

# Human Services—Office of the Public Guardian and Trustee—Surplus Management and Results Reporting

## SUMMARY

The Public Trustee manages the financial assets of vulnerable Albertans. The Public Trustee acts to protect and manage the interests of Albertans who are otherwise unable to make financial decisions for themselves. This role includes administering estates or trusts for represented adults, minor children, and deceased and missing persons. There are approximately 20,000 open case files. The Public Trustee has a fiduciary responsibility to act in their best interest, protect their assets and comply with legislative requirements. Clients, beneficiaries and families deserve to know that their loved ones' financial needs are being properly managed by the Public Trustee.

The Public Trustee is accountable to its clients, the public and the Minister of Human Services. The Ministry of Human Services funds the Public Trustee's administrative costs representing salaries and other expenses. In 2015 these costs totalled \$16 million.

The Public Trustee was created as a separate legal entity under legislation, and administers \$603 million in assets directly and indirectly. These assets are not consolidated into the Ministry of Human Services financial statements as they do not belong to the government, rather they are held in trust for clients.

### What we examined

We examined whether the Public Trustee has processes to determine how much should be retained in the surplus account and how to utilize the balance that has accumulated over time.

We also examined the processes the Public Trustee uses to set, communicate and report the results of its operations.

### Overall conclusion

The Public Trustee does not have adequate systems to manage the surplus funds arising from the management of the assets of the Public Trustee's clients.

The Public Trustee does not have adequate processes to support reporting on the results the Public Trustee's operations, including adequate results analysis.

### What needs to be done

The Public Trustee should analyze past results and examine trends to determine the required amount that should be retained in the accumulated surplus to mitigate the risks of negative interest fluctuations and errors and omissions claims.

The Public Trustee should implement processes to identify, analyze and report results achieved in order to improve its operations and demonstrate accountability for results to its clients and Albertans.

## Why this is important to Albertans

An increasing number of Albertans are relying on the Public Trustee to make financial decisions on their behalf. Albertans, the ministry and the Legislative Assembly need sufficient and appropriate information to assess whether the Public Trustee is complying with legislative responsibilities, accomplishing its objectives and managing risk for vulnerable Albertans.

If the Public Trustee does not complete an analysis of the accumulated surplus balance, there is a risk that the Public Trustee will hold in reserve more funds than are necessary to mitigate the risks of interest fluctuations, errors and omissions, and the opportunity to maximize the return to client accounts may be missed.

## AUDIT OBJECTIVE AND SCOPE

Our objective was to determine if:

- the Public Trustee has adequate systems to monitor the accumulated surplus
- the Public Trustee has systems in place to report on its results measured against plans and objectives

Our audit included examining:

- applicable legislation
- how results are measured, analyzed and reported

We conducted our field work from January to October 2015. We substantially completed our audit on December 10, 2015. Our audit was conducted in accordance with the *Auditor General Act* and the standards for assurance engagements set out in the CPA Canada Handbook—Assurance.

## BACKGROUND

### Mandate of the Public Trustee

The *Public Trustee Act* sets out the regulatory framework within which the Public Trustee operates. The role of the Public Trustee was established within the Department of the Attorney General on July 1, 1949 and transferred the responsibility of administering client estates from the attorney general to the Public Trustee.

The Public Trustee is a corporation sole,<sup>1</sup> which was established under the *Public Trustee Act* in 2005. Governance and decision making for vulnerable Albertans, as listed below, are vested in the Public Trustee.

Under the *Public Trustee Act* the Lieutenant Governor in Council may appoint the Public Trustee to act:

- as a personal representative of a deceased person
- as trustee of any trust to hold or administer property in any other fiduciary capacity
- to protect the property or estate of minors and unborn persons
- in any capacity in which the Public Trustee is authorized to act by order of the court and this or any other Act

---

<sup>1</sup> Technical term is a corporation sole—which is a unique type of corporation in which it is comprised of one individual.

The legislation provides for the appointment of a Public Trustee to:

- protect and manage the best interests of Albertans who are otherwise unable to make financial decisions for themselves.
- separate the assets of Public Trustee clients from those that belong to the province. The Public Trustee acts as a custodian of these assets.

