

## Chapter 1

### Section 1.09

Ministry of the Attorney General

# Office of the Public Guardian and Trustee

Follow-Up on VFM Section 3.09, *2018 Annual Report*

RECOMMENDATION STATUS OVERVIEW						
	# of Actions Recommended	Status of Actions Recommended				
		Fully Implemented	In the Process of Being Implemented	Little or No Progress	Will Not Be Implemented	No Longer Applicable
Recommendation 1	3	1	2			
Recommendation 2	1	1				
Recommendation 3	2		2			
Recommendation 4	2		2			
Recommendation 5	2	1	1			
Recommendation 6	2	1	1			
Recommendation 7	2	1	1			
Recommendation 8	1		1			
Recommendation 9	2	1	1			
Recommendation 10	1		1			
Recommendation 11	2	2				
Recommendation 12	2	1	1			
Recommendation 13	1	1				
Recommendation 14	3	2	1			
Recommendation 15	2		2			
Recommendation 16	2	1	1			
<b>Total</b>	<b>30</b>	<b>13</b>	<b>17</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>%</b>	<b>100</b>	<b>43</b>	<b>57</b>	<b>0</b>	<b>0</b>	<b>0</b>

## Overall Conclusion

As of September 24, 2020, the Office of the Public Guardian and Trustee (Public Guardian) of the

Ministry of the Attorney General (Ministry) had fully implemented 43% of the actions we recommended in our *2018 Annual Report*. The Public Guardian had made progress in implementing an additional 57% of the recommendations.

The Public Guardian has developed processes to track assets and track which community assessors are producing capacity assessments with repeated quality concerns. It also is working with stakeholder groups to identify people who are at higher risk of being incapable of managing their finances with no other supports. This work is intended to protect as many mentally incapable Ontarians as possible from financial mismanagement. The Public Guardian has also developed benchmarks for a reasonable caseload of guardianship cases; provided additional training to staff, including how to verify the validity of identification documents; and identified performance indicators that measure its activities throughout the duration of guardianship cases.

The Public Guardian was in the process of implementing other recommendations such as procuring services separately for the appraisal and auctioning of client assets; reviewing and updating its visit policy to state when other parties can be relied upon to reduce the frequency of visits by its own staff; reviewing its investment policies to confirm they meet prudent investor standards; improving its case management system; and establishing standard referral procedures and tools with other health partners to help psychiatric facilities meet legislative requirements to assess patients' capacity to manage their property and refer to the Public Guardian when appropriate.

The status of actions taken on each of our recommendations is described in this report.

## Background

The main mandate of the Office of the Public Guardian and Trustee (Public Guardian) is to protect the rights, property and well-being of people who lack the mental capacity to do it for themselves. This includes managing the finances of about 12,800 people (about 12,000 people in 2017/18), acting as the personal-care guardian of about 47 people (about 30 people in 2017/18), and

administering the estates of Ontarians who have died without a will and without next of kin residing in Ontario.

In 2019/20, the Ontario government allocated \$44 million (\$40 million in 2017/18) to fund the Public Guardian, which also charged about \$33 million in service fees to its clients (\$31 million in 2017/18), the people under its guardianship and estate heirs.

Our audit found that the Public Guardian had not ensured it was safeguarding the interests of its clients.

We also found that though the Public Guardian had invested funds according to its own rules, these rules had not been reviewed by the Public Guardian's external investment consultant or the panel the government appointed to provide it with strategic investment advice. The rules may have been so restrictive that they limited returns.

Our more significant audit findings included:

- The Public Guardian did not require staff to visit the people whose property they managed. Although they were required to conduct initial visits when individuals first came under guardianship, these initial visits were usually not performed due to Public Guardian policies that exempted staff from conducting visits if, for example, a client was violent or aggressive, or resided in a supportive setting. Our review of a sample of people who had been with the Public Guardian for as many as 28 years indicated that half had not been visited since they had come under guardianship.
- Legal staff had missed critical deadlines because of weaknesses in the case-management system. For example, the Public Guardian's legal staff missed deadlines to apply for benefits on behalf of clients in certain cases, which resulted in the Public Guardian becoming liable for an estimated \$5 million to pay clients involved in motor-vehicle accidents.
- Public Guardian staff had detected about \$1 million in financial transaction errors between April 2015 and March 2018. About

half the total related to missed opportunities to collect income for clients such as disability benefits and extended health-insurance benefits. Although these errors were identified, others may have gone undetected given the systemic risks identified.

- The Public Guardian had paid an auction house commissions on behalf of clients to appraise and sell their belongings. Although it had begun using the auction house's services in the 1980s, there was no formal agreement, and the services had not been competitively procured.
- About \$28 million from about 260 estates was eligible to be turned over to the Crown because the Public Guardian had not identified heirs or distributed assets of these estates to heirs within 10 years of the clients' deaths. The Public Guardian's actions had contributed to delays in distributing assets. For example, estate staff could not consistently locate contact information for deceased clients' next of kin because caseworkers did not always obtain and document this information while the clients were still alive.

