

Office of the Public Guardian and Trustee

1.0 Summary

The main mandate of the Office of the Public Guardian and Trustee (Public Guardian) is to protect the rights and property of people who lack the mental capacity to do this themselves. The Public Guardian manages the finances of about 12,000 people (clients) who are mentally incapable, for a variety of reasons, of looking after their own property. It also acts as the personal-care guardian of about 30 clients who are incapable of managing their own personal care, including health, housing and nutrition. As well, it administers certain estates of Ontarians who have died without a will and without next-of-kin residing in Ontario.

The Public Guardian had 388 full-time staff as of March 31, 2018, of whom 89% performed functions that directly or indirectly relate to managing the property of individuals found to be incapable, or to administering estates of deceased persons. In 2017/18, the Ontario Government allocated \$40 million to fund the Public Guardian; the Public Guardian in turn charged \$31 million in service fees, primarily to clients.

Our audit found that the Public Guardian has not ensured that it safeguarded the interests of clients under guardianship and estate heirs. While the Public Guardian has established policies and information systems to support the management of

guardianship and estate cases, we identified significant weaknesses in its operation that have not been sufficiently mitigated. For instance, we found that staff do not consistently identify and secure assets for clients on a timely basis, and the belongings of clients are not consistently tracked in the Public Guardian's case management system. The risk exists that clients' assets could be lost or misappropriated because of weak internal controls. We also found that management lacks useful reports from this system for use by its senior staff to effectively oversee many areas of its operations. These weaknesses increase the risk of hardship and financial loss to clients and heirs of estates.

The Public Guardian invests clients' funds in various investment products following internally developed investment policies. Our audit found that the Public Guardian financial planners follow these policies in determining how to invest clients' funds. However, these policies do not necessarily maximize the future cash flows for clients—the majority of clients' funds are invested in low-return, low-risk investment products that earned about 2% interest since 2014/15. These policies have never been reviewed by the financial experts retained by the Public Guardian for investment advice.

In estate administration, we found that the Public Guardian expects its staff to be able to detect fraudulent identification when it is presented by those purporting to be heirs to estates. However, it does not provide its staff with training on how

to identify false documents. In 2010, the Alberta Public Guardian and Trustee office discovered that one of its own staff had used fraudulent identification to misappropriate \$122,000 of funds from an estate file. Even though Ontario Ministry of Transportation staff informed us that it has observed increasing use of fraudulent documents at ServiceOntario—and so trains ServiceOntario and other government staff in how to detect such documents—the Public Guardian has never provided similar training to its own staff, even though it administers millions of dollars on behalf of others.

Our more significant audit findings include:

Guardianship Services for Clients

- **Based on Public Guardian data, only between about 7% and about 15% of the 12,000 clients under property guardianship were visited in each of the last five years.** The Public Guardian does not require its staff to visit the people whose property they manage, although it does require staff to conduct initial visits when individuals first come under property guardianship. However, these initial visits are usually not performed due to visit exemptions, and our review of a sample of clients who had been with the Public Guardian for as many as 28 years indicated that half have not been visited since coming under guardianship.
- **Financial plans developed for clients do not consider current, complete and accurate health information.** While Public Guardian financial planners are required by policy to consider a client's health information when preparing a plan for their investments and cash flow for future years, we found the health information they used did not have support in the file. This is consistent with findings in our 2004 audit.
- **Legal staff have missed acting on several time-sensitive legal cases for clients because of weaknesses in the case management system.** For example, the Public Guardian's legal staff missed deadlines in certain cases, which resulted in the Public Guardian becoming liable for an estimated \$5 million to cover accident benefits of clients involved in motor-vehicle accidents.
- **Public Guardian staff detected about \$1 million in financial transaction errors between April 2015 and March 2018.** About half the value of the errors detected by Public Guardian staff related to missed opportunities to collect income such as disability benefits and extended health insurance benefits for their clients. Although these specific errors were identified, others could go undetected, given various systemic risks (such as the need for more staff training and improvement to the case management system) that resulted in the errors occurring in the first place.
- **Business relationship with an auction house not formalized.** The Public Guardian pays commissions to an auction house on behalf of the clients whose belongings the auction house appraises and sells, but it has not entered into any formal agreement with this company since it first began using its services in the 1980s. As well, it has not competitively procured these services.
- **Many professionals in the community, such as social workers and occupational therapists (assessors), still perform capacity assessments of potential clients despite repeated concerns about the quality of their assessments.** The Capacity Assessment Office (Office), which reports to the Public Guardian and Trustee, provides training to and maintains a roster of health care professionals who assess the capacity of potential clients to manage property. Persons found incapable of managing property will become clients of the Public Guardian. External evaluations of the assessors conducted in 2016 and 2017 identified quality concerns in about half of them. However, the Office did not refer these assessors to their regulatory

colleges, and has not delisted any assessor from its roster. Public Guardian caseworkers who responded to our survey indicated that they believed certain people in their caseloads were capable of managing their own finances; the Consent and Capacity Board overturned over 80% of the cases it heard, indicating the community assessors were unable to provide sufficient evidence to establish the finding of incapacity in 2016/17 and 2017/18.

Estates Administration

- **About \$28 million from approximately 260 estates was eligible to be turned over to the Crown because the Public Guardian did not identify heirs and distribute assets of the estates under its management within 10 years of a person's death.** Several factors under the Public Guardian's control have contributed to delays in distributing assets to heirs. For example, estates staff could not consistently locate contact information for a deceased client's next of kin because caseworkers did not always obtain and document this information when the clients were still alive (about half of estates administered were previously property guardianship clients). This caused delays in identifying heirs when the clients died. As well, staff have not followed up on more than 600 estates cases that have been open with no activity for three years, and the Public Guardian case management system does not flag cases where follow-up actions are still required.

Case Management System

- **The Public Guardian's case management system does not effectively support the day-to-day operating activities of staff.** Public Guardian staff have made suggestions to improve the functions and reporting capabilities of the case management system. However, we noted in our audit that over 200 of these suggested changes have not

been implemented, even though some were from five years ago. As well, the system does not generate reports showing warnings of unauthorized access to the system, which contains sensitive health and financial information on clients.

Fees

- **Fees have not been reviewed since 2004.**

The Public Guardian collects fees from guardianship clients and from estates that it manages, as allowed under the *Public Guardian and Trustee Act*. These fees are based either on a percentage of the dollar value of the individual's assets or on the number of hours spent performing the services. We found that Ontario generally charges less than other provinces, although it does charge more than Manitoba specifically for reviewing submissions from others who apply to replace the Public Guardian as an existing client's guardian.

This report contains 16 recommendations, with 30 action items, to address our audit findings.

Overall Conclusion

Our audit concluded that the Office of the Public Guardian and Trustee (Public Guardian) could not fully demonstrate that it has protected the financial interests of the mentally incapable adults under its guardianship. We found that weaknesses in the Public Guardian's internal control systems and procedures put the assets it manages on behalf of clients at risk of loss or misappropriation. There have been situations where it has not collected benefits on behalf of clients on a timely basis, resulting in missed income; the process of securing clients' valuables is weak; and there have also been situations where it delayed acting on time-sensitive legal cases, leading to financial loss.

We also found that the Public Guardian invested funds according to its internal policies. However, these investment rules have not been validated by the Public Guardian's external investment

consultant or the government-appointed panel that provides it with strategic investment advice. The existing investment rules may be too restrictive, limiting the returns for some people under guardianship.

We further concluded that the Public Guardian did not have effective internal controls to support the administration and distribution of estates of deceased people in a timely and accurate manner.

We also found that while the Public Guardian reports its performance on how quickly it initiates guardianship services for new clients to the Ministry of the Attorney General, it does not measure other significant aspects of its services and programs, such as ongoing management of guardianship cases, and does not publicly report on any performance measures.

OVERALL OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE RESPONSE

The Office of the Public Guardian and Trustee (OPGT) appreciates the comprehensive audit conducted by the Auditor General and welcomes the advice on how to improve its services to Ontario's most vulnerable residents.

The recommendations within this report support the objectives of the OPGT's current strategic plan and modernization project, including making it simpler and faster for clients to access services; using an evidence-based approach to improve the effectiveness of service delivery; transforming business processes and tools; and increasing public awareness of the OPGT's roles and responsibilities.

The OPGT provides essential services to vulnerable Ontarians by protecting the value of property and the quality of life for mentally incapable adults who have no one else suitable to help them. It acts as a last-resort decision-maker for medical treatment and investigates allegations of serious harm to mentally incapable adults. Other client services include receiving and depositing income, making investments,

maintaining and selling property, applying for benefits, filing tax returns, paying bills and acting in legal proceedings if required. In addition, OPGT manages estates of people who have died without a will and have no known next-of-kin in Ontario and conducts extensive searches for possible heirs. It also oversees the capacity assessment process, serves as the Accountant of the Superior Court of Justice, and protects the public's interest in charities. All of this important work is part of the government's statutory duty to protect vulnerable Ontarians.

The OPGT is committed to modernizing and strengthening its services to achieve its mandate. The audit recommendations reinforce this commitment and will help us continue to improve services that directly affect the livelihoods of thousands of mentally incapable Ontarians who have no other means of support.

2.0 Background

2.1 Overview of Office of the Public Guardian and Trustee

The Office of the Public Guardian and Trustee (Public Guardian) has many responsibilities; its primary mandate is to protect the interests of those who cannot do so for themselves due to mental incapacity. Most of this work relates to adults who are incapable of managing their property (including their finances) when there is no one else willing and suitable to be appointed for this authority. These individuals are referred to as clients under property guardianship. The Public Guardian also administers certain estates of Ontario residents who have died without a will or next-of-kin residing in Ontario. See **Appendix 1** for key services that the Public Guardian provides.

2.1.1 Organization Structure

The Public Guardian operates within the Ministry of the Attorney General (Ministry). The Ontario Government partially funds the Public Guardian's operations and the Public Guardian's staff are managed under the Ministry's human resources function. However, under the *Public Guardian and Trustee Act*, the Public Guardian has the authority to act independently on behalf of adults who have been found to be incapable of managing their own finances or personal care.

The Public Guardian has regional offices in Hamilton, London, Ottawa, Sudbury and Thunder Bay; its central-office headquarters is in Toronto, which also serves as the Toronto regional office. As of March 31, 2018, the Public Guardian had about 388 full-time-equivalent staff, 89% of whom performed functions that either directly or indirectly relate to managing the estates and property of individuals found to be incapable of managing their property or of making personal care decisions (such as where to live, what to wear, and what to eat).

2.1.2 Funding, Fees and Other Financial Information

The Public Guardian's operations are funded primarily by an annual allocation of about \$40 million from the Ontario Government (which nets to \$18 million after the Public Guardian remits surplus income to the government), and fees charged to clients whose finances are managed by the Public Guardian. Revenue from fees in 2017/18 amounted to about \$31 million.

The Public Guardian also receives investment income from its own administration fund, which is invested along with the funds of people under guardianship. This investment approach began over 20 years ago to achieve a greater return for clients since higher levels of capital generally allow for a higher return. As set out in a regulation under the *Public Guardian and Trustee Act*, the administration fund contains mostly reinvested income from

investments accumulated over about 20 years. The fund had a balance of about \$122 million as of March 31, 2018.

Fees Charged for Services Performed

The *Public Guardian and Trustee Act* states that "the Public Guardian and Trustee may charge fees for anything done by the Public Guardian and Trustee under the Act or any other Act." The most common fees the Public Guardian charges clients are the compensation fee (3% on all transactions) and the care and management fee (0.6% of total assets managed on behalf of the incapable person). In general, the Public Guardian does not charge these fees for those receiving Ontario Disability Support Program payments.

2.2 Authority to Act as Guardian of an Incapable Person

2.2.1 Property Guardianship

As shown in **Figure 1**, as of March 31, 2018, the Public Guardian was acting as the property guardian for 12,189 adults incapable of managing their finances, an increase of 7% from 2014. Over the five-year period between 2013/14 and 2017/18, the average age of those under guardianship remained at about 60 to 61 years old, and the average net assets per person under guardianship increased by 19%, from about \$48,600 as of March 31, 2014, to almost \$58,000 as of March 31, 2018. Almost half of the guardianship clients also received payments from the Ontario Disability Support Program in each of these five years.

Of the property guardianship clients the Public Guardian managed as of March 31, 2018, 6% had net assets over \$100,000; 22% had net assets between \$15,000 and \$100,000; and 71% had net assets under \$15,000.

Caseloads of property guardianship clients have steadily grown between 2013/14 and 2017/18. **Figure 2** shows the trend of new and closed property guardianship cases between those years under the

Figure 1: Number, Average Age and Average Net Assets of People under Guardianship as of March 31, 2014–2018

Source of data: Office of the Public Guardian and Trustee

As of March 31	# of People Under Guardianship	Average Age of People Under Guardianship	Average Value of Net Assets of People Under Guardianship (\$)
2014	11,341	60.5	48,611
2015	11,540	60.6	51,038
2016	11,754	60.6	52,346
2017	11,971	60.7	55,161
2018	12,189	60.8	57,946
% Increase from 2014–2018	7	<1	19

various authorities that authorize the Public Guardian to be the property guardian of incapable adults. Over the past five years, about 2,000 new cases were added annually to the Public Guardian’s caseloads, and about 1,700 cases were closed each year.

Many different staff and departments within the Public Guardian perform various functions in managing the finances of clients. These functions include, for example, identifying and securing assets, gathering income or benefits and making disbursements, such as living expenses. **Appendix 2** provides further details about these functions.