## Role of the Minister of Human Services

The Minister of Human Services is responsible for the *Public Trustee Act*, *Adult Guardianship and Trusteeship Act*, and *Minors' Property Act*.<sup>2</sup>

The Minister of Human Services, through the department, has responsibility for oversight of the Public Trustee to ensure the interests of clients are protected and to mitigate the risk of provincial exposure to loss on the guaranteed accounts. A portion of these assets under administration are guaranteed by the Crown.

## The common fund

The Public Trustee manages the financial interests of vulnerable Albertans in accordance with the *Public Trustee Act*, the *Adult Guardianship and Trusteeship Act* and the supporting regulations. Prior to 2005, the Public Trustee administered client assets through a common fund and a special reserve fund. The *Public Trustee Act* that was passed in 2005 combined these funds into a single trust fund called the common fund. The purpose of the common fund is to invest and hold in trust the monetary assets of its clients.

Under the previous Act,<sup>3</sup> the special reserve fund was set up to mitigate the risks of interest fluctuations in the client accounts, protect the Public Trustee from errors and omissions, and pay expenses incurred in the operation of the common fund. The accumulated surplus now serves the functions of the previous special reserve fund. The surplus reflects the differences between the income earned on client investments and the interest paid to the client accounts less operating costs. This surplus has been increasing.

The estates and trust fund is comprised of two components:

- common fund assets—the balance in the client guaranteed accounts<sup>4</sup> plus the accumulated surplus.<sup>5</sup> At March 31, 2015, these balances were \$441 million and \$76 million, respectively.
- other assets under administration—other client assets and liabilities held outside of the common fund, including real and other property as well as privately held investments over which the Public Trustee has no direct management, but retains a fiduciary obligation. These assets and liabilities are held pending liquidation or discharge, at which time the proceeds will be deposited into the common fund. At March 31, 2015 these were comprised of assets valued at \$127 million and liabilities valued at \$41 million, and are not guaranteed by the government.

The Act stipulates that any money received by the Public Trustee is to be paid into the common fund. The Public Trustee uses the common fund to receive income, pay expenses and settle estates on behalf its clients, receive investment income, pay investment management fees and transfer fees to the

<sup>2</sup> *Government Organization Act*, Section 16 and *Designation and Transfer of Responsibility Regulation*.

<sup>3</sup> *Public Trustee Act*.

<sup>4</sup> Portion of the client assets under administration that are unconditionally guaranteed by the Crown.

<sup>5</sup> Excess income on investments that has not been returned to client accounts.

department for both administering the Act and for fees collected from client accounts for services provided.<sup>6</sup>

### Interest allocated to client guaranteed accounts

Under the Act, the Public Trustee is required to credit the client guaranteed accounts interest on a monthly basis. The rate of interest is set by the Public Trustee in accordance with the *Public Trustee Investment Regulation* (PTIR).

The *Regulation* states the annual interest rate on guaranteed accounts during a fiscal year will be at least 90 per cent of the average reference rate.<sup>7</sup> The reference rate is a rolling average of the yield for the past five years on the Government of Canada five-year benchmark bond (CANSIM V39053). This benchmark bond paid 1.81 per cent in 2015.

### Public Trustee Information System Replacement—Business Operating Support System

The Public Trustee Information System (PTIS) is a data management system currently used by the Public Trustee to track financial and non-financial data for its clients. In 2005 the Public Trustee requested additional funding from the Department of Justice<sup>8</sup> to support the development of a new data management system to replace PTIS, due to its age, lack of capacity and costs to maintain.

The Department of Justice and Solicitor General requested and Treasury Board authorized funding of \$13 million for both the Business Operating Support System project of \$4.5 million and other operational requirements amounting to approximately \$8.5 million, to be spent over a seven-year period. This project had no impact on the department's operating or capital budgets, the project was fully funded from the accumulated surplus of the common fund of the Public Trustee.

## FINDINGS AND RECOMMENDATIONS

### Accumulated surplus

#### Background

Maintaining a reserve is a common and prudent practice. The Public Trustee uses such a reserve, called the accumulated surplus, to manage the risks and ensure the Public Trustee is protected from interest fluctuations and from unforeseen expenses, such as errors and omissions. If the balance is too large, the opportunity to maximize the return to client accounts may be missed.

