

Human Services — Office of the Public Trustee

SUMMARY

The role of the Public Trustee is to protect and manage the property of deceased persons, represented adults¹ and minors when there is no one else to act on their behalf.

In 2010, Service Alberta notified the Office of the Public Trustee that one of its senior trust officers had obtained a government identification card under another name.² Upon further investigation, the OPT found that in 1997 the senior trust officer paid \$102,000 to an individual of that name, identified as the sole beneficiary in an estate file that the officer administered. The funds were deposited into a bank account opened using the government identification. In 1998, the senior trust officer approved a final distribution from the same estate of \$20,000 that was deposited into the same bank account.

After completing its internal investigation and finding that funds were improperly disbursed, the OPT terminated the employment of the senior trust officer administering the file. The Public Trustee, as personal representative of the estate, filed a civil suit³ seeking to recover the funds the senior trust officer allegedly misappropriated. The Deputy Minister of the Department of Justice⁴ asked the Office, and we agreed, to do two things:

- an investigation to assess the risk that the dismissed senior trust officer misappropriated other client funds
- an audit of the design and operating effectiveness of the OPT's systems to safeguard and administer client assets

What we examined

Our examination included reviewing files the former employee had handled and auditing the internal controls the OPT uses to protect its clients' financial interests.

Why it is important to Albertans

Albertans should be confident that the financial interests of vulnerable individuals are being properly safeguarded and managed by the Public Trustee.

¹ The Public Trustee may be appointed under the *Adult Guardianship and Trusteeship Act*, S.A. 2008 c.-4.2, to take control of the property of a represented adult. The Public Trustee then collects income and pays expenses on their behalf.

² Through the use of facial recognition software, Service Alberta found that a driver's licence was issued in the officer's own name, and a government-issued identification card was issued to the same individual under a different name.

³ Court file number: 1103 02537. This Statement of Claim sets out specific allegations that have not yet been proven in court.

⁴ The Department of Justice became the Department of Justice and Solicitor General in May 2012.

What we found

The OPT has inadequate systems to safeguard and administer clients'⁵ assets. We found inadequate:

- supervisory review and internal audit⁶ of client files
- compliance with policies and procedures
- segregation of duties
- supporting documentation in client files

We are concerned about the lack of proper management oversight in the administration of the client files. We found examples where the OPT has not followed its own policies for the administration of estate files. In some cases, management was unaware of these shortcomings. In other instances, management was aware but did not take the action needed.

We found no evidence of further misappropriation of client funds by the former senior trust officer. Accordingly, we can conclude there is a low probability that other client funds were diverted by this former employee.

Overall, our findings relating to the OPT's current control environment showed many files were poorly organized and lacked adequate supporting documentation, including evidence that the files had been adequately reviewed and internally audited. In effect, the Public Trustee does not have the necessary assurance that its clients' interests are being safeguarded. Unless the OPT significantly improves its systems and processes, unnecessary risk exists that the financial assets of vulnerable Albertans may be improperly diverted or misused.

What needs to be done

The OPT needs to:

- improve its file management processes and oversight of client files by ensuring adequate supervisory review and internal audit
- review and assess whether its policies are appropriate; ensure that processes adequately mitigate the risk that client assets could be mismanaged or misappropriated; and ensure policies and processes are being followed
- strengthen its processes for approving and paying client expenses
- improve its processes for ensuring client files are appropriately documented, including adequate documentation of administration, supervisory review and internal audit

⁵ "client" is defined in section 1(a.1) of the *Public Trustee Act* as "a person, trust or estate (i) for whom the Public Trustee holds property, or (ii) to whom or for whose benefit the Public Trustee provides any service or performs any task or function under this or any other Act".

⁶ The internal audit function of the OPT is limited to a compliance role. It consists primarily of pre-distribution verification for deceased estate and represented adult files.

AUDIT OBJECTIVES AND SCOPE

We had two objectives for this audit. The first objective was to assess the risk that the former senior trust officer had misappropriated other client funds. Our review included a risk-based sample of 550 files managed by the senior trust officer as well as the files from our second objective where he had involvement. The senior trust officer was a long-term employee of the OPT, so some of the files we examined were from the early 1990s.

Our second objective was to determine if the OPT has proper systems in place to safeguard and administer clients' assets. We reviewed an additional 430 files that were active between April 1, 2009 and March 31, 2011.