We made 16 recommendations, consisting of 30 action items, to address our audit findings.

We received commitment from the Public Guardian that it would take action to address our recommendations.

## Status of Actions Taken on Recommendations

We conducted assurance work between April 2020, and July 2020. We obtained written representation from the Ministry of the Attorney General that effective October 8, 2020, it has provided us with a complete update of the status of the recommendations we made in the original audit two years ago.

## Risks Exist of Misappropriation and Loss of Client Assets

### Recommendation 1

*To help fully account for clients' assets, and to secure the highest possible proceeds for valuables of guardianship clients, we recommend that the Office of the Public Guardian and Trustee:*

- *develop processes to track assets, including those from safety deposit boxes and properties, from point of being secured to point of safekeeping or sale, and follow up on any exceptions identified;*

**Status: Fully implemented.**

### Details

In our 2018 audit, we noted that the case management system did not support consistent tracking of the disposition of assets. For smaller valuables, the system did not indicate whether assets were eventually stored and sold and that proceeds were fully deposited into an incapable person's account. Further, we noted that senior Public Guardian staff had no way to determine whether assets from clients' safety deposit boxes were fully accounted for when brought back by inspectors.

At the time of our follow-up, the Public Guardian had developed new instructions to track assets, including those from safety deposit boxes and properties, from point of being secured to point of safekeeping or sale. The new process, which is documented in flowcharts, includes defining asset management functions, events and delivery processes for all asset types. As well, the Public Guardian had moved its asset management and quality assurance unit into the investment and asset management unit, so all assets—such as real estate, life insurance, jewellery and personal effects—could be managed within one unit.

Finally, the Public Guardian has confirmed that data is accurate in 35 system reports related to assets' tracking in its existing information systems. The Public Guardian expects that these newly developed processes will be incorporated in its new financial and case management system.

- *procure for the services of appraisal and auctioning separately;*

**Status: In the process of being implemented by November 2020.**

#### Details

In our 2018 audit, we noted that the Public Guardian had used the services of the same auction house since the 1980s to both appraise valuables and to sell them.

At the time of our follow-up, the Public Guardian had selected an appraisal vendor from an invitation to quote that was issued in June 2019; the contract was finalized and was awarded in June 2020. As well, it had selected a successful auction vendor—unique from the appraisal vendor—from an invitation to quote that was issued in February 2020 and was reviewing the contract. The Public Guardian expected to finalize this contract by November 2020. These two vendors are different from the vendor the Public Guardian was using since the 1980s.

- *specify in contractual agreements the responsibilities of the auction service provider regarding its efforts in getting the best value for assets to be sold and its responsibility for damaged, lost or stolen goods.*

**Status: In the process of being implemented by November 2020.**

#### Details

In our 2018 audit, we noted that the Public Guardian did not have an agreement with the auction house that appraises and sells clients' assets, exposing the Public Guardian to a number of risks. These risks include not obtaining the highest possible value on the sale of clients' assets and not clarifying which party—the Public Guardian or the auction house—retains financial responsibility if items removed by the auction house are damaged.

At the time of our follow-up, the Public Guardian had incorporated clauses to address general liability insurance, errors and omissions insurance, and security and privacy liability insurance into the draft contract with the auction service provider

as discussed in the above action item; the contract was not finalized when we completed the follow-up. The Public Guardian expected to have a signed contractual agreement with the auction service provider by November 2020.

#### Recommendation 2

*To reduce the risk that employees abuse their positions of guardianship power, we recommend that the Office of the Public Guardian and Trustee confirm that its guardianship services staff have all obtained required security clearance.*

**Status: Fully implemented.**

#### Details

In our 2018 audit, we noted that the Public Guardian could not produce any record of clearance checks for 36% of its employees who work extensively with clients' finances and property.

At the time of our follow-up, the Public Guardian indicated that it still could not locate clearance checks for 43 employees after the Ministry of the Attorney General's (Ministry) human resources services searched for them over three months in 2019. The Public Guardian identified these 43 employees after sorting through an initial list of over 100 employees and eliminating those who have exited the organization, who are not guardianship services staff, and where documents were found in Public Guardian regional offices' files.

The Public Guardian considered this action fully implemented because the Ministry's human resources services provided written assertion to the Public Guardian that an employment offer would only be made after criminal record checks are obtained, and this process was consistently followed between 2003 and 2014. Since 2014, the clearance checks responsibilities were transferred to another ministry (Ministry of Government and Consumer Services), but the Public Guardian indicated that none of the 43 employees were hired after the other ministry took over the process. As well, even though two other checks—vulnerable sector checks and credit checks—were required in

addition to the criminal record check for employees hired after 2012, the Public Guardian indicated that none of the 43 employees were hired after 2012 and therefore only the criminal background check was applicable to them.