The Public Guardian also invests excess cash of the people whose finances it manages in investment funds that it oversees. The Public Guardian’s investment policies require staff to follow the “prudent investor” rule whereby its staff “must exercise care, skill, diligence, and judgment that a prudent investor would exercise in making investments.” **Appendix 3** provides further details about the investment funds and related oversight.

Capacity Assessments

The Public Guardian’s authority to act as the property guardian for individuals can stem from several sources. In most cases, a determination that a person is incapable of managing their finances is made either by a physician in a psychiatric facility or a trained capacity assessor in the community. As of March 31, 2018:

- 50% of the property guardianship cases managed by the Public Guardian originated from a community assessor who evaluated their capacity to manage finances (as allowed by the *Substitute Decisions Act*)—these assessments may be requested by the individuals themselves or others such as bank employees or family members;
- 45% of the cases were individuals who had been admitted to psychiatric facilities and assessed by their physicians as being incapable of managing property (as required in the *Mental Health Act*); and
- 5% of the cases stemmed from other sources, such as the court ordering the Public Guardian to be a person’s property guardian.

Capacity Assessment Office

The Capacity Assessment Office (Office) was established over 20 years ago to provide training and support for quality improvements in the capacity assessment process as set out in the *Substitute Decisions Act*. The two staff of the Office share office space with Public Guardian staff and the lead of the Office reports directly to the Public Guardian and Trustee.

Regulated professionals such as nurses and social workers can apply to this Office to become community assessors. After receiving training provided by the Office and completing a take-home test

Figure 2: Trend of New and Closed Property Guardianship Cases, 2013/14–2017/18

Source of data: Office of the Public Guardian and Trustee

	2013/14	2014/15	2015/16	2016/17	2017/18
# of people under property guardianship at the beginning of the year (April 1)	11,041	11,341	11,540	11,754	11,971
# of new cases added during the year for the following reasons:					
Under the <i>Substitute Decisions Act</i> ¹	1,081	1,037	1,088	1,105	1,138
Under the <i>Mental Health Act</i> ²	885	876	891	771	779
Under other authority	35	27	31	27	33
Duplicate count due to information system limitations	(10)	(3)	(38)	(4)	(2)
Total	1,991	1,937	1,972	1,899	1,948
# of cases closed during the year for the following reasons:					
Death	(1,081)	(1,031)	(1,088)	(1,093)	(1,149)
Family, friends, etc. took over guardianship	(243)	(321)	(294)	(257)	(256)
Psychiatric facility elected to discontinue authority under the <i>Mental Health Act</i> ²	(214)	(174)	(202)	(197)	(189)
Updated capacity assessment under <i>Substitute Decisions Act</i> ¹	(29)	(24)	(36)	(29)	(30)
Other (e.g., Consent and Capacity Board ruling changes client's capacity status)	(120)	(189)	(125)	(110)	(106)
Total	(1,687)	(1,739)	(1,745)	(1,686)	(1,730)
Variance due to information system limitations	(4)	1	(13)	4	–
Breakdown of property guardianship clients at the end of the year (March 31):					
Authorized under the <i>Substitute Decisions Act</i> ¹	5,557	5,666	5,783	5,986	6,095
Authorized under the <i>Mental Health Act</i> ²	4,990	5,147	5,278	5,387	5,442
Authorized under other (e.g., court appointed)	794	727	693	598	652
Total	11,341	11,540	11,754	11,971	12,189

1. Under the *Substitute Decisions Act*, a trained capacity assessor in the community makes the determination that a person is incapable of managing his or her finances. An assessor can also subsequently reassess a person as capable.
2. Under the *Mental Health Act*, a physician in a designated psychiatric facility makes the determination that a person is incapable of managing his or her finances. A physician can reassess a person as capable while the person is still admitted in the psychiatric facility. The psychiatric facility is also required to notify the Public Guardian to continue guardianship prior to the person being discharged; otherwise, the person will by default be deemed capable upon discharge.

of competency, successful candidates are included in the publicly available roster of community assessors. Members of the public may select a community assessor from this roster to conduct a capacity assessment when needed. During 2017, there were about 120 community assessors in Ontario.

The Office also provides regular refresher training for existing assessors, most recently conducted in spring 2017. About 100 community assessors attended that seminar.

As well, the Office contracts with two expert consultants who review samples of capacity assess-

ments completed by community assessors to evaluate and report on the quality of assessments.

Appendix 4 describes the capacity assessment process in greater detail.

2.2.2 Personal Care Guardianship

The *Substitute Decisions Act* requires the Public Guardian to investigate any allegation that a person is incapable of personal care and that serious adverse events are occurring or may result. Public Guardian policy indicates this means a risk of

Figure 3: Types and Number of Personal Care Cases Managed by the Office of the Public Guardian and Trustee, as of March 31, 2018

Source of data: Office of the Public Guardian and Trustee

	# of Cases
All personal care components (i.e., safety, shelter, health, clothing, nutrition, hygiene)	28
Safety, shelter	2
Safety, shelter, health	2
Safety, shelter, health, clothing, nutrition	1
Safety, shelter, health, nutrition, hygiene	1
Total	34

suffering serious personal harm as a result of their incapacity. These cases arise usually because of abuse allegations from the public made to the Public Guardian, mostly through a publicly available contact phone number, but also by letter or email. Public Guardian staff investigate these allegations to assess whether action is required.

If the Public Guardian determines after an investigation that an individual needs protection, it will ask the court to appoint it as the individual's personal care guardian. In this role, the Public Guardian will often be responsible for making decisions on behalf of the person about one or more of the following six areas: health care, shelter (place of residence), safety, nutrition, hygiene and clothing. This may mean that the Public Guardian is given custodial authority to remove the individual from a situation of harm, or to prevent access by third parties who are abusing the person.

Under the *Substitute Decisions Act*, the Public Guardian is required to act diligently and in good faith, taking into consideration what the person's best interests are, when acting as guardian of personal care. The Public Guardian has had between 15 and 34 individuals under personal care guardianship at any given time over the last five years. **Figure 3** shows the number for each type of personal care guardianship cases managed by the Public Guardian as of March 31, 2018.

2.3 Estates and Heirship Searches and Distribution

Each year, the Public Guardian is appointed by the court as the estate trustee for over 200 new estates. These are estates of Ontario residents who have died without a will or an executor in Ontario, have no next-of-kin in Ontario, and have a minimum net value of \$10,000.

The Public Guardian's primary responsibility regarding estates is to identify and secure the assets and liabilities of the estate, using the same processes as when establishing new property guardianships. As of May 2018, the Public Guardian managed about \$145 million of assets in about 1,400 estates cases.

Public Guardian staff liquidate the net assets of estates and seek out the heirs. These processes happen concurrently. In identifying and locating all heirs to an estate, the Public Guardian establishes proof of lineage and heirship. It then ensures funds are forwarded to heirs in a timely manner.

Under the *Crown Administration of Estates Act*, if heirs cannot be located, the assets can become payable to the Province 10 years after the date of death. In 2017/18, \$516,610 of undistributed assets were escheated, or paid out, to the Ontario Government. The five-year trend of amounts and cases escheated is shown in **Figure 4**.

Appendix 5 provides further details on the process of administering estates.

Figure 4: Amount of Assets Escheated to the Government of Ontario and Number of Related Estate Cases, 2013/14–2017/18

Source of data: Office of the Public Guardian and Trustee

	Amounts Escheated to the Province (\$)	# of Estate Cases
2013/14	1,112,991	43
2014/15	1,077,375	46
2015/16	1,004,715	38
2016/17	249,025	22
2017/18	516,610*	7

* The total amount that could be escheated on March 31, 2018, according to the *Crown Administration of Estates Act* was \$28 million. The Public Guardian was unable to produce similar information for years prior to 2017/18.

3.0 Audit Objective and Scope

Our audit objective was to assess whether the Office of the Public Guardian and Trustee (Public Guardian) had effective systems and procedures in place to:

- protect the rights and interests of mentally incapable adults who have no one suitable to act on their behalf by executing its fiduciary duties as the guardian of property, investigating and acting as necessary on allegations of abuse of incapable adults, and investing client assets according to legislative requirements;
- administer deceased people’s estates in situations defined by legislative requirements, such as where there is no willing and available estate trustee, and distribute the estates to rightful heirs and beneficiaries;
- fulfill its core mandates with due regard for economy and efficiency; and
- measure and publicly report on the effectiveness of these services and programs.

Before starting our work, we identified the audit criteria we would use to address our audit objective. These criteria were established based on a review of applicable legislation, policies and

procedures, internal and external studies, and best practices. Senior management at the Public Guardian reviewed and agreed with the suitability of our audit objective and related criteria as listed in **Appendix 6**.

Our audit focused on the core programs and activities of the Public Guardian concerning guardianship functions for incapable adults aged 18 and over (for both property and personal care) and administration of estates. These activities encompass capacity assessment, financial and asset management, investigation, legal services, and identifying and distributing assets of estates that are administered by the Public Guardian. Regarding legal services, while we focused primarily on those provided to incapable adults, we also examined how the Public Guardian acted as a litigation guardian. These are cases where the Public Guardian is appointed by the court to make decisions on behalf of individuals who are involved in lawsuits but who lack sufficient capacity to properly instruct a lawyer or to make decisions about significant issues such as a potential settlement. In many of these cases, the Public Guardian is already the property guardian of the individual.

We focused on activities of the Public Guardian in the three-year period ending March 31, 2018, and considered relevant data and events of the last 10 years. We conducted our audit from January to July 2018, and obtained written representation from the Public Guardian that effective November 9, 2018, it has provided us with all the information it was aware of that could significantly affect the findings or the conclusions of this report.

In conducting our work, we reviewed applicable legislation, agreements, reports, and program guidelines and policies. We also examined documents and relevant files, analyzed data, reviewed information technology controls and assessed risks, and observed processes in securing and liquidating the assets of those under guardianship. In addition, we interviewed relevant staff from the Public Guardian, the Victims and Vulnerable Persons Division of the Ministry of the Attorney

General, and the Capacity Assessment Office (an independent office that reports to the Public Guardian and Trustee, and which, among other functions, provides training and information to assessors in Ontario) to better understand their roles and responsibilities in supporting the Public Guardian in delivering services to those under guardianship.

As well, we conducted a survey of all Public Guardian caseworkers (69% response rate) whose primary functions include ensuring that those under guardianship receive all the income and/or benefits they are entitled to, determining spending allowances and expense requirements, and arranging for routine property maintenance for those who have real estate or other substantial assets. We also conducted a survey (100% response rate) of the Public Guardian's financial planners, who are responsible for planning when to sell certain assets of those under guardianship and determining how to invest their funds. Furthermore, we surveyed all psychiatric facilities in Ontario that provide inpatient services (70% response rate) to better understand how they examine patients' mental capacity while in their facilities and their process of referring patients to the Public Guardian under the *Mental Health Act*.

We did our work primarily at the Public Guardian's central-office headquarters in Toronto. We visited and performed audit procedures on selected aspects of the audit in two of the four regional offices in Hamilton and Ottawa, to ensure selected functions are performed consistently across the province.

We met or spoke with representatives from the Office of the Conflict of Interest Commissioner, the Family Responsibility Office, and Ontario Disability Support Program to understand government requirements and best practices pertaining to conflict of interest; with representatives from the Ministry of Children, Community and Social Services to understand more about children transitioning to adulthood who may require capacity assessments; and with representatives from the Ministry of Transportation to understand their training pro-

cesses for their staff to detect potentially fraudulent identification documents.

We interviewed the external investment consultant that the Public Guardian had contracted with to provide expert advice on investment performance as well as a representative from the Investment Advisory Committee of the Public Guardian and Trustee, a committee consisting of members publicly appointed by the Lieutenant Governor in Council under the *Public Guardian and Trustee Act*, to help us better understand how the Public Guardian manages investment assets.

We researched how other provinces operate their Public Guardian and Trustee offices, and spoke to representatives from British Columbia, Alberta, Manitoba and Quebec to identify areas for improvement in Ontario.

To obtain perspectives on capacity assessments, we met with representatives from the Consent and Capacity Board and spoke to representatives of regulatory colleges representing individuals who can be qualified to be capacity assessors (community assessors) in Ontario—namely, the College of Occupational Therapists of Ontario, the Ontario College of Social Workers and Social Service Workers, the College of Psychologists of Ontario, the College of Nurses of Ontario, and the College of Physicians and Surgeons of Ontario.

We met with industry stakeholders including the Advocacy Centre for the Elderly, the Ontario Brain Injury Association, AdvantAge Ontario, Citizens with Disabilities – Ontario, the Ontario Long Term Care Association, the Canadian Mental Health Association (Ontario Division and Toronto Chapter), and Elder Abuse Ontario to obtain their perspectives on how the Public Guardian could better serve incapable members in their communities.

In determining the scope and extent of our audit work, we reviewed relevant audit reports issued by the Ontario Internal Audit Division and complaints data received by the Ontario Ombudsman in the last three years.

We did not audit other functions of the Public Guardian, such as management of perpetual care

funds for cemeteries, protecting the public's interest in charities, dealing with dissolved corporations, and its custodial function for funds under its role as Accountant of the Superior Court of Justice, as described in **Appendix 1**.

We conducted our work and reported on the results of our examination in accordance with the applicable Canadian Standards on Assurance Engagements—Direct Engagements issued by the Auditing and Assurance Standards Board of the Chartered Professional Accountants of Canada. This included obtaining a reasonable level of assurance.

The Office of the Auditor General of Ontario applies the Canadian Standards of Quality Control and, as a result, maintains a comprehensive quality control system that includes documented policies and procedures with respect to compliance with rules of professional conduct, professional standards and applicable legal and regulatory requirements.

