the unoccupied house.

Upon receiving a listing of the above client's assets in May 1995, the client's daughter wrote to the Office expressing agreement to selling the client's assets in a public auction. However, the contents of the client's house were not sold, and her car was sold only in April 1997.

In 1994, the field investigator had recommended that the car, which was in fair condition with low mileage, should be towed to a storage area as it was parked in the client's driveway and was "easy prey for vandals." This was not done. We noted that the car had accumulated 18,000 additional kilometres by the time of sale, despite the fact that no one had been authorized to drive it. By the time the car was sold in 1997, it had lost an additional \$2,000 from its 1994 value.

Management informed us that, since May 1998, it has produced a list with information about real estate owned by its clients, including whether unoccupied houses have been listed for sale. We noted that the list did provide management with more information for serving its clients and monitoring the work of its staff. However, as can be seen from the above cases, the reason for properties not being properly disposed of was the failure to take timely action rather than a lack of information.

### **Recommendations**

**To protect vulnerable clients from financial and personal exploitation and to minimize liability to the province, the Office should closely monitor the ongoing guardianships of its existing clients through timely field investigations and visits. In addition, it should ensure that:**

- **the Office acts with proper jurisdiction as guardian in all cases;**
- **income redirections and benefit entitlement applications on behalf of clients are completed on a timely basis to prevent loss of income to clients;**
- **assets of clients are identified, accounted for and secured to prevent misappropriations; and**
- **unused assets of clients, such as unoccupied houses and vehicles, are promptly sold so that clients receive maximum value for them and avoid unnecessary expenses.**

**The Office should establish adequate procedures to ensure that prompt corrective action is taken when problems are identified.**

## 3.02

### **Office Response**

*There is an increase of approximately 35% in frontline guardianship workers being implemented. This was planned prior to the audit. It will allow the Office to be faster in attending to all of the issues identified in these recommendations. It will have a positive impact on the rate of completion and of many important activities including client visits, file reviews, initial identification and securing of assets, applications for benefits and disposal of unneeded assets.*

*With respect to the specific audit findings, the following are some of the initiatives taken by the Office:*

- *Client visits: Restructuring, planned pre-audit, for this fiscal year will reallocate client files so that staff are assigned to specific institutions. This will allow more economical use of time by permitting staff to visit many clients in one attendance. System enhancements are being implemented which will enable reporting of visits by all team members and which will capture multiple visits.*
- *Jurisdiction: It is important to note that in no case identified as lacking in jurisdiction did the Office assume authority over a person who was actually mentally capable. All cases cited in the report have been rectified, and the Office's internal auditor continues to search out any other lapses.*
- *Redirecting income and benefit entitlements: We have implemented reports that generate notification to staff and their managers, of clients who are becoming/have become eligible for statutory pensions so that these will not be delayed and so that managers can follow up to ensure these are done. A dedicated TAMS (computer system) screen was finalized in May, 1999. This alerts client representatives to potential extended health care benefits and reports to management on these cases.*
- *Identifying and securing clients' assets: A new automated system for logging and tracking requests, reports and field investigations is being implemented. An expanded "new file review" process is also being implemented in conjunction with the new staffing structure which will act as a check on this function.*
- *Disposition of unneeded assets: Since May 1998 managers have been receiving a report showing all real properties that may meet the criteria for listing. These are checked with staff for action if applicable. Repeat reports of the same property are now tracked and used as a performance indicator for staff and managers. The process is too new to have shown any results in the 1994-1998 audit period*

*In addition, the Office is increasing its supervisory staff to enable closer analysis and follow-up on the monitoring and tracking of the report concerning these issues and staff prioritization of these and other important tasks. Internal audit capacity is being doubled and a new Quality Assurance Unit is also being established to expand the ability to audit, monitor and track asset identification, collection and disposition.*

---

## TERMINATION OF GUARDIANSHIP

The Office's authority as guardian for incapable persons is terminated upon the death of the client, by the client regaining capability, or by loss of continuing jurisdiction to manage the client's affairs. When jurisdiction ceases, the Office is required to close the files and transfer the assets to the client's estate, to the client if the client has been found capable, or to a private guardian. The Office's policy requires that close-out procedures be commenced in a timely and efficient manner.