The Public Guardian further indicated that the two unions that represent these 43 employees have agreed to the Employment Security Screening Checks Policy Operational Guidelines as being reasonable and the Grievance Settlement Board has ordered the Ontario Public Service to implement these guidelines. These guidelines speak to when rescreening is permitted but the Public Guardian assessed that these circumstances were not present and therefore will not rescreen these employees. We reviewed these guidelines and noted they include circumstances including if the individual is an employee in a position for which the employer has established the requirement for periodic re-screening and the employee is due for rescreening; the individual is an employee in a position requiring an employment security screening check and self-reports charges that have been laid against them under the offence provisions of federal statutes, where such charges occur subsequent to their last check; and the individual is an employee in a position requiring an employment security screening check and where the manager or ministry contact has reason to believe that a check is required for cause.

## Client Needs Not Well Understood to Support Provision of Quality Services

### Recommendation 3

*To monitor and responsibly manage individuals under property guardianship, we recommend that the Office of the Public Guardian and Trustee:*

- *review and update its visit policy to state when other parties, such as doctors or social workers, can be relied upon to reduce the frequency of visits by its own staff;*

**Status: In the process of being implemented by November 2020.**

### Details

In our 2018 audit, we noted that about half of the caseworkers who responded to our survey felt that they could rely on other individuals, such as social workers and doctors, to oversee the well-being of some of the clients under guardianship. However, in our random sampling of client files, we found little evidence that caseworkers had communicated with such professionals, increasing the risk that caseworkers may be wrongly assuming that the clients would not benefit from a visit from Public Guardian staff.

At the time of our follow-up, the Public Guardian was updating its client visit policy, including adding a section detailing circumstances that would warrant an exemption from conducting initial client visits. Such circumstances include communications with client supports such as family and social workers and with staff members of a residence where the client lives, such as a long-term-care home or a group home. The policy also stipulates that Public Guardian staff should review the client's circumstances every three years to determine whether a client visit is warranted. In addition, the Public Guardian developed a client visit form where these exemption reasons are to be documented; the form is expected to be approved by a manager after its completion. The Public Guardian was reviewing the revised policy and draft form and expected to have these approved for implementation by November 2020.

- *monitor to ensure its staff document dates and details of visits, as well as communications with supportive contacts.*

**Status: In the process of being implemented by November 2020.**

### Details

In our 2018 audit, we noted that there was little evidence of recent contact that Public Guardian staff made with individuals under guardianship to determine their status or well-being. As well, we identified circumstances where the caseworker had

placed unwarranted reliance on supportive people or settings, such as by community health agencies. For instance, we found cases of clients who came under guardianship 14 to 28 years ago with no indication when the most recent contact occurred.

At the time of our follow-up, the Public Guardian was developing training materials to staff and had requested an update to the case management system so that communication with clients or client supports would be counted as client visits due to ongoing communication, even though there may not be an actual visit. The Public Guardian expected that all staff would be trained by November 2020.

#### Recommendation 4

*To prudently manage the assets of incapable adults without missing opportunities for higher returns, we recommend that the Office of the Public Guardian and Trustee:*

- *monitor that caseworkers obtain and document current health information of clients, including when this information was obtained, and make this information readily available to financial planners;*

**Status: In the process of being implemented by November 2020.**

#### Details

In our 2018 audit, we noted that while Public Guardian financial planners need to consider a client's health and age to form their decision on how to invest clients' assets, they are not in a position to obtain health information and must rely on caseworkers to obtain such information. However, caseworkers often did not document health information or when such information was last updated in the case management system. We also found that financial planners rarely asked for current health information from caseworkers.

At the time of our follow-up, the Public Guardian had reviewed and amended the health questionnaire and was training staff on the use of the new form. As well, Public Guardian staff had been

informed to label and file all medical information as health information in the case management system. The Public Guardian expected that by the end of September 2020 this information will be separately filed for easier retrieval, and by November 2020 system reports to monitor the completion of client health information will be completed.

- *review its investment policies, with expert input from, for example, the Investment Advisory Committee or its investment advisor, to confirm they meet prudent investor standards and revise as necessary.*

**Status: In the process of being implemented by November 2020.**

#### Details

In our 2018 audit, we noted that the Public Guardian financial planners had, in 2005, developed internal investment policies to guide their decisions to invest clients' assets. These policies contained several specific rules that financial planning staff indicated were based on industry practice. The policies had never been reviewed outside of the financial planning unit; financial planning staff could not produce any industry practice evidence of the basis for the policies; and, in some cases, the policies could result in an overly cautious investment strategy not sufficiently diversified for clients.