We have complied with the independence and other ethical requirements of the Code of Professional Conduct of the Canadian Professional Accountants of Ontario, which are founded on fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour.

4.0 Detailed Audit Observations

4.1 Risks Exist of Misappropriation and Loss of Client Assets

The Public Guardian manages the finances of over 12,000 people under guardianship, with the lead responsibility resting with caseworkers; these staff approve payments and secure revenue sources for clients under guardianship, which amounts to about 700,000 transactions a year. Public Guardian inspectors are responsible for securing client assets, including valuables, when clients have moved or do not require them.

We noted weaknesses in the processes that are used to manage client finances as well as in the processes that legal staff use to track legal matters that affect clients. These weaknesses introduce risk that clients will experience a permanent or temporary loss of income that may lead to a decreased quality of life. In the more significant cases described below, the loss was often temporary because other individuals such as family in the client's life asked questions that led to the loss being identified—and then covered by the Public Guardian's assurance fund. However, in many cases, clients have no such individuals in their lives, increasing the risk that losses will be permanent and impact quality of life. Some of these issues could be addressed by improvements to the case management system; for more on these issues, see **Section 4.8**.

4.1.1 Payment Errors Result in Over \$1 Million in Losses for Clients or Reimbursement from Assurance Fund

In the three years between April 1, 2015, and March 31, 2018, Public Guardian staff—primarily internal audit staff, caseworkers and team leaders—have identified instances where clients lost over \$1 million because of errors made by staff, usually caseworkers.

The Public Guardian covers the cost of such errors with funds from its assurance fund (\$14 million as of March 31, 2018), which is part of the administration fund, described in **Section 2.1.2**, by compensating clients for any identified losses. Slightly less than half of the \$1 million related to missed collection of health care and Ontario Disability Support Program benefits. Between 2015 and 2018, 85 people under guardianship were delayed in receiving the extended health care benefits to which they were entitled, usually because of missed claims or a delay in submitting receipts or claims, and 73 clients were affected when Public Guardian staff missed deadlines related to various aspects of the Ontario Disability Support Program.

The reasons for these errors often stem from lack of staff training, and the case management system not flagging these situations for follow-up by caseworkers or for senior staff to help oversight. (For more on staff training see **Section 4.4.**)

4.1.2 Client Assets Not Consistently Tracked, Resulting in Risk of Loss

Public Guardian inspection staff are responsible for identifying and securing valuables in clients' homes, and other assets such as bank accounts, when clients first come under guardianship. Some valuables are stored and others are disposed of to pay for living expenses or reduce storage costs. However, the case management system does not support consistent tracking of the disposition of assets. For smaller valuables, it does not indicate whether assets are eventually stored and sold and that proceeds are fully deposited into an incapable person's account.

For example, we found a packet of jewellery, valued at \$645, in a regional office safe without any identifying name recorded; regional staff have been unable to determine the owner of these assets. We also found an instance where asset management staff had information on a client's foreign bank account of \$2.1 million, but since it was not tracked in the system, the bank account was not secured on the client's behalf until after the client died.

Furthermore, we found weaknesses in the process of securing assets from clients' safety deposit boxes, especially since these are commonly used to store high-value items. When clients have a safety deposit box, Public Guardian policy requires only one inspector to visit the bank to secure the contents and bring them back to the Public Guardian's head office. The inspector brings back either a Public Guardian-designed form that is intended to list all assets in the safety deposit box, or a bank-produced form. Either form must be signed by a bank official. However, there is no way to confirm that a bank official has signed the form, and the risk remains that an inspector could retain the contents,

complete a new form, and sign for the bank official. We found several instances where the form brought back by the inspector showed few or no assets in the safety deposit box. Senior Public Guardian staff have no way to determine whether assets have been taken by an inspector.

Public Guardian policy requires its inspection staff to complete inspections of client properties within 10 days of starting them, but senior staff do not monitor overall compliance with this requirement. We analyzed inspection data between January 2015 and May 2018 and found that, on average, inspections were completed within 16 days of starting them; in some cases the policy was exceeded by over 100 days. Inspectors are also required to document reasons for delays in excess of the policy; such reasons included difficulties in negotiating a visit date and logistical problems in accessing the property. However, we found that the reason of "other" was used about 40% of the time over this period. With minimal information documented by inspection staff, senior staff cannot effectively identify the root causes of delays.

4.1.3 Lack of Reliable Tracking Processes of Legal Matters Results in Assurance Fund Payouts

Public Guardian legal staff have several means of tracking legal matters, many of which are manual processes; the case management system does not facilitate the tracking of deadlines that affect legal matters, of which there were about 4,000 at any given time. As a result, senior legal staff cannot readily oversee legal matters to ensure they are dealt with in a timely manner, and deadlines on legal matters can be missed, increasing the risk that clients will experience losses. For example:

- In one case, the need to bring an incapable person under guardianship was not tracked by legal staff or the case management system. As a result it took the Public Guardian 16 years to finalize a court application to confirm its authority to act as guardian of property

for this incapable person. Because of this delay, the person experienced a significant reduction in net assets. Legal staff estimates indicated the individual originally owned \$118,000 of liquid assets and a property with no liabilities, but over the course of 16 years spent \$31,725 to maintain the vacant property and between \$818 and \$1,005 a month on accommodation elsewhere. As well, the individual missed out on \$110,525 of social assistance payments because the Public Guardian was not able to apply for this on their behalf. The missed case was only discovered in 2016 after a family member inquired about the status of the property. Consequently, Public Guardian legal staff applied for property guardianship, which was finalized in spring 2017. In early 2018, the incapable person passed away, leaving an estate valued at \$174,000 with unpaid debt of about \$123,000, for net assets of \$51,000.

- Three clients did not receive accident benefits to which they were entitled following motor vehicle accidents until between eight and 13 years later because legal staff did not properly track their legal matters, and missed key deadlines. The Public Guardian as a result is liable for an estimated \$5 million to cover these benefits as well as damages to the clients since, for example, one client's family had been required to pay for some of the client's attendant-care costs.
- A person under guardianship did not receive an estimated \$150,000 because Public Guardian staff missed a deadline to apply for employer disability benefits.

In most of the above cases, the liability to the incapable person was discovered only through inquiries made by the incapable person's family or friends who were aware of the history of events. Having a system to track key dates and limitation periods is therefore essential, as not all clients have family or friends who can advocate on their behalf.

4.1.4 Long-Standing Business Relationship with Auction House Not Formalized, Increasing Risk of Reduced Revenue for Clients

The Public Guardian indicated it has used the services of the same auction house, based in Toronto, since the 1980s to both appraise valuables (such as jewellery and paintings) and to sell them. Assets are sold when a client does not require them, when money is needed for living expenses or to reduce storage costs. We found the business relationship between the Public Guardian and the auction house had not been formalized in an agreement, exposing the Public Guardian to a number of risks, one being that the highest possible value was not obtained on the sale of clients' assets. See **Figure 5** for more details.

RECOMMENDATION 1

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

- develop processes to track assets, including those from safety deposit boxes and properties, from point of being secured to point of safekeeping or sale, and follow up on any exceptions identified;
- procure for the services of appraisal and auctioning separately; and
- specify in contractual agreements the responsibilities of the auction service provider regarding its efforts in getting the best value for assets to be sold and its responsibility for damaged, lost or stolen goods.

OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE RESPONSE

The Office of the Public Guardian and Trustee (OPGT) agrees with the recommendation. The OPGT currently uses a combination of systems

Figure 5: Weaknesses in Business Relationship with Auction House

Prepared by the Office of the Auditor General of Ontario

Concerns	Details
Auction house services have never been competitively procured	No other auction houses in Ontario have been given the opportunity to provide local services to the regional offices of the Public Guardian; such a procurement could result in lower commissions charged to clients. Following our inquiries, the asset management staff at the Public Guardian reviewed rates for various auction houses and based on this review, the auction house the Public Guardian has been using has lower commission rates than some and is approximately equal to others. For example, two auction houses, including the Public Guardian's, charge 15% for assets between \$2,500 and \$7,500. The Ministry recently directed the Public Guardian to procure this service competitively, which it plans to do in the next 12 to 18 months. In comparison, the British Columbia Public Guardian uses four appraisers and 16 different auction houses across the province to provide similar services.
Auction house appraises and sells clients' assets	The auction house appraises as well as sells clients' assets. The Public Guardian informed us that it assumes the auction house will act in good faith and so does not oversee any aspect of the auction house's activities after the assets are removed to the auction house. For example, the asset management staff rely on the auction house to make the best effort to obtain the highest value for assets sold, and trust that they will not engage in unethical practices, such as arranging for someone to bid low on items at a poorly advertised auction and later resell for a higher return, which would not be remitted to the client.
Security checks not required	While the Public Guardian requires security checks for the employees of external firms that provide "clean and search" inspection services at clients' properties (to clean their premises and search for financial and legal documents), it does not require the auction house employees that visit these properties (for example, to inspect artwork) to undergo similar checks.
Responsibility for damages and losses not contractually established	The Public Guardian has not clarified, such as through an agreement with the auction house, which party retains financial responsibility if items removed by the auction house are damaged, lost or stolen prior to being sold. Asset management staff informed us that this has never occurred.

and spreadsheets to track client assets. As part of its modernization plan, the OPGT will streamline and improve asset tracking through upgrades to its information technology system, including automation, and workflow and unification of the various current systems. These upgrades will strengthen internal controls. The OPGT will conduct a review of the current process, identify where controls are required or need to be strengthened, and develop business requirements.

The OPGT currently combines appraisal and auctioning services as it feels it is cost-effective for its clients. However, the OPGT will explore the recommended procurement approach. For example, the OPGT will contact the Proceeds of Crime Unit within the Ministry of the Attorney General to discuss way to procure the services of the appraisal and auctioning separately.

The OPGT agrees with the recommendation. In procuring the services of the auctioning service, the OPGT will include the specific responsibilities of the auction service provider in its contract, along with other clauses such as insurance, which are in the Ontario Public Service standard agreement.

4.1.5 No Record of Clearance Checks on 36% of Staff Who Have Access to Client Information

We found a lack of evidence to show that all Public Guardian staff have obtained the required level of security clearance. The potential exists that individuals with criminal backgrounds could attempt to misappropriate client funds.

Public Guardian staff have access to sensitive information about clients' health and financial

position. Depending on their responsibilities and associated risks of the position, Public Guardian staff may be required to undergo one or more of the following clearance checks: a criminal background check; a vulnerable sector check (usually required of individuals who work with children or vulnerable people to confirm that they have not been pardoned for a sexual offence); and a credit check.

Staff hired more recently are required to undergo three checks, while staff hired before 2012 were required to undergo only the criminal background check. As a result, Public Guardian inspectors, caseworkers and their assistants, and team leaders have different levels of clearance checks depending on when they were hired.

Even so, we found that the Public Guardian could not produce any record of clearance checks for 36% of these employees who work extensively with clients' finances and property, even though all of these employees were hired when clearance checks were required.

In contrast, teachers in Ontario must complete a criminal record check before they can teach in Ontario's publicly funded elementary and secondary schools, and must annually declare that they have not been convicted of a criminal offence in Ontario or in any other jurisdiction.

RECOMMENDATION 2

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

OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE RESPONSE

The Office of the Public Guardian and Trustee (OPGT) agrees with the recommendation. The OPGT will work with the Ministry of the Attorney General to ensure that all guardianship staff have obtained the necessary security clearances.

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

4.2.1 Limited Visits Conducted to Confirm Needs and Circumstances of Guardianship Clients

Public Guardian staff have not visited the majority of its property guardianship clients. In 2010, due largely to anecdotal concerns over workload, the Public Guardian stopped requiring annual caseworker visits to property guardianship clients. The only requirement is that caseworkers make one initial visit within the first six to 12 months of when an incapable person first comes under property guardianship. In comparison, we noted that Manitoba's Office of the Public Guardian's goal was to visit each client once per year, and Quebec's Public Guardian has a goal of one visit every one to two years depending on the client's needs. British Columbia's Public Guardian has a policy to visit new "committee of estate" clients (similar to property guardianship clients in Ontario) within six months—unless there are health or safety concerns or the authority to manage finances is in the process of being transferred—and every two to three years thereafter depending on the client's needs.

Public Guardian policies also allow for various exemptions from the visit policy, such as when a visit poses safety concerns (for example, when clients are violent or aggressive); if a client resides in a safe and supporting setting (such as a long-term-care home, a retirement home, or a hospital) or has stable living circumstances, and reliable and involved supports (such as a social worker and/or supportive family); or if a client has no fixed address.

The Public Guardian does not review the frequency with which clients are visited. We obtained visit data and found that as of March 31, 2018:

- in each of the five years from 2013/14 to 2017/18, only about 7% to about 15% of all clients had been visited; and

- in each of the four years from 2013/14 to 2016/17, between about 30% and about 60% of new clients had been visited.

We also estimated how many vulnerable people may have never met their caseworkers by reviewing a random sample of guardianship clients where the Public Guardian attained authority within the last 28 years, and found half had never been visited since coming under Public Guardian services.

In contrast, one of the municipal delivery agents for the Ministry of Children, Community and Social Services' Ontario Works program has an internal process to perform wellness checks such as visits when people do not cash cheques for three months. While caseworkers can examine clients' bank statements to review if they have been cashing cheques or withdrawing funds, the Public Guardian's information systems cannot produce a summary report to highlight for caseworkers if a cheque has not been cashed, or other situations that might warrant a visit to confirm the well-being of people under guardianship.