We commenced our work in January 2011, immediately after management informed us of the alleged misappropriation of funds. Our work took 19,500 hours over 22 months at a cost of \$2.4 million⁷ to complete.

The following table shows the cost of the work we performed:

Objective	Time Period	Hours	Cost
Investigation	January – December 2011	12,900	\$1,555,000
Systems Audit	January – October 2012	6,600	\$888,000
Total		19,500	\$2,443,000

Our audit was conducted in accordance with the *Auditor General Act* and the standards for assurance engagements set by the Canadian Institute of Chartered Accountants.

BACKGROUND

Role and responsibilities of the Public Trustee

The role of the Public Trustee is to protect the financial interests of vulnerable Albertans by administering the estates of deceased persons, and managing the property of represented adults and minors when there is no one else to act. The *Public Trustee Act*⁸ directs the Lieutenant Governor in Council to appoint a person to be the Public Trustee who will administer the OPT, which falls within the Department of Human Services.⁹

The OPT provides the following services¹⁰ to Albertans:

- financial management services for adults who are unable to perform these functions independently
- estate administration services where there is no one else to administer a deceased estate
- financial management services for minor children, to protect their interests

⁷ Costs directly incurred by the OAG were \$1,243,000; the Department of Justice contributed \$1,200,000.

⁸ Section 2(1) of the *Public Trustee Act*

⁹ The Office of the Public Trustee moved from the Department of Justice to the Department of Human Services in May 2012.

¹⁰ 2010–2011 Annual Report Alberta Justice Office of the Public Trustee, page 6.

Represented adults

The Public Trustee may be appointed by the court to act as Trustee for an adult when there is no private trustee appointed, or a private trustee is no longer able to continue acting.

Once appointed, the Public Trustee:

- takes control of the represented adult's property, which may include real estate, cash, investments and other personal property
- makes arrangements to collect the represented adult's income and pay expenses
- manages, on an ongoing basis, the financial assets and expenses of the represented adult

Any payments made by the Public Trustee to or on behalf of the represented adult must come out of his or her assets or income. The Public Trustee does not provide any internal funding to the clients.

Deceased estates

The OPT may handle a deceased person's estate if there is no one else who can do so. The OPT acts as the administrator of the estate and handles duties that include locating assets, paying debts and funeral costs, and distributing inheritance to beneficiaries. This happens when:

- there is no will, and no one else entitled to be administrator has applied or is willing to apply to be appointed
- an executor cannot be found, or is unwilling to act, and no one else is entitled or willing to apply to be appointed to administer the estate

Official guardian for minors

The OPT¹¹ will act when a minor:

- inherits property and there is no will, or the will does not appoint a trustee to look after the property
- is injured and receives money under a legal settlement or court judgement
- is the beneficiary of an insurance policy or pension plan where a private trustee is not appointed
- wins a lottery or other game of chance

When a minor is entitled to property worth over \$5,000, the law requires that the property be delivered to the Public Trustee. If the assets are worth \$5,000 or less, parents and guardians can accept them as trustee for the minor, but must always act in the best interest of the minor. The person delivering the property is released from any further liability if they receive a signed Acknowledgement of Responsibility from the parent or guardian.

If a minor is entitled to property worth more than \$5,000, a parent or guardian can apply for a court order to appoint them trustee of the minor's property. The court may appoint a private trustee of the minor's property only if satisfied that it is in the minor's best interest to do so, and the court may require the private trustee to provide a bond or other form of security. A person who is appointed private trustee of a minor's property by a court order will be accountable to the court for the proper administration of the minor's property.

¹¹ http://justice.alberta.ca/programs_services/public_trustee/Common_Questions_PublicTrustee/WhenDoesPublicTrusteeGetInvolved.aspx

Benefits payable to a minor under the *Victims of Crime Act* or section 70(9) of the *Workers' Compensation Act* must be paid to the Public Trustee, even if the amount is under \$5,000.

Other responsibilities

Over the years, the OPT has developed the practice of keeping the original wills for some individuals, often in cases where the Public Trustee is named as the executor in the will. The OPT holds about 1,000 wills in its two offices.

The OPT also:

- investigates complaints made against private trustees under the *Adult Guardianship and Trusteeship Act*¹²
- administers missing persons' estates
- holds Pooling Order¹³ funds for missing land owners

For the year ended March 31, 2011, the OPT handled 4,413 files on behalf of represented adults, 810 deceased estate files, and 12,501 official guardian files.¹⁴ The OPT disbursed approximately \$120 million dollars from client accounts in that fiscal year. The OPT has five functional groups—trust administration, legal, tax, financial services and internal audit.