During our follow-up, we found that the Public Guardian had engaged in discussions with its investment advisory committee on several occasions during 2019 and early 2020 related to investment trends, practices and policies, and to determine a benchmark suitable for its clients. Based on these discussions, the Public Guardian indicated it will revise its investment policies and implement changes by November 2020.

#### Recommendation 5

*To best serve the financial interests of guardianship clients and heirs of estates, we recommend that the Office of the Public Guardian and Trustee:*

- *assess the appropriateness of its current investment strategy, which currently consists of three separate funds of varied risks, for its clients' investment needs and develop a plan to revise the strategy if needs are better met through other investment options;*

**Status: In the process of being implemented by November 2020.**

#### Details

In our 2018 audit, we noted that the Public Guardian invests clients' assets in a mix of three funds that were established between 2000 and 2006. Two of these funds offer capital growth; one does not. Public Guardian financial staff had not assessed whether these three funds provide the most appropriate investment opportunities for clients to meet their current and future needs, or whether other funds could yield better returns or improve capital preservation.

At the time of our follow-up, the Public Guardian had engaged in discussions with its investment advisory committee on several occasions during 2019 and early 2020 related to investment trends, practices and policies, and to determine a benchmark suitable for its clients. Based on these discussions, the Public Guardian indicated it will revise its investment policies and implement changes by November 2020.

- *periodically evaluate the use of the Investment Management Corporation of Ontario or other existing Ontario government investment service providers.*

**Status: Fully implemented.**

#### Details

In our 2018 audit, we noted that the Public Guardian made initial contact with the Investment Management Corporation of Ontario in summer 2017 to explore opportunities to use the Corporation's investment management services for the Public Guardian's investment funds. At the time of our audit, the investment funds were managed by external fund managers.

At the time of our follow-up, the Public Guardian indicated that it had met with the Corporation and determined that there was no alignment to use the Corporation as its investment service provider. As well, an executive of the Corporation joined the Public Guardian's investment advisory committee in late 2019. The Public Guardian indicated it would continue to assess in the future when there is a need to procure investment management services.

## Little Assurance that Guardianship Services Are Provided to Those in Need

### Recommendation 6

*To identify and protect incapable people who may be suffering from harm and abuse, we recommend that the Office of the Public Guardian and Trustee (Public Guardian):*

- *work with the Ministry of the Attorney General to clearly communicate to the public through updates to its website and social media the ways to report possible abuse cases and the Public Guardian's role as personal care guardian;*

**Status: In the process of being implemented by December 2023.**

#### Details

In our 2018 audit, we noted that the dedicated public telephone line is not easy to locate on the Public Guardian's website, which resides within the Ministry of the Attorney General's website. As well, the Public Guardian did not use other digital means such as social media to inform the public about its services. In comparison, the Office of the Public Guardian in the United Kingdom used social media to communicate with the public.

At the time of our follow-up, the Public Guardian was posting regularly on social media through the Ministry of the Attorney General (Ministry) to educate the public about powers of attorney, the resources available on the Public Guardian webpage, and how the government might need to step

in if no suitable person is found to be someone's property or personal care power of attorney. The Public Guardian also indicated that it was in the process of refreshing educational brochures and partnering with stakeholders to increase education and awareness around how to report cases of abuse and understanding the Public Guardian's role as a personal care guardian. In addition, the Public Guardian and the Ministry were working together to make changes to existing web content as part of the migration of the Ministry's website to Ontario.ca. This will also provide more online visibility for the Public Guardian. The migration is expected to be completed by 2021. As part of a modernization strategy, which is expected to be finished by December 2023, the Public Guardian was planning to revise its communication strategy to the public on reporting possible abuse cases and on its role as the personal care guardian of individuals in need of this service.

- *refresh training of its property guardianship staff to clarify how staff can refer cases of suspected abuse or those in need of protection to personal care guardianship.*

**Status: Fully implemented.**

#### Details

In our 2018 audit, we noted that even though the Public Guardian caseworkers of property guardianship cases were mostly aware that they could internally refer cases from property guardianship to personal care guardianship, they had referred only about eight such cases a year on average. We further noted that Public Guardian senior management generally held the view that being a personal care guardian to someone imposes a highly restrictive level of control on a person's freedoms, and therefore did not actively seek out those who might benefit from personal care guardianship.

At the time of our follow-up, the Public Guardian had delivered training to its property guardianship staff at team meetings held in February and March 2019 to clarify how staff can refer cases to

personal care guardianship. This training outlined when cases may warrant referral to personal care guardianship and what steps staff could take, including notifying the police or community supports, and discussing with other Public Guardian staff such as team leaders and legal counsel. The training also described the role of the Public Guardian's investigations unit, which conducts additional work to obtain further information and recommend to the Public Guardian and Trustee to apply to court if incapacity or serious personal risk is confirmed.