Our survey of caseworkers indicated that, in spite of the workload concerns (see **Section 4.4** for more on caseloads), many indicated that visits were an important part of case management. (See **Appendix 7** for more on caseworkers' perspectives on visits.)

4.2.2 Little Information on How Clients Are Supported in the Community

About half of the caseworkers who responded to our survey felt that they could rely on other individuals, such as social workers and doctors, to oversee the well-being of some, but not all, of those under guardianship. Furthermore, when asked about the well-being of clients, about 20% of the caseworkers who responded to our survey either did not feel confident or did not know, 23% did not take a position, and 40% did not answer the question.

While the need for visits can be reasonably reduced for clients who live in supportive settings (such as long-term-care homes, retirement homes

or hospitals) or who have family members or professionals such as social workers or physicians involved in their care, our random sample of client files indicated little evidence that caseworkers had communicated with these individuals in the community. Without this relevant information, caseworkers cannot make informed judgments when managing their cases, and may be wrongly assuming that the clients would not benefit from a visit. Senior staff indicated that the case management system did not include a place to record the details of information from key contacts and that it would be helpful to have such information more readily locatable.

Based on our review of a sample of files, we found that, overall, there was little evidence of recent contact made with such individuals under guardianship to determine their status or well-being. For example, in some cases the incapable person came under Public Guardian guardianship between 14 and 28 years ago with no indication of when the most recent contact occurred.

Further, according to our review of a sample of files, we identified circumstances where the caseworker had placed unwarranted reliance on the supportive people or settings. For example, a caseworker indicated in the file shortly after a client came under guardianship that a community mental health and addiction service agency was supporting the individual; however, there was no evidence in the file that any contact had been made with the agency since 2016.

RECOMMENDATION 3

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

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

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

OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE RESPONSE

The Office of the Public Guardian and Trustee (OPGT) agrees with the recommendation. The OPGT will review and update its client visit policy to state when other parties, such as doctors or social workers, can be relied upon to reduce the frequency of visits by its own staff.

The OPGT will provide additional training to staff on documenting dates and details of client visits. The OPGT will develop business requirements to improve the tracking of communications with supportive contacts through the system. The OPGT will introduce interim measures for managers that will enhance the monitoring of visit documentation and communications with supportive contacts.

4.2.3 Financial Plans and Investment Choices Made without Complete Picture of Client's Health Status

The Public Guardian financial planners are responsible for developing plans for all clients with net financial assets over \$50,000; these plans describe, among other things, how their assets are to be invested among three investment funds. In developing these plans, financial planners are required to consider the individual's health and age, since these factors can influence when and for how long a client may require funds, and follow internally developed policies when making investment decisions on behalf of clients.

The policies that financial planners follow have never been reviewed outside of the Public Guardian's financial planning unit. While these policies help guard against overly aggressive investment strategies that subject clients' assets to unwarranted risk, in some cases, they result in an overly cautious

investment strategy that is not well diversified for clients—with the majority of their assets being invested in funds that provide a low annual return of about 2% since 2014/15.

Limited Reliability of Health Information Used as Basis for Financial Plans

The current practice for developing financial plans does not ensure plans are based on accurate health information—in part because financial planners are not in a position to obtain such information. They must rely on caseworkers to obtain this information and caseworkers often do not document such information in the case management system.

We reviewed a sample of clients with investments and we found minimal documented health information in the case management system. The case management system does not have a specific field for this information; instead, it is embedded in the many notes included in the client's electronic case file, and therefore not readily locatable. For example, we found that caseworkers did not document when they last updated the health status of the client by speaking to a health professional.

Financial planning staff informed us that in some cases, they would not have reliable information on the health of the client because the client would not disclose the identity of physicians. However, we did not find any communications from financial planners to caseworkers requesting they obtain more current health information; caseworkers are entitled to request such information to help manage a client's finances. But based on our sample of client files, they rarely asked for the information.

The Public Guardian and Trustee of British Columbia, which also has several investment accounts representing different levels of risk, makes investment decisions based on a medical diagnosis and prognosis that also considers the person's life expectancy. None of the other larger provinces' Public Guardians maintained investment funds with different levels of risk.

4.2.4 Inflexible Investment Policy Not Supported by Evidence and Minimizes Income of Some Healthy Incapable Adults

The Public Guardian’s investment policies—those that financial planners use to invest clients’ assets—were originally created in 2005 by financial planning staff, with minor updates in 2017. They contain several specific investment rules that financial planning staff informed us were based on industry practice. These policies included a requirement that a client should not have more than 30% of assets invested in either of the Public Guardian’s medium- or high-risk funds. Financial planning staff could not produce any industry practice evidence of the basis for the policies.

We examined a sample of financial plans and found that they were prepared according to the developed policies. We reviewed these policies and found that while they appeared effective at guarding against overly aggressive investments for clients, they did not ensure a reasonably diversified investment strategy—even though senior financial staff indicated this was the intention of the policies. Consequently, the returns for some clients were unnecessarily low and could impact their future cash flows and quality of living. For example, under the policy, the funds of a healthy 80-year-old new client would be invested in only the low-risk, low-return fund. Also, no more than 30% of a client’s assets are to be invested in each of the medium- and high-risk funds but there is no requirement to invest any of their assets in these funds even if all other investments are in low-risk, low-return funds. Our sample of investment plans included two individuals in fair health where we questioned whether their investments were sufficiently diversified:

- A 60-year-old man had all \$69,000 of his assets invested in low-risk, low-return investments even though he had a positive monthly income of \$415; and
- A 64-year-old man had \$1.3 million (or 69%) of total assets of \$1.9 million invested in low-risk, low-return investments with a negative

monthly income of about \$2,000. While the negative monthly income suggests a need for some cash reserves, the client would still have over \$1.2 million available for other investments in five years.

RECOMMENDATION 4

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

- monitor that caseworkers obtain and document current health information of clients, including when this information was obtained, and make this information readily available to financial planners; and
- review its investment policies, with expert input from, for example, the Investment Advisory Committee or its investment advisor, to confirm they meet prudent investor standards and revise as necessary.

OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE RESPONSE

The Office of the Public Guardian and Trustee (OPGT) agrees with this recommendation. The OPGT will provide further training to staff on the importance of documenting the current health information of clients and when it was obtained. The OPGT will develop business requirements for system enhancements to improve the ability of staff and financial planners to locate this information.

The OPGT will review the investment policies with its investment advisors or other external organizations to provide a “peer review” or other advisory services to confirm the client financial planning policies meet prudent investor standards and change or update as necessary.

4.2.5 Assessing Alternative Fund Options Could Yield Opportunities for Better Value

As noted in **Appendix 3**, four external fund managers currently manage the investments of guardianship clients and estates on behalf of the Public Guardian. These funds, each with different characteristics related to returns, risks, and asset composition, are intended to meet the diverse needs of clients on a collective basis. These funds were established between 2000 and 2006, and since then, Public Guardian financial staff have not assessed whether these provide the most appropriate investment opportunities for clients to meet their current and future needs. For example, clients' funds are invested in one or more of the three options—two of which offer capital growth and one that does not. But the Public Guardian has not assessed whether other funds, which could yield better returns or improve capital preservation, would better meet clients' individual needs. Furthermore, for the guardianship clients' money that is available to be invested across the three funds, over 90% is in the fixed income fund that provides about 2% interest, with less than 10% in the medium- and high-risk funds that earned higher returns over the long-term. Monies in registered plans, such as disability savings plans and retirement savings plans, are not available to be invested in the Public Guardian's three funds but are also overseen by the Public Guardian's financial planners. The Public Guardian has not assessed whether other fund options, such as another non-fixed income fund that is low risk, would be more appropriate for the risk profiles of its clients.

As well, the recently created Investment Management Corporation of Ontario (Corporation) invests on behalf of public-sector clients such as the Ontario Pension Board and the Workplace Safety and Insurance Board using pooled funds. The Public Guardian made initial contact with this organization in summer 2017 to explore opportunities for using the Corporation's investment management services for the Public Guardian's investment funds,

consisting of mostly pooled funds but also unitized client funds. While the Corporation is in its early start-up phase, it may be a good option for consideration by the Public Guardian within the next several years.

RECOMMENDATION 5

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

- assess the appropriateness of its current investment strategy, which currently consists of three separate funds of varied risks, for its clients' investment needs and develop a plan to revise the strategy if needs are better met through other investment options; and
- periodically evaluate the use of the Investment Management Corporation of Ontario or other existing Ontario Government investment service providers.

OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE RESPONSE

The Office of the Public Guardian and Trustee (OPGT) agrees with the recommendation. The OPGT will assess the appropriateness of its current investment strategy and develop a plan to revise the strategy as necessary in the next procurement cycle.

The OPGT tendered several funds in 2017 as part of the ongoing review of its investment strategy. As part of the above noted assessment, the OPGT will contact the Investment Management Corporation of Ontario or other government service providers to discuss interest and possible partnership when procuring investment service providers in the future.

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

The Public Guardian, in its role as property or personal care guardian, can significantly influence the quality of life of the people under its guardianship. Our audit indicates that risks exist that cognitively impaired Ontarians are not getting the protection they need, and that some property guardianship clients may in fact be capable of managing their own finances. As a result, the Public Guardian cannot assure that it is providing services to the right people in need, which is a concern given the limited resources for providing guardianship services.

4.3.1 Low Number of Personal Care Guardianship Cases a Concern

The Public Guardian can be appointed by the court to act as a personal care guardian for mentally incapable people who are allegedly suffering from abuse, harm or neglect after the Public Guardian is made aware of the situation and investigates to confirm. The public can contact the Public Guardian through a dedicated telephone line to report suspected cases of serious personal harm (for example, not providing food, refusal to help obtain medical care, or leaving a person alone in an unsafe environment) or financial harm (for example, large withdrawals from a bank account for the use of another person, possibly a relative) to a mentally incapable person.

As personal care guardian, the Public Guardian can make decisions on behalf of these individuals regarding personal matters including their health care, diet, housing and clothing, as decided by the court. While legislative requirements across Canada vary, most larger provinces, including British Columbia, Alberta, Saskatchewan and Quebec, operate similarly to Ontario, where the court appoints the Public Guardian to be the personal care guardian for people in need.

The Public Guardian has acted as a personal care guardian for very few people in Ontario—between 15 and 34 over the last five years—compared with the roughly 12,000 people for whom it acts as a property guardian. Compared with Public Guardians in Quebec and Alberta, the number of personal care cases is significantly lower in Ontario. In Quebec, almost all of those under guardianship (about 13,500) were for both property and personal care. In Alberta, about 2,600 clients were under personal care guardianship as of March 31, 2018.

We examined the reasons for the low number of personal care guardianship cases in Ontario. We found that Public Guardian senior management generally holds the view that being a personal care guardian to someone imposes a highly restrictive level of control on a person's freedoms. It therefore does not actively seek out those who may benefit from personal care guardianship. For example, while the Public Guardian does conduct some outreach to inform certain community organizations, including community health centres and religious institutions about powers of attorney and the duties of a property guardian, these focus mainly on determining who may require property guardianship services. As well, we were informed that even though the Public Guardian caseworkers, who oversee property guardianship cases, were mostly aware that they can internally refer cases from property guardianship to personal care guardianship, they have referred only about eight such cases a year on average. Further, the dedicated public phone line, the primary means by which new personal care clients are referred to the Public Guardian and cases of suspected abuse or neglect are reported, is not easy to locate on the Public Guardian website, which resides within the Ministry's website. As well, the Public Guardian does not use other digital means such as social media to inform the public about its services. In comparison, the Office of the Public Guardian in the United Kingdom uses social media to communicate with the public.

Few of the stakeholder organizations we spoke to were familiar with the Public Guardian's role as

guardian of personal care. All said they thought that more of the incapable people they represented would benefit from such services and wanted the Public Guardian to more clearly communicate its services to the public, including when the Public Guardian should and should not be contacted, and how to access services, particularly personal care guardianship.

RECOMMENDATION 6

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

- work with the Ministry of the Attorney General to clearly communicate to the public through updates to its website and social media the ways to report possible abuse cases and the Public Guardian's role as personal care guardian; and
- refresh training of its property guardianship staff to clarify how staff can refer cases of suspected abuse or those in need of protection to personal care guardianship.

OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE RESPONSE

The Office of the Public Guardian and Trustee (OPGT) agrees with the recommendation. The OPGT will develop a public awareness strategy on the OPGT's role, mandate and how to access its services. This will include seeking approval to have a social media presence and working with the Ministry of the Attorney General (Ministry) to improve content on the Ministry's website so the information is more accessible and user-friendly.

The OPGT will incorporate refresher training on this topic as part of the broader training plan for frontline staff and ensure delivery of training on how to refer cases that may require guardianship of the person.

4.3.2 Concerns with Community Assessors' Work Identified but No Assessor Has Ever Been Delisted from the Provincial Roster

The Public Guardian has not taken a proactive role to ensure that community assessors (designated professionals outside of a hospital setting who have received training to assess a person's capacity to manage finances) are performing in accordance with acceptable quality standards. Without this assurance, there is risk that the Public Guardian is assuming authority for managing the finances of people who are in fact capable of doing it themselves.

Half of the Public Guardian caseworkers who responded to our survey indicated that they believed certain people on their caseload were capable of managing their own finances and do not truly need the Public Guardian's services. The Consent and Capacity Board, which in 2016/17 and 2017/18 heard 32 appeals from individuals assessed by community assessors, overturned over 80% of these cases where it found that the evidence could not support the finding of incapacity.