The accumulated surplus has existed in some form since the Public Trustee office was created. Growth in the accumulated surplus is a result of interest earned on investments exceeding the interest allocated to the client accounts. The balance has increased over the years to \$76 million as at March 31, 2015.

#### **RECOMMENDATION 3: DETERMINE AND MANAGE SURPLUS**

We recommend that the Public Trustee develop processes to effectively manage the growth and use of the accumulated surplus in the Common Fund.

<sup>6</sup> *Public Trustee Act*, Sections 31 and 32.

<sup>7</sup> *Public Trustee Investment Regulation*, Section 2(2).

<sup>8</sup> Prior to 2013 government restructuring, responsibility for Public Trustee was with Minister of Justice.

**Criteria: the standards for our audit**

The Public Trustee should have processes to manage the growing accumulated surplus, which consider the amount required for errors and omissions, as well as the amounts to protect against interest fluctuations and other required administrative costs.

**Our audit findings****KEY FINDINGS**

- The Public Trustee does not have systems to assess the optimal level of accumulated surplus.
- The Public Trustee does not have:
  - systems to estimate the amount necessary to manage the risks of investment return fluctuations and errors and omissions
  - documented analyses to justify the current balance retained in accumulated surplus

Prior to 2005, the Public Trustee had a special reserve fund to manage two identified risks. The first risk was that investment earnings on clients' assets were insufficient to cover the minimum legislative required allocations to client accounts. The second was to ensure sufficient funds were set aside to cover the costs of errors and omissions relating to the management of client accounts.

**Investment earnings**

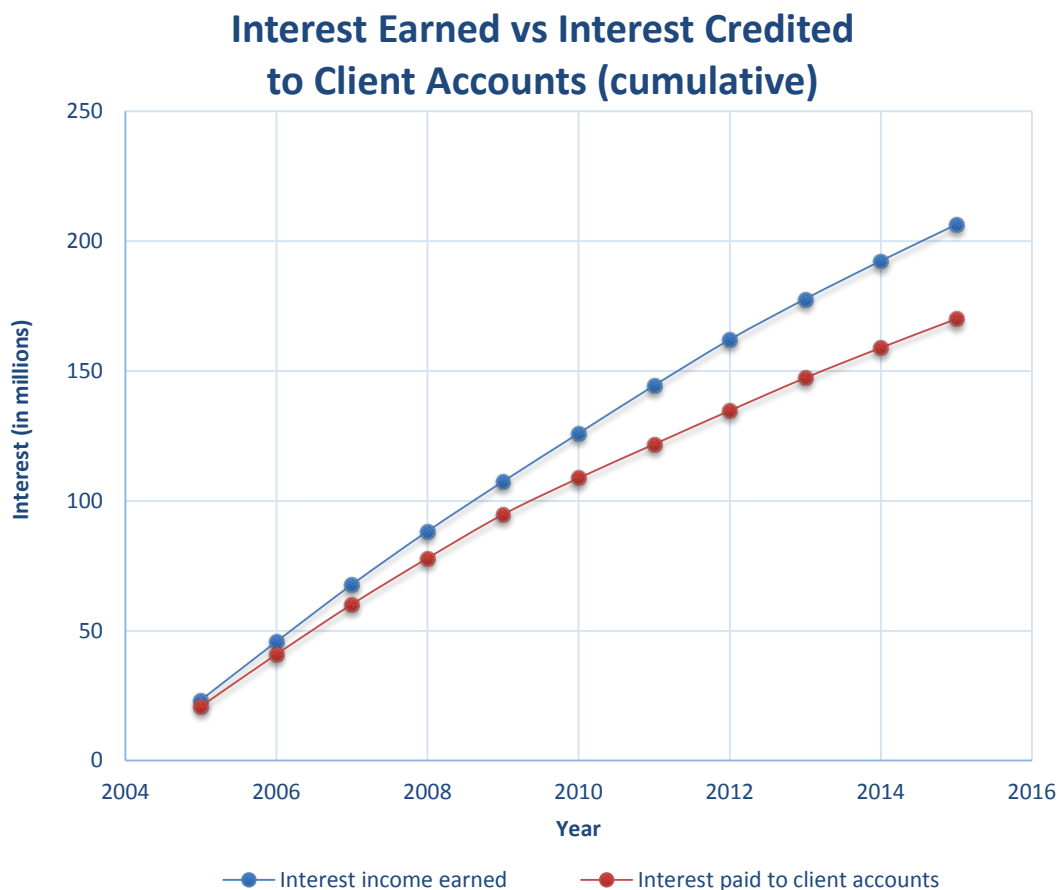
We could not find evidence that an analysis had been performed to determine the amount to be retained in the accumulated surplus to manage the risk of insufficient investment earnings on client assets. Insufficient investment earnings occur when the interest earned on investments drops below the benchmark rate, which is the minimum amount that must be paid monthly to client accounts.

