
MINISTRY OF THE ATTORNEY GENERAL

4.02—Office of the Public Guardian and Trustee

(Follow-up to VFM Section 3.02, 1999 Annual Report)

BACKGROUND

The primary responsibilities of the Office of the Public Guardian and Trustee (the Office) include acting as the guardian of property and/or personal care for mentally incapable persons and administering the estates of persons who die in Ontario without a will and without known relatives. In addition, the duties of the Office were expanded in 1997 to include those of the Accountant of the Ontario Court. As such, the Office acts as custodian for assets paid into court, including monies paid to the credit of children until they reach the age of majority.

For the 1998/99 fiscal year, the Office had approximately 250 staff, operating expenditures of \$21 million and managed assets of approximately \$970 million.

In our 1999 audit, we concluded that although the Office had procedures in place to measure and report on the effectiveness of its services and programs, for the most part, the performance results reported did not meet the Office's 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 assets and financial affairs for its mentally incapable clients. We found a number of cases in which the Office 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, 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 were 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 to locate potential heirs to the assets of estates that had files opened prior to 1996. If heirs cannot be located, the assets of an estate are payable to the province 10 years after an individual's death.

The Accountant of the Ontario Court indicated that it did not have a legal obligation to locate account holders—clients for whom it administers funds until the age of majority is reached—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 Office had not attempted to obtain current information, such as addresses, for many of these clients.

Accordingly, we made recommendations for improving the Office's systems and procedures and the management of its resources.

CURRENT STATUS OF RECOMMENDATIONS

Based on information received from the Office, action has been taken to implement our recommendations, but further improvements are still required. The Office indicated that it is committed to proceed with such improvements. The current status of our recommendations is as follows.

SERVICE TO INCAPABLE PERSONS

Intake and Guardianship Investigation

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.

Current Status

The Office reported it had established an automated tracking system for incoming allegations to improve its ability to monitor activity on these allegations. Cases that are not concluded within 45 days are to be subject to review by senior management.

The Office reported improvements and indicated a commitment to further improve the timeliness of responses and investigations.

Ongoing Guardianship

Recommendation

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.

Current Status

The Office advised us that the number of front-line staff responsible for these vulnerable clients was increased by 35% in 1999. The Office revised its operational manual and established a new tracking system. Increased staffing and a reallocation of cases substantially increased the number of client visits. All new files are reviewed by a supervisor after 90 days.

With regard to ensuring that the Office acts with proper authority at all times, the Office informed us that an automated report was developed to alert staff to cases for which jurisdiction may need to be checked and corrected. A new Jurisdiction Manual was also developed for staff. Quarterly office-performance reports indicated that proper jurisdiction was generally being obtained on a timely basis.

Regarding income redirections and benefit entitlements for clients, staff were receiving system reports that help them identify:

- clients who may, based on age, become eligible for Old Age Security and Canada Pension Plan benefits;
- clients for whom applications may have been missed; and
- applications for extended health-care benefits that may have been overlooked.

An annual internal audit of clients' real estate and motor vehicles was instituted in 1999. Staff now receive a quarterly report identifying real estate that is vacant and appears to be eligible for sale and are required to follow up on the information. The Office indicated that it had completed the amendment of its procedures for handling clients' motor vehicles. Training on the new procedures commenced in April 2001. In addition, a review of procedures for handling clients' personal effects began in November 2000 and was expected to be completed by October 2001.

A tracking log was implemented to ensure that errors identified through internal reviews are monitored until they are resolved.

With regard to establishing adequate procedures for ensuring corrective action when problems are identified, internal reviews indicated some improvement but the Office needed to further reduce omissions and errors in providing services to incapable clients.

Termination of Guardianship

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.

Current Status

The Office has amended its procedures and reorganized the department responsible for this function. The Office advised us that over 90% of the group of 200 pre-July-1995 files referred to in our *1999 Annual Report* were closed out. For the remaining open cases, the Office stated that closing most or all of these files depended on the actions of third parties.

Notwithstanding the action taken, a significant number of the files identified for close-out from July 1995 through December 2000 were still not closed out as of April 2001.

ESTATE ADMINISTRATION

Locating Heirs

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.

Current Status

Of the 451 pre-1996 estates identified as eligible for review, the Office indicated it had undertaken action on all of them. In 149 cases, heirs were identified; another 28 cases were identified for escheat; for the remaining files, action was ongoing.

The Office stated that the date for completion of work on the remaining files cannot be predicted because acquiring information from outside parties can take a long time, unexpected information can surface, and the supply of professional heir searchers is limited.

The Office was continuing in its efforts to complete work on all pre-1996 files.

Distribution of Assets

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.

Current Status

As at March 2001, 15% of the 67 pre-July-1995 estate files remained open. The Office stated that closing the remaining files depended on the receipt of tax clearances and the outcome of legal work.

An increase in staff, the addition of a new supervisory position, and procedural improvements have reduced the amount of time being taken to distribute estates. A new reporting system was established to track the progress of files. Files concerning assets awaiting distribution are to be monitored closely to ensure a new backlog does not develop.

When we followed up, further action was required, as not all of the older files had yet been closed out. In addition, the Office needed to ensure that newer files would be closed out on a timely basis.

ACCOUNTANT OF THE ONTARIO COURT

Distribution of Assets

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.

Current Status

The Office advised us it had improved its procedures in this area—for instance, it established a notification process in February 2000. Notices are now sent to account holders when they become eligible to withdraw their funds.

The Office of the Public Guardian still had a large number of clients who had not been located or paid after they became eligible to receive their funds. As of April 2001, there were almost 1,800 clients who, although eligible to receive funds prior to the year 2000, had still not received all or part of their funds, which amounted to about \$13 million. The Office explained that it could not predict when or whether the amounts owing to clients would be paid because it had not yet determined whether it would need to apply for a court order to allow it to access other government databases that might have current addresses. Also, the Office had not yet determined whether professional searchers should be hired to help locate account recipients.

The Office was conducting an in-depth review on the files not yet paid out to identify potential sources of information, such as lawyers and family members who might be able to help locate clients eligible to receive funds. It was anticipated that the review would be complete by March 2002.

STAFFING RESOURCES AND WORKLOAD

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.*

Current Status

Regarding the assignment of clients to staff, the Office indicated it has implemented a system for assigning work to staff based on the complexity of cases. For example, senior client representatives are assigned the more complex cases.

However, substantive action was not taken on workload standards and the monitoring of time spent by staff on individual clients and tasks. The Office had engaged a consultant to determine how best to implement this recommendation.