In early 1999, there were over 1,000 former client files waiting to be closed. Our review revealed that over 500 of those files were transferred for close-out prior to January 1998. Of those, over 200 were transferred before July 1995 and for more than two thirds of these files, the Office could not provide us with a summary of the actions taken or reasons for the significant delays. The Office indicated to us that the information was available in the individual files but had not yet been reviewed. However, we noted that some of the files were missing and could not be located.

When heirs of deceased former clients were identified, we found that reporting to heirs was late, sometimes by as much as seven months compared to the Office's staff performance target of eight weeks. Some of these files were misplaced and the staff responsible were uncertain when they had received them.

### **Recommendation**

**To properly discharge its fiduciary duty to former clients and their beneficiaries, the Office should ensure timely closure of files and transfer of assets.**

### **Office Response**

***The Office has taken steps in the past year and a half to improve on the timeliness of closing files and transferring of assets. In late 1997, the Office instituted a new staffing structure and monitoring process which is steadily improving this aspect of the Office's operation.***

***The current structure is working well with all new files meeting the performance standards. The database is containing more complete information as to the true status of the older files. As part of the office staff's ongoing file review, regular reminder letters are being sent to families when no response has been received from them.***

## TREATMENT DECISIONS

As a result of legislative amendments in 1995 and 1996, the Office became the treatment decision-maker of last resort for incapable adults, primarily under the authority of the *Health Care Consent Act*. In circumstances where a relative, or other legally designated treatment decision-maker willing and able to make a decision for specific treatments on behalf of an incapable individual, cannot be located, health practitioners are required to obtain the consent of

---

the Office. Treatment decisions include decisions about surgery, medication, admission to a long-term care facility and, less commonly, end-of-life ventilator decisions.

After obtaining all information necessary to make an informed decision, the Office's treatment decision consultant sends a letter of consent to the health practitioner who recommended the treatment. The treatment decision area is largely independent of other activities within the Office. Treatment decisions are made for existing clients and for other incapable persons who have no other relationship with the Office. Approximately 3,000 decisions were made in the 1997/98 fiscal year, often with multiple treatment decisions being made for the same client.

We concluded that the Office generally had adequate policies and procedures in place to ensure treatment decisions were appropriate and supported by the information obtained.

## 3.02

---

### ESTATE ADMINISTRATION

The Office is responsible for administering the estates of individuals who die in Ontario without a will or known next-of-kin, providing the estate has a value of at least \$5,000.

For the estates it is administering, the Office conducts investigations for wills, applies to court for the estate administration, identifies and locates heirs up to second cousins where possible, and distributes assets to beneficiaries. For its efforts, the Office is compensated based on a percentage of the assets as allowed by provincial law for trust administration. Under the *Escheats Act*, if heirs cannot be located, the assets of an estate become payable to the province ten years after the date of death.

As of December 1998, the Office had about 2,100 outstanding estate files with assets valued at about \$90 million under its administration as follows:

#### Estates under Administration

	Number	Value
Files opened prior to 1989 (payable to the province)	500	\$16 million
Files opened from 1989 to 1995	1,100	\$38 million
Files opened from 1996	500	\$36 million
Total	2,100	\$90 million

Source: Office of the Public Guardian and Trustee

### EFFECTIVENESS MEASURES

The Office has developed effectiveness service standards for will investigations, court applications, searches for heirs, and asset distributions to beneficiaries. However, management indicated that staff performances were assessed based on less stringent targets due to resource constraints. Except for will investigations, the Office's performance reports indicated that the Office was not meeting its performance targets.

For example, effectiveness standards required initiating court applications for administration within 60 days of the receipt of files, and staff performance targets required applications to be initiated within four months. However, in about half of the cases in 1998, the Office did not initiate court applications even within the four-month staff performance target. Also, while

---

service standards allowed six months to two years for distributing assets to beneficiaries, the Office reported asset distribution took from two to six years between 1994 and 1998.