Under the Act, the Public Trustee is required to credit the client accounts' interest on a monthly basis. The rate of interest is set by the Public Trustee in accordance with the PTIR. The minimum amount objective set by legislation to be allocated to client accounts during a fiscal year is at least 90 per cent of the average reference rate.<sup>9</sup> The reference rate is a rolling average of the yield for the past five years on the Government of Canada five-year benchmark bond (CANSIM V39053). This benchmark bond paid a rate of return 1.81 per cent in 2015.

When setting the interest rate to allocate to client guaranteed accounts, the Public Trustee relies on recommendations from its Investment Advisory Committee, reviews rates paid in other provinces and monitors market conditions. In 2015, the Public Trustee paid 2.5 per cent to its clients' accounts, which exceeded the minimum statutory requirement of 1.63 per cent (90 per cent of the reference rate of 1.81 per cent). We reviewed the portfolios of the common fund as at March 31, 2015 and found that approximately 80 per cent of the investments held are generating returns in excess of 3 per cent and have maturity dates beyond one year.

We could not find any legislative provisions requiring an upper maximum on the amounts that could be transferred to client accounts. The actual earnings by the Public Trustee on its clients' assets was 3.3 per cent in 2015. The difference between actual earnings of 3.3 per cent and the amount of 2.5 per cent paid to clients was approximately \$4 million. Since 2005, investment earnings of the Public Trustee have exceeded the earnings transferred to its client accounts. (See chart on the following page.)

<sup>9</sup> *Public Trustee Investment Regulation*, Section 2(2).



In recent years, as illustrated in the chart above, the relative percentage of earnings allocated to client accounts has been declining—with the difference being retained in accumulated surplus. Up until 2005, interest allocated to client accounts was approximately 90 per cent of interest earned on investments. Since then this allocation has been closer to 80 per cent. As a result of these ongoing reduced allocations to client accounts, the accumulated surplus has increased \$36 million since 2005.

#### Errors and omissions

The Public Trustee does not have formal processes to analyze and forecast the amount required to cover the risk of errors and omissions. Errors and omission claims are paid from the accumulated surplus as they cannot be deducted from client guaranteed accounts. We would have expected to see a trend analysis to help the Public Trustee determine the amount that is required to mitigate this risk. We reviewed the history of incidents over the last five years. These amounts were not significant, averaging approximately \$150,000 per year.

Management analysis of the current balance in the accumulated surplus was not documented. In the absence of this analysis, we analyzed the March 31, 2015 accumulated surplus balance of \$76 million. As depicted in the chart on the following page, we determined \$36 million of the \$76 million represents the difference between the investment earnings on client assets (including earning on the prior surplus balance), and the amounts transferred to the clients for the period 2005 to 2015. The remaining \$40 million represents the opening balance of the accumulated surplus in 2005 less the annual administration fees paid to the department for the cost of administering the Act.

## COMPONENTS OF ACCUMULATED SURPLUS (IN MILLIONS)



It is important that the Public Trustee perform an analysis of the accumulated surplus given its growth and a low incidence of errors and omissions. It is also important to consider that amounts paid to clients for investment earnings has historically been less than earnings on investments. Since 2005, interest earned on investments has not dropped below the benchmark rate, demonstrating that large surpluses are not necessary.

### Implications and risks if recommendations not implemented

If the Public Trustee does not complete an analysis of the accumulated surplus balance, there is a risk that the Public Trustee will hold in reserve more funds than are necessary to mitigate the risks of interest fluctuations, and errors and omissions. Further, the opportunity to maximize the return to client accounts may be missed.