Issues identified in previous external audits

We audit the OPT's financial statements annually. The purpose of these audits is to obtain reasonable assurance that the financial statements are free from material misstatement. As part of our audit, we consider internal controls relevant to the preparation of the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the OPT's internal controls. If in considering internal controls we observe deficiencies that are significant to the preparation of the financial statements as a whole, we communicate to management our observations and recommendations to improve internal control.

Over the last number of years, we made recommendations for improvements to the OPT's internal controls. Most of these recommendations were subsequently implemented by management. The following two recommendations remain outstanding. Management has identified them as implemented—to be confirmed by follow up audits:

- improving controls for adding new vendors to the Public Trustee Information System (*October 2010 Report*, page 180)
- improving controls for issuing and stopping recurring payments (*October 2010 Report*, page 180)

In 2009, the OPT asked a professional services firm to assess the OPT's fraud risk and controls. The OPT took this initiative as there were publicly reported cases of fraud at the Public Guardian and Trustee offices in British Columbia and Ontario. The firm issued 58 recommendations to the OPT to improve its internal controls to mitigate the risk of fraud or wrongdoing. Some of these recommendations were minor in nature, requiring minimal

¹² Section 75 of the *Adult Guardianship and Trusteeship Act*.

¹³ A Pooling Order is used to distribute the net income of drilling a well between all owners of mines and minerals in a drilling space. The balance of proceeds for missing or untraceable owners is paid to the Public Trustee in accordance with Section 8 of the *Public Trustee Act*.

¹⁴ *2010–2011 Annual Report Alberta Justice Office of the Public Trustee*, page 19.

change to implement; others were major in nature and would require significant changes to the OPT's control environment. According to the OPT, some of these recommendations have been implemented. The majority of them are to be implemented when the OPT's new operating software for client accounts becomes operational in several years. However, several key recommendations that would strengthen the internal controls remain outstanding.

Audit approach

At the time when the trust funds were allegedly misappropriated for the former senior trust officer's personal benefit, that officer's primary role was to administer deceased estates, although he had also worked on files for represented adults and minors while employed at the OPT. Therefore, we used the following risk-based approach to determine that we would examine all files the former senior trust officer had administered that were:

- deceased estate files with one beneficiary—We considered these high-risk files as the likelihood of someone challenging the identity of the beneficiary was very low.
- deceased estate files assigned to the officer between 1992 and 2002, which is five years on either side of the time when the trust funds were allegedly misappropriated
- represented adult files and a sample of official guardian files the senior trust officer worked on or administered

We also examined a sample of other deceased estate, represented adult and official guardian files active between April 1, 2009 to March 31, 2011 from the Calgary and Edmonton offices. These files were administered by other trust officers.

FINDINGS AND RECOMMENDATIONS

Alleged misappropriation of client funds

In December 2010, Service Alberta's Special Investigation Unit notified the OPT that their facial recognition software had found two pieces of identification where the person looked the same, but had different names. The first identification was an Alberta driver's licence in the name of one of the OPT's senior trust officers. The second identification was an Alberta photo identification card using a false identity in the name of Robert Thompson.¹⁵ It appeared from the photos in both identification cards that the same individual was using two different names.

The OPT checked its internal electronic database¹⁶ for the name of Robert Thompson and discovered that from 1995 to 1998, the senior trust officer had administered a deceased estate for which the only beneficiary was named "Robert Thompson." After reviewing the file, the OPT found:

- the file did not have proper kinship documents establishing "Robert Thompson" as a legitimate beneficiary—There is reference to kinship documents on the file; however, at the time of our audit, they were not present.

¹⁵ We found no evidence that the false identity of Robert Thompson established by the former senior trust officer is the proper or legitimate beneficiary of the estate.

¹⁶ PTIS—Public Trustee Information System

- the senior trust officer and the manager of deceased estates¹⁷ authorized a distribution of estate funds in the amount of \$102,360.67, payable to “Robert Thompson,” in June 1997
- the same individuals authorized a second distribution of \$20,382.96 to “Robert Thompson” in May 1998

The OPT subsequently terminated the employment of the senior trust officer. The Public Trustee, as personal representative of the estate, filed a statement of claim with the Alberta Court of Queen’s Bench setting out the specific allegations and seeking to recover the funds that the employee allegedly used for personal benefit. The OPT is looking for the proper beneficiaries of the estate.