## **LOCATING HEIRS**

Since 1996, the Office has contracted with outside firms to locate heirs who could not be located by office staff through reviews of documents and investigations. Unlike other outside heir tracers, which usually demand from 30% to 50% of the estate from the heirs they locate, the contract tracers were paid by hour. Over the last three years, the contract tracers have been successful in locating heirs for over 65% of their cases.

The Office indicated that because of resource limitations, its efforts in searching for heirs focused on files set up from 1996 onward. We noted that few searches for heirs were conducted for files set up prior to 1996, although those files represented over 75% of the total number of estates currently under administration.

The improvement in searches for heirs of estates for files opened since 1996 was commendable. However, the lack of timely searches for the heirs of estates for files opened prior to 1996 resulted in unnecessary compensation fees paid to the Office.

For the 500 estates older than 10 years with a value of \$16 million about to be paid to the province, the Office had selected 12 files for searches to be conducted by the contract tracers. As a result of those searches, heirs were located for five of the estates with a total value of \$235,000. In view of those successful efforts, we believe searches for heirs of estates with more recent files might be even more successful given that information on these estates and their beneficiaries is more likely to be readily available and less likely to have been lost than for older cases.

### **Recommendation**

**To ensure better success in locating heirs, the Office should conduct timely searches for heirs for estates that came under the Office's administration prior to 1996.**

### ***Office Response***

***In 1996, the Office undertook a very aggressive program to locate heirs for estates coming under its jurisdiction. The program has offered very good results. The Provincial Auditor recommends that it be extended to pre-1996 estate files. Given their age, these files have a lesser chance of an heir search being successful. That is why resources have been focused on the newer files. However, we will be undertaking a special project to determine how we can improve on our ability to conduct heir searches for the pre-1996 files before the estate becomes payable to the province under the Escheats Act. It is important to note, however, that even when such a payment occurs, the right to the inheritance is not lost, and any heir that is subsequently located is still entitled to claim his or her share of the estate from the province.***

---

## DISTRIBUTION OF ASSETS

At the time of our audit, over one third of the files ready for distribution of assets to beneficiaries had delays of more than two years. We reviewed a sample of files where there had been excessive delays in distributing client assets of over five years and noted that:

- Thirty-four percent of the files showed that additional assets had been deposited in the client accounts between 6 and 13 years ago. However, the estate officers responsible for the files were not informed of the deposits, and thus were not aware of assets to be distributed. At the time of our audit, eight files were still not distributed. Staff had knowledge of three of the files, but were not aware of the situations in the other five until we brought the cases to their attention.
- Twelve percent of the files showed delays in distribution of up to eight years mainly due to a lack of staff continuity. Half of these estates were still not distributed, as staff were unaware of their status until we informed them.
- For 9% of the files, assets had been distributed but the files had not been closed to indicate that distributions had occurred.
- There were various reasons for the delays for the remaining files including outstanding tax matters, excessive interest credited to client accounts and transfers to third parties.

We were concerned that assets had not been distributed to beneficiaries on a timely basis. These delays had resulted in unnecessary compensation charges imposed by the Office. In one instance, an estate with a value of about \$3 million, which had been ready for distribution in 1994, was distributed two years later resulting in unnecessary compensation charges to the estate.