## Reporting

### Background

Results analysis is a process to check how well a program is working and make improvements. Management examines program results and costs, and assesses what is working and what is not. Actual results are reviewed against planned results with reference to the actual and expected performance. This may lead to adjusting future plans, efforts and spending to improve results.

Albertans should be updated on results achieved by the Public Trustee in relation to its performance against its plan. The combination of annual plans and reports establish accountability for and transparency of results to Albertans.

The Public Trustee prepares annual financial statements that are included in the ministry annual report but has not prepared an annual report since 2012.

#### **RECOMMENDATION 4: IMPROVE RESULTS ANALYSIS PROCESSES AND REPORTING**

We recommend that the Public Trustee and Ministry of Human Services improve the performance reporting for the operations of the Public Trustee.

#### **Criteria: the standards for our audit**

The Public Trustee should report on the financial and non-financial results of its performance against goals, objectives and initiatives.

#### **Our audit findings**

##### **KEY FINDING**

The Public Trustee and ministry do not adequately report on the results of the operations of the Public Trustee.

#### **Financial reporting**

While there is public reporting of financial information, it is reported in a disaggregated manner in the ministry financial statements and the Public Trustee's estates and trusts financial statement. There is no one financial report that identifies the financial results of operations and the assets under the administration of the Public Trustee. This makes it difficult for Albertans and those providing oversight to understand the financial performance of the office.

The Public Trustee's operating costs are reported in aggregate as a single line item in the ministry financial statements. There is no breakdown of these costs. The estates and trust funds administered by the Trustee are included in a note in the ministry's financial statements. A separate financial statement is prepared by the Public Trustee which reflects the operations of the common fund and the assets held in trust and activity for the estates and trusts administered by the Public Trustee.

#### **Integrated performance reporting**

We did not observe reporting to the department or publicly on:

- relevant performance measures and indicators with targets
- the identification of significant achievements, results and outcomes
- the analysis and evaluation of results and outcomes with reference to goals, plans, key risks and targets
- financial and non-financial information linked in an integrated manner
- comparative information that includes trend considerations
- management commentary that is fair, balanced and complete

Other Public Trustee Offices in Canada<sup>10</sup> have set annual plans and prepare annual reports on the financial and non-financial achievements of their operations.

The reports prepared by these other provinces are directed to the ministers responsible. They focus on analysis of initiatives, results and outcomes that link to business plans and legislated responsibilities for the entire operations of the office.

<sup>10</sup> Examples include the provinces of British Columbia, Saskatchewan, Manitoba and Ontario.



The Public Trustee Offices of British Columbia and Saskatchewan use the following performance metrics to assess and report on their performance:

- return on investment against benchmarks
- service quality
- stakeholder satisfaction
- response time to client complaints
- tax filing and clearance certificate
- client disbursements
- time to secure physical assets
- processing times for personalized expenditure plans
- project management

#### Business Operating Support System—IT initiative

It is best practice that significant projects and priority initiatives be highlighted in performance reporting. We highlight a significant initiative funded by the accumulated surplus that was not highlighted in the Public Trustee's performance reporting. Reporting on the initiative may have positively impacted the success of the project and saved money.

In 2011 the Public Trustee entered into a significant fixed price contract to develop a new IT system to replace an aging system. It was to be delivered in March 2013. Adequate processes for reporting on the progress of the project to the Ministry of Justice were not in place. This failure resulted in the project continuing for several years at a cost of \$10.6 million, without any benefits to clients or the Public Trustee.

Subsequent to government restructuring in 2012 and recognizing the project was in jeopardy, the Ministry of Human Services engaged an external consultant to complete a project review. The project review included assessing the contractor's ability to meet its contractual obligations. Several key milestones in the contract were not achieved and the delivery date was pushed to November 2013.

The Department of Human Services concluded that the project was not viable and the contract was terminated. Total capital and administrative costs for the failed IT project, for which the Public Trustee received no tangible benefit, amount to \$10.6 million. This \$10.6 million was funded from the accumulated surplus of the Public Trustee.

#### Implications and risks if recommendation not implemented

In the absence of quality results analysis reporting, stakeholders will not receive sufficient information to assess whether the Public Trustee is achieving its desired results. Further, an evaluation into whether the costs to achieve the results are reasonable cannot be performed because of insufficient information.