#### Recommendation 7

*To help capacity assessors in the community comply with required standards so that only those persons correctly assessed as incapable are referred for guardianship, we recommend the Public Guardian and Trustee instruct the Capacity Assessment Office to:*

- *track which community assessors are producing capacity assessments with repeated quality concerns (for example, assessments lacking a well-documented basis for incapacity);*

**Status: Fully implemented.**

#### Details

In our 2018 audit, we noted that the Capacity Assessment Office, which reports to the Public Guardian and Trustee, did not track how many community assessors had repeated quality concerns identified through quality reviews that were conducted by external expert consultants. We analyzed these reviews and found that three-quarters of the assessors with more significant quality concerns in the 2016–2017 review cycle also had concerns in the 2014–2015 cycle.

Our follow-up found that the Public Guardian started a tracking spreadsheet effective December 1, 2019, to track reviewed cases and assessors with concerns. Examples of concerns include depth of assessment and unclear wording of assessment report, and instances where the assessors were found by the reviewer to have repeated concerns over the years.

- *develop criteria to determine when a community assessor should be referred to the relevant regulatory college and/or removed from the roster of community assessors, and apply these criteria appropriately to address systemic quality concerns.*

**Status: In the process of being implemented by October 2020.**

#### Details

In our 2018 audit, we noted that since the Capacity Assessment Office was established over 20 years ago, it had never removed a community assessor from the roster that it maintained. As well, it had never filed a complaint with any community assessor's regulatory college and had no criteria or guidelines to help it determine when to file such a complaint. Similar to the findings of a review conducted by senior Public Guardian staff that noted this shortcoming about 20 years ago, the Capacity Assessment Office still did not obtain assessors' reports or files to allow it to evaluate the complaint against file information.

At the time of our follow-up, we found that the Public Guardian in February 2020 had contacted the College of Nurses of Ontario, the College of Physicians and Surgeons of Ontario, the College of Psychologists of Ontario, the College of Occupational Therapists of Ontario and the Ontario College of Social Workers and Social Service Workers to develop criteria for referral of assessors and review policies and processes around disqualification of assessors. In May 2020, it met with four of the five regulatory colleges. After meeting with all colleges, the Public Guardian indicated it will complete an action plan by October 2020 to identify next steps.

#### Recommendation 8

*To help psychiatric facilities meet the legislative requirements under the Mental Health Act to assess patients' capacity to manage their property and refer to the Office of the Public Guardian and Trustee (Public Guardian) when appropriate, we recommend that*

*the Public Guardian work with the Ministry of Health and Long-Term Care, psychiatric facilities, or any other relevant health partners as required to establish standard referral procedures and tools.*

**Status: In the process of being implemented by November 2020.**

#### Details

In our 2018 audit, we found that although specific cases have not been tracked, senior Public Guardian staff informed us that they noted an increase in recent years of hospitals inadvertently discharging patients assessed as incapable before filing the required paperwork with the Public Guardian to continue guardianship. Psychiatric facilities that responded to our survey noted that they developed and used their own tools, such as training and checklists, to help ensure they appropriately refer cases to the Public Guardian. The Ministry of Health, which funds these facilities, had not developed any common tools for these hospitals to use, and informed us that other partners, such as the College of Physicians and Surgeons of Ontario and the Ontario Hospital Association, might also be responsible for establishing standards of professional conduct and competency for physicians and ensuring compliance with legislative requirements, respectively.

During our follow-up, we learned of meetings the Public Guardian had held to address this, one in July 2019 with the Ministry of Health (formerly part of the Ministry of Health and Long-Term Care) and a second in July 2020 with representatives from the Ministry of Health, the Ministry of the Attorney General and the Ontario Hospital Association. The parties decided at the July 2020 meeting to create a consistent set of principles and relay the same information and expectations to all involved in this issue. The Public Guardian noted that the Ontario Hospital Association was to hold a webinar on the importance of meeting the legislative requirements under the *Mental Health Act* (Act) in late October 2020. This was to include a presentation by the Public Guardian on the importance of completing the required assessments and submitting the required documents for all cases of referral

to the Public Guardian, and a presentation by the Orillia Soldiers' Memorial Hospital on a tool it has developed to facilitate compliance with the Act. The Public Guardian was anticipating that the webinar would be attended by physicians and other hospital staff with responsibilities in this area. The webinar was to remain online as a reference tool after it took place in October 2020.

In addition, the Public Guardian indicated that the Ontario Hospital Association will prepare a short document underlining the need for timely assessment of patients and the need to inform the Public Guardian of the results of those assessments. The document will also set out a list of procedures to follow when a patient is found incapable. The Public Guardian anticipates this will be a useful tool for physicians and hospitals.

According to the Public Guardian, the Ontario Hospital Association will seek to have all these materials promoted by the Ontario Medical Association, since that is the organization from which physicians are most likely to seek and accept information.