The Public Guardian is uniquely positioned to influence the quality of the work of these community assessors, who are responsible for referring over half of the property guardianship cases to the Public Guardian, because the Capacity Assessment Office (Office) reports to the Public Guardian and Trustee. The Capacity Assessment Office provides training to and maintains a roster of these assessors. (For more on the way community assessors are appointed and overseen, see **Appendix 4**.)

Since the Office was established over 20 years ago, it has never removed a community assessor from the roster. It has also never filed a complaint with any community assessor's regulatory college and has no criteria or guidelines to help it determine when to file such a complaint. The Office informed us that its role is to provide education through feedback and seminars to community assessors, not to sanction community assessors. A review conducted by senior staff at the Public

Guardian about 20 years ago noted that the Office “is unable to take disciplinary action against assessors about whom complaints are received other than to ‘delist’ them from the public list. This action has not been taken because Capacity Assessment Office staff are not privy to assessors’ reports or files, and therefore cannot evaluate the complaint against file information.” The Office’s staff still do not obtain assessors’ reports or files, and the Public Guardian has not conducted any similar review recently. Furthermore, the Office does not track the number of assessments conducted by each assessor and does not verify the declarations submitted by assessors stating that they have conducted five assessments over two years as required.

The Office retains external expert consultants who review the community assessors’ quality of work. We examined all expert consultants’ reviews from 2016 and 2017, covering 155 capacity assessments conducted by 77 community assessors, and found that the consultants had identified concerns in almost half of the assessors they evaluated. We found that the Capacity Assessment Office is limited in its ability to follow up on the results of the expert consultants’ quality reviews because of weaknesses in the process, which we describe in **Figure 6**.

In almost one-third of these capacity assessment reviews, expert consultants documented concerns with the quality of the capacity assessments they had evaluated. They cited concerns such as a lack of understanding of relevant legislation; asking

subjects questions that lacked sufficient depth; not explaining why they found the subject incapable; and not meeting any of the requirements for completing an assessment.

We also analyzed how many community assessors had repeated quality concerns identified through this quality review (each assessor is reviewed every two years). We found three-quarters of the assessors with more significant quality concerns in the 2016-2017 review cycle also had concerns in the 2014-2015 cycle. The Capacity Assessment Office has never conducted such an analysis.

We noted that in other provinces, a finding of incapacity generally involves several professionals providing input into the decision, sometimes with opportunities for the individual to contest the finding of incapacity prior to the Public Guardian establishing its authority. For instance, in British Columbia, capacity assessments are conducted first by a health-care provider and then a designate from the local health authority. A certificate of incapability is issued only when both determine a person’s capacity is lacking. Representatives from two stakeholder groups we spoke to suggested that including the input of others familiar with the person being assessed, such as a physician, would help ensure the overall accuracy of the assessment.

Figure 6: Weaknesses in Quality Review Process for Capacity Assessments

Prepared by the Office of the Auditor General of Ontario

Concerns	Details
Reviews covered only a fraction of work completed by community assessors	Each community assessor is required to send in only two completed capacity assessments for quality review over two years. As a result, only 155 or about 7% of all capacity assessments performed in 2016 and 2017 were reviewed.
Community assessors can choose which assessments to submit for review	Community assessors can choose the capacity assessments they forward for quality review, and therefore can avoid sending those that they know were not performed well.
Repeated instances of poor performance are not tracked	The Capacity Assessment Office does not track the expert consultants’ reviews of capacity assessments to determine if a community assessor has performed poorly over several years.

RECOMMENDATION 7

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

- track which community assessors are producing capacity assessments with repeated quality concerns (for example, assessments lacking a well-documented basis for incapacity); and
- develop criteria to determine when a community assessor should be referred to the relevant regulatory college and/or removed from the roster of community assessors, and apply these criteria appropriately to address systemic quality concerns.

OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE RESPONSE

The Office of the Public Guardian and Trustee (OPGT) agrees with this recommendation. The OPGT will instruct the Capacity Assessment Office (Office) to develop a system-based mechanism that will track capacity assessors who are producing assessments with quality concerns to measure frequency of individual occurrences and to categorize systemic matters aimed at improving the educational curriculum of the Office.

The OPGT will instruct the Office to work with the regulatory colleges to develop criteria for referral of an assessor to their regulator for review and to review its policies and processes around the removal of assessors from the roster of assessors.

4.3.3 Some Psychiatric Facilities Not Fully Confident that They Have Minimized Financial Losses of Patients

Psychiatric facilities have established different processes to ensure the patients in their facilities who are incapable of managing their finances are appropriately referred to the Public Guardian. We surveyed all designated psychiatric facilities in Ontario. Of the facilities that responded to our survey, 42% were confident that their facilities were able to minimize any financial loss experienced by admitted patients, while 58% were only somewhat or less confident. When discharged patients requiring property guardianship services are not appropriately referred to the Public Guardian, they may be susceptible to financial losses because of their own mismanagement or because of mistreatment by others.

Under the *Mental Health Act* (Act), the Minister of Health and Long-Term Care has authority to designate which psychiatric facilities are required to have all admitted patients assessed by their physicians to determine whether they are capable of managing their property, and to refer incapable patients to the Public Guardian for property management as appropriate. The Ministry has designated 82 such facilities and is responsible for administering the Act.

Senior Public Guardian staff informed us that although specific cases have not been tracked, they noted an increase in recent years of hospitals inadvertently discharging patients assessed as incapable before filing the required paperwork with the Public Guardian to continue guardianship. In 2014, and again in 2018 (during our audit), the Public Guardian sent a written reminder to these designated psychiatric facilities of their legislated duty to evaluate patients for their capacity to manage property.

According to the facilities that responded to our survey, they developed and used their own tools to help ensure they appropriately refer cases to the Public Guardian. These include training provided to

physicians either through the Public Guardian or by the hospital itself, and checklists to establish financial management capability. While the Ministry administers the Act and funds hospital operations, it had not developed any common tools for these hospitals to use. The Ministry informed us that other health partners such as the College of Physicians and Surgeons of Ontario and the Ontario Hospital Association may also be responsible for establishing standards of professional conduct and competency for physicians and ensuring compliance with legislative requirements, respectively.

The 2017 Law Commission of Ontario's report, *Legal Capacity, Decision-Making and Guardianship*, found that examinations performed by physicians in psychiatric facilities to determine capacity to manage property are relatively unregulated and under-analyzed.

RECOMMENDATION 8

To help psychiatric facilities meet the legislative requirements under the Mental Health Act to assess patients' capacity to manage their property and refer to the Office of the Public Guardian and Trustee (Public Guardian) when appropriate, we recommend that the Public Guardian work with the Ministry of Health and Long-Term Care, psychiatric facilities, or any other relevant health partners as required to establish standard referral procedures and tools.

OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE RESPONSE

The Office of the Public Guardian and Trustee (OPGT) will engage relevant stakeholders in the mental-health sector and ministry partners to discuss the establishment of referral procedures and tools to refer clients to the OPGT when appropriate.

4.3.4 Gaps in Legal Requirements Overlook Certain Groups of Vulnerable Individuals That Could Benefit from Public Guardian Services

Outside of psychiatric facilities, Ontario currently has no standard process to systematically evaluate certain vulnerable populations who may also be incapable of managing their own finances and may not have power of attorney, including:

- people residing in long-term-care facilities with conditions such as dementia;
- people who have acquired severe brain injuries that affect decision-making;
- people with mental health or developmental disabilities admitted to hospitals that are not designated by the Ministry of Health and Long-Term Care under the *Mental Health Act*, such as community hospitals; and
- youth receiving social benefits who have some form of mental illness or acquired brain injury or severe disability.

The Ministry of Health and Long-Term Care has not assessed how many individuals in long-term care homes and non-designated hospitals are at risk of being unable to manage their own finances. Representatives from the Ontario Long Term Care Association and the Brain Injury Association informed us that, in their view, such assessments should be conducted more systematically in these settings. See **Appendix 8** for more information on their rationale for extending capacity assessments to long-term-care homes and hospitals.

The Ministry of Children, Community and Social Services identified that as of June 2018, more than 1,300 youths aged 18 and 19 and entering adulthood lived with either mental illness or severe disability, and received payments from either the Ontario Disability Support Program or the Assistance for Children with Severe Disabilities. These adults are at risk of not being able to manage their own property and should be evaluated and referred to the Public Guardian as needed, but no processes exist to ensure this occurs.

In the five years between 2013/14 and 2017/18, only 218 youths aged 18 or 19 were referred to the Public Guardian for property guardianship. The 2017 Law Commission of Ontario report noted a similar issue: “For those transitioning youth who are living with acquired brain injuries, mental health disabilities or other condition that may affect decision-making abilities, there may be no clear mechanism or responsibility for triggering a Capacity Assessment at age 18: these youth may ‘fall through the cracks’ in various systems.”

A medical professional with one of the stakeholder groups we talked to noted another group of vulnerable people that the Public Guardian might miss under the current referral process is those with low income who might not have the capacity to know that they should not be making impulsive, non-essential purchases. The professional noted cases where low-income individuals had spent their next month’s rent on non-essential needs such as high-end clothing, with the consequence of being evicted and becoming homeless. These individuals are not systematically brought to the Public Guardian’s attention as they are not necessarily abused by another party (as explained in **Section 4.3.1**). However, they could benefit from the Public Guardian’s property guardianship services.

Many of the stakeholder groups stated that, in their view, the Public Guardian’s work should be expanded to help more incapable people, but that it was their impression that the Public Guardian was working with a full caseload and so could not absorb this higher work volume.

RECOMMENDATION 9

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

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

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

OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE RESPONSE

The Office of the Public Guardian and Trustee will consult with and work in conjunction with the Ministry of the Attorney General, other relevant ministries and stakeholders to develop formal processes to assist specific, vulnerable populations in accessing property guardianship services. This work will consider the Law Commission of Ontario’s report, *Legal Capacity, Decision-Making and Guardianship*, and the OPGT’s current modernization initiative (for service-delivery considerations).

4.3.5 Public Not Well Informed of Right to Replace Public Guardian

The Public Guardian received about 260 applications each year in 2016/17 and 2017/18 from people who wanted to replace it as an individual’s guardian. Between 2014/15 and 2017/18, the number of cases closed due to family and friends taking over guardianship declined by 20%, while the total number of property guardianship cases went up by almost 6%.

While the Public Guardian is legislatively established as the guardian of last resort, it does not clearly convey to the public that it does not have to be the permanent guardian. As a result, the public, particularly family and friends of an incapable person under guardianship, may not be fully aware that they can ask to replace the Public Guardian as an incapable person’s guardian; such replacements could reduce the Public Guardian’s caseload.

When guardianship is first undertaken, Public Guardian policy requires caseworkers to notify any individuals who appear to be potentially suitable guardians that they may request to take over guardianship. However, we noted that not all such

individuals were identified by caseworkers and that policy does not require further notifications, even if the incapable person is under guardianship for many years. The Public Guardian’s main website does not clearly direct visitors to instructions on how family or friends may replace the Public Guardian. Instead, an interested party would need to know to perform a general search for “replace Public Guardian and Trustee,” or click through three links from the Public Guardian’s main website to find the instructions.

RECOMMENDATION 10

To minimize resources devoted to providing guardianship services and to help suitable family and friends become aware that they can be more involved in managing an incapable person’s assets, we recommend that the Office of the Public Guardian and Trustee (Public Guardian) work with the Ministry of the Attorney General to clearly communicate to the public—such as through updating its website and using social media—their right to replace the Public Guardian as a guardian of an incapable person.

OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE RESPONSE

The Office of the Public Guardian and Trustee (OPGT) agrees with the recommendation. The OPGT will work on developing a plan to identify family members of existing clients who may be suitable and willing to apply to replace the OPGT. The OPGT will determine and implement a process for notifying them again of the potential to apply and ensuring that they have the required information. The OPGT will also incorporate and highlight this information in the public awareness campaign on the OPGT’s role and mandate that will be part of its modernization initiative. As noted, the OPGT will be seeking approval to have a social media presence and will be working with the Ministry of the Attorney General (Ministry) to improve the

content relating to OPGT services on the Ministry’s website, which will make the information more accessible and user-friendly.

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

The Public Guardian has not assessed the way it distributes cases among caseworkers, or the most effective mix of staff to support case management, in over 20 years. As a result, the Public Guardian cannot demonstrate that staff are currently deployed in the most effective way to provide quality services to vulnerable people.

Caseworkers provide critical frontline services to guardianship clients, such as developing monthly budgets to meet client needs based on their available resources, authorizing the payment of their bills, and obtaining information from health-care sector and social service workers who may be closest to clients who suffer from mental illness, brain injuries or developmental disabilities. The Public Guardian requires caseworkers to have knowledge of the various statutes that give it authority to act as the guardian of vulnerable adults, financial management practices, and negotiating skills with creditors, among other technical and problem-solving skills. The Public Guardian does not require caseworkers to have specific educational prerequisites.

Our discussions with stakeholder groups indicated that, in their experience, caseworkers usually were professional and hard-working, and quick to respond to requests for needed services (for example, funds for clothes or rent). However, most also noted cases where caseworkers were unreachable and unresponsive to urgent requests to support clients. Many of the groups we met with indicated that it was their understanding that the work of the Public Guardian was hindered by high caseloads.

The Ontario Ombudsman reported to us that it received almost 450 complaints from the public on the Public Guardian between April 2015 and December 2017:

- about 43% of these complaints related to services (for example, alleging that the Public Guardian failed to renew a client's mortgage when it came due and alleging that the Public Guardian sent a client's monthly allowance to the wrong recipient);
- 28% related to communication (for example, difficulties getting in contact with the caseworkers and delay in responding to clients' or their families' inquiries);
- 21% related to decision-making (for example, dissatisfaction with the Public Guardian's decision to become involved and manage the health and financial affairs of an individual without obtaining full information from family members and decisions regarding the management of client finances); and
- 8% related to other miscellaneous reasons.

