

# Justice and Solicitor General— Progress Report on Control Systems at the Office of the Public Guardian and Trustee

## INTRODUCTION

A trustee is someone who has a legal duty to manage another person’s property and money—the person’s “trust.” The duties and responsibilities of a trustee are significant. A trustee must act with care, with integrity and in the best interest of the person whose trust they hold.

Alberta’s Public Trustee can be appointed<sup>1</sup> to take on a person’s trust when they are unable to manage their financial matters themselves, and no one else in the person’s life is able or willing to act as trustee. The Public Trustee manages the financial interests for some of the most vulnerable people in Alberta. It holds trusts for represented adults,<sup>2</sup> minors and the deceased.<sup>3</sup> The Public Trustee is responsible for more than 16,000 trusts, totalling \$638 million.<sup>4</sup>

Because of a recent government reorganization, the Office of the Public Guardian and Trustee now reports to the Ministry of Justice and Solicitor General.<sup>5</sup> The Public Trustee reports to the Assistant Deputy Minister of Justice Services Division and manages the approximately 150 staff who administer clients’ trusts.

## SUMMARY OF OUR PREVIOUS WORK

We have completed two performance audits at the OPGT in recent years. In February 2016, we reported on the OPGT’s broader controls around its business processes. Specifically we found that the Public Trustee did not have adequate systems to manage surplus funds, or to support reporting on its operations. The recommendations from that audit are outstanding but are not the subject of this progress report. Here we instead focus on the management of individual client trust funds from our February 2013 audit report.

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<sup>1</sup> The Public Trustee may be appointed by the Court of Queen’s Bench or as various pieces of legislation direct, including the *Adult Guardianship and Trusteeship Act*, *Wills and Succession Act*, *Administration of Estates Act* and *Minor’s Property Act*.

<sup>2</sup> A “represented adult” is an adult who has a trustee appointed by the court after the court is satisfied that the adult does not have the capacity to make decisions respecting any or all financial matters and for whom less restrictive measures would not protect the adult’s interest in financial matters.

<sup>3</sup> A “deceased estate” is an estate of a deceased person who has a minor, represented adult or other vulnerable Albertan interested in the estate. The Public Trustee may administer these estates.

<sup>4</sup> The figure 16,000 is according to July 2016 case-count reporting from the Public Trustee Information System; \$638 million is as reported in the OPGT’s financial statements at March 31, 2016.

<sup>5</sup> In January 2017 the Office of the Public Guardian and Trustee was placed under the responsibility of the Minister of Justice and Solicitor General following Order in Council 18/2017. Until January 19, 2017, the Office of the Public Guardian and Trustee was under the responsibility of the Minister of Human Services.

In 2011 and 2012, we investigated an alleged fraud at the Office of the Public Guardian and Trustee.<sup>6</sup> A former employee of the office took advantage of weak safeguards and defrauded a deceased Albertan's estate. The Office of the Public Guardian and Trustee subsequently repaid the real beneficiary \$330,000.<sup>7</sup> Our investigation did not find any other cases of fraud.

We also did an audit of how the Office of the Public Guardian and Trustee manages and protects clients' trusts. In our audit we found instances where weak processes put vulnerable Albertans at risk. For example, we saw a trust that had gone unchecked for 45 years. We found instances where Public Trustee management and staff did not follow policy. We also saw payments from trust accounts made without enough information to support or justify the payments.

We reported the results of our audit in February 2013.<sup>8</sup> We found that processes to protect clients' trusts were not working as they needed to. We also found an environment that did not support the care, integrity and focus on clients' best interests that a trustee needs to have in order to do their job. We concluded that vulnerable Albertans who rely on the Public Trustee were at risk of their trusts being misused or mismanaged.

We made five recommendations to the Office of the Public Guardian and Trustee—see Appendix A. Our recommendations, which covered a broad range of processes, all focused on improving and supporting effective trust administration practices.

## OBJECTIVE OF THIS PROGRESS REPORT

We reported the results of our original audit four years ago. Management has not been able to implement all of our recommendations. As a result, we are not able to conduct a follow-up audit at this time.

We use a progress report to understand what management has done to date and its plans going forward. We also use a progress report to make observations to management. These observations help us to make sure management can fix the problems we initially found.

A progress report is not an audit. We do not perform detailed audit procedures in a progress report. Instead, we base our assessment on interviews, analytical procedures and a review of management's documents. Therefore, in a progress report we do not provide audit-level assurance on our conclusions as we typically provide in our audit and follow-up audit reports.