The former Department of Justice then asked us to review the OPT’s processes, and assess the risk that other funds may have been misappropriated by the same senior trust officer.

We reviewed the Thompson file to determine how the diversion of funds was accomplished. We found the internal controls were not effective to mitigate risks and ensure the integrity of payments. There was inadequate segregation of duties that resulted in the senior trust officer administering files without effective safeguards to mitigate the risk of fraud and error. In this case, it allowed a senior trust officer to be the only individual dealing with and having contact with the “beneficiary,” including being the only OPT employee to witness the beneficiary’s signature on a document required by financial services before it issued payment. The cheque was then provided directly to the senior trust officer for delivery to the “beneficiary.”

We also found OPT internal audit reviewed the file prior to the distribution of the inheritance as was required by policy. In a memo to the file, internal audit identified a number of deficiencies in the client file, yet still provided their approval to distribute the funds to the beneficiary. It appears internal audit did not follow up with the senior trust officer about the deficiencies identified in their memo.

We also reviewed over 550 files handled by the former senior trust officer. Our examination was complicated because the senior trust officer was an employee of the OPT for over 20 years. In our extensive review of client files managed by the senior trust officer, there were no further files where we found evidence that client assets were misappropriated.

In October 2012, we interviewed the senior trust officer and found him to be cooperative. The interview did not result in any new evidence or further leads. Nothing in our discussions with the senior trust officer caused us to change any of our conclusions.

¹⁷ There is no indication that this individual was involved in the alleged misappropriation.

Management oversight

Background

The role of the Public Trustee is to protect and manage the property of deceased individuals, minor children and represented adults when no one else can. Management is responsible for setting clear expectations that support the OPT's role and objectives and ensuring there are effective internal controls that support those objectives.

Our audit findings

We would have expected the OPT, being in a position of trust, to have strong internal controls and rigorous management oversight to ensure that the property of vulnerable Albertans is properly safeguarded and administered. Instead, we found:

- evidence of poorly designed internal controls
- policies and procedures were inadequate to manage risks
- significant non-compliance with relevant policies across all program areas
- inadequate supervisory review of files administered by trust officers
- the OPT's internal audit function was weak, and lacked the rigour and independence required to effectively identify risks

Our findings relating to specific control weaknesses are discussed elsewhere in this report. Collectively, they demonstrate an overall failure by management to provide adequate direction and oversight.

We found an office environment:

- marked by excessive trust and reliance on the actions and assertions of trust officers, who have a great deal of autonomy and exercise broad discretion when administering the assets of vulnerable Albertans
- where staff didn't feel comfortable questioning the actions or decisions of colleagues or superiors
- marked by recurring non-compliance with policies and procedures
- with no effective process for following up on and resolving compliance issues
- where management's actions did not demonstrate that it appreciates the seriousness of non-compliance with policies and procedures

Our finding that management was unaware of the extent of non-compliance issues may, in part, offer some explanation. But it is management's responsibility to ensure effective controls are in place, operating as intended, and that it is receiving the information it needs to effectively manage risk and resolve issues.

Rectifying the internal control weaknesses that we have identified is only part of the solution. New policy requirements or stronger controls won't effectively mitigate risks if the office environment remains unchanged. Office environment starts with management's action or inaction as the case may be. Failure to effectively monitor and redress non-compliance issues contributes to an environment in which management may be seen as tolerant of or indifferent to non-compliance with internal policies and procedures. In turn, employees are unlikely to appreciate the seriousness of non-compliance issues if that is the tone set by management. Comprehensive policies and procedures will not resolve these issues if management action is inconsistent with the expectations it sets out in the policy.

It is management's responsibility to ensure that there is adequate supervisory review of files, and an effective internal audit function that can provide management with the assurance it needs that the assets of vulnerable Albertans are being safeguarded and administered in a prudent manner. However, we found that supervisory review was inadequate; internal audit's role was too limited and lacked rigour.