The Public Guardian has not assessed whether its current staffing model for guardianship services is conducive to effective management of client cases. The current staffing model consists of multiple positions—caseworkers, senior caseworkers, caseworker assistants, team leaders and managers. Assistants provide administrative support to senior caseworkers, who are assigned to manage more complex cases. Non-complex cases are assigned to junior caseworkers.

The Public Guardian has not determined what a reasonable caseload is among its classes of caseworkers. Without such benchmark, caseloads among staff varied considerably: senior caseworkers' caseloads ranged from 73 to 112 as of March 31, 2018, compared with 71 to 107 as of a year earlier; more junior caseworkers' caseloads ranged from 150 to 237, compared with 178 to 227 a year earlier. In other words, some caseworkers managed about 50% more cases than other caseworkers, even though they are all supposed to be managing files of similar characteristics and complexity. Of the caseworkers who responded to our survey, 88% found their caseloads unmanageable, and 65% indicated that a large caseload was the single largest obstacle to managing clients' finances effectively.

We also noted that, in 2015, an internal working group found that the Public Guardian could assign cases based on specialized areas instead of by complexity. Specifically, it noted that assigning all cases with extended health-care plans to one specialized group of caseworkers would improve the way staff obtain benefits and manage claims for guardianship clients. However, the Public Guardian has not implemented this recommendation. Caseworkers who responded to our survey felt that having specialized groups of caseworkers to manage cases with pending lawsuits (such as motor vehicle accident claims), insurance claims, or real-estate issues would also be beneficial.

See **Figure 7** for further details on our concerns regarding the staffing model.

RECOMMENDATION 11

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

- analyze the time and effort required to manage guardianship cases, determine a suitable staffing model, develop benchmarks for a reasonable caseload, and reallocate resources accordingly; and
- identify areas where staff require additional training and provide effective training to staff, possibly through one-on-one instruction.

OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE RESPONSE

The Office of the Public Guardian and Trustee (OPGT) agrees with the recommendation. The OPGT is currently undertaking a modernization initiative, which includes making upgrades to its information technology system and implementing strategies to address the current workload pressures. Workload analysis is a key deliverable of this modernization work, which

Figure 7: Weaknesses In Staffing Model

Prepared by the Office of the Auditor General of Ontario

Concerns	Details
Insufficient training according to caseworkers responding to our survey	Of those caseworkers who responded to our survey, 63% felt that they did not receive enough training and would benefit from more one-on-one training to help them make better decisions in a variety of situations.
Caseworkers indicated lack of support by team leaders according to our survey	One-third of the caseworkers who responded to our survey felt that they received enough support from their team leaders only some of the time, noting that team leaders are not always effective, knowledgeable, willing or available to help them. About 60% of the caseworkers who responded to our survey felt that they received enough support from their team leaders all of the time, and another 10% did not answer this question.
Disconnect between oversight responsibilities and reporting relationships	The Public Guardian employs assistants to provide administrative support to senior caseworkers who are assigned more complex cases to manage. However, the effectiveness of this model is questionable because 65% of the senior caseworkers who responded to our survey indicated that they could not rely on the assistants to alleviate their workload given their high turnover and inability to perform tasks accurately. As well, assistants report to managers, not the senior caseworkers they assist. Similarly, team leaders are required to oversee the work of caseworkers, but caseworkers officially report to the managers (a level above team leaders). Also, team leaders allocate new cases to caseworkers without considering the existing overall distribution of caseloads because that is the manager's responsibility.
Staffing changes made without first determining what a reasonable caseload should be	In 2015 and 2018, the Public Guardian increased the staffing of guardianship caseworkers by adding three team leaders and seven caseworkers. However, it has not assessed what impact these staffing additions had on caseworkers' ability to efficiently manage clients' property.

will assist with determining an appropriate staffing model and optimal use of resources. A comprehensive three-year plan with short-, medium- and long-term objectives has been developed to drive this work. In the interim, managers will undertake a review of caseload distribution within the existing staffing structure and make adjustments where required.

The OPGT will establish a plan to identify staff who require additional training and in which areas of function/responsibility. The OPGT will also look at various options for the delivery of training to ensure that staff are appropriately trained to carry out their roles.

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

4.5.1 System Limitations and Other Factors Contributed to Delay in Estates Distribution

According to the *Crown Administration of Estates Act*, estate funds that have not been distributed 10 years after a person's death are to be escheated (or paid) to the provincial government. The remitted funds are deposited into the Province's general fund and used to cover the costs of public services. As of May 2018, Public Guardian estates staff still had not distributed about 260 estates to their heirs, representing 18% of estate cases administered, for at least 10 years after the date of death. These cases had a combined value of \$28 million.

Similar to concerns our Office raised in the audit of the Public Guardian in 2004, we found examples during this audit where estates staff did not, on a timely basis, distribute estates to the heirs in cases

where heirs were found, or remit undistributed estates to the Ontario Government in cases where heirs were not found. These delays resulted in unnecessary losses to the beneficiaries or the Crown.

In one case, estates staff did not remit to the Crown an estate valued at about \$5.8 million, even though they should have escheated it in March 2016, until we inquired about this case during our audit. Because estates staff delayed escheating the

file, the estate incurred about \$119,000 of federal taxes and Public Guardian fees between 2016 and 2018. In another case, estates staff approved an heir to receive about \$64,000 in 2016, but did not distribute the funds until we inquired about the delay in May 2018.

We identified a number of factors that contributed to the delay in closing estates cases, which are described in **Figure 8**.

Figure 8: Weaknesses in Process of Managing Estates

Prepared by the Office of the Auditor General of Ontario

Concerns	Details
Caseworkers not documenting information on family members of people under guardianship, resulting in slow heir searches later	About half of estate cases managed by estates staff originate from deceased people who were previously under the Public Guardian's guardianship. Public Guardian internal policy requires that caseworkers obtain background information of the guardianship client, including their family members, while the client is alive. However, estates staff indicated that information on family members was not always complete when they take over these cases from the caseworkers, resulting in longer-than-necessary searches for heirs.
No timing benchmarks established for various steps involved in administering estates	Estate administration involves multiple steps; for example, identifying and securing assets, identifying and locating heirs, and completing a legal review, as shown in Appendix 5 . The Public Guardian has not analyzed the time it typically takes to complete each step. Without such timing benchmarks, and subsequent monitoring for compliance, senior staff have not been able to detect and act on the delays that have resulted in administering estates and distributing funds to heirs.
Some estates files open for almost four months on average, with no decision made on whether to administer them	In the 2016/17 and 2017/18 fiscal years, the average time taken to open estate files was over a month from the date that the estate was referred to the Public Guardian, which exceeds the internal policy of 15 business days. As of July 2018, estates staff had still not determined whether they would take on 81 files that had been open for an average of 118 days, with one open for about two years. Estates staff explained that the delays are usually due to difficulties in locating next-of-kin in Ontario or quantifying the value of the estate—they only administer estates that are over \$10,000 net value—since this process often relies on external parties such as banks. They also informed us that because estates timeline data was not readily available, they could not determine whether the 15-day benchmark was reasonable.
More than 600 cases open for more than three years without evidence of review by senior staff	We found that 606 files had been open for more than three years. Even though senior staff review open files on an ad hoc, informal basis, they do not track which files have been reviewed. So, neither we nor the estates staff could determine which of these old files had been reviewed and what action, if any, staff had been directed to take to help close the files. Following our last audit of the entity in 2004, the Public Guardian committed to reviewing the status of every estates file open more than three years on a quarterly basis.
Information systems have no functionality to help with manual processes	Much of the estate administration processes are manual and the related information systems do not produce useful progress reports to support oversight. For instance, the system does not alert staff when a file needs to be followed up to contact heirs or to be escheated; does not easily allow staff to calculate each beneficiary's entitlement, an exercise that can be complex when there are multiple beneficiaries; and does not track the type of information requested of and obtained from each potential heir prior to distributing the estates. Senior estates staff requested system changes in 2012 to address many of these deficiencies, but changes had not been made at the time of our audit. We discuss other issues with the information systems in Section 4.8 .

RECOMMENDATION 12

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

- monitor whether caseworkers obtain more complete information about the family members of people under guardianship; and
- assess the time required to complete the various stages of the estates processes, establish or update benchmarks, and monitor the time taken to complete these stages.

OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE RESPONSE

The Office of the Public Guardian and Trustee (OPGT) agrees with the recommendation. The OPGT will establish processes to ensure that managers and supervisors monitor compliance with this requirement.

The OPGT is currently undertaking a modernization initiative, which includes making upgrades to its information technology system and implementing strategies to address the current workload pressures. Workload analysis is a key deliverable of this modernization work, which will assist with determining an appropriate staffing model and optimal use of resources. A comprehensive three-year plan with short-, medium- and long-term objectives has been developed to drive this work. In the interim, managers will work with available data to assess the timeframes in accordance with the recommendation and introduce revised targets.

4.5.2 Lack of Staff Training to Detect Imposters Increases Estate Fraud Risk

Despite the often millions of dollars of estate funds at stake, estates staff are not formally trained on how to detect fraudulent identification documents that claimants may produce to claim estate funds.

Instead, staff are expected to learn from their peers how to detect fraudulent documents. As a result, the Public Guardian cannot effectively detect cases where it may be distributing estate assets to people who are not the rightful heirs. Such an instance was detected in Alberta's Office of the Public Guardian and Trustee in 2010, where a staff member had fraudulently obtained a government identification card under a beneficiary's name and used it to open a bank account to misappropriate \$122,000 of funds from one of that staff member's estates files.

The Ontario Public Guardian requires claimants to produce documents such as birth certificates, marriage certificates and notarized affidavits to prove their identity. However, given current printer and photocopy technologies that can easily produce high-quality images, it can be difficult to ensure these documents—particularly documents from foreign countries—are valid.

The Ministry of Transportation's Fraud Prevention and Business Integrity Unit informed us it has seen an increase in the volume and quality of fraudulent documents used in attempts to obtain driver's licences and health cards over the years. The Ministry of Transportation trains ServiceOntario staff as well as DriveTest staff, who regularly review identification documents before issuing drivers' licences, on how to identify fraudulent documentation. The Ministry of Transportation also holds training sessions for other government staff, but the Public Guardian has not requested or received any such training.

RECOMMENDATION 13

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

OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE RESPONSE

The Office of the Public Guardian and Trustee (OPGT) agrees with the recommendation. The OPGT will contact the Ministry of Transportation to discuss and arrange this training for OPGT staff.

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

The Public Guardian measures whether it has generated enough investment returns on the funds that it manages and whether it has initiated specific services on a timely basis when it begins managing a client's assets. However, it does not measure ongoing activities in managing clients' assets; nor has it set targets for various activities or publicly reported on its performance.

The Public Guardian met its performance measure on investment in 2017/18. That year, it reported that the four-year rolling average returns for all three investment funds had exceeded established benchmarks, which are based on various stock indices and other bond and treasury bill rates.

However, we found that the Public Guardian does not fully measure and report on its performance of guardianship services:

- The Public Guardian monitors whether it has initiated 10 “critical” services to safeguard property within 30 days. These services include requesting an investigation to identify and secure assets, and requesting financial information from various organizations, such as the Canada Revenue Agency and the Canada Pension Plan. Over the four quarters in 2017/18, the Public Guardian reported that in 82% to 86% of cases, it initiated the 10 services within 30 days. However, the results are not measured against any targets to improve performance.

- Beyond the 10 initial services, the Public Guardian does not measure its performance on ongoing guardianship activities. In comparison, the Office of the Public Guardian and Trustee of British Columbia measures activities that occur throughout the period of guardianship, such as whether disbursements (such as for rent or for food) are processed within 15 days, and whether all investment plans that are due for review were reviewed by senior management before the end of the current year.
- The Public Guardian does not publicly report on any of its performance indicators to demonstrate to the public that it is operating effectively in meeting its mandate. In contrast, we noted that the Office of the Public Guardian and Trustee of British Columbia annually reports its performance measures in its public report.

RECOMMENDATION 14

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

- identify appropriate performance indicators that measure the efficiency and effectiveness of all activities throughout the duration of guardianship cases;
- set performance targets and regularly assess actual results against these targets; and
- report publicly on the results.

OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE RESPONSE

The Office of the Public Guardian and Trustee (OPGT) agrees with this recommendation. The OPGT will continue identifying ways of measuring efficiency and effectiveness of office-wide activities throughout the duration of a guardianship case. The modernization work currently under way will address data availability, risk

analysis and on-demand access to performance measures.

The OPGT has recently identified 47 performance targets: 24 in Client Services, 17 in Finance and six in the Legal Services Branch. The OPGT will continue to develop suitable new performance targets and regularly assess results against these targets.

The OPGT is part of the Open Government initiative and will continue to report approved data elements and performance targets. The OPGT will also include this information in future annual reports.

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

The Public Guardian may not be getting fair compensation for its work because it has not reviewed the service fees it charges to guardianship clients and estates under management since 2004, and does not consistently bill clients for services it performs.

The *Public Guardian and Trustee Act* enables the Public Guardian to charge fees for services it performs, and specifies that the Attorney General needs to approve these fees. As well, a regulation under the *Substitute Decisions Act* sets out specific percentages to be charged, such as 3% for receipt of income.