We conducted our field work between August 2016 and January 2017. We substantially completed our work on March 9, 2017.

## OBSERVATIONS ON PROGRESS

We expected that after four years management would be able to demonstrate it has an effective system of internal controls to manage clients' trusts. The system we expected to see is not yet in place. Progress has been slow because management has been trying to build new processes at the same time as it attempts to sort out many of the core problems we identified in our 2013 report.

<sup>6</sup> In April 2014 the Ministry of Human Services merged the Office of the Public Trustee with the Office of the Public Guardian to form the Office of the Public Guardian and Trustee.

<sup>7</sup> The \$330,000 repaid is the original amount defrauded plus interest. The original amount was \$122,000.

<sup>8</sup> *Report of the Auditor General of Alberta—February 2013*, pages 33–50.

## MANAGEMENT'S ASSESSMENT

We asked management to give us a summary of what it has done to date and its plans going forward. The deputy minister of Human Services sent us management's summary in October 2016. Management's reporting indicates it will have all five recommendations fully implemented by March 31, 2018.

## OUR ASSESSMENT

In four years, management has worked on a number of activities. We observed progress on some of our recommendations, including the design of:

- a new process to update policies and procedures
- new controls to strengthen payment processes
- a new file structure

These are important steps, but critical deficiencies remain in the OPGT's management of clients' trust funds. We have concerns with the OPGT's latest supervisory review process, the culmination of several iterations. OPGT management continues to work on this process and continues to be challenged by the high number of errors occurring in the administration of clients' trusts.

Another area of significant concern is the OPGT's internal audit function. We recommended in 2013 that it be strengthened, since it was performing operational work rather than audit work and it reported to OPGT management rather than Human Services. The internal audit staff were moved into Human Services Corporate Internal Audit, where they completed one risk-based audit of the OPGT and began work on several others. However, since then these internal audit staff have returned to exclusively performing operational work for the OPGT. Consequently, the OPGT effectively has no internal audit function.

### KEY FINDING

Efforts to date have failed to make needed changes to trust administration, and plans going forward lack the rigour needed to ensure success.

In Appendix B, we give a fuller account of our observations and our assessment of management's assertions.

Management's plans for completing the fixes to its processes do not have the rigour they need to ensure success. We observed that current plans and unsuccessful ones from the past had in common a lack of basic project management approaches, such as:

- clear objectives
- clear definitions of who is responsible for what
- gatekeeping<sup>9</sup>
- monitoring and reporting processes
- use of a results management framework<sup>10</sup>

Without focus and expertise, the solutions can get lost in competing priorities. Management needs project management expertise to help it fix the problems we identified.

<sup>9</sup> "Gatekeeping" refers to the practice in project management of stopping at defined, periodic check-points to ensure that past steps have worked and making any needed changes before providing authorization to proceed.

<sup>10</sup> We define a results management framework in our audit of Treasury Board and Finance—Results Analysis Reporting, Appendix: Results Management and Analysis Reference Guide, *Report of the Auditor General of Alberta—July 2014*, pages 24–33.

## DEPARTMENT OVERSIGHT

It is not the department's job to fix the identified problems. However, it is the department's job to ensure that the OPGT's management fixes them. Given the significance of the problems we identified in 2013, and the limited progress to date, it seems clear to us that the department has not provided consistent oversight.

When we released our report in February 2013, the Ministry of Human Services published an action plan and committed to quarterly public reporting for one year. The associate minister at the time took direct responsibility for overseeing the plan to fix the problems we identified.

The department published quarterly reports for one year. Since that time, plans have changed noticeably from those originally published, delays have occurred, and timelines have continually been missed or pushed back. While OPGT management and the department continued to meet to discuss progress on the recommendations, the department has not provided additional reporting to help the public understand the delays.

Furthermore, the inconsistent oversight is likely due, at least in part, to the instability in leadership the OPGT has experienced over the past four years.

The former Public Trustee's appointment was rescinded in March 2013. An Acting Public Trustee was in place until October 2015, when the current Public Trustee was appointed. She was appointed to a one-year term, followed by an eight-month extension that extends to June 2017.

During these same four years, the OPGT has reported to five different ministers, two associate ministers, three deputy ministers and eight assistant deputy ministers.