Real change requires action on the part of management to create a working environment in which:

- management demonstrates that non-compliance with legislation, policies and procedures will not be tolerated
- open discussion by staff regarding potential issues and solutions is encouraged
- employees are comfortable questioning decisions and actions by supervisors and colleagues—Otherwise staff may not report suspicious transactions or other significant issues to management.
- the value of rigorous supervisory review and audit is recognized and supported—This can be demonstrated by ensuring its audit function has sufficient authority, independence and the resources necessary to effectively fulfill its role. Internal audit should have a clear mandate, including the authority to make recommendations and confirm implementation. Because without an effective follow-up process to ensure compliance, risks cannot be effectively mitigated. Nor can internal audit provide management with the necessary assurance needed for proper oversight.

Supervisory review

Background

Trust officers have considerable independence and discretion when acting as the administrator of an estate, or as a trustee managing funds held on behalf of and for the benefit of represented adults and minors. This means that the financial interests of vulnerable Albertans are subject to the competency and integrity of the trust officer assigned responsibility for managing their property. It is the Public Trustee, though, that is appointed and entrusted with protecting its clients' financial interests, and ensuring their assets are properly managed. This requires strong internal controls, a key component of which is supervisory review of client files to ensure that trust officers are managing the files properly, and acting in the best interest of the client.

Deceased estate files

Deceased estate files require supervisory review four months after the file is opened, and review by internal audit before any estate funds are distributed to beneficiaries. Policy requires that issues or exceptions identified in the audit must be resolved before internal audit authorizes the distribution. Additional review and authorization is required from the OPT's tax section administration prior to the trust officer accounting to the beneficiaries, notifying them of the proposed distribution of assets, and providing them with a release confirming their agreement with the proposed distribution.

Releases must be signed by all beneficiaries before final distribution of the estate. The trust officer forwards the file with the completed release packages to the director. The director should ensure the release packages are properly signed and then enter the third electronic signature authorizing the distribution to the beneficiaries.

Represented adults

OPT policy requires that represented adult files be reviewed by a supervisor four months after it is opened, and by the OPT's internal audit section ten months after opening the file. Review by the OPT's internal audit section is also required prior to closing the file.

Official guardian files

The OPT has classified client files for minors as low risk, and does not require an audit, even prior to closing. There is an administrative process in place before funds are distributed to a minor to ensure the file is ready for distribution and subsequent closure. But there is no requirement for an in-depth review of the file's activity and the trust officer's management of the file. These files are often open for many years, until the minor reaches the age of majority.

We make two recommendations to the OPT to improve their processes relating to supervisory review and audit of client files.

RECOMMENDATION 2: SUPERVISORY REVIEW OF CLIENT FILES

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

RECOMMENDATION 3: INTERNAL AUDIT ROLE

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

Criteria: the standards for our audit

The OPT should provide proper supervisory review of its client files by management and internal audit.

KEY FINDINGS

- The OPT does not have an adequate and comprehensive review of open files to ensure proper and timely administration by the trust officer.
- Some client files were dormant for extended periods of time or non-compliant with policy and were undetected by management control systems.

Supervisory review of client files

The OPT has systems in place to supervise its trust officers' management of client assets for its three program areas, but the systems are weak and not always followed. The OPT

needs to strengthen its supervisory review of client files to ensure it is adequately protecting client interests and performing its role in an effective and efficient manner.

Deceased estate files

After the initial review four months after the file is opened, deceased estate files require no further review until the trust officer is ready to distribute the estate to the beneficiaries. An estate file can span from several months to many years, during which time many key decisions may have been made, and funds disbursed. The alleged misappropriation of client funds by a senior trust officer was not detected by the OPT until almost 15 years later, and only after being notified of a potential issue by Service Alberta. With more timely, rigorous review while the file was being administered, management may have become aware of it much sooner or prevented it from happening.

Timing of the review was not the only issue that we found. Even in cases that were subject to review and audit, we found the review was not sufficiently rigorous to mitigate the risk that funds were administered improperly, and to ensure that expenses were legitimate and accounted for.

We found instances in which:

- funds were paid to beneficiaries without adequate kinship documents on the file to confirm identity of the beneficiary
- funds were distributed without the appropriate level of approval being obtained as evidenced by the required authorized electronic signatures
- approval by electronic signatures was provided, but no other evidence of review being done
- files remained dormant for a number of years, without adequate explanation for the delay

Official guardian files

We found there was no effective supervisory review and oversight to ensure official guardian files were properly managed by a trust officer. The OPT does have an administrative process in place before distributing the funds to the minor. But this process is not designed to provide assurance that the funds are being managed properly. After the funds are disbursed, approval to close the file is provided by the same trust officer who administered the file. There is no supervisory review of the file activity from the time it is opened. Internal audit does not audit these files.