### **Recommendation**

**To avoid unnecessary compensation charges to estates, the Office should establish adequate procedures for ensuring that assets of estates are distributed to beneficiaries on a timely basis.**

### ***Office Response***

***In 1998, a new process to track and report to management on estates for which administration is complete was introduced. This process is too new to have demonstrated measurable results during the audit period. The staff will be able to process distribution more quickly once the additional staff, currently under recruitment, are in place. We are going to retain temporary help to clear the backlog of older files referred to in the report. It is also important to note that the Office's policy is to forego collection of compensation in the event of undue delay and this issue will be addressed during the backlog cleanup.***

# 3.02

---



---

## ACCOUNTANT OF THE ONTARIO COURT

The Accountant of the Ontario Court is the depository for all monies, mortgages and securities paid into, or lodged with, the court. The Accountant of the Ontario Court does not act as a guardian, but rather as a custodian and invests funds for clients. These monies, mortgages and securities are received and released pursuant to judgments and orders of the court, and in accordance with the *Courts of Justice Act* and other relevant statutes. Where monies are paid into court to the credit of minors, the Accountant of the Ontario Court is to administer the funds until the children reach the age of majority. Most client accounts are for either minors or litigants awaiting settlement.

The Accountant of the Ontario Court was consolidated with the Office of the Public Guardian and Trustee in November 1997 as a result of legislative amendments. As of October 1998, it had approximately \$475 million of assets under its administration. Of this amount, \$109 million was from approximately 17,000 litigant accounts and \$366 million was from about 47,000 minor accounts.

### DISTRIBUTION OF ASSETS

We noted that the process for timely distribution of assets to litigants was generally satisfactory. However, we noted that a significant number of assets intended for the benefit of children were not distributed even years after the individuals had reached the age of majority. Our review indicated that over 1,300 accounts for minor children, with a value of over \$13 million, belonged to clients who were at least 25 years old.

The Office indicated that it did not have a legal obligation to locate account holders and notify them of their assets. It assumed that account holders were informed because the Office issued them legal notification of interest earned (T3 slips) every year.

We selected a sample of accounts of clients who were over 25 years of age and had cash balances of over \$20,000 each for further review. We noted that the Office did not have a current address for 60% of these clients. For half of that 60%, the Office had not tracked the last time a T3 slip was returned due to a non-current address. In the cases where the dates of undelivered T3 slips were known, we noted that the Office had not communicated with the clients for three to six years.

We performed an additional follow-up review of 10 accounts of minors with cash balances of over \$50,000. This review indicated that two of the clients were aware of their entitlements. Another two may not have been aware of the existence of their accounts, although there was evidence that relatives had enquired about them. For the remaining clients:

- One had become a client of the Office at age three and had \$65,000 in the court. He would now be 45 years old. We found no correspondence on file with him over that period.
- Another client had requested information about his entitlement and about procedures for withdrawing the funds in 1987. A cheque was issued to him, but was forwarded to a wrong address and returned undelivered. The Office had not followed up with the client, who had over \$150,000 in the court at the time of our audit. His request letter, which had his address on it, was destroyed as per the Office's file retention schedule.

## 3.02

- Another client with almost \$400,000 had on file only a letter returned from the post office in 1988 due to address unknown. Three other clients with a total of \$280,000 in their accounts had no documents on file other than those indicating payments to the Court.

Since the Office did not inform beneficiaries of the existence of their entitlements, the balances of their funds or the procedures for withdrawing funds, these minor account holders might never know of the funds paid into court for them when they were infants. Sending T3 tax slips as a formal notification of entitlements is inadequate because even in cases where T3 slips were not returned, it could not be known whether the beneficiaries had actually received them. Furthermore, in most cases, the Office did not have forwarding addresses.

### **Recommendation**

**To assist beneficiaries who may not be aware of funds deposited in court on their behalf, the Office should establish better procedures for informing these beneficiaries of their entitlements.**

### ***Office Response***

***The Office is taking steps to establish a new process that will address the concerns around informing minors of their entitlements.***

***Under a new process that has been established with the Office of the Children's Lawyer (OCL), the Accountant of the Ontario Court will forward a list to the OCL six months in advance of a minor turning 18 years of age (or other date when the minor will be entitled to his or her trust funds). The OCL will send a letter to the minor explaining the existence of and reason for funds in court, terms of order/judgment, entitlement, and procedure to obtain funds.***

***Many of these accounts should not be paid out as they are subject to further court orders or instructions from the OCL. The Office will consider further classification codes that will assist in identifying such clients in the system more readily.***

***For those minors now past the age of 18 years, a special project will identify those clients where there has been no contact and commence a search in order to inform or remind the client of the existence of funds.***

## **STAFFING RESOURCES AND WORKLOAD**

As at March 31, 1999, salaries and benefits for the Office's 250 staff accounted for \$19 million or over 80% of total Office expenditures. The following table provides a breakdown of staff assigned to the various programs.