In February 2013, we reported on a public trusteeship system that had significant problems. It is now 2017 and many of the problems of 2013 still exist. The OPGT's management must make changes and the department must ensure these changes happen—vulnerable Albertans depend on it.

## APPENDIX A: FEBRUARY 2013 RECOMMENDATIONS

### **RECOMMENDATION 2: SUPERVISORY REVIEW OF CLIENT FILES**

We recommend that the Office of the Public Guardian and Trustee improve its file management processes to ensure that all client files are subject to adequate supervisory review.

### **RECOMMENDATION 3: INTERNAL AUDIT ROLE**

We recommend that the Office of the Public Guardian and Trustee strengthen the role of its internal audit, ensuring it has adequate authority and independence to effectively perform its function.

### **RECOMMENDATION 4: IMPROVE AND FOLLOW POLICIES**

We recommend that the Office of the Public Guardian and Trustee:

- review and assess whether its policies are appropriate, and procedures are adequate to mitigate the risk that client assets could be misappropriated or otherwise mismanaged
- improve its processes for ensuring compliance with policies and procedures

### **RECOMMENDATION 5: SEGREGATION OF DUTIES**

We recommend that the Office of the Public Guardian and Trustee strengthen its processes for the approval and payment of client expenses and disbursements.

### **RECOMMENDATION 6: DOCUMENTATION**

We recommend that the Office of the Public Guardian and Trustee improve its processes for ensuring client files are appropriately documented, including adequate documentation of supervisory review and internal audit.



## APPENDIX B: SUMMARY OF PROGRESS

### SUMMARY OF STATUS OPGT & OAG Assessments

Recommendation	OPGT Assessment	OAG Assessment
2. <sup>11</sup> Supervisory review of client files		
3. Internal audit role		
4. Improve and follow policies		
5. Segregation of duties		
6. Documentation		

#### Legend

-  Good progress observed
-  Limited progress observed
-  Unsatisfactory progress observed

#### Recommendation 2: Supervisory file review

Management’s assessment:  Not implemented<sup>12</sup>  
 OAG assessment:  Unsatisfactory progress

#### Rationale for our assessment:

In February 2013, we recommended that management develop a process to regularly review files in order to respond to key risks we had identified. For example:

- files lay dormant and were not routinely opened by case workers
- supervisory activities did not result in improvements to client files or to the overall administration of files
- there were widespread instances of non-compliance with policies—staff made payments from clients’ trust funds without proper approval or without sufficient support to confirm the funds were used for the intended purpose and were in the best interest of the client
- minors’ trust files were not subjected to the level of scrutiny seen in other file types or based on risk

Management has made significant efforts to develop a sustainable, comprehensive review process that will become part of its ongoing client service processes. The OPGT’s supervisory review process is now in its third iteration, after Human Services Corporate Internal Audit expressed concern over the first two iterations. OPGT management continues to work on this process and continues to be challenged by the high number of errors occurring in the administration of clients’ trusts.

<sup>11</sup> In our *February 2013 Report*, the Control Systems at the Office of the Public Trustee was the second chapter, so the numbering of the recommendations began as Recommendation 2 and continued through to Recommendation 6 (5 in total). We have maintained that numbering here for consistency.

<sup>12</sup> OPGT management asserted each recommendation as either “implemented” or “not implemented.” We confirmed with management that these assertions would align with our criteria for “good progress observed” and “limited progress observed” respectively.

Operational changes that came out of the first iteration of the review process do not appear to have improved staff's compliance with file-handling procedures: the latest round of reviews has identified errors in a large majority of the files reviewed. Further, the new risk-based file review strategy seeks to review 11,000 trust files.<sup>13</sup> We are concerned that this task may take years to complete.

The OPGT is only now beginning to integrate reporting into the supervisory review process. While the OPGT did some reporting after the first iteration of the review process, the absence of ongoing reporting throughout was likely a key contributing factor in the process's slow progress to date. Once fully in place, reporting will help management understand what needs to be improved.

In light of the findings of our 2013 audit and the OPGT's continued delays in successfully implementing needed changes, we believe the risk remains heightened that funds held in trust by the OPGT may be mismanaged.

### Recommendation 3: Internal audit

Management's assessment: ● Implemented  
 OAG assessment: ◆ Unsatisfactory progress

#### Rationale for our assessment:

In 2013, we found that the OPGT's internal audit function was not sufficiently independent. It was performing pre-distribution reviews, which is operational work that would not typically be done by internal audit. Further, internal audit was reporting to management rather than, as we would expect, to the department. We therefore recommended that the OPGT strengthen the role of its internal audit function.