The issues we found included:

- serious delays and periods of inactivity on open files
- not obtaining an adequate reporting or a proper accounting of funds held for the benefit of a minor by a private trustee when required to do so
- inadequate documentary support for discretionary disbursements made to guardians for the benefit of a minor

Given the number of exceptions we found, it raises concerns about the management of the official guardian (OG) files we did not audit, particularly since some exceptions involved non-compliance with requirements under legislation. We examined 236 of the 12,051 OG files handled by the OPT according to their 2011–2012 annual report. For exceptions relating to

non-compliance with policy and legislative requirements, we found these went undetected by management in most cases since there are no effective processes for supervisory review and oversight.

Represented adults

We found numerous represented adult files that had not been reviewed by a supervisor or audited in many years. In one case, the file had not been reviewed in 45 years. Policy requires supervisory review after four months and by audit at ten months and prior to closing. By the time management has the opportunity to identify any potential issues or mismanagement by trust officers, years may have passed, and the opportunity to mitigate risk and prevent any loss or misuse of client assets is gone.

Internal audit

Currently, internal audit has a limited role at the OPT. They:

- perform a ten-month review of representative adult files, but are not responsible for any follow-up work from their review
- complete pre-distribution audits for deceased estates and represented adult files
- do not audit any operational processes
- do not perform any third-party verification as part of their audit work
- do not perform any audit work relating to the estates of minors
- report directly to the Public Trustee

Opportunities for improvement

There are opportunities for improvement in supervisory review in all of the service areas that the OPT handles. The supervisory review would ensure that the issues on the files are being handled properly and completed on a timely basis.

Without effective processes for ensuring there is proper supervisory review and independent audit, management does not have the assurance that client assets are being managed in the best interest of the client. Management cannot resolve issues if it doesn't have an effective process for identifying them. Nor can it identify weaknesses or opportunities to improve policy or guide staff.

A well-designed audit group will work with and report to management, but will also have a level of independence. A best practice suggests that an internal audit group should have dual reporting relationships—reporting to management and, in this case, the Ministry. The audit group should develop its own audit strategy, which may include issues management wants audit to look at plus issues that audit has identified as a higher risk.

Implications and risks if recommendation not implemented

Without an effective supervisory review and a broad scope of operations for its internal audit function, management cannot be assured that client files are being properly administered, that the OPT is applying a consistent approach in similar situations, and that trust officers are performing their duties competently and acting in the best interests of the client.

Improve and follow policies

Background

Policies are an important component of a properly designed internal control system. The purpose of written policy is to clearly articulate management's expectations and provide guidance to staff to achieve the desired result. Compliance with policy requirements will result in a consistent approach when staff deal with similar issues. Policies and procedures are also important when staff must deal with complex legislation or when staff, such as trust officers, have a certain amount of independence to exercise discretion. Policies should be reviewed regularly to ensure they remain updated.

The OPT has a number of policies for its program areas to assist staff in the administration of client files. The OPT updated its policies 113 times during the 2010–2011 fiscal year.

RECOMMENDATION 4: IMPROVE AND FOLLOW POLICIES

We recommend that the Office of the Public 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

Criteria: the standards for our audit

The OPT should have appropriate policies that management and staff follow.

KEY FINDINGS

- Policies are not always followed and processes to monitor compliance with policy are ineffective.
- Policy around supporting documentation requirements is inadequate.

We found instances of non-compliance with policy in all program areas, and occurring over multiple years. Management was unaware of the extent of non-compliance with policy requirements. We also found instances in which management did not comply with policy.

OPT policy requires taxation, internal audit and the director to authorize the release of client funds from the deceased estate files. In the deceased estate files we examined from the Edmonton office, we found that the majority of files did not have the proper level of authorization from the director to release the funds to the beneficiaries. These files were authorized by taxation, internal audit and a senior trust officer. The senior trust officer did not have the proper signing authority to approve the distributions to the beneficiaries. Total payments to beneficiaries from these files were just over \$1.9 million.