### Recommendation 9

*To protect all mentally incapable Ontarians from financial mismanagement, we recommend that the Office of the Public Guardian and Trustee (Public Guardian), in conjunction with the Ministry of the Attorney General:*

- *work with relevant ministries to identify populations that are at higher risk of being incapable of managing their finances with no other supports;*

**Status: Fully implemented.**

#### Details

In our 2018 audit, we noted that outside of psychiatric facilities, Ontario had no standard process to systematically evaluate certain vulnerable populations who may also be incapable of managing their own finances and may not have set up power of attorney for property. Such populations include, for example, people residing in long-term-care homes with condi-

tions such as dementia, and youth receiving social benefits who have some form of mental illness or acquired brain injury or severe disability.

At the time of our follow-up, the Public Guardian had identified the following groups of people as having higher risk of being incapable of managing their finances: people residing in long-term-care homes, people with acquired brain injury, populations at increased risk of being incapable who have a mental impairment, people who are receiving services from Developmental Services Ontario, and children with special needs who are receiving specialized services and supports.

- *develop formal processes to help these individuals access property guardianship services from the Public Guardian.*

**Status: In the process of being implemented by November 2020.**

#### Details

In our 2018 audit, we noted that outside of psychiatric facilities, Ontario did not have a standard process to systematically evaluate certain vulnerable populations who may also be incapable of managing their own finances and may not have set up power of attorney for property.

At the time of our follow-up, we found that the Public Guardian had met with three stakeholder groups between November 2019 and March 2020 in the health and social services sectors. At these meetings, the Public Guardian and the stakeholder groups identified opportunities for further education of front-line staff in these sectors. The Public Guardian was in the process of developing processes and procedures to assist front-line staff by November 2020.

### Recommendation 10

*To minimize resources devoted to providing guardianship services and to help suitable family and friends become aware that they can be more involved in managing an incapable person's assets, we recommend that the Office of the Public Guardian and*

*Trustee (Public Guardian) work with the Ministry of the Attorney General to clearly communicate to the public—such as through updating its website and using social media—their right to replace the Public Guardian as a guardian of an incapable person.*

**Status: In the process of being implemented by April 2021.**

#### Details

In our 2018 audit, we noted that while the Public Guardian is legislatively established as the guardian of last resort, it did not clearly convey to the public that it does not have to be the permanent guardian. An interested party would need to know to perform a general search for “replace Public Guardian and Trustee” or click through three links from the Public Guardian’s main website to find the instructions.

By the time of our follow-up, the Public Guardian had held discussions with the Ministry of the Attorney General’s Communications Branch to develop a formal communication strategy using multiple media types, but this was not expected to be fully implemented until April 2021. In the meantime, the Public Guardian has developed a letter to be sent to eligible family members reiterating their right to apply to replace it, and plans to send out this letter in a mass mailing by November 2020. As well, the Public Guardian has amended its existing letters to friends and family regarding replacement options to make them more user-friendly. It indicated it has sent these out on a case-by-case basis, typically on new files.

## Public Guardian Has Not Reviewed Staff Caseload in Over 20 Years

### Recommendation 11

*To promote more efficient and effective case management of guardianship cases and to help staff make sound judgments in order to provide quality services to clients, we recommend that the Office of the Public Guardian and Trustee:*

- *analyze the time and effort required to manage guardianship cases, determine a suitable staffing model, develop benchmarks for a reasonable caseload, and reallocate resources accordingly;*

**Status: Fully implemented.**

#### Details

In our 2018 audit, we noted that the Public Guardian had not assessed the way it distributed cases among caseworkers, or the most effective mix of staff to support case management, in over 20 years. Some stakeholder groups we spoke to for the 2018 audit indicated that while caseworkers usually were professional and hard-working, some were unreachable and unresponsive to urgent requests to support clients. In addition, with no benchmark of a reasonable caseload, some caseworkers managed about 50% more cases than other caseworkers, even though they are all supposed to be managing files of similar characteristics and complexity.

At the time of our follow-up, we found that the Public Guardian had in December 2019 reallocated caseload among staff based on complexities of the client files. According to the caseload report from February 2020, across all regions, senior caseworkers’ caseloads ranged from 70 to 90 cases, and caseworkers’ caseloads ranged from 126 to 196 cases. The Public Guardian expected to review these cases again in six months.

- *identify areas where staff require additional training and provide effective training to staff, possibly through one-on-one instruction.*

**Status: Fully implemented.**

#### Details

In our 2018 audit, we noted that 63% of the caseworkers who responded to our survey felt that they did not receive enough training and would benefit from more one-on-one training to help them make better decisions in a variety of situations.

At the time of our follow-up, the Public Guardian had developed a training calendar after consultation with team leaders and managers on staff training needs in December 2019 and

February 2020. The training calendar for 2020 includes monthly training to new staff, a mix of in-person and online training, and training sessions on specific topics such as disability benefits and family law. Several topics are new to the 2020 training plan, including the art of decision-making, foreign properties and family law. The Public Guardian indicated it had provided training, including effective communication, modular insurance, new staff training, and disability support funding to its staff between January and June 2020 both in-person and via an online video conferencing platform.