The department acted on this recommendation in early 2013 by folding the OPGT's internal audit staff into its existing Human Services Corporate Internal Audit group. For example, it:

- retrained the former OPGT staff
- developed a risk-based audit plan and completed the first planned audit
- regularly reported to leadership in Human Services

However, the relocation of the internal audit staff created a vacuum that the OPGT did not sufficiently anticipate or fill. Backlogs developed in the operational work previously done by the audit staff. As a result, internal audit staff became more involved again in providing operational support to the OPGT.

In October 2015, these audit staff moved to performing only operational support for OPGT's new file review process and managing distributions of trust funds, and they were no longer carrying out audit work. Human Services leadership approved this temporary change so that internal audit could provide needed support to the OPGT. In its 2016–2017 audit plan, Human Services Corporate Internal Audit budgeted 42 per cent of its total internal audit resources to the OPGT. None of that amount was for auditing—it was all for operational support.

In its October 2016 progress report, Human Services confirmed that the internal audit group would continue to provide support to OPGT operations until June 30, 2017 and then revert to its internal audit

<sup>13</sup> The supervisory review process approved in October 2015 called for the review of 7,000 files. An additional 4,000 were assessed by management as having a lower risk, so a sample of these files will be reviewed instead of every file.

role once again. However, neither the department, the internal audit group nor OPGT management have a documented plan for how to meet this timeframe, or for how the OPGT will replace these resources. We have concerns that another vacuum may be created. Further, the independence of the internal audit staff will require reassessment given their involvement in the design, implementation and monitoring of new processes within the OPGT.

#### Recommendation 4: Improve and follow policy

Management's assessment:  Not implemented  
OAG assessment:  Limited progress

#### Rationale for our assessment:

In 2013 we recommended that the OPGT assess the appropriateness of its policies and procedures and improve its processes for ensuring policies and procedures are complied with. In February 2015, the OPGT revised its policy manual, clearly separating policies from procedures and reducing the number to 13 broad policies. It has also developed a framework to guide the development, approval and regular review of policies and procedures.

The OPGT is in the process of completing updates to its procedures and plans to complete this work by July 2017. To deal with the part of the recommendation relating to improving compliance with policies and procedures, the OPGT developed new training materials in December 2014. Management is relying on the new supervisory review process (discussed above) to provide the reporting on results (currently under development) to tell it whether staff are adhering to policies. Results to date indicate that adherence to policies continues to be an area of concern. The effectiveness of the training material is unclear, and the lack of up-to-date procedures that reflect current practices and expectations has been a major challenge to seeing improved results.

#### Recommendation 5: Segregation of duties

Management's assessment:  Implemented  
OAG assessment:  Good progress

#### Rationale for our assessment:

In 2013, we found that the OPGT's processes for approving and paying client expenses and disbursements were weak. For example, we found deficiencies in supporting documentation. Trust officers were sometimes approving payments without providing sufficient documentation, but finance staff were often making the payments anyway, even though they should have requested documentation. This situation meant that there was essentially no second check on payment approvals: if a trust office approved a payment, that payment was likely to be made without question. Having no second check on payments is, in effect, a breakdown of segregation of duties, which is supposed to prevent the same person both approving and making payments.

OPGT finance staff have since designed and implemented new controls supporting better review and approval of client trust disbursements and distributions. Management has also hired additional staff to perform duties related to the newly implemented controls. We have not tested whether these controls are operating effectively—this testing will take place during our follow-up audit.

**Recommendation 6: Documentation**

Management's assessment:       Not implemented

OAG assessment:                       Limited progress

**Rationale for our assessment:**

In 2013, we recommended that the OPGT improve its documentation of client files because we found that there was often no documentation of regular updates or of support for key decisions concerning the management of clients' financial affairs.

In response, OPGT management has re-designed the physical structure of its files and applied the new structure on a go-forward basis. It has developed a budget template that is to be used to support better decisions regarding the use of client funds. Management has not assessed whether the template and other documentation requirements support better decisions regarding the use of client funds.

Management plans to make this assessment as part of its new supervisory review process (discussed above).

For each client, the OPGT maintains a paper file and an electronic file. Management has not yet provided clear guidance on when and how staff should use a client's electronic file.