We found the policy governing the approval and payment of client expenses should be reviewed, and management should assess whether it is adequate given the role and objectives of the OPT. At this time, it provides that invoices or other supporting documentation are only required if the expense is over \$500. The implication being that

invoices or other evidence to support the payment is not required for expenses under \$500. The policy also states that no invoice or receipt is required for payments made to a third party by cheque or electronic fund transfer,¹⁸ regardless of the amount. Policy states that the client must submit a written request for the expenditure to a third party. The policy also states a trust officer has the discretion to request a receipt from the payee even if the amount is under \$500.

As the OPT is administering trust funds for the benefit of vulnerable Albertans, we would have expected more onerous requirements regarding the need for adequate evidence of the legitimacy of expenses. For example, the Government of Alberta's policy for the payment of government expenses requires invoices or receipts to support the payment or reimbursement of expenses. There are some exceptions for lower cost items, such as parking costs, where a receipt may be more difficult to obtain. Under the OPT policy, however, it is not only certain types of expenses that do not require supporting documentation; rather, it is any expenses under certain threshold amounts, or types of expenses regardless of amount. This makes it difficult to determine if client funds were used for the intended purpose.

We acknowledge certain OPT clients will be unable to provide the required documentation to support their expenses. These incidents should be the exception and clearly defined in the policy.

Implications and risks if recommendation not implemented

Without strong policies that are monitored for compliance and enforced, it is difficult to know whether trust funds are being properly administered and accounted for.

Segregation of duties

Background

Trust officers are responsible for the administration of a client's file, including initiating the payment of client expenses. OPT policies prescribe what approvals and supporting documentation are necessary for financial services to issue a payment. In particular, OPT policy:

- does not require an invoice or other supporting documentation for client expenses less than \$500
- does not require an invoice or receipt if payments are made directly to a vendor, regardless of the amount
- requires two signatures from individuals with the proper level of authorization, evidencing approval from the appropriate level of staff, for expenses over \$4,000

When no invoice or other supporting documentation is required, a trust officer submits what is referred to as a "pink slip" to financial services for processing. The pink slip, filled in by a trust officer, contains the client number, vendor name, vendor number and amount of the payment.

¹⁸ Third-party would not include a represented adult, minor or the minor's parent/guardian.

For deceased estate files, distribution of estate funds requires authorization from internal audit, taxation and the director of trust administration, before cheques are issued.

RECOMMENDATION 5: SEGREGATION OF DUTIES

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

Criteria: the standards for our audit

There should be proper segregation of duties between the person who authorizes a payment and the person who processes it.

KEY FINDINGS

- Segregation of duties between trust administration and financial services is flawed because financial services does not receive sufficient documentation to scrutinize payment requests.
- Financial services provide trust officers with cheques for payment of expenses the trust officers approved from client accounts.

Segregation of duties is an important internal control requiring that more than one person be involved in a task. Having one person authorizing the payment and a second person processing the payment minimizes the possibility of error and fraud.

We found that the OPT segregates duties between individuals involved in authorizing expenditures and those processing the payments. Trust officers submit a request for payment to financial services staff, who then process the payment. However, these processes need to be significantly strengthened to operate effectively.

Since OPT policy does not require supporting documentation for all client expenses or other disbursements, financial services relies on the trust officer's authorization as evidence that the expense is valid.

We found the trust officers submit a large number of "pink slips" to financial services to process vendor payments. Yet, without an invoice from the vendor or other supporting documentation, it's not clear how financial services has the necessary assurance that the payment is correct or legitimate and complies with applicable policies.

We also found instances of financial services making payments even though it was apparent from the pink slip or invoice that the required signatures of approval were missing. For example, in cases requiring two signatures, payments were made when there was only one or when persons authorizing the payment did not have the proper level of authorization.

We identified other exceptions that increase the risk of illegitimate transactions going undetected. These involved financial services providing cheques directly to trust officers for payments to third parties. This is a poor practice, as it reduces the opportunity to flag illegitimate transactions and verify the legitimacy of the payee.

Similar issues were identified in 2009 by a professional services firm, as stated in its report to management: "...the disbursement process lacks sufficient rigour, structure and design to provide an effective basis of determining whether policies and procedures are being adhered to by OPT staff or payments are valid." It recommended that the OPT consider redesigning the disbursement process to improve its effectiveness and efficiency.

Our findings similarly demonstrate that OPT processes for approving and paying client expenses lack rigour, and do not provide the necessary assurance that expenses are appropriate or legitimate and funds are used as intended.