We compared the fees Ontario charges with other larger provinces' public guardians and trustees. We found that Ontario charges a higher fee than Manitoba for reviewing applications from others who apply to replace the Public Guardian as an existing client's guardian. Overall, however, Ontario charges less than other provinces. For instance, for each transaction of receiving income, Ontario charges a 3% fee, compared with 4% charged by British Columbia. As well, Ontario does not charge a fee when its staff perform heir tracing and research services related to estates, whereas British Columbia and Manitoba all charge a fee of \$75 per hour. **Appendix 9** shows a comparison of Ontario's fees with three other provinces.

Regarding fees for legal services, we also found that in March 2018, the Public Guardian wrote off six invoices for such services provided between 2012 and 2017, totalling \$10,254, because a lawyer retired in May 2017 and did not always bill for services provided over the years. The opportunity to bill the incapable person was lost when the case was closed.

The risk exists that lawyers could be foregoing legal fees as we found that lawyers recorded a wide range of hours in the billing system during 2017/18. While, on average, full-time lawyers recorded 850 hours, 60% of the lawyers recorded fewer than 1,000 hours, the minimum target established by senior legal staff in 2015, with one lawyer entering just two hours in the entire year.

RECOMMENDATION 15

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

- review and update its fees schedule; and
- bill promptly for all services performed.

OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE RESPONSE

The Office of the Public Guardian and Trustee (OPGT) agrees with this recommendation and will review and seek approval to update its fees schedule.

The OPGT also will ensure it bills promptly for all services performed. The OPGT will review its processes and put a system in place to ensure that services are billed promptly. The development of a more robust electronic case management system for billings and additional administrative resources are part of the OPGT's modernization work, which will help address this issue.

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

The Public Guardian’s case management system does not fully support staff in performing their daily functions and cannot easily produce useful reports to help senior staff effectively oversee operations. As a result, caseworkers and other staff cannot easily make informed decisions to help manage clients’ cases.

The case management system consists of two components:

- The first, implemented in 1991 and based on largely obsolete mainframe technology, tracks financial transactions.
- The second, implemented in 2004 with continuous enhancements since, tracks the activities performed on guardianship and estate cases.

In addition to case management system shortcomings identified in **Sections 4.1, 4.2 and 4.5**, other weaknesses are listed in **Figure 9**.

4.8.1 No Assessment of Best Use of Administration Fund

The Public Guardian has not assessed whether the administration fund (explained in **Section 2.1.2**) should be reinvested in Public Guardian operations to, for example, improve its case management system or hire additional staff, or continue to be invested to help increase financial returns for vulnerable adults whose assets it manages. The Ministry of the Attorney General, which oversees the Public Guardian, has not conducted any such analysis either.

The Public Guardian had \$122 million in its administration fund as of March 31, 2018. About 20 years ago, the Public Guardian supplemented guardianship clients’ assets in the investment funds

Figure 9: Weaknesses in Case Management System

Prepared by the Office of the Auditor General of Ontario

Concerns	Details
Paper-based files create inefficiencies	Legal cases and financial plans are predominantly paper-based and therefore not always stored in the information system. These documents are often integral to effectively managing property since, for example, they can indicate which assets will be sold and when. Yet, they are not readily available in the system, preventing guardianship caseworkers from making decisions on a timely basis.
Over 200 suggested system changes not yet implemented	At the time of our field work in 2018, Public Guardian information technology staff had yet to implement over 200 system changes requested by various staff on average 421 days previously, with some dating back five years. These changes were requested to help support oversight and improve case management. While Public Guardian staff discuss these requests at monthly meetings, they do not formally rank their importance to help prioritize which changes should be made first.
No process to detect unauthorized system access	Public Guardian information technology staff indicated that they are concerned that the reporting on security events is inadequate. For example, there is currently no system-generated warning to information technology staff when someone tries multiple times to gain access to the Public Guardian’s case management system. Instead, staff would have to search through reports to identify and review any security events, but spend little time doing so because their time is spent supporting ongoing operations and addressing requests for changes to the system and new reports. Best practices suggest that to decrease the risk of unauthorized or malicious cyber activity, data log analysis software should be set to constantly monitor security events, such as failed attempts to access the system, and flag these based on defined criteria.
Data extraction processes time-consuming and cumbersome	Public Guardian staff must separately extract and manipulate data to determine the time the Public Guardian takes to initiate services for its property guardianship clients, a performance measure that is reported to the Ministry of the Attorney General.

with money from its administration fund, with the expectation of realizing higher returns from higher levels of capital. Over the years, the balance in the investment funds has increased significantly from about \$900 million in 2000 to \$1.7 billion in 2018.

RECOMMENDATION 16

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

- determine in conjunction with the Ministry of the Attorney General whether the administration fund continues to have value in improving the financial returns for incapable adults, and, if appropriate, reallocate the funds to other operational areas; and
- improve the functionality of its case management system, incorporating feedback from its program areas.

OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE RESPONSE

The Office of the Public Guardian and Trustee (OPGT) will engage and discuss this recommendation with the Ministry of the Attorney General with the goal of ensuring that this fund is used effectively to support the role of the OPGT and its clients. This includes investing a portion of the funds to support the OPGT's modernization work, which will result in increased efficiencies to better support and provide critical services to its clients.

The modernization work will include improving the OPGT case management system; staff consultation will be sought in designing and implementing these improvements.

Appendix 1: Key Office of the Public Guardian and Trustee Activities and Corresponding Legislation

Prepared by the Office of the Auditor General of Ontario

Program Areas	Description of Program	Applicable Legislation
Program Areas Covered in Our Audit		
Guardianship Services	<p>The Office of the Public Guardian and Trustee (Public Guardian) acts as the guardian of property for mentally incapable adults when there is no one else who has been appointed to do so. In this role, the Public Guardian is required to make decisions and conduct transactions that are in the client's best interest.</p> <p>The Public Guardian is also to investigate any allegation that a person is incapable of personal care and that serious adverse events are occurring or may result. Following these investigations, if the Public Guardian determines an individual needs protection, it will apply to the court to request to be appointed as the individual's personal care guardian.</p> <p>These matters are covered in our report under Sections 4.1, 4.2 and 4.3.</p>	<p><i>Substitute Decisions Act, 1992</i></p> <p><i>Mental Health Act, 1990</i></p> <p><i>Public Guardian and Trustee Act, 1990</i></p>
Estates Administration	<p>The Public Guardian administers certain estates of persons who die in Ontario without a will and without next of kin residing in Ontario, where the minimum net value of the estate is \$10,000.</p> <p>These matters are covered in our report under Section 4.5.</p>	<p><i>Crown Administration of Estates Act, 1990</i></p> <p><i>Trustee Act, 1990</i></p> <p><i>Escheats Act, 2015</i></p>
Program Areas Not Covered in Our Audit		
The Accountant of the Superior Court of Justice	<p>Acting as the Accountant of the Superior Court of Justice, the Public Guardian manages funds and assets on behalf of the Court until these are required to be paid.* The funds and assets relate to either litigations (in the Superior Court of Justice, Small Claims and Family Court; about \$393 million as of March 31, 2018) or amounts held on behalf of children that are due when the child becomes eligible at age 18 (about \$426 million as of March 31, 2018).</p>	<p><i>Public Guardian and Trustee Act, 1990</i></p>
Charitable Property	<p>The Public Guardian has a supervisory role over charities and charitable property to protect the public's interest. Specifically, it:</p> <ul style="list-style-type: none"> reviews applications by organizations that seek to attain charitable status to verify that their activities are eligible; assists in resolving situations where a gift to charity is included in a will but without a specific charity being named or one named that no longer exists; investigates complaints about alleged misuse of charitable property; facilitates charitable interests in court cases when necessary. This means that the Public Guardian does not protect the charities themselves (e.g., Humane Society), but charitable interest (e.g., someone leaving behind money for a purpose, such as protecting animals). 	<p><i>Public Guardian and Trustee Act, 1990</i></p>
Maintaining Trust Accounts for Cemeteries	<p>Cemetery owners in Ontario are required by law to maintain trust funds for the perpetual care and maintenance of their grounds and monuments. Cemetery owners who do not have a practical alternative may request the Public Guardian to manage the trust funds while they receive the income earned on these trust funds on an annual basis to cover perpetual care and maintenance costs.</p>	<p><i>Funeral, Burial and Cremation Services Act, 2002</i></p>
Treatment Decisions	<p>The Public Guardian, as a last resort, could be required to make a decision on behalf of incapable people where a medical treatment is proposed and there are no other people available to make a decision.</p>	<p><i>Health Care Consent Act, 1996</i></p>

* The investment of these funds, as well as of the funds of guardianship clients, is covered in **Section 4.2.**

Appendix 2: Key Functions in Managing Client's Finances

Prepared by the Office of the Auditor General of Ontario

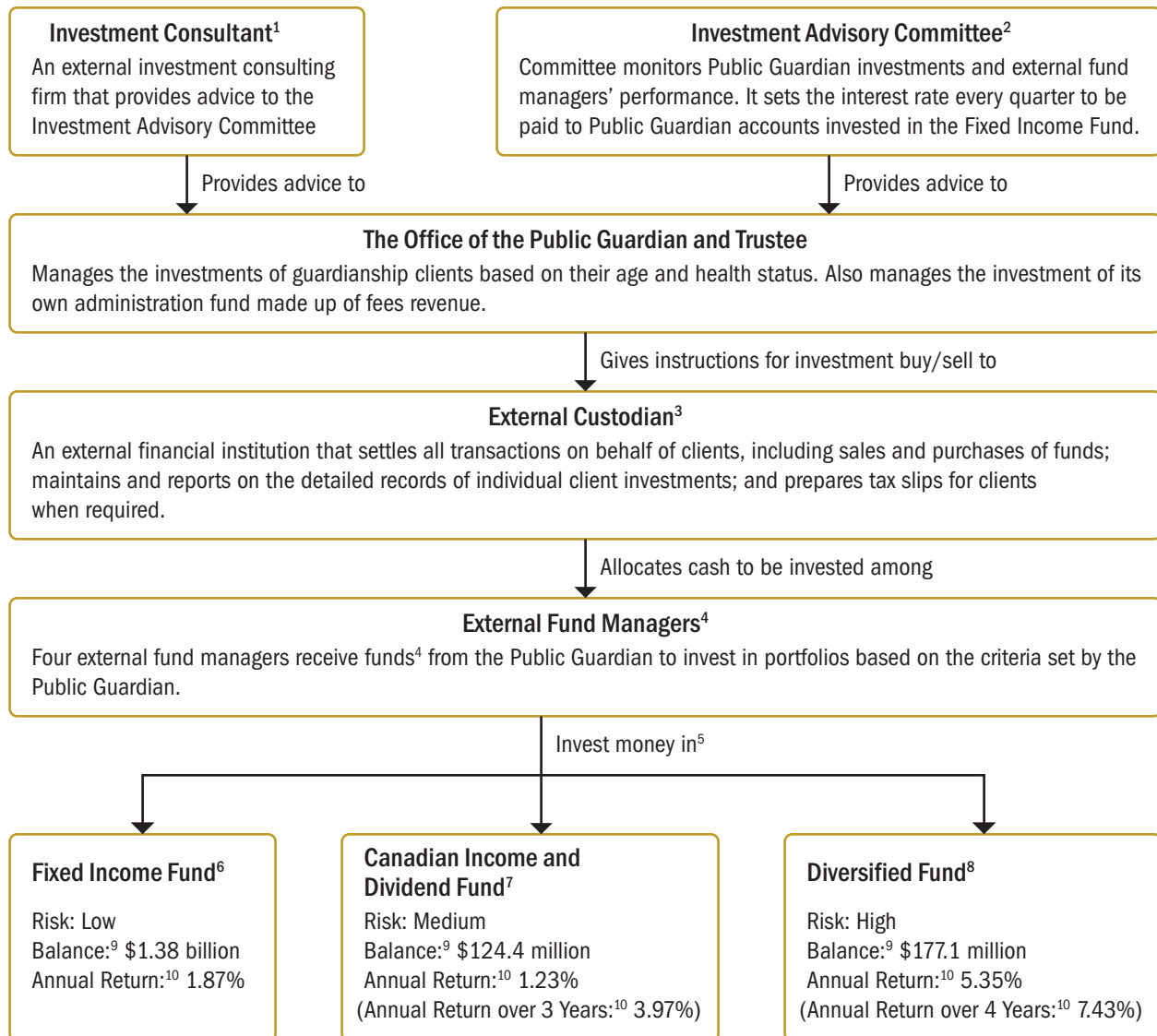
Caseworkers are assigned cases based on their complexity¹, and perform day-to-day activities² to manage finances of people under guardianship, with support from staff in other departments (Inspection, Legal, Vendor Management, Financial Planning, Asset Management)

Support Functions				
Inspection Visit the properties of persons under guardianship to identify, secure and safeguard assets and information ³	Legal Provide legal advice to caseworkers on files that contain legal matters	Vendor Management Establish legitimacy of vendors to whom caseworkers make payments on behalf of people under guardianship	Financial Planning Create financial plans for people under guardianship with assets valued at \$50,000+ and provide instructions on investments ⁴	Asset Management Liquidate, invest or dispose of assets according to caseworkers' and/or financial planners' instructions ⁵ and deposit proceeds to accounts

1. Complex cases that include, for example, real estate, a complex legal matter, financial investments, extended health care benefits, or cash and cash equivalents of at least \$50,000 are assigned to senior caseworkers; all other non-complex cases are assigned to more junior caseworkers.
2. Includes authorizing payment of rent and cable bills (actual payments are made by a separate group within the organization), filing any needed insurance claims, providing the guardianship client with an allowance for food, etc.
3. Includes assets such as jewellery and collectible coins, financial documents such as bills, and legal documents such as wills. Property guardianship client may continue to live in their current residence or may be required to move if there is insufficient funds to pay rent or if the person cannot care for himself or herself in their current residence.
4. Refer to **Appendix 3** for more information on this process.
5. Examples of instructions include selling securities previously held with external firms, investing money into one of the Public Guardian's investment funds, or opening a Tax Free Savings Account.