## Delays in Paying Out Estates and Lack of Training to Detect Fraudulent Heirs

### Recommendation 12

*To reduce delays in distributing assets to heirs and unnecessary losses to the value of estates under management, we recommend that the Office of the Public Guardian and Trustee:*

- *monitor whether caseworkers obtain more complete information about the family members of people under guardianship;*

**Status: Fully implemented.**

### Details

In our 2018 audit, we noted that while about half of estate cases managed by estates staff originated from deceased people who were previously under the Public Guardian's guardianship, caseworkers did not always document information on family members of those people when they were alive, resulting in longer-than-necessary searches for heirs.

At the time of our follow-up, the Public Guardian implemented a revised questionnaire in its case management system to help ensure caseworkers obtain as complete as possible information on family members and contact information. The questionnaire prompts the caseworker to indicate whether information about family and contacts has

been recorded in a specified field in the case management information.

- *assess the time required to complete the various stages of the estates processes, establish or update benchmarks, and monitor the time taken to complete these stages.*

**Status: In the process of being implemented by November 2020.**

### Details

In our 2018 audit, we noted that the Public Guardian did not have timing benchmarks for each of the steps involved in administering estates, such as identifying and securing assets, identifying and locating heirs, and completing a legal review. As a result, senior staff had not been able to detect and act on the delays in administering estates and distributing funds to heirs.

In our follow-up, we found that relevant staff in the Public Guardian held internal meetings in July and August 2019 to discuss the need to establish clear timelines for estate heirship and research functions, what activities should have their times measured, and how to track and measure these activities. The group identified needed improvements to the information system to accommodate this tracking, such as the ability to generate reports. The Public Guardian indicated it still needed to complete the study of these various stages and develop system-based reports to monitor the time taken to complete these stages. It expected this work to be completed by November 2020.

### Recommendation 13

*To prevent payouts of estates to fraudulent claimants, we recommend that the Office of the Public Guardian and Trustee provide training, possibly from the Ministry of Transportation, to its staff on verifying the validity of identification documents.*

**Status: Fully implemented.**

### Details

In our 2018 audit, we noted that estate staff were not formally trained on how to detect fraudulent identification documents that claimants may produce to claim estate funds. Staff were expected to learn from their peers instead. The Ministry of Transportation informed us in the 2018 audit that it had seen an increase in the volume and quality of fraudulent documents used in attempts to obtain driver's licences and health cards over the years. That Ministry trains ServiceOntario and DriveTest staff on how to identify fraudulent documentation, and provides training sessions for other government staff, but the Public Guardian had not requested nor received any such training.

For our follow-up, we found that the Public Guardian brought in a document verification specialist from the Ministry of Transportation to train its staff in March and May 2019. The training covered topics such as how to detect fraudulent documents and issues with production or issuance of documents commonly reviewed by Public Guardian staff.

## Success of Key Public Guardian Activities Not Fully Measured or Publicly Reported

### Recommendation 14

*To fully measure all significant activities within its mandate, we recommend that the Office of the Public Guardian and Trustee:*

- *identify appropriate performance indicators that measure the efficiency and effectiveness of all activities throughout the duration of guardianship cases;*

**Status: Fully implemented.**

### Details

In our 2018 audit, we noted that the Public Guardian did not measure its performance on ongoing guardianship activities beyond 10 “initial services” that include events such as requesting

an investigation to identify and secure assets, and requesting financial information from various organizations, to safeguard property within 30 days. Ongoing activities could include whether disbursements are processed within a specific period of time, and whether all investment plans that are due for review were reviewed by senior management before the end of the year.

During our follow-up, we found that in May 2019, the Public Guardian had developed 43 key performance indicators that measure activities in various program areas such as client services, estates and legal services. Examples of indicators include the following:

- percentage of new property guardianship services clients whose financial plans are completed as scheduled in order to enhance overall return in investment;
- percentage of complex estate files where the first distribution takes place within two years of issuing the Certificate of Appointment of Estate Trustee; and
- percentage of legal file reviews completed within six months.

- *set performance targets and regularly assess actual results against these targets;*

**Status: Fully implemented.**

### Details

In our 2018 audit, we noted that the Public Guardian did not measure results it collected on the 10 initial services of guardianship against any targets to improve performance.

At the time of our follow-up, the Public Guardian had developed targets for the 43 key performance indicators, and had collected and assessed actual results each quarter, current to the third quarter of 2019/20. For example, between April 2019 and December 2019, against a target of completing initial client visits within 12 months 100% of the time, the Public Guardian's performance was between 16% and 21%. Similarly, against a target of requesting banking information within

30 days 100% of the time, the Public Guardian's performance was between 85% and 92%.