Implications and risks if recommendation not implemented

If financial services must rely solely on the representations of the trust officer requesting payment, there is not a meaningful segregation of duties. Insufficient supervisory review and oversight further increases the risk that improper payments could go undetected.

Supporting documentation

Background

The OPT maintains a client file for each estate in which the Public Trustee is appointed the administrator, or when acting on behalf of a represented adult or minor.

The documents that should be retained on a file will vary depending on the type of file. For example, deceased estate file documentation will include court documents such as the letters of administration, kinship documents, other vital statistic documents, inventory of assets and invoices. Represented adult files could include documents evidencing financial obligations of the represented adult, such as bills for utilities or other ongoing expenses. Represented adult files should also include sources of income and the OPT's authority to act on behalf of the represented adult. Official guardian files may include the OPT's authority to act, questionnaires sent to the parent/guardian, receipts or other supporting documentation for payments made for the benefit of the minor. All client files should also contain various correspondence outlining the ongoing status of the file, actions taken and decisions made in the administration of the client file.

Size and complexity of a file will also vary depending on the amount of ongoing activity required on the file, and the length of time the OPT has administered it. The file size can range from one folder containing a few documents to multiple folders containing numerous documents showing the activity on the file over many years. The OPT has been the Public Trustee of some represented adult clients in excess of 40 years.

RECOMMENDATION 6: DOCUMENTATION

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

Criteria: the standards for our audit

There should be proper documentation in client files supporting the decisions made by the OPT. All OPT policies identifying documentation requirements should be followed.

KEY FINDINGS

- Client files lacked the required documentation demonstrating that the file was properly administered.
- Status updates, rationale and support for key decisions and evidence of supervisory review were often not documented in client files.

We examined 430 files from the Calgary and Edmonton offices. We found many instances, from all program areas, in which the files lacked the appropriate documentation. Missing or incomplete documentation included all document types, such as invoices, receipts, legal documents, correspondence and memos outlining actions or decisions that we would have expected to see on file.

Client files often lacked the documentation necessary to determine if expenses were legitimate. Other key documents were often missing from the files as well, such as:

- on minors' files, legal documents such as court orders confirming awards to minors, copies of letters of administration or grants of probate
- documents relating to minors' interests in land
- final reporting and accounting in cases where minors are beneficiaries
- adequate kinship documents, particularly for foreign beneficiaries, in which the integrity of translated documents is often relied upon

On client files for represented adults and minors where regular expenditures were made, there was little evidence of adequate financial planning such as preparing a budget. This may involve working with the client or their representative, as appropriate within the terms of the trust instrument, to create an overall strategy and long-term objectives for the trust fund, budgeting anticipated receipts and expenditures based on agreed upon objectives. This information would be useful in guiding trust officers in assessing requests for funds and in maximizing the benefits to the clients.

Many files also lacked internal documentation outlining the status of the file, or explaining the decisions made by the trust officer. Trust officers must use their professional judgement when exercising discretion and making decisions; however, decisions and the rationale to support them should be documented on the file. A file may be transferred to another trust officer, and it is important that anyone assuming responsibility for the file is able to understand actions taken to date, and the rationale behind any decisions. As well, adequate documentation is necessary for supervisory review and audit of the file.

Given the size or history of some files, a summary memo would be useful, particularly for files that are unusually complex or very large. A memo could provide a clearer understanding of the actions taken to date, and what remains to be done. This would be especially useful for a new trust officer assuming responsibility for the file, the supervisor reviewing the file, and the OPT's internal audit group.

A properly documented file is a best practice for several reasons. It not only protects the interests of clients, or those who have a legal interest in property held by the OPT; it helps

protect the reputation of the individual trust officer, and it also helps maintain public trust and confidence in the OPT.

We also found that the client files were not well organized, particularly files with a long history or a large number of documents. Files were generally organized by date, which makes it difficult to locate specific documents in a timely manner. Key documents were not segregated by type (for example, court documents). Rather, all documents were intermingled, in many cases depending on the date the trust officer put it on the file, rather than by the type of document.

As well, we found numerous duplicate documents within the files. Organizing documents by type, for example, keeping invoices, receipts or court documents together, would help the trust officer eliminate duplicate documents, and make it much easier to quickly locate a document or determine if all required documentation is on file.

Implications and risks if recommendation not implemented

If client files do not include adequate supporting documentation, the OPT will be unable to demonstrate it is properly administering and monitoring client files.