---

**Number of Staff by Program at March 31, 1999**

<b>Program</b>	<b>No. Staff</b>
Service to incapable persons - guardianship	150
Service to incapable persons - treatment decisions	17
Estate administration and dissolved corporations	12
Accountant of the Ontario Court	8
Charitable property	7
Administrative and other supports	56
<b>Total</b>	<b>250</b>

*Source: Office of the Public Guardian and Trustee*

As the above table indicates, staff were mostly devoted to providing property guardianship to incapable clients due to the amount of time required for attending to these cases.

The Office has established a service standard of 12 hours of service per year for each incapable client based on criteria such as the Office's past experiences, other jurisdictions and trust industry standards with adjustment for social services provided to clients. Based on this service standard, the Office determined that, to be effective in serving its clients, each staff member should have a caseload of not more than 150 incapable clients.

With 150 staff assigned to providing guardianship for 12,000 incapable persons, the staff-to-client ratio was 1:80. However, according to management, of these 150 staff, only 86 were specifically assigned to directly handle guardianship cases. The other 64 were mainly providing legal, investigative, intake and other support services. When only the 86 staff were taken into account, the staff-to-client ratio became 1:140, indicating a caseload of slightly less than the 1:150 service standard.

However, our review of staffing revealed the following:

- Of the 86 staff assigned to the guardianship of incapable clients, only 43 client representatives were counted by the Office in the staff-to-client caseload ratio. The other 43 employees, mainly assistants to client representatives, were excluded by management in measuring the staff-to-client ratio.
- In addition to not including assistants to client representatives in the staff-to-client ratio, the caseload standard did not take into account the amount of work imposed on staff by the nature and complexity of different tasks. For example, a staff member visiting a client in a remote part of the province might have to spend more time travelling than another staff member visiting 20 clients in a local nursing home. Also, clients with significant assets, such as rental properties, generally require more time and attention from staff than those with minimal assets. Establishing staffing requirements solely based on caseload could lead to uneconomical decisions in the deployment of staff.
- The Office did not record the time spent by its staff either on attending to individual clients or for specific tasks performed. Without such information, the Office could not adequately assess what constituted reasonable time in serving certain types of clients or in performing certain tasks. Consequently, reasonable standards to assess efficiency of staff performance could not be established.

## 3.02

---

### **Recommendation**

To achieve better economy and efficiency for its staff resources, the Office should:

- assign clients to staff based on work requirements, giving proper consideration to complexity and other factors affecting the job; and
- establish workload standards and monitor time spent by staff on individual clients and tasks.

### **Office Response**

*A new staffing ratio is being adopted. This is based on consultations with other jurisdictions and related services and on our experience with the time and expertise requirements for various tasks and services.*

*The Office has obtained approved funding of 36 additional frontline positions for restructuring its guardianship services department to significantly increase supervision and management of cases to provide services to incapable people. This funding provides the opportunity for management to implement its restructuring initiative which introduces team leader positions as the technical experts to provide day-to-day technical advice and 19 new junior client representative positions to handle “high volume/low risk/low complexity” clients.*

*Staff will be assigned clients based on work requirements. Caseloads will be divided to reassign those that are complex because they involve real estate, legal problems, high assets values, or individual clients who reside independently in the community. These caseloads will be much smaller and will be served by senior staff. Clients with simple finances and who reside in protected settings will be grouped into larger caseloads and will be assigned to junior client representatives, as they are less time consuming and complicated.*

*Workload standards and procedures to monitor, more closely, time spent on individual clients and tasks will be implemented by the new supervisory resources, the team leaders.*