- *report publicly on the results.*

**Status: In the process of being implemented by November 2020.**

#### Details

In our 2018 audit, we noted that the Public Guardian did not publicly report on any of its performance indicators to demonstrate to the public that it is operating effectively in meeting its mandate. In contrast, the British Columbia Public Guardian annually reported its performance measures in its public report.

At the time of our follow-up, the Public Guardian had identified the following four performance indicators to Treasury Board so it could share them publicly:

- percentage of allegation of abuse of mentally incapable adults responded to within 24 hours;
- percentage of request for medical treatment decisions for mentally incapable adults responded to within one day;
- percentage of critical services initiated to safeguard client property within 30 days of client coming under Public Guardian jurisdiction; and
- percentage of pooled investment funds for which the rate of return exceeds industry benchmarks as set out in the Statements of Investment Policies and Goals.

However, this information was not available on any public website at the time of our follow-up. The Public Guardian indicated that Treasury Board could not determine when the information was last posted publicly. Nevertheless, the Public Guardian indicated it plans to post its performance indicators on its 2019/20 activities on its website upon determining which ones it would publish publicly, by November 2020.

## Service Fees Not Reviewed Since 2004, and Not Always Billed

### Recommendation 15

*To provide reasonable compensation for its work, we recommend that the Office of the Public Guardian and Trustee:*

- *review and update its fees schedule;*

**Status: In the process of being implemented by November 2020.**

#### Details

In our 2018 audit, we noted that the Public Guardian had not reviewed since 2004 the service fees it charged to guardianship clients and estates under management. The *Public Guardian and Trustee Act* enables the Public Guardian to charge fees and specifies that the Attorney General needs to approve these fees.

At the time of our follow-up, the Public Guardian had reviewed its fees schedule and the Public Guardian and Trustee had approved changes. The Public Guardian expects to submit the revised fees schedule to the Attorney General for approval by November 2020.

- *bill promptly for all services performed.*

**Status: In the process of being implemented by November 2020.**

#### Details

In our 2018 audit, we noted that because a lawyer at the Public Guardian retired in May 2017 and did not bill for services provided over the years, the Public Guardian wrote off six invoices for legal services provided between 2012 and 2017. As well, we found that lawyers recorded a wide range of hours in the billing system during 2017/18 and may be foregoing legal fees.

At the time of our follow-up, the Public Guardian had continued to remind legal staff through either email or meetings from June 2019 to June 2020 to promptly record time spent and bill clients, and review and address on a quarterly

basis any client fees deferred due to lack of funds. In addition, the Public Guardian amended its docketing and billing policy in May 2020 to require counsels to review accounts every 12 months and submit a bill where appropriate. The Public Guardian expected to review counsels' compliance with policy by November 2020.

## Case Management System Inadequate to Support Staff in Providing Good Services to Clients

### Recommendation 16

*To help staff efficiently manage clients' property as well as perform other functions within its core mandate, we recommend that the Office of the Public Guardian and Trustee:*

- *determine in conjunction with the Ministry of the Attorney General whether the administration fund continues to have value in improving the financial returns for incapable adults, and, if appropriate, reallocate the funds to other operational areas;*

**Status: Fully implemented.**

### Details

In our 2018 audit, we noted that the Public Guardian had \$122 million in its administration fund as of March 31, 2018. This fund was used to supplement guardianship clients' assets in the investment funds, with the expectation of realizing higher returns from higher levels of capital. Yet over the years, the balance in the investment funds has increased significantly from about \$900 million in 2000 to \$1.7 billion in 2018. The Public Guardian had not assessed whether the administration fund should still be invested to help increase financial returns or reinvested in Public Guardian operations.

At the time of our follow-up, the Public Guardian had determined that the most beneficial use of the administration fund is to allocate it to its modernization project to help replace the current information systems. Senior management at the

Public Guardian and the Ministry of the Attorney General have approved this proposal and Treasury Board approved this proposal in June 2020.

- *improve the functionality of its case management system, incorporating feedback from its program areas.*

**Status: In the process of being implemented by January 2024.**

### Details

In our 2018 audit, we noted that the case management system did not fully support staff in performing their daily functions and could not easily produce useful reports to help senior staff effectively oversee operations. For example, the information technology staff at the Public Guardian had still not resolved over 200 system changes requested by other staff at the time of our 2018 audit, with some requests made five years prior.

At the time of our follow-up, the Public Guardian had completed jurisdictional scans of other countries including the United Kingdom, New Zealand and Western Australia; created a roadmap to implement information technology changes; initiated a project to facilitate data migration efforts; and was in the process of gathering data requirements. Replacing the existing case management system is part of a longer-term modernization project. The Public Guardian expects that by January 2024, it will receive all necessary approvals from Treasury Board and Management Board of Cabinet, complete all procurements and have data migrated and staff trained in the new information technology solution.