Appendix 3: Management, Oversight and Details of Investments Made by the Office of the Public Guardian and Trustee

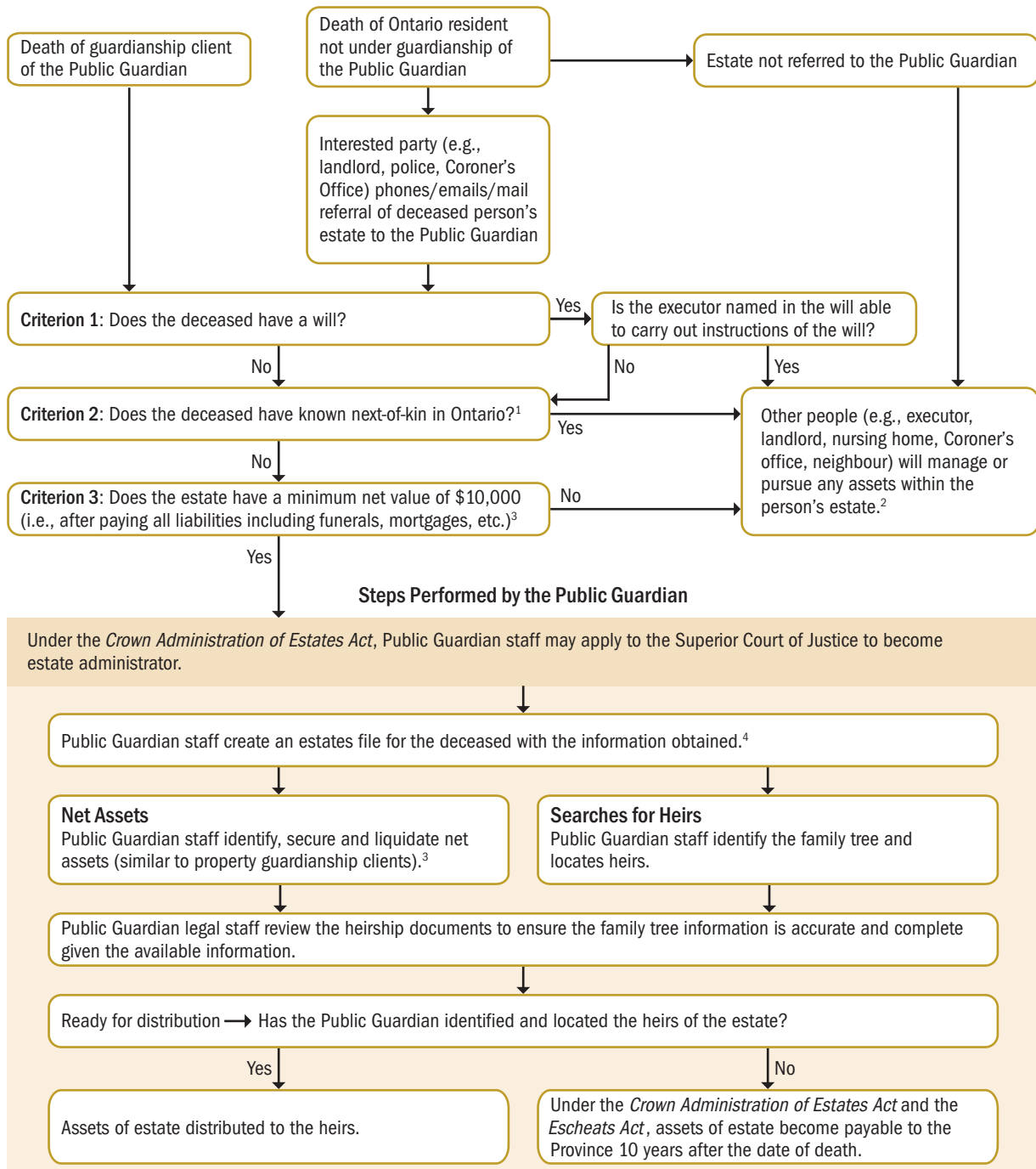
Prepared by the Office of the Auditor General of Ontario



1. The external investment consulting firm is contracted by the Public Guardian through a competitive selection process and has expertise in investment analysis, comparative reporting on fund manager performance, and investment risk management. The current contract, procured in 2016, has a term of seven years. The previous contract had a term of five years.
2. Committee consists of seven external members who collectively have expertise in investment management, institutional fund management, and financial services, and are all appointed by order-in-council.
3. The external custodian is contracted by the Public Guardian. The current contract was procured in 2010 and has a term of nine years.
4. The four external fund managers are selected by the Public Guardian through a competitive selection process. The contract for three of the existing investment managers was procured in 2018 and has a term of nine years. The previous contract was for 12 years. The contract for the fourth investment manager was last procured in 2007 and had a term of 12 years.
5. Includes cash from both clients' accounts and its own administration fund, which contained a balance of about \$122 million as of March 31, 2018.
6. Fund consists of Canadian and U.S. money market securities and Canadian bonds.
7. Fund consists of 50% Canadian fixed income and 50% Canadian equity.
8. Fund consists of two separate portfolios, each managed by a separate fund manager. Collectively, the two portfolios' asset mix is 40% Canadian fixed income, 30% Canadian equity and 30% global equity.
9. Balance as of March 31, 2018.
10. For period ending March 31, 2018.

Appendix 5: Estates Administered by the Office of the Public Guardian and Trustee and Steps Involved in Administration

Prepared by the Office of the Auditor General of Ontario



- Next-of-kin must be able and willing to administer the estate and be over the age of 18. If the next-of-kin resides outside Ontario, he or she can nominate another individual in Ontario to administer the estate on his or her behalf.
- These people may also be required to apply to the Superior Court of Justice to administer the estate (e.g., banks may require this step prior to releasing the assets to the individual administering the estate).
- Public Guardian staff visit the home of the deceased to assess the value of the assets and liabilities. The information obtained helps assess Criterion 3 and identify the total net assets to be distributed.
- For deceased clients, i.e., those who were previously under Public Guardian authority, information obtained while the persons were under guardianship will be included in the estates file.

Appendix 6: Audit Criteria

Prepared by the Office of the Auditor General of Ontario

1. Capacity assessments are conducted by qualified, competent individuals, following a consistent methodology.
2. Allegations of abuse are investigated in a timely manner, and appropriate actions regarding personal care or property guardianship are taken based on the results of the investigations.
3. The Office of the Public Guardian and Trustee acts as a property guardian only when it has the proper authority to do so.
4. Property guardianship client and estate assets are identified, safeguarded, valued, and recorded in a timely manner. Property guardianship assets are managed according to legislative requirements. Estates are distributed to rightful heirs or beneficiaries, including charitable interests where appropriate, in a timely manner.
5. Financial and legal affairs of clients are effectively managed, ensuring that income and other benefit entitlements are identified and received in a timely manner, and liabilities are identified, validated and paid as required in the best interests of the client.
6. Financial plans are completed in a timely manner and properly executed. Investments are managed in accordance with legislative requirements.
7. Resources are managed with due regard for economy and efficiency to fulfill the Public Guardian and Trustee's core mandates.
8. Information systems support service delivery to clients and facilitate accurate measurement of and public reporting on the effectiveness of services and programs.
9. Costs of services are accounted for and the corresponding fees allowed by legislation are charged to clients on a timely and appropriate basis.

Appendix 7: Visiting Guardianship Clients Provides Value to Case Management

Prepared by the Office of the Auditor General of Ontario

In this audit, we surveyed all caseworkers; 69% responded. Of those responding, 48% indicated that visits to at least some of the clients on their caseload was important, especially for people living in the community (and not, for example, in a hospital or other supportive setting). The remaining 52% felt that visiting incapable adults was not useful or necessary, often citing time pressures as a reason.

One caseworker said: “I found that visiting clients in nursing homes, even if they were non-communicative, helped me understand their needs and seemed to add value to the level of care provided to our clients.”

Another caseworker noted long-term-care “staff are not invested enough to provide us with information. ... It is important for the (caseworker) to meet the (person under guardianship) and ensure that the belongings of the (person) and his/her living conditions are as they are said to be. Visits to facilities also allow a chance to meet with the staff and they then know that there is supervision for (the people under guardianship) and that gives a bit more accountability to them.”

Similarly, the Public Guardian and Trustee of British Columbia noted in its *2017/18 Annual Report* that “for the adult, the visit is an opportunity to convey information directly to the [Public Guardian and Trustee] without an intermediary such as a caregiver or care facility administrator,” and “visits improve quality of life for (those under guardianship) through direct contact with [Public Guardian and Trustee] staff and provide for their maximum empowerment.”

In 2015 and 2016, the Ontario Public Guardian examined efficiencies within the visit process by surveying its caseworkers and a sample of people under guardianship. It found that while most people under guardianship surveyed were satisfied with its services, areas for improvement included timeliness of services, difficulty contacting caseworkers, and not being notified when there are changes in caseworkers. We noted that its survey had a response rate of 14% and did not ask whether the respondents thought that visits were performed with reasonable frequency.

Appendix 8: Extending Capacity Assessments—Perspectives from Organizations that Represent Residents of Long-term-care Homes and People with Acquired Brain Injuries

Source of data: Ontario Long Term Care Association and Ontario Brain Injury Association

	Sector Currently Lacking Systematic Assessments of Capacity	
	Long-term-care (LTC) Homes	Hospitals
Who should be assessed?	Cognitively impaired residents, such as those with dementia	Patients with acquired brain injury
Why would they need support?	90% of residents have some form of cognitive impairment, with the prevalence and severity of cases expected to increase in the coming years.	Because of the nature of some brain injuries, survivors often do not recognize that their ability to manage property is impaired. This may cause them to make financial decisions that are not in their best interest.
What cases might warrant intervention by the Public Guardian?	<p>LTC staff have noted cases where the family controlling a resident's finances does not appear to spend the funds in the resident's best interest.</p> <p>LTC home staff cannot easily identify whether a resident is considered incapable of managing their finances, and therefore would not know whether it is appropriate to refer cases to the Public Guardian.</p> <p>LTC homes have noted cases where the family controlling a resident's finances does not pay for their LTC fees.</p> <p>The Ontario Long Term Care Association estimated that uncollectible accommodation fees amounted to \$3.5 million across all LTC homes as of March 31, 2016 (most recent year data is available).</p>	The Ontario Brain Injury Association noted cases where individuals with a serious brain injury may receive a settlement from an insurance company that is intended to be used for rehabilitative medical costs, but might instead be coerced by others to spend it in ways that do not help to improve their health. Such individuals have contacted the Association for help after their settlements have been spent and they are in need of assistance due to their ongoing disability.
How would they benefit from assessment?	Potentially maximize the quality of life for long-term-care home residents and reduce financial abuse.	Earlier interventions, such as through a property guardianship that properly manages finances, could contribute to the long-term independence of these individuals.

Appendix 9: Fees Charged by Public Guardian and Trustee in Ontario and Selected Provinces, 2018

Prepared by the Office of the Auditor General of Ontario based on data from various offices of public guardian and trustees

Service Performed	Fees			
	Ontario	BC	Manitoba	Quebec
Guardianship Services				
Processing transactions (based on individual transaction value, unless noted otherwise):				
Capital receipts	3%	4%	3%	\$1,049/year flat fee + other administration fees*
Income receipts				
Capital disbursements		0%		
Income disbursements				
Management of assets	0.60%	0.70%	0.90%	1.50%
Property inspections (including preparation of reports):				
Gross assets of less than \$100,000	\$100/hour	\$125/inspection	up to \$80/hour + \$50/hour for travel time	\$1,157 for internal investigation, an additional \$94/hour after the first 12 hours, and \$94/hour for any other mandate executed by an investigator
Gross assets of \$100,000–\$249,999		\$200/inspection		
Gross assets of \$250,000–\$374,999		\$250/inspection		
Gross assets of \$375,000–\$499,999		\$300/inspection		
Gross assets of \$500,000–\$599,999		\$350/inspection		
Gross assets of \$600,000 or more		\$400/inspection		
Review of application to replace the Public Guardian as guardian	\$382	\$500	\$300	N/A
Estate Services				
Processing transactions (based on individual transaction value, unless noted otherwise):				
Capital receipts	3%	7%	3%	Liquidation of estate: \$131/hour Settlement of estate: \$1,324/file to \$1,873/file depending on whether file concerns an individual or commercial enterprise
Sale of real property with an agent		5% of gross sale price		
Real property conveyed to beneficiary or heir		3% of gross value of property		
Income receipts		5%		
Capital disbursements		0%		
Income disbursements		0%		
Management of assets		0.6%		
Identifying, locating and validating heirs	\$0	\$75/hour	\$75/hour	
Closing of file	\$0	\$0	\$300	

Note: Wording used to describe the various fees of each province has been adapted to help present comparative information.

* These include administration of land (\$84/year), residential building (\$694/year), rental property with less than 4 housing units (\$2,450/year) or rental property with 4 or more units (\$3,387/year), recovery of mortgage loan or other receivable (\$508/year), payment of mortgage loan or other debt (\$99/year), sale of movable property, purchase or sale of automobile (35% of transaction amount up to \$1,000), preparation and supervision of sale of real estate (25% of transaction amount, up to maximum of \$2,500).