



News Release

For Immediate Release

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Public Guardian Cannot Fully Demonstrate Main Mandate Being Met: Auditor General

(TORONTO) The Office of the Public Guardian and Trustee (Public Guardian) cannot fully demonstrate that it has consistently protected the financial interests of the mentally incapable adults under its guardianship, Auditor General Bonnie Lysyk says in her *2018 Annual Report*, released today.

“We found that weaknesses in the Public Guardian’s internal control systems and procedures put the assets it manages on behalf of clients at risk of loss or misappropriation,” Lysyk said after her Report was tabled in the Legislative Assembly.

“The process of securing clients’ valuables is weak and there have been situations where the Public Guardian delayed acting on time-sensitive legal cases, leading to financial loss for its clients. Its rules for investing client funds may also be too restrictive, limiting the returns for some people under guardianship.”

The main mandate of the Public Guardian is to protect the rights and property of people who lack the mental capacity to do this themselves. It manages the finances of about 12,000 people (clients) who are mentally incapable of looking after their own property. It also acts as the personal-care guardian of about 30 clients incapable of doing it themselves, and administers certain estates of Ontarians who have died without a will and without next-of-kin residing in Ontario.

The Public Guardian had 388 full-time staff as of March 31, 2018, of whom 89% performed functions that directly or indirectly relate to managing the property of clients, or to administering estates of deceased persons. In 2017/18, the Ontario Government allocated \$40 million to fund the Public Guardian; the Public Guardian in turn charged \$31 million in service fees, primarily to clients.

Among the other findings in the Report:

- Staff do not consistently identify and secure assets for clients on a timely basis, and the belongings of clients are not consistently tracked in the Public Guardian’s case-management system. The risk exists that clients’ assets could be lost or misappropriated because of weak internal controls.
- The Public Guardian invests clients’ funds according to internally developed investment policies. However, these policies do not necessarily maximize future cash flows for clients—the majority of such funds are invested in low-return, low-risk products that earned about 2% interest annually since 2014/15.
- Based on the Public Guardian’s own data, only between about 7% and 15% of the 12,000 clients under property guardianship were visited in each of the last five years. The Public Guardian does not require its staff to visit the people whose property they manage, although it does require initial staff visits when individuals first come under guardianship. However, these initial visits are usually not performed, and our review of a sample of clients who had been with the Public Guardian for as many as 28 years indicated that half had not been visited since coming under guardianship. The Public Guardian has not reviewed staff caseloads in over 20 years.

- The Public Guardian has not taken a proactive role to ensure that community assessors (designated professionals outside of a hospital setting who have received training to assess a person's capacity to manage their own finances) are making the right assessments. The Consent and Capacity Board, which in 2016/17 and 2017/18 heard 32 appeals from individuals assessed by community assessors, overturned over 80% of them where it found that the evidence could not support a finding of incapacity.
- About \$28 million from approximately 260 estates was eligible to be turned over to the Crown because the Public Guardian did not identify heirs and distribute assets of the estates under its management within 10 years of a person's death. Several factors under the Public Guardian's control have contributed to delays in distributing assets to heirs. For example, estates staff could not consistently locate contact information for a deceased client's next-of-kin because caseworkers did not always obtain and document this information when the clients were still alive (about half of estates administered were previously property guardianship clients).

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Read the [Office of the Public Guardian and Trustee](http://www.auditor.on.ca) audit report at www.auditor.on.ca

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